

IMPEACHMENT OF PRESIDENT
DONALD JOHN TRUMP

THE EVIDENTIARY RECORD
PURSUANT TO H. RES. 798

VOLUME X, PART 9

Transcript of December 11-13, 2019 Committee on the
Judiciary Markup of: H. Res. 755, Articles of Impeach-
ment Against President Donald J. Trump, Volumes
I-XI



Printed at the direction of Cheryl L. Johnson, Clerk of the House of
Representatives, pursuant to H. Res. 798, 116th Cong., 2nd Sess. (2020)

JANUARY 23, 2020.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON THE JUDICIARY

JERROLD NADLER, New York, *Chairman*

ZOE LOFGREN, California	DOUG COLLINS, Georgia, <i>Ranking Member</i>
SHEILA JACKSON LEE, Texas	F. JAMES SENSENBRENNER, JR., Wisconsin
STEVE COHEN, Tennessee	STEVE CHABOT, Ohio
HENRY C. "HANK" JOHNSON, JR., Georgia	LOUIE GOHMERT, Texas
THEODORE E. DEUTCH, Florida	JIM JORDAN, Ohio
KAREN BASS, California	KEN BUCK, Colorado
CEDRIC L. RICHMOND, Louisiana	JOHN RATCLIFFE, Texas
HAKEEM S. JEFFRIES, New York	MARTHA ROBY, Alabama
DAVID N. CICILLINE, Rhode Island	MATT GAETZ, Florida
ERIC SWALWELL, California	MIKE JOHNSON, Louisiana
TED LIEU, California	ANDY BIGGS, Arizona
JAMIE RASKIN, Maryland	TOM McCLINTOCK, California
PRAMILA JAYAPAL, Washington	DEBBIE LESKO, Arizona
VAL BUTLER DEMINGS, Florida	GUY RESCIENTHALER, Pennsylvania
J. LUIS CORREA, California	BEN CLINE, Virginia
MARY GAY SCANLON, Pennsylvania, <i>Vice-Chair</i>	KELLY ARMSTRONG, North Dakota
SYLVIA R. GARCIA, Texas	W. GREGORY STEUBE, Florida
JOE NEGUSE, Colorado	
LUCY McBATH, Georgia	
GREG STANTON, Arizona	
MADELEINE DEAN, Pennsylvania	
DEBBIE MUCARSEL-POWELL, Florida	
VERONICA ESCOBAR, Texas	

PERRY APELBAUM, *Majority Staff Director & Chief Counsel*
BRENDAN BELAIR, *Minority Staff Director*

MAJORITY STAFF

AMY RUTKIN, *Chief of Staff*
PERRY APELBAUM, *Staff Director and Chief Counsel*
JOHN DOTY, *Senior Advisor*
AARON HILLER, *Deputy Chief Counsel and Chief Oversight Counsel*
BARRY BERKE, *Special Counsel*
NORMAN EISEN, *Special Counsel*
ARYA HARIHARAN, *Deputy Chief Oversight Counsel*

MADELINE STRASSER, *Chief Clerk*
PRIYANKA MARA, *Professional Staff*
WILLIAM S. EMMONS, *Professional Staff*
ANTHONY L. VALDEZ, *Staff Assistant*

MINORITY STAFF

BRENDAN BELAIR, *Staff Director, Counsel*
BOBBY PARMITER, *Deputy Staff Director, Chief Counsel*
ASHLEY CALLEN, *Chief Oversight Counsel*
STEPHEN CASTOR, *Counsel*
DANNY JOHNSON, *Oversight Counsel*
JAKE GREENBERG, *Oversight Counsel*
PAUL TAYLOR, *Chief Counsel, Constitution Subcommittee*
DANIEL FLORES, *Counsel*
RYAN BREITENBACH, *Counsel*
JON FERRO, *Parliamentarian, Counsel*

ERICA BARKER, *Deputy Parliamentarian*
ELLA YATES, *Member Services Director*
ANDREA WOODARD, *Professional Staff Member*

MARKUP OF: H. RES. 755,
ARTICLES OF IMPEACHMENT AGAINST
PRESIDENT DONALD J. TRUMP
VOLUME IX

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS
FIRST SESSION

DECEMBER 11–13, 2019

Serial No. 116–69

Printed for the use of the Committee on the Judiciary



Available <http://judiciary.house.gov> or www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2020

39–409



(19199)

COMMITTEE ON THE JUDICIARY

JERROLD NADLER, New York, *Chairman*

ZOE LOFGREN, California

SHEILA JACKSON LEE, Texas

STEVE COHEN, Tennessee

HENRY C. "HANK" JOHNSON, JR., Georgia

THEODORE E. DEUTCH, Florida

KAREN BASS, California

CEDRIC L. RICHMOND, Louisiana

HAKEEM S. JEFFRIES, New York

DAVID N. CICILLINE, Rhode Island

ERIC SWALWELL, California

TED LIEU, California

JAMIE RASKIN, Maryland

PRAMILA JAYAPAL, Washington

VAL BUTLER DEMINGS, Florida

J. LUIS CORREA, California

MARY GAY SCANLON, Pennsylvania,

Vice-Chair

SYLVIA R. GARCIA, Texas

JOE NEGUSE, Colorado

LUCY McBATH, Georgia

GREG STANTON, Arizona

MADELEINE DEAN, Pennsylvania

DEBBIE MUCARSEL-POWELL, Florida

VERONICA ESCOBAR, Texas

DOUG COLLINS, Georgia, *Ranking Member*

F. JAMES SENSENBRENNER, JR.,

Wisconsin

STEVE CHABOT, Ohio

LOUIE GOHMERT, Texas

JIM JORDAN, Ohio

KEN BUCK, Colorado

JOHN RATCLIFFE, Texas

MARTHA ROBY, Alabama

MATT GAETZ, Florida

MIKE JOHNSON, Louisiana

ANDY BIGGS, Arizona

TOM McCLINTOCK, California

DEBBIE LESKO, Arizona

GUY RESCIENTHALER, Pennsylvania

BEN CLINE, Virginia

KELLY ARMSTRONG, North Dakota

W. GREGORY STEUBE, Florida

PERRY APELBAUM, *Majority Staff Director & Chief Counsel*BRENDAN BELAIR, *Minority Staff Director*

CONTENTS

VOLUME IX

DECEMBER 11–13, 2019

A. REPORTS

	Page
Report, Special Counsel Robert Mueller (DOJ), “Report on the Investigation Into Russian Interference in the 2016 Election,” March 2019 Submitted by the Honorable Jerrold Nadler	1
Report, SSCI, “Russian Active Measures Campaigns and Interference in the 2016 U.S. Election Vol. 1: Russian Efforts Against Election Infrastructure” Submitted by the Honorable Jerrold Nadler	447
Report, SSCI, “Russian Active Measures Campaigns and Interference in the 2016 U.S. Election Vol. 2: Russia’s Use of Social Media” Submitted by the Honorable Jerrold Nadler	514
Report, SSCI, ICA Assessment, July 3, 2018 Submitted by the Honorable Jerrold Nadler	599
Report, UN, “Conflict in Ukraine Enters its Fourth Year with No End in Sight,” June 13, 2017 Submitted by the Honorable Jerrold Nadler	606

B. FACTSHEETS AND MISCELLANEOUS

Fact Sheet, European External Action Service, EU-Ukraine Relations—Fact-sheet Submitted by the Honorable Jerrold Nadler	695
Fact Sheet, GovTrack, House Vote No. 568 of 115th Cong., on Passage of S.585, Oct. 12, 2017 Submitted by the Honorable Jerrold Nadler	709
Fact Sheet, NATO, “NATO’s support to Ukraine,” November 2018 Submitted by the Honorable Jerrold Nadler	730
Misc., American Oversight v. U.S. Department of Energy Joint Status Report and Production Schedule, Submitted by the Honorable Jerrold Nadler	734
Misc., Complaint in Charles Kupperman v. U.S. House of Representatives, September 11, 2019 Submitted by the Honorable Jerrold Nadler	737
Misc., Donald Trump for President, Inc. FEC Form 99 Submitted by the Honorable Jerrold Nadler	765
Misc., Harvard Law Review, “Faithful Execution and Article II,” June 2019 Submitted by the Honorable Jamie Raskin	766
Misc., Indictment, United States v. Netykshko et al., No. 18 Cr. 215 (D.D.C. 2018) Submitted by the Honorable Jerrold Nadler	848

C. TRANSCRIPTS

Transcript, Dan Coats Statement for the Record, SSCI Hearing, “Worldwide Threat Assessment of the US Intelligence Community,” January 29, 2019 Submitted by the Honorable Jerrold Nadler	877
Transcript, HPSCI, Former Special Counsel Robert S. Mueller III on the Investigation Into Russian Interference in the 2016 Presidential Election, July 24, 2019 Submitted by the Honorable Jerrold Nadler	969

19202

1

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Report On The Investigation Into Russian Interference In The 2016 Presidential Election

Volume I of II

Special Counsel Robert S. Mueller, III

Submitted Pursuant to 28 C.F.R. § 600.8(c)

Washington, D.C.

March 2019

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

TABLE OF CONTENTS – VOLUME I

INTRODUCTION TO VOLUME I	1
EXECUTIVE SUMMARY TO VOLUME I	4
I. THE SPECIAL COUNSEL’S INVESTIGATION	11
II. RUSSIAN “ACTIVE MEASURES” SOCIAL MEDIA CAMPAIGN	14
A. Structure of the Internet Research Agency	15
B. Funding and Oversight from Concord and Prigozhin	16
C. The IRA Targets U.S. Elections	19
1. The IRA Ramps Up U.S. Operations As Early As 2014	19
2. U.S. Operations Through IRA-Controlled Social Media Accounts	22
3. U.S. Operations Through Facebook	24
4. U.S. Operations Through Twitter	26
a. Individualized Accounts	26
b. IRA Botnet Activities	28
5. U.S. Operations Involving Political Rallies	29
6. Targeting and Recruitment of U.S. Persons	31
7. Interactions and Contacts with the Trump Campaign	33
a. Trump Campaign Promotion of IRA Political Materials	33
b. Contact with Trump Campaign Officials in Connection to Rallies	35
III. RUSSIAN HACKING AND DUMPING OPERATIONS	36
A. GRU Hacking Directed at the Clinton Campaign	36
1. GRU Units Target the Clinton Campaign	36
2. Intrusions into the DCCC and DNC Networks	38
a. Initial Access	38
b. Implantation of Malware on DCCC and DNC Networks	38
c. Theft of Documents from DNC and DCCC Networks	40
B. Dissemination of the Hacked Materials	41
1. DCLeaks	41
2. Guccifer 2.0	42
3. Use of WikiLeaks	44
a. WikiLeaks’s Expressed Opposition Toward the Clinton Campaign	44
b. WikiLeaks’s First Contact with Guccifer 2.0 and DCLeaks	45

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

c. The GRU's Transfer of Stolen Materials to WikiLeaks	45
d. WikiLeaks Statements Dissembling About the Source of Stolen Materials	48
C. Additional GRU Cyber Operations	49
1. Summer and Fall 2016 Operations Targeting Democrat-Linked Victims	49
2. Intrusions Targeting the Administration of U.S. Elections	50
D. Trump Campaign and the Dissemination of Hacked Materials	51
1. HOM	51
a. Background	51
b. Contacts with the Campaign about WikiLeaks	52
c. Harm to Ongoing Matter	54
d. WikiLeaks's October 7, 2016 Release of Stolen Podesta Emails	58
e. Donald Trump Jr. Interaction with WikiLeaks	59
2. Other Potential Campaign Interest in Russian Hacked Materials	61
a. Henry Oknyansky (a/k/a Henry Greenberg)	61
b. Campaign Efforts to Obtain Deleted Clinton Emails	62
IV. RUSSIAN GOVERNMENT LINKS TO AND CONTACTS WITH THE TRUMP CAMPAIGN	66
A. Campaign Period (September 2015 – November 8, 2016)	66
1. Trump Tower Moscow Project	67
a. Trump Tower Moscow Venture with the Crocus Group (2013-2014)	67
b. Communications with I.C. Expert Investment Company and Giorgi Rtskhiladze (Summer and Fall 2015)	69
c. Letter of Intent and Contacts to Russian Government (October 2015-January 2016)	70
i. Trump Signs the Letter of Intent on behalf of the Trump Organization	70
ii. Post-LOI Contacts with Individuals in Russia	72
d. Discussions about Russia Travel by Michael Cohen or Candidate Trump (December 2015-June 2016)	76
i. Sater's Overtures to Cohen to Travel to Russia	76
ii. Candidate Trump's Opportunities to Travel to Russia	78
2. George Papadopoulos	80
a. Origins of Campaign Work	81
b. Initial Russia-Related Contacts	82
c. March 31 Foreign Policy Team Meeting	85

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

d. George Papadopoulos Learns That Russia Has “Dirt” in the Form of Clinton Emails	86
e. Russia-Related Communications With The Campaign.....	89
f. Trump Campaign Knowledge of “Dirt”	93
g. Additional George Papadopoulos Contact.....	94
3. Carter Page.....	95
a. Background	96
b. Origins of and Early Campaign Work	97
c. Carter Page’s July 2016 Trip To Moscow	98
d. Later Campaign Work and Removal from the Campaign	102
4. Dimitri Simes and the Center for the National Interest	103
a. CNI and Dimitri Simes Connect with the Trump Campaign.....	103
b. National Interest Hosts a Foreign Policy Speech at the Mayflower Hotel	105
c. Jeff Sessions’s Post-Speech Interactions with CNI	107
d. Jared Kushner’s Continuing Contacts with Simes.....	108
5. June 9, 2016 Meeting at Trump Tower.....	110
a. Setting Up the June 9 Meeting	110
i. Outreach to Donald Trump Jr.....	110
ii. Awareness of the Meeting Within the Campaign	114
b. The Events of June 9, 2016.....	116
i. Arrangements for the Meeting	116
ii. Conduct of the Meeting.....	117
c. Post-June 9 Events	120
6. Events at the Republican National Convention	123
a. Ambassador Kislyak’s Encounters with Senator Sessions and J.D. Gordon the Week of the RNC	123
b. Change to Republican Party Platform.....	124
7. Post-Convention Contacts with Kislyak	127
a. Ambassador Kislyak Invites J.D. Gordon to Breakfast at the Ambassador’s Residence.....	127
b. Senator Sessions’s September 2016 Meeting with Ambassador Kislyak.....	127
8. Paul Manafort.....	129
a. Paul Manafort’s Ties to Russia and Ukraine.....	131

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

i. Oleg Deripaska Consulting Work	131
ii. Political Consulting Work	132
iii. Konstantin Kilimnik	132
b. Contacts during Paul Manafort's Time with the Trump Campaign	134
i. Paul Manafort Joins the Campaign	134
ii. Paul Manafort's Campaign-Period Contacts	135
iii. Paul Manafort's Two Campaign-Period Meetings with Konstantin Kilimnik in the United States	138
c. Post-Resignation Activities	141
B. Post-Election and Transition-Period Contacts	144
1. Immediate Post-Election Activity	144
a. Outreach from the Russian Government	145
b. High-Level Encouragement of Contacts through Alternative Channels	146
2. Kirill Dmitriev's Transition-Era Outreach to the Incoming Administration	147
a. Background	147
b. Kirill Dmitriev's Post-Election Contacts With the Incoming Administration	149
c. Erik Prince and Kirill Dmitriev Meet in the Seychelles	151
i. George Nader and Erik Prince Arrange Seychelles Meeting with Dmitriev	151
ii. The Seychelles Meetings	153
iii. Erik Prince's Meeting with Steve Bannon after the Seychelles Trip	155
d. Kirill Dmitriev's Post-Election Contact with Rick Gerson Regarding U.S.-Russia Relations	156
3. Ambassador Kislyak's Meeting with Jared Kushner and Michael Flynn in Trump Tower Following the Election	159
4. Jared Kushner's Meeting with Sergey Gorkov	161
5. Petr Aven's Outreach Efforts to the Transition Team	163
6. Carter Page Contact with Deputy Prime Minister Arkady Dvorkovich	166
7. Contacts With and Through Michael T. Flynn	167
a. United Nations Vote on Israeli Settlements	167
b. U.S. Sanctions Against Russia	168
V. PROSECUTION AND DECLINATION DECISIONS	174
A. Russian "Active Measures" Social Media Campaign	174

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

B. Russian Hacking and Dumping Operations	175
1. Section 1030 Computer-Intrusion Conspiracy.....	175
a. Background	175
b. Charging Decision As to Harm to Ongoing Matter	176
2. Potential Section 1030 Violation By Personal Privacy	179
C. Russian Government Outreach and Contacts.....	180
1. Potential Coordination: Conspiracy and Collusion.....	180
2. Potential Coordination: Foreign Agent Statutes (FARA and 18 U.S.C. § 951).....	181
a. Governing Law.....	181
b. Application.....	182
3. Campaign Finance	183
a. Overview Of Governing Law.....	184
b. Application to June 9 Trump Tower Meeting.....	185
i. Thing-of-Value Element	186
ii. Willfulness	187
iii. Difficulties in Valuing Promised Information	188
c. Application to WikiLeaks HOM	188
i. Questions Over Harm to Ongoing Matter	189
ii. Willfulness	190
iii. Constitutional Considerations	190
iv. Analysis HOM	190
4. False Statements and Obstruction of the Investigation.....	191
a. Overview Of Governing Law.....	191
b. Application to Certain Individuals.....	192
i. George Papadopoulos.....	192
ii. Personal Privacy	194
iii. Michael Flynn	194
iv. Michael Cohen	195
v. HOM	196
vi. Jeff Sessions	197
vii. Others Interviewed During the Investigation.....	198

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

INTRODUCTION TO VOLUME I

This report is submitted to the Attorney General pursuant to 28 C.F.R. § 600.8(c), which states that, “[a]t the conclusion of the Special Counsel’s work, he . . . shall provide the Attorney General a confidential report explaining the prosecution or declination decisions [the Special Counsel] reached.”

The Russian government interfered in the 2016 presidential election in sweeping and systematic fashion. Evidence of Russian government operations began to surface in mid-2016. In June, the Democratic National Committee and its cyber response team publicly announced that Russian hackers had compromised its computer network. Releases of hacked materials—hacks that public reporting soon attributed to the Russian government—began that same month. Additional releases followed in July through the organization WikiLeaks, with further releases in October and November.

In late July 2016, soon after WikiLeaks’s first release of stolen documents, a foreign government contacted the FBI about a May 2016 encounter with Trump Campaign foreign policy advisor George Papadopoulos. Papadopoulos had suggested to a representative of that foreign government that the Trump Campaign had received indications from the Russian government that it could assist the Campaign through the anonymous release of information damaging to Democratic presidential candidate Hillary Clinton. That information prompted the FBI on July 31, 2016, to open an investigation into whether individuals associated with the Trump Campaign were coordinating with the Russian government in its interference activities.

That fall, two federal agencies jointly announced that the Russian government “directed recent compromises of e-mails from US persons and institutions, including US political organizations,” and, “[t]hese thefts and disclosures are intended to interfere with the US election process.” After the election, in late December 2016, the United States imposed sanctions on Russia for having interfered in the election. By early 2017, several congressional committees were examining Russia’s interference in the election.

Within the Executive Branch, these investigatory efforts ultimately led to the May 2017 appointment of Special Counsel Robert S. Mueller, III. The order appointing the Special Counsel authorized him to investigate “the Russian government’s efforts to interfere in the 2016 presidential election,” including any links or coordination between the Russian government and individuals associated with the Trump Campaign.

As set forth in detail in this report, the Special Counsel’s investigation established that Russia interfered in the 2016 presidential election principally through two operations. First, a Russian entity carried out a social media campaign that favored presidential candidate Donald J. Trump and disparaged presidential candidate Hillary Clinton. Second, a Russian intelligence service conducted computer-intrusion operations against entities, employees, and volunteers working on the Clinton Campaign and then released stolen documents. The investigation also identified numerous links between the Russian government and the Trump Campaign. Although the investigation established that the Russian government perceived it would benefit from a Trump presidency and worked to secure that outcome, and that the Campaign expected it would benefit

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

electorally from information stolen and released through Russian efforts, the investigation did not establish that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities.

* * *

Below we describe the evidentiary considerations underpinning statements about the results of our investigation and the Special Counsel's charging decisions, and we then provide an overview of the two volumes of our report.

The report describes actions and events that the Special Counsel's Office found to be supported by the evidence collected in our investigation. In some instances, the report points out the absence of evidence or conflicts in the evidence about a particular fact or event. In other instances, when substantial, credible evidence enabled the Office to reach a conclusion with confidence, the report states that the investigation established that certain actions or events occurred. A statement that the investigation did not establish particular facts does not mean there was no evidence of those facts.

In evaluating whether evidence about collective action of multiple individuals constituted a crime, we applied the framework of conspiracy law, not the concept of "collusion." In so doing, the Office recognized that the word "collud[e]" was used in communications with the Acting Attorney General confirming certain aspects of the investigation's scope and that the term has frequently been invoked in public reporting about the investigation. But collusion is not a specific offense or theory of liability found in the United States Code, nor is it a term of art in federal criminal law. For those reasons, the Office's focus in analyzing questions of joint criminal liability was on conspiracy as defined in federal law. In connection with that analysis, we addressed the factual question whether members of the Trump Campaign "coordinat[ed]"—a term that appears in the appointment order—with Russian election interference activities. Like collusion, "coordination" does not have a settled definition in federal criminal law. We understood coordination to require an agreement—tacit or express—between the Trump Campaign and the Russian government on election interference. That requires more than the two parties taking actions that were informed by or responsive to the other's actions or interests. We applied the term coordination in that sense when stating in the report that the investigation did not establish that the Trump Campaign coordinated with the Russian government in its election interference activities.

* * *

The report on our investigation consists of two volumes:

Volume I describes the factual results of the Special Counsel's investigation of Russia's interference in the 2016 presidential election and its interactions with the Trump Campaign. Section I describes the scope of the investigation. Sections II and III describe the principal ways Russia interfered in the 2016 presidential election. Section IV describes links between the Russian

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

government and individuals associated with the Trump Campaign. Section V sets forth the Special Counsel's charging decisions.

Volume II addresses the President's actions towards the FBI's investigation into Russia's interference in the 2016 presidential election and related matters, and his actions towards the Special Counsel's investigation. Volume II separately states its framework and the considerations that guided that investigation.

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

EXECUTIVE SUMMARY TO VOLUME I

RUSSIAN SOCIAL MEDIA CAMPAIGN

The Internet Research Agency (IRA) carried out the earliest Russian interference operations identified by the investigation—a social media campaign designed to provoke and amplify political and social discord in the United States. The IRA was based in St. Petersburg, Russia, and received funding from Russian oligarch Yevgeniy Prigozhin and companies he controlled. Prigozhin is widely reported to have ties to Russian President Vladimir Putin, ~~Harm to Ongoing Matter~~

In mid-2014, the IRA sent employees to the United States on an intelligence-gathering mission with instructions ~~Harm to Ongoing Matter~~

The IRA later used social media accounts and interest groups to sow discord in the U.S. political system through what it termed “information warfare.” The campaign evolved from a generalized program designed in 2014 and 2015 to undermine the U.S. electoral system, to a targeted operation that by early 2016 favored candidate Trump and disparaged candidate Clinton. The IRA’s operation also included the purchase of political advertisements on social media in the names of U.S. persons and entities, as well as the staging of political rallies inside the United States. To organize those rallies, IRA employees posed as U.S. grassroots entities and persons and made contact with Trump supporters and Trump Campaign officials in the United States. The investigation did not identify evidence that any U.S. persons conspired or coordinated with the IRA. Section II of this report details the Office’s investigation of the Russian social media campaign.

RUSSIAN HACKING OPERATIONS

At the same time that the IRA operation began to focus on supporting candidate Trump in early 2016, the Russian government employed a second form of interference: cyber intrusions (hacking) and releases of hacked materials damaging to the Clinton Campaign. The Russian intelligence service known as the Main Intelligence Directorate of the General Staff of the Russian Army (GRU) carried out these operations.

In March 2016, the GRU began hacking the email accounts of Clinton Campaign volunteers and employees, including campaign chairman John Podesta. In April 2016, the GRU hacked into the computer networks of the Democratic Congressional Campaign Committee (DCCC) and the Democratic National Committee (DNC). The GRU stole hundreds of thousands of documents from the compromised email accounts and networks. Around the time that the DNC announced in mid-June 2016 the Russian government’s role in hacking its network, the GRU began disseminating stolen materials through the fictitious online personas “DCLeaks” and “Guccifer 2.0.” The GRU later released additional materials through the organization WikiLeaks.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

The presidential campaign of Donald J. Trump (“Trump Campaign” or “Campaign”) showed interest in WikiLeaks’s releases of documents and welcomed their potential to damage candidate Clinton. Beginning in June 2016, **Harm to Ongoing Matter** forecast to senior Campaign officials that WikiLeaks would release information damaging to candidate Clinton. WikiLeaks’s first release came in July 2016. Around the same time, candidate Trump announced that he hoped Russia would recover emails described as missing from a private server used by Clinton when she was Secretary of State (he later said that he was speaking sarcastically). **Harm to Ongoing Matter**

Harm to Ongoing Matter WikiLeaks began releasing Podesta’s stolen emails on October 7, 2016, less than one hour after a U.S. media outlet released video considered damaging to candidate Trump. Section III of this Report details the Office’s investigation into the Russian hacking operations, as well as other efforts by Trump Campaign supporters to obtain Clinton-related emails.

RUSSIAN CONTACTS WITH THE CAMPAIGN

The social media campaign and the GRU hacking operations coincided with a series of contacts between Trump Campaign officials and individuals with ties to the Russian government. The Office investigated whether those contacts reflected or resulted in the Campaign conspiring or coordinating with Russia in its election-interference activities. Although the investigation established that the Russian government perceived it would benefit from a Trump presidency and worked to secure that outcome, and that the Campaign expected it would benefit electorally from information stolen and released through Russian efforts, the investigation did not establish that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities.

The Russian contacts consisted of business connections, offers of assistance to the Campaign, invitations for candidate Trump and Putin to meet in person, invitations for Campaign officials and representatives of the Russian government to meet, and policy positions seeking improved U.S.-Russian relations. Section IV of this Report details the contacts between Russia and the Trump Campaign during the campaign and transition periods, the most salient of which are summarized below in chronological order.

2015. Some of the earliest contacts were made in connection with a Trump Organization real-estate project in Russia known as Trump Tower Moscow. Candidate Trump signed a Letter of Intent for Trump Tower Moscow by November 2015, and in January 2016 Trump Organization executive Michael Cohen emailed and spoke about the project with the office of Russian government press secretary Dmitry Peskov. The Trump Organization pursued the project through at least June 2016, including by considering travel to Russia by Cohen and candidate Trump.

Spring 2016. Campaign foreign policy advisor George Papadopoulos made early contact with Joseph Mifsud, a London-based professor who had connections to Russia and traveled to Moscow in April 2016. Immediately upon his return to London from that trip, Mifsud told Papadopoulos that the Russian government had “dirt” on Hillary Clinton in the form of thousands

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

of emails. One week later, in the first week of May 2016, Papadopoulos suggested to a representative of a foreign government that the Trump Campaign had received indications from the Russian government that it could assist the Campaign through the anonymous release of information damaging to candidate Clinton. Throughout that period of time and for several months thereafter, Papadopoulos worked with Mifsud and two Russian nationals to arrange a meeting between the Campaign and the Russian government. No meeting took place.

Summer 2016. Russian outreach to the Trump Campaign continued into the summer of 2016, as candidate Trump was becoming the presumptive Republican nominee for President. On June 9, 2016, for example, a Russian lawyer met with senior Trump Campaign officials Donald Trump Jr., Jared Kushner, and campaign chairman Paul Manafort to deliver what the email proposing the meeting had described as “official documents and information that would incriminate Hillary.” The materials were offered to Trump Jr. as “part of Russia and its government’s support for Mr. Trump.” The written communications setting up the meeting showed that the Campaign anticipated receiving information from Russia that could assist candidate Trump’s electoral prospects, but the Russian lawyer’s presentation did not provide such information.

Days after the June 9 meeting, on June 14, 2016, a cybersecurity firm and the DNC announced that Russian government hackers had infiltrated the DNC and obtained access to opposition research on candidate Trump, among other documents.

In July 2016, Campaign foreign policy advisor Carter Page traveled in his personal capacity to Moscow and gave the keynote address at the New Economic School. Page had lived and worked in Russia between 2003 and 2007. After returning to the United States, Page became acquainted with at least two Russian intelligence officers, one of whom was later charged in 2015 with conspiracy to act as an unregistered agent of Russia. Page’s July 2016 trip to Moscow and his advocacy for pro-Russian foreign policy drew media attention. The Campaign then distanced itself from Page and, by late September 2016, removed him from the Campaign.

July 2016 was also the month WikiLeaks first released emails stolen by the GRU from the DNC. On July 22, 2016, WikiLeaks posted thousands of internal DNC documents revealing information about the Clinton Campaign. Within days, there was public reporting that U.S. intelligence agencies had “high confidence” that the Russian government was behind the theft of emails and documents from the DNC. And within a week of the release, a foreign government informed the FBI about its May 2016 interaction with Papadopoulos and his statement that the Russian government could assist the Trump Campaign. On July 31, 2016, based on the foreign government reporting, the FBI opened an investigation into potential coordination between the Russian government and individuals associated with the Trump Campaign.

Separately, on August 2, 2016, Trump campaign chairman Paul Manafort met in New York City with his long-time business associate Konstantin Kilimnik, who the FBI assesses to have ties to Russian intelligence. Kilimnik requested the meeting to deliver in person a peace plan for Ukraine that Manafort acknowledged to the Special Counsel’s Office was a “backdoor” way for Russia to control part of eastern Ukraine; both men believed the plan would require candidate Trump’s assent to succeed (were he to be elected President). They also discussed the status of the

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Trump Campaign and Manafort's strategy for winning Democratic votes in Midwestern states. Months before that meeting, Manafort had caused internal polling data to be shared with Kilimnik, and the sharing continued for some period of time after their August meeting.

Fall 2016. On October 7, 2016, the media released video of candidate Trump speaking in graphic terms about women years earlier, which was considered damaging to his candidacy. Less than an hour later, WikiLeaks made its second release: thousands of John Podesta's emails that had been stolen by the GRU in late March 2016. The FBI and other U.S. government institutions were at the time continuing their investigation of suspected Russian government efforts to interfere in the presidential election. That same day, October 7, the Department of Homeland Security and the Office of the Director of National Intelligence issued a joint public statement "that the Russian Government directed the recent compromises of e-mails from US persons and institutions, including from US political organizations." Those "thefts" and the "disclosures" of the hacked materials through online platforms such as WikiLeaks, the statement continued, "are intended to interfere with the US election process."

Post-2016 Election. Immediately after the November 8 election, Russian government officials and prominent Russian businessmen began trying to make inroads into the new administration. The most senior levels of the Russian government encouraged these efforts. The Russian Embassy made contact hours after the election to congratulate the President-Elect and to arrange a call with President Putin. Several Russian businessmen picked up the effort from there.

Kirill Dmitriev, the chief executive officer of Russia's sovereign wealth fund, was among the Russians who tried to make contact with the incoming administration. In early December, a business associate steered Dmitriev to Erik Prince, a supporter of the Trump Campaign and an associate of senior Trump advisor Steve Bannon. Dmitriev and Prince later met face-to-face in January 2017 in the Seychelles and discussed U.S.-Russia relations. During the same period, another business associate introduced Dmitriev to a friend of Jared Kushner who had not served on the Campaign or the Transition Team. Dmitriev and Kushner's friend collaborated on a short written reconciliation plan for the United States and Russia, which Dmitriev implied had been cleared through Putin. The friend gave that proposal to Kushner before the inauguration, and Kushner later gave copies to Bannon and incoming Secretary of State Rex Tillerson.

On December 29, 2016, then-President Obama imposed sanctions on Russia for having interfered in the election. Incoming National Security Advisor Michael Flynn called Russian Ambassador Sergey Kislyak and asked Russia not to escalate the situation in response to the sanctions. The following day, Putin announced that Russia would not take retaliatory measures in response to the sanctions at that time. Hours later, President-Elect Trump tweeted, "Great move on delay (by V. Putin)." The next day, on December 31, 2016, Kislyak called Flynn and told him the request had been received at the highest levels and Russia had chosen not to retaliate as a result of Flynn's request.

* * *

On January 6, 2017, members of the intelligence community briefed President-Elect Trump on a joint assessment—drafted and coordinated among the Central Intelligence Agency, FBI, and

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

National Security Agency—that concluded with high confidence that Russia had intervened in the election through a variety of means to assist Trump’s candidacy and harm Clinton’s. A declassified version of the assessment was publicly released that same day.

Between mid-January 2017 and early February 2017, three congressional committees—the House Permanent Select Committee on Intelligence (HPSCI), the Senate Select Committee on Intelligence (SSCI), and the Senate Judiciary Committee (SJC)—announced that they would conduct inquiries, or had already been conducting inquiries, into Russian interference in the election. Then-FBI Director James Comey later confirmed to Congress the existence of the FBI’s investigation into Russian interference that had begun before the election. On March 20, 2017, in open-session testimony before HPSCI, Comey stated:

I have been authorized by the Department of Justice to confirm that the FBI, as part of our counterintelligence mission, is investigating the Russian government’s efforts to interfere in the 2016 presidential election, and that includes investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia’s efforts. . . . As with any counterintelligence investigation, this will also include an assessment of whether any crimes were committed.

The investigation continued under then-Director Comey for the next seven weeks until May 9, 2017, when President Trump fired Comey as FBI Director—an action which is analyzed in Volume II of the report.

On May 17, 2017, Acting Attorney General Rod Rosenstein appointed the Special Counsel and authorized him to conduct the investigation that Comey had confirmed in his congressional testimony, as well as matters arising directly from the investigation, and any other matters within the scope of 28 C.F.R. § 600.4(a), which generally covers efforts to interfere with or obstruct the investigation.

President Trump reacted negatively to the Special Counsel’s appointment. He told advisors that it was the end of his presidency, sought to have Attorney General Jefferson (Jeff) Sessions unrecuse from the Russia investigation and to have the Special Counsel removed, and engaged in efforts to curtail the Special Counsel’s investigation and prevent the disclosure of evidence to it, including through public and private contacts with potential witnesses. Those and related actions are described and analyzed in Volume II of the report.

* * *

THE SPECIAL COUNSEL’S CHARGING DECISIONS

In reaching the charging decisions described in Volume I of the report, the Office determined whether the conduct it found amounted to a violation of federal criminal law chargeable under the Principles of Federal Prosecution. See Justice Manual § 9-27.000 *et seq.* (2018). The standard set forth in the Justice Manual is whether the conduct constitutes a crime; if so, whether admissible evidence would probably be sufficient to obtain and sustain a conviction;

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

and whether prosecution would serve a substantial federal interest that could not be adequately served by prosecution elsewhere or through non-criminal alternatives. See Justice Manual § 9-27.220.

Section V of the report provides detailed explanations of the Office's charging decisions, which contain three main components.

First, the Office determined that Russia's two principal interference operations in the 2016 U.S. presidential election—the social media campaign and the hacking-and-dumping operations—violated U.S. criminal law. Many of the individuals and entities involved in the social media campaign have been charged with participating in a conspiracy to defraud the United States by undermining through deceptive acts the work of federal agencies charged with regulating foreign influence in U.S. elections, as well as related counts of identity theft. See *United States v. Internet Research Agency, et al.*, No. 18-cr-32 (D.D.C.). Separately, Russian intelligence officers who carried out the hacking into Democratic Party computers and the personal email accounts of individuals affiliated with the Clinton Campaign conspired to violate, among other federal laws, the federal computer-intrusion statute, and they have been so charged. See *United States v. Netyksho, et al.*, No. 18-cr-215 (D.D.C.). **Harm to Ongoing Matter**

Personal Privacy

Second, while the investigation identified numerous links between individuals with ties to the Russian government and individuals associated with the Trump Campaign, the evidence was not sufficient to support criminal charges. Among other things, the evidence was not sufficient to charge any Campaign official as an unregistered agent of the Russian government or other Russian principal. And our evidence about the June 9, 2016 meeting and WikiLeaks's releases of hacked materials was not sufficient to charge a criminal campaign-finance violation. Further, the evidence was not sufficient to charge that any member of the Trump Campaign conspired with representatives of the Russian government to interfere in the 2016 election.

Third, the investigation established that several individuals affiliated with the Trump Campaign lied to the Office, and to Congress, about their interactions with Russian-affiliated individuals and related matters. Those lies materially impaired the investigation of Russian election interference. The Office charged some of those lies as violations of the federal false-statements statute. Former National Security Advisor Michael Flynn pleaded guilty to lying about his interactions with Russian Ambassador Kislyak during the transition period. George Papadopoulos, a foreign policy advisor during the campaign period, pleaded guilty to lying to investigators about, *inter alia*, the nature and timing of his interactions with Joseph Mifsud, the professor who told Papadopoulos that the Russians had dirt on candidate Clinton in the form of thousands of emails. Former Trump Organization attorney Michael Cohen pleaded guilty to making false statements to Congress about the Trump Moscow project. **Harm to Ongoing Matter**

And in February 2019, the U.S. District Court for the District of Columbia found that

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Manafort lied to the Office and the grand jury concerning his interactions and communications with Konstantin Kilimnik about Trump Campaign polling data and a peace plan for Ukraine.

* * *

The Office investigated several other events that have been publicly reported to involve potential Russia-related contacts. For example, the investigation established that interactions between Russian Ambassador Kislyak and Trump Campaign officials both at the candidate's April 2016 foreign policy speech in Washington, D.C., and during the week of the Republican National Convention were brief, public, and non-substantive. And the investigation did not establish that one Campaign official's efforts to dilute a portion of the Republican Party platform on providing assistance to Ukraine were undertaken at the behest of candidate Trump or Russia. The investigation also did not establish that a meeting between Kislyak and Sessions in September 2016 at Sessions's Senate office included any more than a passing mention of the presidential campaign.

The investigation did not always yield admissible information or testimony, or a complete picture of the activities undertaken by subjects of the investigation. Some individuals invoked their Fifth Amendment right against compelled self-incrimination and were not, in the Office's judgment, appropriate candidates for grants of immunity. The Office limited its pursuit of other witnesses and information—such as information known to attorneys or individuals claiming to be members of the media—in light of internal Department of Justice policies. *See, e.g.*, Justice Manual §§ 9-13.400, 13.410. Some of the information obtained via court process, moreover, was presumptively covered by legal privilege and was screened from investigators by a filter (or "taint") team. Even when individuals testified or agreed to be interviewed, they sometimes provided information that was false or incomplete, leading to some of the false-statements charges described above. And the Office faced practical limits on its ability to access relevant evidence as well—numerous witnesses and subjects lived abroad, and documents were held outside the United States.

Further, the Office learned that some of the individuals we interviewed or whose conduct we investigated—including some associated with the Trump Campaign—deleted relevant communications or communicated during the relevant period using applications that feature encryption or that do not provide for long-term retention of data or communications records. In such cases, the Office was not able to corroborate witness statements through comparison to contemporaneous communications or fully question witnesses about statements that appeared inconsistent with other known facts.

Accordingly, while this report embodies factual and legal determinations that the Office believes to be accurate and complete to the greatest extent possible, given these identified gaps, the Office cannot rule out the possibility that the unavailable information would shed additional light on (or cast in a new light) the events described in the report.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

I. THE SPECIAL COUNSEL'S INVESTIGATION

On May 17, 2017, Deputy Attorney General Rod J. Rosenstein—then serving as Acting Attorney General for the Russia investigation following the recusal of former Attorney General Jeff Sessions on March 2, 2016—appointed the Special Counsel “to investigate Russian interference with the 2016 presidential election and related matters.” Office of the Deputy Att’y Gen., Order No. 3915-2017, *Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters*, May 17, 2017) (“Appointment Order”). Relying on “the authority vested” in the Acting Attorney General, “including 28 U.S.C. §§ 509, 510, and 515,” the Acting Attorney General ordered the appointment of a Special Counsel “in order to discharge [the Acting Attorney General’s] responsibility to provide supervision and management of the Department of Justice, and to ensure a full and thorough investigation of the Russian government’s efforts to interfere in the 2016 presidential election.” Appointment Order (introduction). “The Special Counsel,” the Order stated, “is authorized to conduct the investigation confirmed by then-FBI Director James B. Comey in testimony before the House Permanent Select Committee on Intelligence on March 20, 2017,” including:

- (i) any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and
- (ii) any matters that arose or may arise directly from the investigation; and
- (iii) any other matters within the scope of 28 C.F.R. § 600.4(a).

Appointment Order ¶ (b). Section 600.4 affords the Special Counsel “the authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Counsel’s investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.” 28 C.F.R. § 600.4(a). The authority to investigate “any matters that arose . . . directly from the investigation,” Appointment Order ¶ (b)(ii), covers similar crimes that may have occurred during the course of the FBI’s confirmed investigation before the Special Counsel’s appointment. “If the Special Counsel believes it is necessary and appropriate,” the Order further provided, “the Special Counsel is authorized to prosecute federal crimes arising from the investigation of these matters.” *Id.* ¶ (c). Finally, the Acting Attorney General made applicable “Sections 600.4 through 600.10 of Title 28 of the Code of Federal Regulations.” *Id.* ¶ (d).

The Acting Attorney General further clarified the scope of the Special Counsel’s investigatory authority in two subsequent memoranda. A memorandum dated August 2, 2017, explained that the Appointment Order had been “worded categorically in order to permit its public release without confirming specific investigations involving specific individuals.” It then confirmed that the Special Counsel had been authorized since his appointment to investigate allegations that three Trump campaign officials—Carter Page, Paul Manafort, and George Papadopoulos—“committed a crime or crimes by colluding with Russian government officials with respect to the Russian government’s efforts to interfere with the 2016 presidential election.” The memorandum also confirmed the Special Counsel’s authority to investigate certain other matters, including two additional sets of allegations involving Manafort (crimes arising from payments he received from the Ukrainian government and crimes arising from his receipt of loans

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

from a bank whose CEO was then seeking a position in the Trump Administration); allegations that Papadopoulos committed a crime or crimes by acting as an unregistered agent of the Israeli government; and four sets of allegations involving Michael Flynn, the former National Security Advisor to President Trump.

On October 20, 2017, the Acting Attorney General confirmed in a memorandum the Special Counsel's investigative authority as to several individuals and entities. First, "as part of a full and thorough investigation of the Russian government's efforts to interfere in the 2016 presidential election," the Special Counsel was authorized to investigate "the pertinent activities of Michael Cohen, Richard Gates, **Personal Privacy**, Roger Stone, and **PP**" "Confirmation of the authorization to investigate such individuals," the memorandum stressed, "does not suggest that the Special Counsel has made a determination that any of them has committed a crime." Second, with respect to Michael Cohen, the memorandum recognized the Special Counsel's authority to investigate "leads relate[d] to Cohen's establishment and use of Essential Consultants LLC to, *inter alia*, receive funds from Russian-backed entities." Third, the memorandum memorialized the Special Counsel's authority to investigate individuals and entities who were possibly engaged in "jointly undertaken activity" with existing subjects of the investigation, including Paul Manafort. Finally, the memorandum described an FBI investigation opened before the Special Counsel's appointment into "allegations that [then-Attorney General Jeff Sessions] made false statements to the United States Senate[.]" and confirmed the Special Counsel's authority to investigate that matter.

The Special Counsel structured the investigation in view of his power and authority "to exercise all investigative and prosecutorial functions of any United States Attorney." 28 C.F.R. § 600.6. Like a U.S. Attorney's Office, the Special Counsel's Office considered a range of classified and unclassified information available to the FBI in the course of the Office's Russia investigation, and the Office structured that work around evidence for possible use in prosecutions of federal crimes (assuming that one or more crimes were identified that warranted prosecution). There was substantial evidence immediately available to the Special Counsel at the inception of the investigation in May 2017 because the FBI had, by that time, already investigated Russian election interference for nearly 10 months. The Special Counsel's Office exercised its judgment regarding what to investigate and did not, for instance, investigate every public report of a contact between the Trump Campaign and Russian-affiliated individuals and entities.

The Office has concluded its investigation into links and coordination between the Russian government and individuals associated with the Trump Campaign. Certain proceedings associated with the Office's work remain ongoing. After consultation with the Office of the Deputy Attorney General, the Office has transferred responsibility for those remaining issues to other components of the Department of Justice and FBI. Appendix D lists those transfers.

Two district courts confirmed the breadth of the Special Counsel's authority to investigate Russia election interference and links and/or coordination with the Trump Campaign. *See United States v. Manafort*, 312 F. Supp. 3d 60, 79-83 (D.D.C. 2018); *United States v. Manafort*, 321 F. Supp. 3d 640, 650-655 (E.D. Va. 2018). In the course of conducting that investigation, the Office periodically identified evidence of potential criminal activity that was outside the scope of the Special Counsel's authority established by the Acting Attorney General. After consultation with

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

the Office of the Deputy Attorney General, the Office referred that evidence to appropriate law enforcement authorities, principally other components of the Department of Justice and to the FBI. Appendix D summarizes those referrals.

* * *

To carry out the investigation and prosecution of the matters assigned to him, the Special Counsel assembled a team that at its high point included 19 attorneys—five of whom joined the Office from private practice and 14 on detail or assigned from other Department of Justice components. These attorneys were assisted by a filter team of Department lawyers and FBI personnel who screened materials obtained via court process for privileged information before turning those materials over to investigators; a support staff of three paralegals on detail from the Department's Antitrust Division; and an administrative staff of nine responsible for budget, finance, purchasing, human resources, records, facilities, security, information technology, and administrative support. The Special Counsel attorneys and support staff were co-located with and worked alongside approximately 40 FBI agents, intelligence analysts, forensic accountants, a paralegal, and professional staff assigned by the FBI to assist the Special Counsel's investigation. Those "assigned" FBI employees remained under FBI supervision at all times; the matters on which they assisted were supervised by the Special Counsel.¹

During its investigation the Office issued more than 2,800 subpoenas under the auspices of a grand jury sitting in the District of Columbia; executed nearly 500 search-and-seizure warrants; obtained more than 230 orders for communications records under 18 U.S.C. § 2703(d); obtained almost 50 orders authorizing use of pen registers; made 13 requests to foreign governments pursuant to Mutual Legal Assistance Treaties; and interviewed approximately 500 witnesses, including almost 80 before a grand jury.

* * *

From its inception, the Office recognized that its investigation could identify foreign intelligence and counterintelligence information relevant to the FBI's broader national security mission. FBI personnel who assisted the Office established procedures to identify and convey such information to the FBI. The FBI's Counterintelligence Division met with the Office regularly for that purpose for most of the Office's tenure. For more than the past year, the FBI also embedded personnel at the Office who did not work on the Special Counsel's investigation, but whose purpose was to review the results of the investigation and to send—in writing—summaries of foreign intelligence and counterintelligence information to FBIHQ and FBI Field Offices. Those communications and other correspondence between the Office and the FBI contain information derived from the investigation, not all of which is contained in this Volume. This Volume is a summary. It contains, in the Office's judgment, that information necessary to account for the Special Counsel's prosecution and declination decisions and to describe the investigation's main factual results.

¹ FBI personnel assigned to the Special Counsel's Office were required to adhere to all applicable federal law and all Department and FBI regulations, guidelines, and policies. An FBI attorney worked on FBI-related matters for the Office, such as FBI compliance with all FBI policies and procedures, including the FBI's Domestic Investigations and Operations Guide (DIOG). That FBI attorney worked under FBI legal supervision, not the Special Counsel's supervision.

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

II. RUSSIAN “ACTIVE MEASURES” SOCIAL MEDIA CAMPAIGN

The first form of Russian election influence came principally from the Internet Research Agency, LLC (IRA), a Russian organization funded by Yevgeniy Viktorovich Prigozhin and companies he controlled, including Concord Management and Consulting LLC and Concord Catering (collectively “Concord”).² The IRA conducted social media operations targeted at large U.S. audiences with the goal of sowing discord in the U.S. political system.³ These operations constituted “active measures” (активные мероприятия), a term that typically refers to operations conducted by Russian security services aimed at influencing the course of international affairs.⁴

The IRA and its employees began operations targeting the United States as early as 2014. Using fictitious U.S. personas, IRA employees operated social media accounts and group pages designed to attract U.S. audiences. These groups and accounts, which addressed divisive U.S. political and social issues, falsely claimed to be controlled by U.S. activists. Over time, these social media accounts became a means to reach large U.S. audiences. IRA employees travelled to the United States in mid-2014 on an intelligence-gathering mission to obtain information and photographs for use in their social media posts.

IRA employees posted derogatory information about a number of candidates in the 2016 U.S. presidential election. By early to mid-2016, IRA operations included supporting the Trump Campaign and disparaging candidate Hillary Clinton. The IRA made various expenditures to carry out those activities, including buying political advertisements on social media in the names of U.S. persons and entities. Some IRA employees, posing as U.S. persons and without revealing their Russian association, communicated electronically with individuals associated with the Trump Campaign and with other political activists to seek to coordinate political activities, including the staging of political rallies.⁵ The investigation did not identify evidence that any U.S. persons knowingly or intentionally coordinated with the IRA’s interference operation.

By the end of the 2016 U.S. election, the IRA had the ability to reach millions of U.S. persons through their social media accounts. Multiple IRA-controlled Facebook groups and

² The Office is aware of reports that other Russian entities engaged in similar active measures operations targeting the United States. Some evidence collected by the Office corroborates those reports, and the Office has shared that evidence with other offices in the Department of Justice and FBI.

³ **Harm to Ongoing Matter**
 see also SM-2230634, serial 44 (analysis). The FBI case number cited here, and other FBI case numbers identified in the report, should be treated as law enforcement sensitive given the context. The report contains additional law enforcement sensitive information.

⁴ As discussed in Part V below, the active measures investigation has resulted in criminal charges against 13 individual Russian nationals and three Russian entities, principally for conspiracy to defraud the United States, in violation of 18 U.S.C. § 371. See Volume I, Section V.A, *infra*; Indictment, *United States v. Internet Research Agency, et al.*, 1:18-cr-32 (D.D.C. Feb. 16, 2018), Doc. 1 (“*Internet Research Agency Indictment*”).

⁵ *Internet Research Agency Indictment* ¶¶ 52, 54, 55(a), 56, 74; **Harm to Ongoing Matter**

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Instagram accounts had hundreds of thousands of U.S. participants. IRA-controlled Twitter accounts separately had tens of thousands of followers, including multiple U.S. political figures who retweeted IRA-created content. In November 2017, a Facebook representative testified that Facebook had identified 470 IRA-controlled Facebook accounts that collectively made 80,000 posts between January 2015 and August 2017. Facebook estimated the IRA reached as many as 126 million persons through its Facebook accounts.⁶ In January 2018, Twitter announced that it had identified 3,814 IRA-controlled Twitter accounts and notified approximately 1.4 million people Twitter believed may have been in contact with an IRA-controlled account.⁷

A. Structure of the Internet Research Agency

Harm to Ongoing Matter

Harm to Ongoing Matter

Harm to Ongoing Matter

The organization quickly grew.

Harm to Ongoing Matter

Harm to Ongoing Matter

The growth of the organization also led to a more detailed organizational structure.

Harm to Ongoing Matter

⁶ *Social Media Influence in the 2016 U.S. Election, Hearing Before the Senate Select Committee on Intelligence*, 115th Cong. 13 (11/1/17) (testimony of Colin Stretch, General Counsel of Facebook) (“We estimate that roughly 29 million people were served content in their News Feeds directly from the IRA’s 80,000 posts over the two years. Posts from these Pages were also shared, liked, and followed by people on Facebook, and, as a result, three times more people may have been exposed to a story that originated from the Russian operation. Our best estimate is that approximately 126 million people may have been served content from a Page associated with the IRA at some point during the two-year period.”). The Facebook representative also testified that Facebook had identified 170 Instagram accounts that posted approximately 120,000 pieces of content during that time. Facebook did not offer an estimate of the audience reached via Instagram.

⁷ Twitter, Update on Twitter’s Review of the 2016 US Election (Jan. 31, 2018).

⁸ See SM-2230634, serial 92.

⁹ Harm to Ongoing Matter

¹⁰ Harm to Ongoing Matter

¹¹ See SM-2230634, serial 86 Harm to Ongoing Matter

¹² Harm to Ongoing Matter

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Harm to Ongoing Matter

Two individuals headed the IRA's management: its general director, Mikhail Bystrov, and its executive director, Mikhail Burchik. Harm to Ongoing Matter

Harm to Ongoing Matter

As early as the spring of 2014, the IRA began to hide its funding and activities. Harm to Ongoing Matter

The IRA's U.S. operations are part of a larger set of interlocking operations known as "Project Lakhta." Harm to Ongoing Matter

Harm to Ongoing Matter

B. Funding and Oversight from Concord and Prigozhin

Until at least February 2018, Yevgeniy Viktorovich Prigozhin and two Concord companies funded the IRA. Prigozhin is a wealthy Russian businessman who served as the head of Concord.

Harm to Ongoing Matter

¹⁴ See, e.g., SM-2230634, serials 9, 113 & 180 Harm to Ongoing Matter

¹⁵ Harm to Ongoing Matter

¹⁶ Harm to Ongoing Matter

See SM-2230634, serials

131 & 204.

¹⁷ Harm to Ongoing Matter

¹⁸ Harm to Ongoing Matter

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Harm to Ongoing Matter

[redacted] Prigozhin was sanctioned by the U.S. Treasury Department in December 2016,¹⁹
Harm to Ongoing Matter

[redacted] Harm to Ongoing Matter

[redacted] Numerous media sources have reported on Prigozhin's ties to Putin, and the two have appeared together in public photographs.²²

Harm to Ongoing Matter

[redacted] Harm to Ongoing Matter

Harm to Ongoing Matter

[redacted] Harm to Ongoing Matter

[redacted] Harm to Ongoing Matter

Harm to Ongoing Matter

¹⁹ U.S. Treasury Department, "Treasury Sanctions Individuals and Entities in Connection with Russia's Occupation of Crimea and the Conflict in Ukraine" (Dec. 20, 2016).

[redacted] Harm to Ongoing Matter

[redacted] Harm to Ongoing Matter

²² See, e.g., Neil MacFarquhar, *Yevgeny Prigozhin, Russian Oligarch Indicted by U.S., Is Known as "Putin's Cook"*, New York Times (Feb. 16, 2018).

[redacted] Harm to Ongoing Matter

[redacted] Harm to Ongoing Matter

[redacted] Harm to Ongoing Matter

²⁵ Harm to Ongoing Matter see also SM-2230634, serial 113 HOM [redacted]

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Harm to Ongoing Matter

Harm to Ongoing Matter

²⁶ Harm to Ongoing Matter

Harm to Ongoing Matter

Harm to Ongoing Matter

Harm to Ongoing Matter

²⁶ Harm to Ongoing Matter

²⁷ Harm to Ongoing Matter

²⁸ The term "troll" refers to internet users—in this context, paid operatives—who post inflammatory or otherwise disruptive content on social media or other websites.

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

IRA employees were aware that Prigozhin was involved in the IRA's U.S. operations.
 Harm to Ongoing Matter

Harm to Ongoing Matter

²⁹
³⁰ In May 2016, IRA employees, claiming to be U.S. social activists and administrators of Facebook groups, recruited U.S. persons to hold signs (including one in front of the White House) that read "Happy 55th Birthday Dear Boss," as an homage to Prigozhin (whose 55th birthday was on June 1, 2016).³¹
 Harm to Ongoing Matter

Harm to Ongoing Matter

C. The IRA Targets U.S. Elections

1. The IRA Ramps Up U.S. Operations As Early As 2014

The IRA's U.S. operations sought to influence public opinion through online media and forums. By the spring of 2014, the IRA began to consolidate U.S. operations within a single general department, known internally as the "Translator" (Переводчик) department.
 Harm to Ongoing Matter

IRA subdivided the Translator Department into different responsibilities, ranging from operations on different social media platforms to analytics to

²⁹ Investigative Technique See SM-2230634, serials 131 & 204.

³⁰ See SM-2230634, serial 156.

³¹ Internet Research Agency Indictment ¶ 12(b); see also 5/26/16 Facebook Messages, ID 1479936895656747 (United Muslims of America) & Personal Privacy

³² Harm to Ongoing Matter

see also SM-2230634, serial 189. Harm to Ongoing Matter

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

graphics and IT.

Harm to Ongoing Matter

⁵³ Harm to
Ongoing Matter

53

Harm to Ongoing Matter

³³ Harm to Ongoing Matter

See SM-2230634, serial 205.

³⁴ See SM-2230634, serial 204. Harm to Ongoing Matter

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Harm to Ongoing Matter
Harm to Ongoing Matter
36

Harm to Ongoing Matter
37

IRA employees also traveled to the United States on intelligence-gathering missions. In June 2014, four IRA employees applied to the U.S. Department of State to enter the United States, while lying about the purpose of their trip and claiming to be four friends who had met at a party.³⁸ Ultimately, two IRA employees—Anna Bogacheva and Aleksandra Krylova—received visas and entered the United States on June 4, 2014.

Prior to traveling, Krylova and Bogacheva compiled itineraries and instructions for the trip.
Harm to Ongoing Matter
Harm to Ongoing Matter

³⁵ Harm to Ongoing Matter

³⁶ Harm to Ongoing Matter

³⁷ Harm to Ongoing Matter

³⁸ See SM-2230634, serials 150 & 172 Harm to Ongoing Matter

³⁹ Harm to Ongoing Matter

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Harm to Ongoing Matter [redacted] 40
Harm to Ongoing Matter [redacted] 41

2. U.S. Operations Through IRA-Controlled Social Media Accounts

Dozens of IRA employees were responsible for operating accounts and personas on different U.S. social media platforms. The IRA referred to employees assigned to operate the social media accounts as “specialists.”⁴² Starting as early as 2014, the IRA’s U.S. operations included social media specialists focusing on Facebook, YouTube, and Twitter.⁴³ The IRA later added specialists who operated on Tumblr and Instagram accounts.⁴⁴

Initially, the IRA created social media accounts that pretended to be the personal accounts of U.S. persons.⁴⁵ By early 2015, the IRA began to create larger social media groups or public social media pages that claimed (falsely) to be affiliated with U.S. political and grassroots organizations. In certain cases, the IRA created accounts that mimicked real U.S. organizations. For example, one IRA-controlled Twitter account, @TEN_GOP, purported to be connected to the Tennessee Republican Party.⁴⁶ More commonly, the IRA created accounts in the names of fictitious U.S. organizations and grassroots groups and used these accounts to pose as anti-immigration groups, Tea Party activists, Black Lives Matter protestors, and other U.S. social and political activists.

The IRA closely monitored the activity of its social media accounts. [redacted]
Harm to Ongoing Matter [redacted]

Harm to Ongoing Matter [redacted]

[redacted] 40 Harm to Ongoing Matter [redacted]

[redacted] 41 Harm to Ongoing Matter [redacted]

[redacted] 42 Harm to Ongoing Matter [redacted]

[redacted] 43 Harm to Ongoing Matter [redacted]

[redacted] 44 See, e.g., SM-2230634, serial 179 Harm to Ongoing Matter [redacted]

⁴⁵ See, e.g., Facebook ID 100011390466802 (Alex Anderson); Facebook ID 100009626173204 (Andrea Hansen); Facebook ID 100009728618427 (Gary Williams); Facebook ID 100013640043337 (Lakisha Richardson).

⁴⁶ The account claimed to be the “Unofficial Twitter of Tennessee Republicans” and made posts that appeared to be endorsements of the state political party. See, e.g., @TEN_GOP, 4/3/16 Tweet (“Tennessee GOP backs @realDonaldTrump period #makeAmericagreatagain #tngop #tennessee #gop”).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Harm to Ongoing Matter

[REDACTED]

Harm to Ongoing Matter

Harm to Ongoing Matter

[REDACTED]

By February 2016, internal IRA documents referred to support for the Trump Campaign and opposition to candidate Clinton.⁴⁹ For example, [HOM] directions to IRA operators [Harm to Ongoing Matter]

[REDACTED] "Main idea: Use any opportunity to criticize Hillary [Clinton] and the rest (except Sanders and Trump - we support them)."⁵⁰ [Harm to Ongoing Matter]

[REDACTED]

The focus on the U.S. presidential campaign continued throughout 2016. In [HOM] 2016 internal [HOM] reviewing the IRA-controlled Facebook group "Secured Borders," the

⁴⁷ [Harm to Ongoing Matter]

⁴⁸ See, e.g., SM-2230634 serial 131 [HOM]

⁴⁹ The IRA posted content about the Clinton candidacy before Clinton officially announced her presidential campaign. IRA-controlled social media accounts criticized Clinton's record as Secretary of State and promoted various critiques of her candidacy. The IRA also used other techniques. [Harm to Ongoing Matter]

[REDACTED] See SM-2230634, serial 70.

⁵⁰ [Harm to Ongoing Matter]

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

author criticized the “lower number of posts dedicated to criticizing Hillary Clinton” and reminded the Facebook specialist “it is imperative to intensify criticizing Hillary Clinton.”⁵¹

IRA employees also acknowledged that their work focused on influencing the U.S. presidential election. Harm to Ongoing Matter

[Redacted]

Harm to Ongoing Matter
[Redacted]

3. U.S. Operations Through Facebook

Many IRA operations used Facebook accounts created and operated by its specialists. Harm to Ongoing Matter

[Redacted]

Harm to Ongoing Matter
[Redacted]

Harm to Ongoing Matter
[Redacted]

⁵⁴ IRA Facebook groups active during the 2016 campaign covered a range of political issues and included purported conservative

⁵¹ Harm to Ongoing Matter
[Redacted]

⁵² Harm to Ongoing Matter
[Redacted]

⁵³ Harm to Ongoing Matter
[Redacted]

⁵⁴ Harm to Ongoing Matter
[Redacted]

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

groups (with names such as “Being Patriotic,” “Stop All Immigrants,” “Secured Borders,” and “Tea Party News”), purported Black social justice groups (“Black Matters,” “Blacktivist,” and “Don’t Shoot Us”), LGBTQ groups (“LGBT United”), and religious groups (“United Muslims of America”).

Throughout 2016, IRA accounts published an increasing number of materials supporting the Trump Campaign and opposing the Clinton Campaign. For example, on May 31, 2016, the operational account “Matt Skiber” began to privately message dozens of pro-Trump Facebook groups asking them to help plan a “pro-Trump rally near Trump Tower.”⁵⁵

To reach larger U.S. audiences, the IRA purchased advertisements from Facebook that promoted the IRA groups on the newsfeeds of U.S. audience members. According to Facebook, the IRA purchased over 3,500 advertisements, and the expenditures totaled approximately \$100,000.⁵⁶

During the U.S. presidential campaign, many IRA-purchased advertisements explicitly supported or opposed a presidential candidate or promoted U.S. rallies organized by the IRA (discussed below). As early as March 2016, the IRA purchased advertisements that overtly opposed the Clinton Campaign. For example, on March 18, 2016, the IRA purchased an advertisement depicting candidate Clinton and a caption that read in part, “If one day God lets this liar enter the White House as a president – that day would be a real national tragedy.”⁵⁷ Similarly, on April 6, 2016, the IRA purchased advertisements for its account “Black Matters” calling for a “flashmob” of U.S. persons to “take a photo with #HillaryClintonForPrison2016 or #nobillary2016.”⁵⁸ IRA-purchased advertisements featuring Clinton were, with very few exceptions, negative.⁵⁹

IRA-purchased advertisements referencing candidate Trump largely supported his campaign. The first known IRA advertisement explicitly endorsing the Trump Campaign was purchased on April 19, 2016. The IRA bought an advertisement for its Instagram account “Tea Party News” asking U.S. persons to help them “make a patriotic team of young Trump supporters” by uploading photos with the hashtag “#KIDS4TRUMP.”⁶⁰ In subsequent months, the IRA purchased dozens of advertisements supporting the Trump Campaign, predominantly through the Facebook groups “Being Patriotic,” “Stop All Invaders,” and “Secured Borders.”

⁵⁵ 5/31/16 Facebook Message, ID 100009922908461 (Matt Skiber) to ID [REDACTED]

[REDACTED] 5/31/16 Facebook Message, ID 100009922908461 (Matt Skiber) to ID [REDACTED]

Personal Privacy

⁵⁶ *Social Media Influence in the 2016 U.S. Election, Hearing Before the Senate Select Committee on Intelligence*, 115th Cong. 13 (11/1/17) (testimony of Colin Stretch, General Counsel of Facebook).

⁵⁷ 3/18/16 Facebook Advertisement ID 6045505152575.

⁵⁸ 4/6/16 Facebook Advertisement ID 6043740225319.

⁵⁹ See SM-2230634, serial 213 (documenting politically-oriented advertisements from the larger set provided by Facebook).

⁶⁰ 4/19/16 Facebook Advertisement ID 6045151094235.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~**Harm to Ongoing Matter** ⁶⁶

The IRA operated individualized Twitter accounts similar to the operation of its Facebook accounts, by continuously posting original content to the accounts while also communicating with U.S. Twitter users directly (through public tweeting or Twitter's private messaging).

The IRA used many of these accounts to attempt to influence U.S. audiences on the election. Individualized accounts used to influence the U.S. presidential election included @TEN_GOP (described above); @jenn_abrams (claiming to be a Virginian Trump supporter with 70,000 followers); @Pamela_Moore13 (claiming to be a Texan Trump supporter with 70,000 followers); and @America_1st_ (an anti-immigration persona with 24,000 followers).⁶⁷ In May 2016, the IRA created the Twitter account @march_for_trump, which promoted IRA-organized rallies in support of the Trump Campaign (described below).⁶⁸

Harm to Ongoing Matter**Harm to Ongoing Matter** ⁹

Using these accounts and others, the IRA provoked reactions from users and the media. Multiple IRA-posted tweets gained popularity.⁷⁰ U.S. media outlets also quoted tweets from IRA-controlled accounts and attributed them to the reactions of real U.S. persons.⁷¹ Similarly, numerous high-

⁶⁶**Harm to Ongoing Matter**

⁶⁷ Other individualized accounts included @MissouriNewsUS (an account with 3,800 followers that posted pro-Sanders and anti-Clinton material).

⁶⁸ See @march_for_trump, 5/30/16 Tweet (first post from account).

⁶⁹**Harm to Ongoing Matter**

⁷⁰ For example, one IRA account tweeted, "To those people, who hate the Confederate flag. Did you know that the flag and the war wasn't about slavery, it was all about money." The tweet received over 40,000 responses. @Jenn_Abrams 4/24/17 (2:37 p.m.) Tweet.

⁷¹ Josephine Lukito & Chris Wells, *Most Major Outlets Have Used Russian Tweets as Sources for Partisan Opinion: Study*, Columbia Journalism Review (Mar. 8, 2018); see also *Twitter Steps Up to Explain #NewYorkValues to Ted Cruz*, Washington Post (Jan. 15, 2016) (citing IRA tweet); *People Are Slamming the CIA for Claiming Russia Tried to Help Donald Trump*, U.S. News & World Report (Dec. 12, 2016).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

profile U.S. persons, including former Ambassador Michael McFaul,⁷² Roger Stone,⁷³ Sean Hannity,⁷⁴ and Michael Flynn Jr.,⁷⁵ retweeted or responded to tweets posted to these IRA-controlled accounts. Multiple individuals affiliated with the Trump Campaign also promoted IRA tweets (discussed below).

b. IRA Botnet Activities

Harm to Ongoing Matter

Harm to Ongoing Matter

Harm to Ongoing Matter

In January 2018, Twitter publicly identified 3,814 Twitter accounts associated with the IRA.⁷⁹ According to Twitter, in the ten weeks before the 2016 U.S. presidential election, these accounts posted approximately 175,993 tweets, “approximately 8.4% of which were election-

⁷² @McFaul 4/30/16 Tweet (responding to tweet by @Jenn_Abrams).

⁷³ @RogerJStoneJr 5/30/16 Tweet (retweeting @Pamela_Moore13); @RogerJStoneJr 4/26/16 Tweet (same).

⁷⁴ @scanhannity 6/21/17 Tweet (retweeting @Pamela_Moore13).

⁷⁵ @mflynnJR 6/22/17 Tweet (“RT @Jenn_Abrams: This is what happens when you add the voice over of an old documentary about mental illness onto video of SJWs. . .”).

⁷⁶ A botnet refers to a network of private computers or accounts controlled as a group to send specific automated messages. On the Twitter network, botnets can be used to promote and republish (“retweet”) specific tweets or hashtags in order for them to gain larger audiences.

⁷⁷ Harm to Ongoing Matter

⁷⁸ Harm to Ongoing Matter

⁷⁹ Eli Rosenberg, *Twitter to Tell 677,000 Users they Were Had by the Russians. Some Signs Show the Problem Continues*, Washington Post (Jan. 19, 2019).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

related.⁸⁰ Twitter also announced that it had notified approximately 1.4 million people who Twitter believed may have been in contact with an IRA-controlled account.⁸¹

5. U.S. Operations Involving Political Rallies

The IRA organized and promoted political rallies inside the United States while posing as U.S. grassroots activists. First, the IRA used one of its preexisting social media personas (Facebook groups and Twitter accounts, for example) to announce and promote the event. The IRA then sent a large number of direct messages to followers of its social media account asking them to attend the event. From those who responded with interest in attending, the IRA then sought a U.S. person to serve as the event's coordinator. In most cases, the IRA account operator would tell the U.S. person that they personally could not attend the event due to some preexisting conflict or because they were somewhere else in the United States.⁸² The IRA then further promoted the event by contacting U.S. media about the event and directing them to speak with the coordinator.⁸³ After the event, the IRA posted videos and photographs of the event to the IRA's social media accounts.⁸⁴

The Office identified dozens of U.S. rallies organized by the IRA. The earliest evidence of a rally was a "confederate rally" in November 2015.⁸⁵ The IRA continued to organize rallies even after the 2016 U.S. presidential election. The attendance at rallies varied. Some rallies appear to have drawn few (if any) participants, while others drew hundreds. The reach and success of these rallies was closely monitored. **Harm to Ongoing Matter**

⁸⁰ Twitter, "Update on Twitter's Review of the 2016 US Election" (updated Jan. 31, 2018). Twitter also reported identifying 50,258 automated accounts connected to the Russian government, which tweeted more than a million times in the ten weeks before the election.

⁸¹ Twitter, "Update on Twitter's Review of the 2016 US Election" (updated Jan. 31, 2018).

⁸² 8/20/16 Facebook Message, ID 100009922908461 (Matt Skiber) to ID **PP**

⁸³ See, e.g., 7/21/16 Email, joshmilton024@gmail.com to **PP**; 7/21/16 Email, joshmilton024@gmail.com to **Personal Privacy**

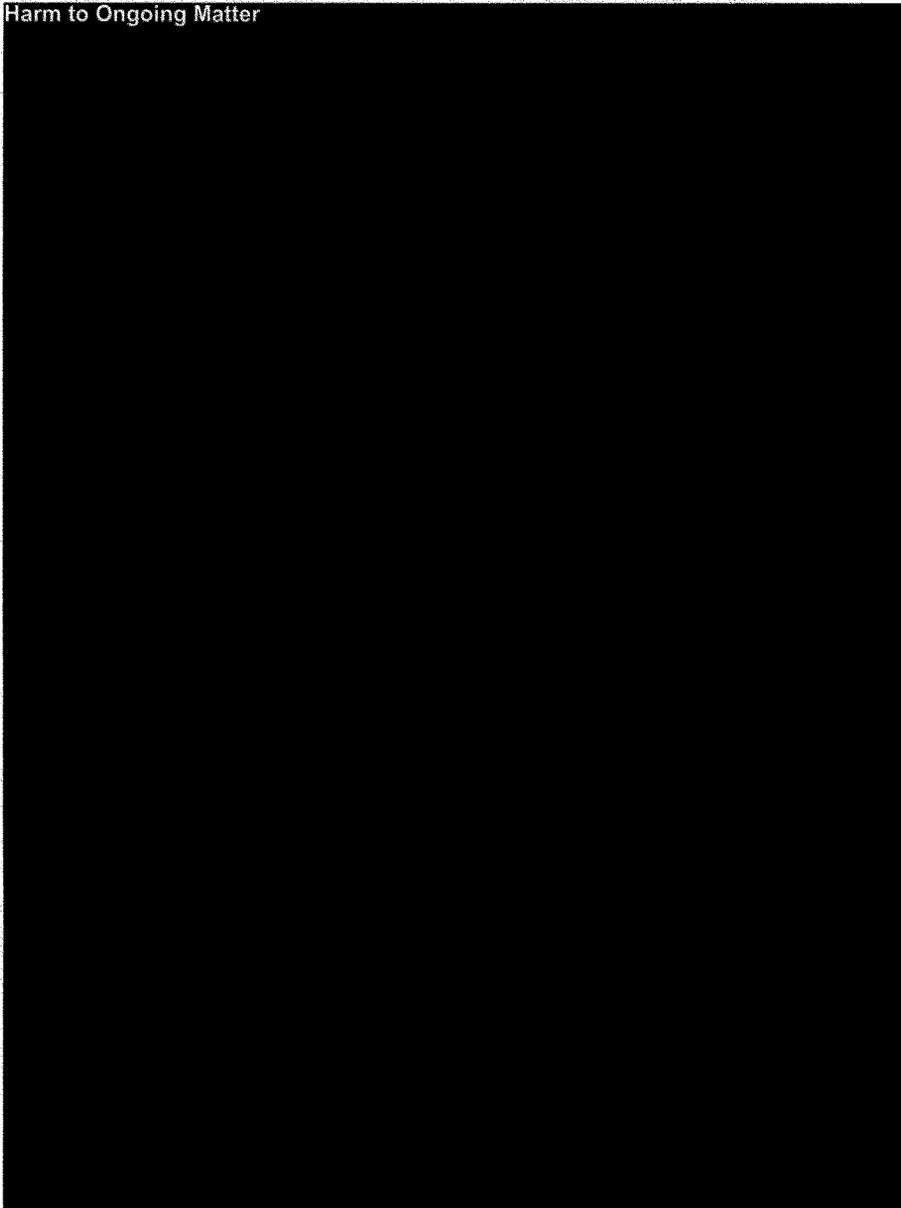
⁸⁴ @march_for_trump 6/25/16 Tweet (posting photos from rally outside Trump Tower).

⁸⁵ Instagram ID 2228012168 (Stand For Freedom) 11/3/15 Post ("Good evening buds! Well I am planning to organize a confederate rally [. . .] in Houston on the 14 of November and I want more people to attend.").

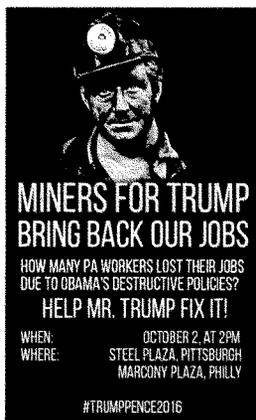
U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Harm to Ongoing Matter



U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)



IRA Poster for Pennsylvania Rallies organized by the IRA

From June 2016 until the end of the presidential campaign, almost all of the U.S. rallies organized by the IRA focused on the U.S. election, often promoting the Trump Campaign and opposing the Clinton Campaign. Pro-Trump rallies included three in New York; a series of pro-Trump rallies in Florida in August 2016; and a series of pro-Trump rallies in October 2016 in Pennsylvania. The Florida rallies drew the attention of the Trump Campaign, which posted about the Miami rally on candidate Trump's Facebook account (as discussed below).⁸⁶

Many of the same IRA employees who oversaw the IRA's social media accounts also conducted the day-to-day recruiting for political rallies inside the United States.

Harm to Ongoing Matter

6. Targeting and Recruitment of U.S. Persons

As early as 2014, the IRA instructed its employees to target U.S. persons who could be used to advance its operational goals. Initially, recruitment focused on U.S. persons who could amplify the content posted by the IRA. **Harm to Ongoing Matter**

Harm to Ongoing Matter

IRA employees frequently used **Investigative Technique** Twitter, Facebook, and Instagram to contact and recruit U.S. persons who followed the group. The IRA recruited U.S. persons from across the political spectrum. For example, the IRA targeted the family of **Personal Privacy** and a number of black social justice activists

⁸⁶ The pro-Trump rallies were organized through multiple Facebook, Twitter, and email accounts. See, e.g., Facebook ID 100009922908461 (Matt Skiber); Facebook ID 1601685693432389 (Being Patriotic); Twitter Account @march_for_trump; beingpatriotic@gmail.com. (Rallies were organized in New York on June 25, 2016; Florida on August 20, 2016; and Pennsylvania on October 2, 2016.)

⁸⁷ **Harm to Ongoing Matter**

⁸⁸ **Harm to Ongoing Matter**

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

while posing as a grassroots group called "Black Matters US."⁸⁹ In February 2017, the persona "Black Fist" (purporting to want to teach African-Americans to protect themselves when contacted by law enforcement) hired a self-defense instructor in New York to offer classes sponsored by Black Fist. The IRA also recruited moderators of conservative social media groups to promote IRA-generated content,⁹⁰ as well as recruited individuals to perform political acts (such as walking around New York City dressed up as Santa Claus with a Trump mask).⁹¹

Harm to Ongoing Matter

Harm to Ongoing Matter

Harm to Ongoing Matter

94

HOM as the IRA's online audience became larger, the IRA tracked U.S. persons with whom they communicated and had successfully tasked (with tasks ranging from organizing rallies to taking pictures with certain political messages). Harm to Ongoing Matter

95

⁸⁹ 3/11/16 Facebook Advertisement ID 6045078289928, 5/6/16 Facebook Advertisement ID 6051652423528, 10/26/16 Facebook Advertisement ID 6055238604687; 10/27/16 Facebook Message, ID Personal Privacy & ID 100011698576461 (Taylor Brooks).

⁹⁰ 8/19/16 Facebook Message, ID 100009922908461 (Matt Skiber) to ID PP

⁹¹ 12/8/16 Email, robot@craigslist.org to beingpatriotic@gmail.com (confirming Craigslist advertisement).

⁹² 8/18-19/16 Twitter DMs, @march_for_trump & PP

⁹³ See, e.g., 11/11-27/16 Facebook Messages, ID 100011698576461 (Taylor Brooks) & ID Personal Privacy (arranging to pay for plane tickets and for a bull horn).

⁹⁴ See, e.g., 9/10/16 Facebook Message, ID 100009922908461 (Matt Skiber) & ID Personal Privacy (discussing payment for rally supplies); 8/18/16 Twitter DM, @march_for_trump to PP (discussing payment for construction materials).

⁹⁵ Harm to Ongoing Matter

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Harm to Ongoing Matter

7. Interactions and Contacts with the Trump Campaign

The investigation identified two different forms of connections between the IRA and members of the Trump Campaign. (The investigation identified no similar connections between the IRA and the Clinton Campaign.) First, on multiple occasions, members and surrogates of the Trump Campaign promoted—typically by linking, retweeting, or similar methods of reposting—pro-Trump or anti-Clinton content published by the IRA through IRA-controlled social media accounts. Additionally, in a few instances, IRA employees represented themselves as U.S. persons to communicate with members of the Trump Campaign in an effort to seek assistance and coordination on IRA-organized political rallies inside the United States.

a. Trump Campaign Promotion of IRA Political Materials

Among the U.S. “leaders of public opinion” targeted by the IRA were various members and surrogates of the Trump Campaign. In total, Trump Campaign affiliates promoted dozens of tweets, posts, and other political content created by the IRA.

- Posts from the IRA-controlled Twitter account @TEN_GOP were cited or retweeted by multiple Trump Campaign officials and surrogates, including Donald J. Trump Jr.⁹⁶ Eric

⁹⁶ See, e.g., @DonaldJTrumpJr 10/26/16 Tweet (“RT @TEN_GOP: BREAKING Thousands of names changed on voter rolls in Indiana. Police investigating #VoterFraud. #DrainTheSwamp.”); @DonaldJTrumpJr 11/2/16 Tweet (“RT @TEN_GOP: BREAKING: #VoterFraud by counting tens of thousands of ineligible mail in Hillary votes being reported in Broward County, Florida.”); @DonaldJTrumpJr 11/8/16 Tweet (“RT @TEN_GOP: This vet passed away last month before he could vote for Trump. Here he is in his #MAGA hat. #voted #ElectionDay.”). Trump Jr. retweeted additional @TEN_GOP content subsequent to the election.

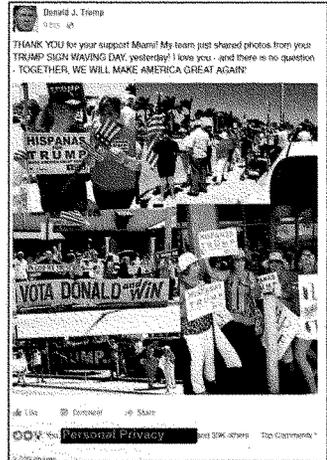
U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Trump,⁹⁷ Kellyanne Conway,⁹⁸ Brad Parscale,⁹⁹ and Michael T. Flynn.¹⁰⁰ These posts included allegations of voter fraud,¹⁰¹ as well as allegations that Secretary Clinton had mishandled classified information.¹⁰²

- A November 7, 2016 post from the IRA-controlled Twitter account @Pamela_Moore13 was retweeted by Donald J. Trump Jr.¹⁰³
- On September 19, 2017, President Trump's personal account @realDonaldTrump responded to a tweet from the IRA-controlled account @10_gop (the backup account of @TEN_GOP, which had already been deactivated by Twitter). The tweet read: "We love you, Mr. President!"¹⁰⁴

IRA employees monitored the reaction of the Trump Campaign and, later, Trump Administration officials to their tweets. For example, on August 23, 2016, the IRA-controlled persona "Matt Skiber" Facebook account sent a message to a U.S. Tea Party activist, writing that "Mr. Trump posted about our event in Miami! This is great!"¹⁰⁵ The IRA employee included a screenshot of candidate Trump's Facebook account, which included a post about the August 20, 2016 political rallies organized by the IRA.



Screenshot of Trump Facebook Account (from Matt Skiber)

⁹⁷ @EricTrump 10/20/16 Tweet ("RT @TEN_GOP: BREAKING Hillary shuts down press conference when asked about DNC Operatives corruption & #VoterFraud #debatenight #TrumpB").

⁹⁸ @KellyannePolls 11/6/16 Tweet ("RT @TEN_GOP: Mother of jailed sailor: 'Hold Hillary to same standards as my son on Classified info' #hillarysemail #WeinerGate.").

⁹⁹ @parscale 10/15/16 Tweet ("Thousands of deplorables chanting to the media: 'Tell The Truth!' RT if you are also done w/ biased Media! #FridayFeeling").

¹⁰⁰ @GenFlynn 11/7/16 (retweeting @TEN_GOP post that included in part "@realDonaldTrump & @mike_pence will be our next POTUS & VPOTUS.").

¹⁰¹ @TEN_GOP 10/11/16 Tweet ("North Carolina finds 2,214 voters over the age of 110!!").

¹⁰² @TEN_GOP 11/6/16 Tweet ("Mother of jailed sailor: 'Hold Hillary to same standards as my son on classified info #hillarysemail #WeinerGate.'").

¹⁰³ @DonaldJTrumpJr 11/7/16 Tweet ("RT @Pamela_Moore13: Detroit residents speak out against the failed policies of Obama, Hillary & democrats . . .").

¹⁰⁴ @realDonaldTrump 9/19/17 (7:33 p.m.) Tweet ("THANK YOU for your support Miami! My team just shared photos from your TRUMP SIGN WAVING DAY, yesterday! I love you - and there is no question - TOGETHER, WE WILL MAKE AMERICA GREAT AGAIN!").

¹⁰⁵ 8/23/16 Facebook Message, ID 100009922908461 (Matt Skiber) to ID [REDACTED]

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Harm to Ongoing Matter

106

b. Contact with Trump Campaign Officials in Connection to Rallies

Starting in June 2016, the IRA contacted different U.S. persons affiliated with the Trump Campaign in an effort to coordinate pro-Trump IRA-organized rallies inside the United States. In all cases, the IRA contacted the Campaign while claiming to be U.S. political activists working on behalf of a conservative grassroots organization. The IRA's contacts included requests for signs and other materials to use at rallies,¹⁰⁷ as well as requests to promote the rallies and help coordinate logistics.¹⁰⁸ While certain campaign volunteers agreed to provide the requested support (for example, agreeing to set aside a number of signs), the investigation has not identified evidence that any Trump Campaign official understood the requests were coming from foreign nationals.

* * *

In sum, the investigation established that Russia interfered in the 2016 presidential election through the "active measures" social media campaign carried out by the IRA, an organization funded by Prigozhin and companies that he controlled. As explained further in Volume I, Section V.A, *infra*, the Office concluded (and a grand jury has alleged) that Prigozhin, his companies, and IRA employees violated U.S. law through these operations, principally by undermining through deceptive acts the work of federal agencies charged with regulating foreign influence in U.S. elections.

¹⁰⁶ Harm to Ongoing Matter

¹⁰⁷ See, e.g., 8/16/16 Email, joshmilton024@gmail.com to **PP** @donaldtrump.com (asking for Trump/Pence signs for Florida rally); 8/18/16 Email, joshmilton024@gmail.com to **PP** @donaldtrump.com (asking for Trump/Pence signs for Florida rally); 8/12/16 Email, joshmilton024@gmail.com to **PP** @donaldtrump.com (asking for "contact phone numbers for Trump Campaign affiliates" in various Florida cities and signs).

¹⁰⁸ 8/15/16 Email, **Personal Privacy** to joshmilton024@gmail.com (asking to add to locations to the "Florida Goes Trump," list); 8/16/16 Email, **Personal Privacy** to joshmilton024@gmail.com (volunteering to send an email blast to followers).

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

III. RUSSIAN HACKING AND DUMPING OPERATIONS

Beginning in March 2016, units of the Russian Federation's Main Intelligence Directorate of the General Staff (GRU) hacked the computers and email accounts of organizations, employees, and volunteers supporting the Clinton Campaign, including the email account of campaign chairman John Podesta. Starting in April 2016, the GRU hacked into the computer networks of the Democratic Congressional Campaign Committee (DCCC) and the Democratic National Committee (DNC). The GRU targeted hundreds of email accounts used by Clinton Campaign employees, advisors, and volunteers. In total, the GRU stole hundreds of thousands of documents from the compromised email accounts and networks.¹⁰⁹ The GRU later released stolen Clinton Campaign and DNC documents through online personas, "DCLeaks" and "Guccifer 2.0," and later through the organization WikiLeaks. The release of the documents was designed and timed to interfere with the 2016 U.S. presidential election and undermine the Clinton Campaign.

The Trump Campaign showed interest in the WikiLeaks releases and, in the summer and fall of 2016, Harm to Ongoing Matter

After HOM WikiLeak's first Clinton-related release HOM, the Trump Campaign stayed in contact HOM about WikiLeaks's activities. The investigation was unable to resolve Harm to Ongoing Matter WikiLeaks's release of the stolen Podesta emails on October 7, 2016, the same day a video from years earlier was published of Trump using graphic language about women.

A. GRU Hacking Directed at the Clinton Campaign

1. GRU Units Target the Clinton Campaign

Two military units of the GRU carried out the computer intrusions into the Clinton Campaign, DNC, and DCCC: Military Units 26165 and 74455.¹¹⁰ Military Unit 26165 is a GRU cyber unit dedicated to targeting military, political, governmental, and non-governmental organizations outside of Russia, including in the United States.¹¹¹ The unit was sub-divided into departments with different specialties. One department, for example, developed specialized malicious software ("malware"), while another department conducted large-scale spearphishing campaigns.¹¹² Investigative Technique a bitcoin mining operation to

¹⁰⁹ As discussed in Section V below, our Office charged 12 GRU officers for crimes arising from the hacking of these computers, principally with conspiring to commit computer intrusions, in violation of 18 U.S.C. §§1030 and 371. See Volume I, Section V.B, *infra*; Indictment, *United States v. Netyksho*, No. 1:18-cr-215 (D.D.C. July 13, 2018), Doc. 1 ("*Netyksho* Indictment").

¹¹⁰ *Netyksho* Indictment ¶ 1.

¹¹¹ Separate from this Office's indictment of GRU officers, in October 2018 a grand jury sitting in the Western District of Pennsylvania returned an indictment charging certain members of Unit 26165 with hacking the U.S. Anti-Doping Agency, the World Anti-Doping Agency, and other international sport associations. *United States v. Aleksei Sergeevich Morenets*, No. 18-263 (W.D. Pa.).

¹¹² A spearphishing email is designed to appear as though it originates from a trusted source, and solicits information to enable the sender to gain access to an account or network, or causes the recipient to

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

secure bitcoins used to purchase computer infrastructure used in hacking operations.¹¹³

Military Unit 74455 is a related GRU unit with multiple departments that engaged in cyber operations. Unit 74455 assisted in the release of documents stolen by Unit 26165, the promotion of those releases, and the publication of anti-Clinton content on social media accounts operated by the GRU. Officers from Unit 74455 separately hacked computers belonging to state boards of elections, secretaries of state, and U.S. companies that supplied software and other technology related to the administration of U.S. elections.¹¹⁴

Beginning in mid-March 2016, Unit 26165 had primary responsibility for hacking the DCCC and DNC, as well as email accounts of individuals affiliated with the Clinton Campaign.¹¹⁵

- Unit 26165 used IT [REDACTED] to learn about Investigative Technique different Democratic websites, including democrats.org, hillaryclinton.com, dnc.org, and dccc.org. Investigative Technique [REDACTED] began before the GRU had obtained any credentials or gained access to these networks, indicating that the later DCCC and DNC intrusions were not crimes of opportunity but rather the result of targeting.¹¹⁶
- GRU officers also sent hundreds of spearphishing emails to the work and personal email accounts of Clinton Campaign employees and volunteers. Between March 10, 2016 and March 15, 2016, Unit 26165 appears to have sent approximately 90 spearphishing emails to email accounts at hillaryclinton.com. Starting on March 15, 2016, the GRU began targeting Google email accounts used by Clinton Campaign employees, along with a smaller number of dnc.org email accounts.¹¹⁷

The GRU spearphishing operation enabled it to gain access to numerous email accounts of Clinton Campaign employees and volunteers, including campaign chairman John Podesta, junior volunteers assigned to the Clinton Campaign's advance team, informal Clinton Campaign advisors, and a DNC employee.¹¹⁸ GRU officers stole tens of thousands of emails from spearphishing victims, including various Clinton Campaign-related communications.

download malware that enables the sender to gain access to an account or network. *Netyksho* Indictment ¶ 10.

¹¹³ Bitcoin mining consists of unlocking new bitcoins by solving computational problems. IT [REDACTED] kept its newly mined coins in an account on the bitcoin exchange platform CEX.io. To make purchases, the GRU routed funds into other accounts through transactions designed to obscure the source of funds. *Netyksho* Indictment ¶ 62.

¹¹⁴ *Netyksho* Indictment ¶ 69.

¹¹⁵ *Netyksho* Indictment ¶ 9.

¹¹⁶ See SM-2589105, serials 144 & 495.

¹¹⁷ Investigative Technique [REDACTED]

¹¹⁸ Investigative Technique [REDACTED]

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

2. Intrusions into the DCCC and DNC Networks

a. *Initial Access*

By no later than April 12, 2016, the GRU had gained access to the DCCC computer network using the credentials stolen from a DCCC employee who had been successfully spearphished the week before. Over the ensuing weeks, the GRU traversed the network, identifying different computers connected to the DCCC network. By stealing network access credentials along the way (including those of IT administrators with unrestricted access to the system), the GRU compromised approximately 29 different computers on the DCCC network.¹¹⁹

Approximately six days after first hacking into the DCCC network, on April 18, 2016, GRU officers gained access to the DNC network via a virtual private network (VPN) connection¹²⁰ between the DCCC and DNC networks.¹²¹ Between April 18, 2016 and June 8, 2016, Unit 26165 compromised more than 30 computers on the DNC network, including the DNC mail server and shared file server.¹²²

b. *Implantation of Malware on DCCC and DNC Networks*

Unit 26165 implanted on the DCCC and DNC networks two types of customized malware,¹²³ known as “X-Agent” and “X-Tunnel”; Mimikatz, a credential-harvesting tool; and rar.exe, a tool used in these intrusions to compile and compress materials for exfiltration. X-Agent was a multi-function hacking tool that allowed Unit 26165 to log keystrokes, take screenshots, and gather other data about the infected computers (e.g., file directories, operating systems).¹²⁴ X-Tunnel was a hacking tool that created an encrypted connection between the victim DCCC/DNC computers and GRU-controlled computers outside the DCCC and DNC networks that was capable of large-scale data transfers.¹²⁵ GRU officers then used X-Tunnel to exfiltrate stolen data from the victim computers.

¹¹⁹ Investigative Technique
[REDACTED]

¹²⁰ A VPN extends a private network, allowing users to send and receive data across public networks (such as the internet) as if the connecting computer was directly connected to the private network. The VPN in this case had been created to give a small number of DCCC employees access to certain databases housed on the DNC network. Therefore, while the DCCC employees were outside the DNC’s private network, they could access parts of the DNC network from their DCCC computers.

¹²¹ Investigative Technique
[REDACTED]

SM-2589105-HACK, serial 5.

¹²² Investigative Technique
[REDACTED]

M-2589105-HACK, serial 5.

¹²³ “Malware” is short for malicious software, and here refers to software designed to allow a third party to infiltrate a computer without the consent or knowledge of the computer’s user or operator.

¹²⁴ Investigative Technique
[REDACTED]

¹²⁵ Investigative Technique
[REDACTED]

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

To operate X-Agent and X-Tunnel on the DCCC and DNC networks, Unit 26165 officers set up a group of computers outside those networks to communicate with the implanted malware.¹²⁶ The first set of GRU-controlled computers, known by the GRU as “middle servers,” sent and received messages to and from malware on the DNC/DCCC networks. The middle servers, in turn, relayed messages to a second set of GRU-controlled computers, labeled internally by the GRU as an “AMS Panel.” The AMS Panel **Investigative Technique** served as a nerve center through which GRU officers monitored and directed the malware’s operations on the DNC/DCCC networks.¹²⁷

The AMS Panel used to control X-Agent during the DCCC and DNC intrusions was housed on a leased computer located near **T** Arizona.¹²⁸ **Investigative Technique**

129

Investigative Technique

Investigative Technique

¹²⁶ In connection with these intrusions, the GRU used computers (virtual private networks, dedicated servers operated by hosting companies, etc.) that it leased from third-party providers located all over the world. The investigation identified rental agreements and payments for computers located in, *inter alia*, **Investigative Technique** all of which were used in the operations targeting the U.S. election.

¹²⁷ *Netyksho* Indictment ¶ 25.

¹²⁸ *Netyksho* Indictment ¶ 24(c).

¹²⁹ *Netyksho* Indictment ¶ 24(b).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

The Arizona-based AMS Panel also stored thousands of files containing keylogging sessions captured through X-Agent. These sessions were captured as GRU officers monitored DCCC and DNC employees' work on infected computers regularly between April 2016 and June 2016. Data captured in these keylogging sessions included passwords, internal communications between employees, banking information, and sensitive personal information.

c. Theft of Documents from DNC and DCCC Networks

Officers from Unit 26165 stole thousands of documents from the DCCC and DNC networks, including significant amounts of data pertaining to the 2016 U.S. federal elections. Stolen documents included internal strategy documents, fundraising data, opposition research, and emails from the work inboxes of DNC employees.¹³⁰

The GRU began stealing DCCC data shortly after it gained access to the network. On April 14, 2016 (approximately three days after the initial intrusion) GRU officers downloaded rar.exe onto the DCCC's document server. The following day, the GRU searched one compromised DCCC computer for files containing search terms that included "Hillary," "DNC," "Cruz," and "Trump."¹³¹ On April 25, 2016, the GRU collected and compressed PDF and Microsoft documents from folders on the DCCC's shared file server that pertained to the 2016 election.¹³² The GRU appears to have compressed and exfiltrated over 70 gigabytes of data from this file server.¹³³

The GRU also stole documents from the DNC network shortly after gaining access. On April 22, 2016, the GRU copied files from the DNC network to GRU-controlled computers. Stolen documents included the DNC's opposition research into candidate Trump.¹³⁴ Between approximately May 25, 2016 and June 1, 2016, GRU officers accessed the DNC's mail server from a GRU-controlled computer leased inside the United States.¹³⁵ During these connections,

¹³⁰ *Netyksho* Indictment ¶¶ 27-29; Investigative Technique

¹³¹ Investigative Technique

¹³² Investigative Technique

¹³³ Investigative Technique

¹³⁴ Investigative Technique

SM-2589105-HACK, serial 5; Investigative Technique

¹³⁵ Investigative Technique

¹³⁵ See SM-2589105-GJ, serial 649. As part of its investigation, the FBI later received images of DNC servers and copies of relevant traffic logs. *Netyksho* Indictment ¶¶ 28-29.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Unit 26165 officers appear to have stolen thousands of emails and attachments, which were later released by WikiLeaks in July 2016.¹³⁶

B. Dissemination of the Hacked Materials

The GRU's operations extended beyond stealing materials, and included releasing documents stolen from the Clinton Campaign and its supporters. The GRU carried out the anonymous release through two fictitious online personas that it created—DCLeaks and Guccifer 2.0—and later through the organization WikiLeaks.

1. DCLeaks

The GRU began planning the releases at least as early as April 19, 2016, when Unit 26165 registered the domain dcleaks.com through a service that anonymized the registrant.¹³⁷ Unit 26165 paid for the registration using a pool of bitcoin that it had mined.¹³⁸ The dcleaks.com landing page pointed to different tranches of stolen documents, arranged by victim or subject matter. Other dcleaks.com pages contained indexes of the stolen emails that were being released (bearing the sender, recipient, and date of the email). To control access and the timing of releases, pages were sometimes password-protected for a period of time and later made unrestricted to the public.

Starting in June 2016, the GRU posted stolen documents onto the website dcleaks.com, including documents stolen from a number of individuals associated with the Clinton Campaign. These documents appeared to have originated from personal email accounts (in particular, Google and Microsoft accounts), rather than the DNC and DCCC computer networks. DCLeaks victims included an advisor to the Clinton Campaign, a former DNC employee and Clinton Campaign employee, and four other campaign volunteers.¹³⁹ The GRU released through dcleaks.com thousands of documents, including personal identifying and financial information, internal correspondence related to the Clinton Campaign and prior political jobs, and fundraising files and information.¹⁴⁰

¹³⁶ *Netyksho* Indictment ¶ 29. The last-in-time DNC email released by WikiLeaks was dated May 25, 2016, the same period of time during which the GRU gained access to the DNC's email server. *Netyksho* Indictment ¶ 45.

¹³⁷ *Netyksho* Indictment ¶ 35. Approximately a week before the registration of dcleaks.com, the same actors attempted to register the website electionleaks.com using the same domain registration service. **Investigative Technique**

¹³⁸ See SM-2589105, serial 181; *Netyksho* Indictment ¶ 21(a).

¹³⁹ **Investigative Technique**

¹⁴⁰ See, e.g., Internet Archive, "https://dcleaks.com/" (archive date Nov. 10, 2016). Additionally, DCLeaks released documents relating to **Personal Privacy**, emails belonging to **PP**, and emails from 2015 relating to Republican Party employees (under the portfolio name "The United States Republican Party"). "The United States Republican Party" portfolio contained approximately 300 emails from a variety of GOP members, PACs, campaigns, state parties, and businesses dated between May and October 2015. According to open-source reporting, these victims shared the same

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

GRU officers operated a Facebook page under the DCLeaks moniker, which they primarily used to promote releases of materials.¹⁴¹ The Facebook page was administered through a small number of preexisting GRU-controlled Facebook accounts.¹⁴²

GRU officers also used the DCLeaks Facebook account, the Twitter account @dcleaks_ and the email account dcleaksproject@gmail.com to communicate privately with reporters and other U.S. persons. GRU officers using the DCLeaks persona gave certain reporters early access to archives of leaked files by sending them links and passwords to pages on the dcleaks.com website that had not yet become public. For example, on July 14, 2016, GRU officers operating under the DCLeaks persona sent a link and password for a non-public DCLeaks webpage to a U.S. reporter via the Facebook account.¹⁴³ Similarly, on September 14, 2016, GRU officers sent reporters Twitter direct messages from @dcleaks_ with a password to another non-public part of the dcleaks.com website.¹⁴⁴

The DCLeaks.com website remained operational and public until March 2017.

2. Guccifer 2.0

On June 14, 2016, the DNC and its cyber-response team announced the breach of the DNC network and suspected theft of DNC documents. In the statements, the cyber-response team alleged that Russian state-sponsored actors (which they referred to as “Fancy Bear”) were responsible for the breach.¹⁴⁵ Apparently in response to that announcement, on June 15, 2016, GRU officers using the persona Guccifer 2.0 created a WordPress blog. In the hours leading up to the launch of that WordPress blog, GRU officers logged into a Moscow-based server used and managed by Unit 74455 and searched for a number of specific words and phrases in English, including “some hundred sheets,” “illuminati,” and “worldwide known.” Approximately two hours after the last of those searches, Guccifer 2.0 published its first post, attributing the DNC server hack to a lone Romanian hacker and using several of the unique English words and phrases that the GRU officers had searched for that day.¹⁴⁶

Tennessee-based web-hosting company, called Smartech Corporation. William Bastone, *RNC E-Mail Was, In Fact, Hacked By Russians*, *The Smoking Gun* (Dec. 13, 2016).

¹⁴¹ *Netyksho* Indictment ¶ 38.

¹⁴² See, e.g., Facebook Account 100008825623541 (Alice Donovan).

¹⁴³ 7/14/16 Facebook Message, ID 793058100795341 (DC Leaks) to ID **Personal Privacy**

¹⁴⁴ See, e.g., 9/14/16 Twitter DM, @dcleaks_ to **Personal Privacy**; 9/14/16 Twitter DM, @dcleaks_ to **Personal Privacy**. The messages read: “Hi https://t.co/QTvKUjQcOx pass: KvFsg%*14@gPgu& enjoy ;).”

¹⁴⁵ Dmitri Alperovitch, *Bears in the Midst: Intrusion into the Democratic National Committee*, CrowdStrike Blog (June 14, 2016). CrowdStrike updated its post after the June 15, 2016 post by Guccifer 2.0 claiming responsibility for the intrusion.

¹⁴⁶ *Netyksho* Indictment ¶¶ 41-42.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

That same day, June 15, 2016, the GRU also used the Guccifer 2.0 WordPress blog to begin releasing to the public documents stolen from the DNC and DCCC computer networks. The Guccifer 2.0 persona ultimately released thousands of documents stolen from the DNC and DCCC in a series of blog posts between June 15, 2016 and October 18, 2016.¹⁴⁷ Released documents included opposition research performed by the DNC (including a memorandum analyzing potential criticisms of candidate Trump), internal policy documents (such as recommendations on how to address politically sensitive issues), analyses of specific congressional races, and fundraising documents. Releases were organized around thematic issues, such as specific states (e.g., Florida and Pennsylvania) that were perceived as competitive in the 2016 U.S. presidential election.

Beginning in late June 2016, the GRU also used the Guccifer 2.0 persona to release documents directly to reporters and other interested individuals. Specifically, on June 27, 2016, Guccifer 2.0 sent an email to the news outlet The Smoking Gun offering to provide “exclusive access to some leaked emails linked [to] Hillary Clinton’s staff.”¹⁴⁸ The GRU later sent the reporter a password and link to a locked portion of the dcleaks.com website that contained an archive of emails stolen by Unit 26165 from a Clinton Campaign volunteer in March 2016.¹⁴⁹ That the Guccifer 2.0 persona provided reporters access to a restricted portion of the DCLeaks website tends to indicate that both personas were operated by the same or a closely-related group of people.¹⁵⁰

The GRU continued its release efforts through Guccifer 2.0 into August 2016. For example, on August 15, 2016, the Guccifer 2.0 persona sent a candidate for the U.S. Congress documents related to the candidate’s opponent.¹⁵¹ On August 22, 2016, the Guccifer 2.0 persona transferred approximately 2.5 gigabytes of Florida-related data stolen from the DCCC to a U.S. blogger covering Florida politics.¹⁵² On August 22, 2016, the Guccifer 2.0 persona sent a U.S. reporter documents stolen from the DCCC pertaining to the Black Lives Matter movement.¹⁵³

¹⁴⁷ Releases of documents on the Guccifer 2.0 blog occurred on June 15, 2016; June 20, 2016; June 21, 2016; July 6, 2016; July 14, 2016; August 12, 2016; August 15, 2016; August 21, 2016; August 31, 2016; September 15, 2016; September 23, 2016; October 4, 2016; and October 18, 2016.

¹⁴⁸ 6/27/16 Email, guccifer20@aol.fr to **Personal Privacy** (subject “leaked emails”); **T**

¹⁴⁹ 6/27/16 Email, guccifer20@aol.fr to **Personal Privacy** (subject “leaked emails”); **T**; see also 6/27/16 Email, guccifer20@aol.fr to **Personal Privacy** (subject “leaked emails”); **T** (claiming DCLeaks was a “Wikileaks sub project”).

¹⁵⁰ Before sending the reporter the link and password to the closed DCLeaks website, and in an apparent effort to deflect attention from the fact that DCLeaks and Guccifer 2.0 were operated by the same organization, the Guccifer 2.0 persona sent the reporter an email stating that DCLeaks was a “Wikileaks sub project” and that Guccifer 2.0 had asked DCLeaks to release the leaked emails with “closed access” to give reporters a preview of them.

¹⁵¹ *Netyksho* Indictment ¶ 43(a).

¹⁵² *Netyksho* Indictment ¶ 43(b).

¹⁵³ *Netyksho* Indictment ¶ 43(c).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

The GRU was also in contact through the Guccifer 2.0 persona with **HOM** a former Trump Campaign member **Harm to Ongoing Matter**

¹⁵⁴ In early August 2016, **HOM** Twitter's suspension of the Guccifer 2.0 Twitter account. After it was reinstated, GRU officers posing as Guccifer 2.0 wrote **HK** via private message, "thank u for writing back . . . do u find any[h]ing interesting in the docs i posted?" On August 17, 2016, the GRU added, "please tell me if i can help u anyhow . . . it would be a great pleasure to me." On September 9, 2016, the GRU—again posing as Guccifer 2.0—referred to a stolen DCCC document posted online and asked **HOM** "what do u think of the info on the turnout model for the democrats entire presidential campaign." **HOM** responded, "pretty standard."¹⁵⁵ The investigation did not identify evidence of other communications between **HOM** and Guccifer 2.0.

3. Use of WikiLeaks

In order to expand its interference in the 2016 U.S. presidential election, the GRU units transferred many of the documents they stole from the DNC and the chairman of the Clinton Campaign to WikiLeaks. GRU officers used both the DCLeaks and Guccifer 2.0 personas to communicate with WikiLeaks through Twitter private messaging and through encrypted channels, including possibly through WikiLeaks's private communication system.

a. WikiLeaks's Expressed Opposition Toward the Clinton Campaign

WikiLeaks, and particularly its founder Julian Assange, privately expressed opposition to candidate Clinton well before the first release of stolen documents. In November 2015, Assange wrote to other members and associates of WikiLeaks that "[w]e believe it would be much better for GOP to win . . . Dems+Media+liberals woudl [sic] then form a block to reign in their worst qualities. . . . With Hillary in charge, GOP will be pushing for her worst qualities., dems+media+neoliberals will be mute. . . . She's a bright, well connected, sadistic sociopath."¹⁵⁶

In March 2016, WikiLeaks released a searchable archive of approximately 30,000 Clinton emails that had been obtained through FOIA litigation.¹⁵⁷ While designing the archive, one WikiLeaks member explained the reason for building the archive to another associate:

¹⁵⁴ **HOM**

¹⁵⁵ **Harm to Ongoing Matter**

¹⁵⁶ 11/19/15 Twitter Group Chat, Group ID 594242937858486276, @WikiLeaks et al. Assange also wrote that, "GOP will generate a lot oposition [sic], including through dumb moves. Hillary will do the same thing, but co-opt the liberal opposition and the GOP opposition. Hence hillary has greater freedom to start wars than the GOP and has the will to do so." *Id.*

¹⁵⁷ WikiLeaks, "Hillary Clinton Email Archive," available at <https://wikileaks.org/clinton-emails/>.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

[W]e want this repository to become “the place” to search for background on hillary’s plotting at the state department during 2009-2013. . . . Firstly because its useful and will annoy Hillary, but secondly because we want to be seen to be a resource/player in the US election, because eit [sic] may en[courage] people to send us even more important leaks.¹⁵⁸

b. WikiLeaks’s First Contact with Guccifer 2.0 and DCLeaks

Shortly after the GRU’s first release of stolen documents through dcleaks.com in June 2016, GRU officers also used the DCLeaks persona to contact WikiLeaks about possible coordination in the future release of stolen emails. On June 14, 2016, @dcleaks_ sent a direct message to @WikiLeaks, noting, “You announced your organization was preparing to publish more Hillary’s emails. We are ready to support you. We have some sensitive information too, in particular, her financial documents. Let’s do it together. What do you think about publishing our info at the same moment? Thank you.”¹⁵⁹ [REDACTED] Investigative Technique [REDACTED]

Around the same time, WikiLeaks initiated communications with the GRU persona Guccifer 2.0 shortly after it was used to release documents stolen from the DNC. On June 22, 2016, seven days after Guccifer 2.0’s first releases of stolen DNC documents, WikiLeaks used Twitter’s direct message function to contact the Guccifer 2.0 Twitter account and suggest that Guccifer 2.0 “[s]end any new material [stolen from the DNC] here for us to review and it will have a much higher impact than what you are doing.”¹⁶⁰

On July 6, 2016, WikiLeaks again contacted Guccifer 2.0 through Twitter’s private messaging function, writing, “if you have anything hillary related we want it in the next twee [sic] days prebable [sic] because the DNC is approaching and she will solidify bernie supporters behind her after.” The Guccifer 2.0 persona responded, “ok . . . i see.” WikiLeaks also explained, “we think trump has only a 25% chance of winning against hillary . . . so conflict between bernie and hillary is interesting.”¹⁶¹

c. The GRU’s Transfer of Stolen Materials to WikiLeaks

Both the GRU and WikiLeaks sought to hide their communications, which has limited the Office’s ability to collect all of the communications between them. Thus, although it is clear that the stolen DNC and Podesta documents were transferred from the GRU to WikiLeaks, [REDACTED] Investigative Technique [REDACTED]

¹⁵⁸ 3/14/16 Twitter DM, @WikiLeaks to [REDACTED] PP [REDACTED] Less than two weeks earlier, the same account had been used to send a private message opposing the idea of Clinton “in whitehouse with her bloodlutt and amitions [sic] of empire with hawkish liberal-interventionist appointees.” 11/19/15 Twitter Group Chat, Group ID 594242937858486276, @WikiLeaks et al.

¹⁵⁹ 6/14/16 Twitter DM, @dcleaks_ to @WikiLeaks.

¹⁶⁰ *Netyksho* Indictment ¶ 47(a).

¹⁶¹ 7/6/16 Twitter DMs, @WikiLeaks & @guccifer_2.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

The Office was able to identify when the GRU (operating through its personas Guccifer 2.0 and DCLeaks) transferred some of the stolen documents to WikiLeaks through online archives set up by the GRU. Assange had access to the internet from the Ecuadorian Embassy in London, England. **Investigative Technique**

On July 14, 2016, GRU officers used a Guccifer 2.0 email account to send WikiLeaks an email bearing the subject "big archive" and the message "a new attempt."¹⁶³ The email contained an encrypted attachment with the name "wk dnc link1.txt.gpg."¹⁶⁴ Using the Guccifer 2.0 Twitter account, GRU officers sent WikiLeaks an encrypted file and instructions on how to open it.¹⁶⁵ On July 18, 2016, WikiLeaks confirmed in a direct message to the Guccifer 2.0 account that it had "the 1Gb or so archive" and would make a release of the stolen documents "this week."¹⁶⁶ On July 22, 2016, WikiLeaks released over 20,000 emails and other documents stolen from the DNC computer networks.¹⁶⁷ The Democratic National Convention began three days later.

Similar communications occurred between WikiLeaks and the GRU-operated persona DCLeaks. On September 15, 2016, @dcleaks wrote to @WikiLeaks, "hi there! I'm from DC Leaks. How could we discuss some submission-related issues? Am trying to reach out to you via your secured chat but getting no response. I've got something that might interest you. You won't be disappointed, I promise."¹⁶⁸ The WikiLeaks account responded, "Hi there," without further elaboration. The @dcleaks_ account did not respond immediately.

The same day, the Twitter account @guccifer_2 sent @dcleaks_ a direct message, which is the first known contact between the personas.¹⁶⁹ During subsequent communications, the

¹⁶² **Investigative Technique**

¹⁶³ This was not the GRU's first attempt at transferring data to WikiLeaks. On June 29, 2016, the GRU used a Guccifer 2.0 email account to send a large encrypted file to a WikiLeaks email account. 6/29/16 Email, guccifer2@mail.com [REDACTED] (The email appears to have been undelivered.)

¹⁶⁴ See SM-2589105-DCLEAKS, serial 28 (analysis).

¹⁶⁵ 6/27/16 Twitter DM, @Guccifer_2 to @WikiLeaks.

¹⁶⁶ 7/18/16 Twitter DM, @Guccifer_2 & @WikiLeaks.

¹⁶⁷ "DNC Email Archive," WikiLeaks (Jul. 22, 2016), available at <https://wikileaks.org/dnc-emails>.

¹⁶⁸ 9/15/16 Twitter DM, @dcleaks_ to @WikiLeaks.

¹⁶⁹ 9/15/16 Twitter DM, @guccifer_2 to @dcleaks_.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Guccifer 2.0 persona informed DCLeaks that WikiLeaks was trying to contact DCLeaks and arrange for a way to speak through encrypted emails.¹⁷⁰

An analysis of the metadata collected from the WikiLeaks site revealed that the stolen Podesta emails show a creation date of September 19, 2016.¹⁷¹ Based on information about Assange's computer and its possible operating system, this date may be when the GRU staged the stolen Podesta emails for transfer to WikiLeaks (as the GRU had previously done in July 2016 for the DNC emails).¹⁷² The WikiLeaks site also released PDFs and other documents taken from Podesta that were attachments to emails in his account; these documents had a creation date of October 2, 2016, which appears to be the date the attachments were separately staged by WikiLeaks on its site.¹⁷³

Beginning on September 20, 2016, WikiLeaks and DCLeaks resumed communications in a brief exchange. On September 22, 2016, a DCLeaks email account `dcleaksproject@gmail.com` sent an email to a WikiLeaks account with the subject "Submission" and the message "Hi from DCLeaks." The email contained a PGP-encrypted message with the filename "wiki_mail.txt.gpg."¹⁷⁴ **Investigative Technique** The email, however, bears a number of similarities to the July 14, 2016 email in which GRU officers used the Guccifer 2.0 persona to give WikiLeaks access to the archive of DNC files. On September 22, 2016 (the same day of DCLeaks' email to WikiLeaks), the Twitter account `@dcleaks` sent a single message to `@WikiLeaks` with the string of characters **Investigative Technique**

The Office cannot rule out that stolen documents were transferred to WikiLeaks through intermediaries who visited during the summer of 2016. For example, public reporting identified Andrew Müller-Maguhn as a WikiLeaks associate who may have assisted with the transfer of these stolen documents to WikiLeaks.¹⁷⁵ **Investigative Technique**

¹⁷⁰ See SM-2589105-DCLEAKS, serial 28; 9/15/16 Twitter DM, `@Guccifer_2` & `@WikiLeaks`.

¹⁷¹ See SM-2284941, serials 63 & 64 **Investigative Technique**

¹⁷² **Investigative Technique**

¹⁷³ At the time, certain Apple operating systems used a setting that left a downloaded file's creation date the same as the creation date shown on the host computer. This would explain why the creation date on WikiLeaks's version of the files was still September 19, 2016. See SM-2284941, serial 62 **Investigative Technique**

¹⁷³ When WikiLeaks saved attachments separately from the stolen emails, its computer system appears to have treated each attachment as a new file and given it a new creation date. See SM-2284941, serials 63 & 64.

¹⁷⁴ See 9/22/16 Email, `dcleaksproject@gmail.com` **T**

¹⁷⁵ Ellen Nakashima et al., *A German Hacker Offers a Rare Look Inside the Secretive World of Julian Assange and WikiLeaks*, Washington Post (Jan. 17, 2018).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Investigative Technique

176

On October 7, 2016, WikiLeaks released the first emails stolen from the Podesta email account. In total, WikiLeaks released 33 tranches of stolen emails between October 7, 2016 and November 7, 2016. The releases included private speeches given by Clinton;¹⁷⁷ internal communications between Podesta and other high-ranking members of the Clinton Campaign;¹⁷⁸ and correspondence related to the Clinton Foundation.¹⁷⁹ In total, WikiLeaks released over 50,000 documents stolen from Podesta's personal email account. The last-in-time email released from Podesta's account was dated March 21, 2016, two days after Podesta received a spearphishing email sent by the GRU.

d. WikiLeaks Statements Dissembling About the Source of Stolen Materials

As reports attributing the DNC and DCCC hacks to the Russian government emerged, WikiLeaks and Assange made several public statements apparently designed to obscure the source of the materials that WikiLeaks was releasing. The file-transfer evidence described above and other information uncovered during the investigation discredit WikiLeaks's claims about the source of material that it posted.

Beginning in the summer of 2016, Assange and WikiLeaks made a number of statements about Seth Rich, a former DNC staff member who was killed in July 2016. The statements about Rich implied falsely that he had been the source of the stolen DNC emails. On August 9, 2016, the @WikiLeaks Twitter account posted: "ANNOUNCE: WikiLeaks has decided to issue a US\$20k reward for information leading to conviction for the murder of DNC staffer Seth Rich."¹⁸⁰ Likewise, on August 25, 2016, Assange was asked in an interview, "Why are you so interested in Seth Rich's killer?" and responded, "We're very interested in anything that might be a threat to alleged Wikileaks sources." The interviewer responded to Assange's statement by commenting, "I know you don't want to reveal your source, but it certainly sounds like you're suggesting a man who leaked information to WikiLeaks was then murdered." Assange replied, "If there's someone who's potentially connected to our publication, and that person has been murdered in suspicious

¹⁷⁶ Investigative Technique¹⁷⁷ Personal Privacy¹⁷⁸ Personal Privacy¹⁷⁹ *Netyksho* Indictment ¶ 43.¹⁸⁰ @WikiLeaks 8/9/16 Tweet.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

circumstances, it doesn't necessarily mean that the two are connected. But it is a very serious matter...that type of allegation is very serious, as it's taken very seriously by us."¹⁸¹

After the U.S. intelligence community publicly announced its assessment that Russia was behind the hacking operation, Assange continued to deny that the Clinton materials released by WikiLeaks had come from Russian hacking. According to media reports, Assange told a U.S. congressman that the DNC hack was an "inside job," and purported to have "physical proof" that Russians did not give materials to Assange.¹⁸²

C. Additional GRU Cyber Operations

While releasing the stolen emails and documents through DCLeaks, Guccifer 2.0, and WikiLeaks, GRU officers continued to target and hack victims linked to the Democratic campaign and, eventually, to target entities responsible for election administration in several states.

1. Summer and Fall 2016 Operations Targeting Democrat-Linked Victims

On July 27, 2016, Unit 26165 targeted email accounts connected to candidate Clinton's personal office [PP]. Earlier that day, candidate Trump made public statements that included the following: "Russia, if you're listening, I hope you're able to find the 30,000 emails that are missing. I think you will probably be rewarded mightily by our press."¹⁸³ The "30,000 emails" were apparently a reference to emails described in media accounts as having been stored on a personal server that candidate Clinton had used while serving as Secretary of State.

Within approximately five hours of Trump's statement, GRU officers targeted for the first time Clinton's personal office. After candidate Trump's remarks, Unit 26165 created and sent malicious links targeting 15 email accounts at the domain [PP] including an email account belonging to Clinton aide [PP]. The investigation did not find evidence of earlier GRU attempts to compromise accounts hosted on this domain. It is unclear how the GRU was able to identify these email accounts, which were not public.¹⁸⁴

Unit 26165 officers also hacked into a DNC account hosted on a cloud-computing service [Personal Privacy]. On September 20, 2016, the GRU began to generate copies of the DNC data using [PP] function designed to allow users to produce backups of databases (referred to [PP] as "snapshots"). The GRU then stole those snapshots by moving

¹⁸¹ See *Assange: "Murdered DNC Staffer Was 'Potential' WikiLeaks Source,"* Fox News (Aug. 25, 2016)(containing video of Assange interview by Megyn Kelly).

¹⁸² M. Raju & Z. Cohen, *A GOP Congressman's Lonely Quest Defending Julian Assange*, CNN (May 23, 2018).

¹⁸³ "Donald Trump on Russian & Missing Hillary Clinton Emails," YouTube Channel C-SPAN, Posted 7/27/16, available at <https://www.youtube.com/watch?v=3kxG8uJUsWU> (starting at 0:41).

¹⁸⁴ **Investigative Technique**

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

them to [PP] account that they controlled; from there, the copies were moved to GRU-controlled computers. The GRU stole approximately 300 gigabytes of data from the DNC cloud-based account.¹⁸⁵

2. Intrusions Targeting the Administration of U.S. Elections

In addition to targeting individuals involved in the Clinton Campaign, GRU officers also targeted individuals and entities involved in the administration of the elections. Victims included U.S. state and local entities, such as state boards of elections (SBOEs), secretaries of state, and county governments, as well as individuals who worked for those entities.¹⁸⁶ The GRU also targeted private technology firms responsible for manufacturing and administering election-related software and hardware, such as voter registration software and electronic polling stations.¹⁸⁷ The GRU continued to target these victims through the elections in November 2016. While the investigation identified evidence that the GRU targeted these individuals and entities, the Office did not investigate further. The Office did not, for instance, obtain or examine servers or other relevant items belonging to these victims. The Office understands that the FBI, the U.S. Department of Homeland Security, and the states have separately investigated that activity.

By at least the summer of 2016, GRU officers sought access to state and local computer networks by exploiting known software vulnerabilities on websites of state and local governmental entities. GRU officers, for example, targeted state and local databases of registered voters using a technique known as “SQL injection,” by which malicious code was sent to the state or local website in order to run commands (such as exfiltrating the database contents).¹⁸⁸ In one instance in approximately June 2016, the GRU compromised the computer network of the Illinois State Board of Elections by exploiting a vulnerability in the SBOE’s website. The GRU then gained access to a database containing information on millions of registered Illinois voters,¹⁸⁹ and extracted data related to thousands of U.S. voters before the malicious activity was identified.¹⁹⁰

GRU officers [Investigative Technique] scanned state and local websites for vulnerabilities. For example, over a two-day period in July 2016, GRU officers [Investigative Technique] for vulnerabilities on websites of more than two dozen states. [Investigative Technique]

¹⁸⁵ *Netyksho* Indictment ¶ 34; see also SM-2589105-HACK, serial 29 [Investigative Technique]

¹⁸⁶ *Netyksho* Indictment ¶ 69.

¹⁸⁷ *Netyksho* Indictment ¶ 69; [Investigative Technique]

¹⁸⁸ [Investigative Technique]

¹⁸⁹ [Investigative Technique]

¹⁹⁰ [Investigative Technique]

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Investigative Technique

Similar [REDACTED] for vulnerabilities continued through the election.

Unit 74455 also sent spearphishing emails to public officials involved in election administration and personnel at companies involved in voting technology. In August 2016, GRU officers targeted employees of [REDACTED], a voting technology company that developed software used by numerous U.S. counties to manage voter rolls, and installed malware on the company network. Similarly, in November 2016, the GRU sent spearphishing emails to over 120 email accounts used by Florida county officials responsible for administering the 2016 U.S. election.¹⁹¹ The spearphishing emails contained an attached Word document coded with malicious software (commonly referred to as a Trojan) that permitted the GRU to access the infected computer.¹⁹² The FBI was separately responsible for this investigation. We understand the FBI believes that this operation enabled the GRU to gain access to the network of at least one Florida county government. The Office did not independently verify that belief and, as explained above, did not undertake the investigative steps that would have been necessary to do so.

D. Trump Campaign and the Dissemination of Hacked Materials

The Trump Campaign showed interest in WikiLeaks's releases of hacked materials throughout the summer and fall of 2016. **Harm to Ongoing Matter**

1. **HOM**

- a. *Background*

Harm to Ongoing Matter

¹⁹¹ *Netyksho* Indictment ¶ 76; **Investigative Technique**

¹⁹² **Investigative Technique**

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

b. Contacts with the Campaign about WikiLeaks**Harm to Ongoing Matter****Harm to Ongoing Matter**

On June 12, 2016, Assange claimed in a televised interview to “have emails relating to Hillary Clinton which are pending publication,”¹⁹⁴ but provided no additional context.

In debriefings with the Office, former deputy campaign chairman Rick Gates said that,

Harm to Ongoing Matter**Harm to Ongoing Matter**

Gates recalled candidate Trump being generally frustrated that the Clinton emails had not been found.¹⁹⁶

Paul Manafort, who would later become campaign chairman, **Harm to Ongoing Matter**

Harm to Ongoing Matter**Harm to Ongoing Matter**

¹⁹⁴ See Mahita Gajanan, *Julian Assange Timed DNC Email Release for Democratic Convention*, Time (July 27, 2016) (quoting the June 12, 2016 television interview).

¹⁹⁵ In February 2018, Gates pleaded guilty, pursuant to a plea agreement, to a superseding criminal information charging him with conspiring to defraud and commit multiple offenses (*i.e.*, tax fraud, failure to report foreign bank accounts, and acting as an unregistered agent of a foreign principal) against the United States, as well as making false statements to our Office. Superseding Criminal Information, *United States v. Richard W. Gates III*, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 195 (“*Gates Superseding Criminal Information*”); Plea Agreement, *United States v. Richard W. Gates III*, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 205 (“*Gates Plea Agreement*”). Gates has provided information and in-court testimony that the Office has deemed to be reliable.

¹⁹⁶ Gates 10/25/18 302, at 1-2.

¹⁹⁷ As explained further in Volume I, Section IV.A.8, *infra*, Manafort entered into a plea agreement with our Office. We determined that he breached the agreement by being untruthful in proffer sessions and before the grand jury. We have generally recounted his version of events in this report only when his statements are sufficiently corroborated to be trustworthy; to identify issues on which Manafort’s untruthful responses may themselves be of evidentiary value; or to provide Manafort’s explanations for certain events, even when we were unable to determine whether that explanation was credible. His account appears here principally because it aligns with those of other witnesses.

Harm to Ongoing Matter

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Michael Cohen, former executive vice president of the Trump Organization and special counsel to Donald J. Trump,¹⁹⁹ told the Office that he recalled an incident in which he was in candidate Trump's office in Trump Tower Harm to Ongoing Matter

Harm to Ongoing Matter

²⁰¹ Cohen further told the Office that, after WikiLeaks's subsequent release of stolen DNC emails in July 2016, candidate Trump said to Cohen something to the effect of, HOM

Harm to Ongoing Matter

According to Gates, Manafort expressed excitement about the release HOM ²⁰³ Manafort, for his part, told the Office that, shortly after WikiLeaks's July 22 release, Manafort also spoke with candidate Trump

Harm to Ongoing Matter

²⁰⁴ Harm to Ongoing Matter

²⁰⁵ Manafort also HOM wanted to be kept apprised of any

¹⁹⁹ In November 2018, Cohen pleaded guilty pursuant to a plea agreement to a single-count information charging him with making false statements to Congress, in violation of 18 U.S.C. § 1001(a) & (c). He had previously pleaded guilty to several other criminal charges brought by the U.S. Attorney's Office in the Southern District of New York, after a referral from this Office. In the months leading up to his false-statements guilty plea, Cohen met with our Office on multiple occasions for interviews and provided information that the Office has generally assessed to be reliable and that is included in this report.

²⁰⁰ HOM

²⁰¹ Harm to Ongoing Matter

²⁰² Cohen 9/18/18 302, at 10. Harm to Ongoing Matter

Harm to Ongoing Matter

Harm to Ongoing Matter

²⁰³ Gates 10/25/18 302 (serial 241), at 4.

²⁰⁴ Grand Jury

²⁰⁵ Grand Jury

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

developments with WikiLeaks and separately told Gates to keep in touch **HOM** about future WikiLeaks releases.²⁰⁶

According to Gates, by the late summer of 2016, the Trump Campaign was planning a press strategy, a communications campaign, and messaging based on the possible release of Clinton emails by WikiLeaks.²⁰⁷ **Harm to Ongoing Matter**

Harm to Ongoing Matter²⁰⁸ **Harm to Ongoing Matter** while Trump and Gates were driving to LaGuardia Airport. **Harm to Ongoing Matter**, shortly after the call candidate Trump told Gates that more releases of damaging information would be coming.²⁰⁹

Harm to Ongoing Matter

c. **Harm to Ongoing Matter**

Harm to Ongoing Matter

Corsi is an author who holds a doctorate in political science.²¹² In 2016, Corsi also worked for the media outlet WorldNetDaily (WND). **Harm to Ongoing Matter**

²⁰⁶ **Grand Jury**

²⁰⁷ Gates 4/10/18 302, at 3; Gates 4/11/18 302, at 1-2 (SM-2180998); Gates 10/25/18 302, at 2.

²⁰⁸ **HOM**

²⁰⁹ Gates 10/25/18 302 (serial 241), at 4.

²¹⁰ **HOM**

²¹¹ **HOM**

²¹² Corsi first rose to public prominence in August 2004 when he published his book *Unfit for Command: Swift Boat Veterans Speak Out Against John Kerry*. In the 2008 election cycle, Corsi gained prominence for being a leading proponent of the allegation that Barack Obama was not born in the United States. Corsi told the Office that Donald Trump expressed interest in his writings, and that he spoke with Trump on the phone on at least six occasions. Corsi 9/6/18 302, at 3.

²¹³ Corsi 10/31/18 302, at 2; **Grand Jury** Corsi was first interviewed on September 6, 2018 at the Special Counsel's offices in Washington, D.C. He was accompanied by counsel throughout the interview. Corsi was subsequently interviewed on September 17, 2018; September 21, 2018; October 31, 2018; November 1, 2018; and November 2, 2018. Counsel was

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Harm to Ongoing Matter

[REDACTED] ²¹⁴ Corsi told the Office during interviews that he "must have" previously discussed Assange with Malloch. ²¹⁵
Harm to Ongoing Matter

²¹⁶ Harm to Ongoing Matter

²¹⁷

Grand Jury

[REDACTED] According to Malloch, Corsi asked him to put Corsi in touch with Assange, whom Corsi wished to interview. Malloch recalled that Corsi also suggested that individuals in the "orbit" of U.K. politician Nigel Farage might be able to contact Assange and asked if Malloch knew them. Malloch told Corsi that he would think about the request but made no actual attempt to connect Corsi with Assange. ²¹⁸

Harm to Ongoing Matter

[REDACTED]

²¹⁹

Harm to Ongoing Matter

²²⁰

present for all interviews, and the interviews beginning on September 21, 2018 were conducted pursuant to a proffer agreement that precluded affirmative use of his statements against him in limited circumstances.

²¹⁴ HOM [REDACTED]

²¹⁵ Corsi 10/31/18 302, at 4.

²¹⁶ HOM [REDACTED]

²¹⁷ HOM [REDACTED]

²¹⁸ Grand Jury [REDACTED] Malloch denied ever communicating with Assange or WikiLeaks, stating that he did not pursue the request to contact Assange because he believed he had no connections to Assange. Grand Jury [REDACTED]

²¹⁹ HOM [REDACTED]

²²⁰ Harm to Ongoing Matter

[REDACTED]

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Malloch stated to investigators that beginning in or about August 2016, he and Corsi had multiple FaceTime discussions about WikiLeaks Harm to Ongoing Matter had made a connection to Assange and that the hacked emails of John Podesta would be released prior to Election Day and would be helpful to the Trump Campaign. In one conversation in or around August or September 2016, Corsi told Malloch that the release of the Podesta emails was coming, after which "we" were going to be in the driver's seat.²²¹

Harm to Ongoing Matter
222 Harm to Ongoing Matter
223 Harm to Ongoing Matter
224 Harm to Ongoing Matter
225

Harm to Ongoing Matter
226 Harm to Ongoing Matter
227 Harm to Ongoing Matter
228

Harm to Ongoing Matter
229 Harm to Ongoing Matter

221 Grand Jury
222 Harm to Ongoing Matter

223 Harm to Ongoing Matter
224 Harm to Ongoing Matter
225 Harm to Ongoing Matter
226 Harm to Ongoing Matter
227 Harm to Ongoing Matter
228 HOM
229 Harm to Ongoing Matter

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

d. WikiLeaks's October 7, 2016 Release of Stolen Podesta Emails

On October 7, 2016, four days after the Assange press conference **HOM**, the Washington Post published an *Access Hollywood* video that captured comments by candidate Trump some years earlier and that was expected to adversely affect the Campaign.²³⁹ Less than an hour after the video's publication, WikiLeaks released the first set of emails stolen by the GRU from the account of Clinton Campaign chairman John Podesta.

Harm to Ongoing Matter
[REDACTED]
²⁴⁰ **Harm to Ongoing Matter**
²⁴¹ **Harm to Ongoing Matter**
²⁴² **[REDACTED]**

Harm to Ongoing Matter
²⁴³ **Harm to Ongoing Matter**
[REDACTED]

Corsi said that, because he had no direct means of communicating with WikiLeaks, he told members of the news site WND—who were participating on a conference call with him that day—to reach Assange immediately.²⁴⁴ Corsi claimed that the pressure was

Harm to Ongoing Matter
[REDACTED]

²³⁹ Candidate Trump can be heard off camera making graphic statements about women.

²⁴⁰ **HOM** **[REDACTED]**

²⁴¹ **HOM** **[REDACTED]**

²⁴² **HOM** **[REDACTED]**

²⁴³ **HOM** **[REDACTED]**

²⁴⁴ In a later November 2018 interview, Corsi stated **Harm to Ongoing Matter** **[REDACTED]** that he believed Malloch was on the call but then focused on other individuals who were on the call—invitation, which Malloch was not. (Separate travel records show that at the time of the call, Malloch was aboard a transatlantic flight). Corsi at one point stated that after WikiLeaks's release of stolen emails on October 7, 2016, he concluded Malloch had gotten in contact with Assange. Corsi 11/1/18 302, at 6.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

enormous and recalled telling the conference call the *Access Hollywood* tape was coming.²⁴⁵ Corsi stated that he was convinced that his efforts had caused WikiLeaks to release the emails when they did.²⁴⁶ In a later November 2018 interview, Corsi stated that he thought that he had told people on a WND conference call about the forthcoming tape and had sent out a tweet asking whether anyone could contact Assange, but then said that maybe he had done nothing.²⁴⁷

The Office investigated Corsi's allegations about the events of October 7, 2016 but found little corroboration for his allegations about the day.²⁴⁸ Harm to Ongoing Matter

[REDACTED] Harm to Ongoing Matter

²⁴⁹ However, the phone records themselves do not indicate that the conversation was with any of the reporters who broke the *Access Hollywood* story, and the Office has not otherwise been able to identify the substance of the conversation. Harm to Ongoing Matter

[REDACTED] ²⁵⁰ However, the Office has not identified any conference call participant, or anyone who spoke to Corsi that day, who says that they received non-public information about the tape from Corsi or acknowledged having contacted a member of WikiLeaks on October 7, 2016 after a conversation with Corsi.

e. Donald Trump Jr. Interaction with WikiLeaks

Donald Trump Jr. had direct electronic communications with WikiLeaks during the campaign period. On September 20, 2016, an individual named Jason Fishbein sent WikiLeaks the password for an unlaunched website focused on Trump's "unprecedented and dangerous" ties

²⁴⁵ During the same interview, Corsi also suggested that he may have sent out public tweets because he knew Assange was reading his tweets. Our Office was unable to find evidence of any such tweets.

²⁴⁶ Corsi 9/21/18 302, at 6-7.

²⁴⁷ Corsi 11/1/18 302, at 6.

²⁴⁸ Harm to Ongoing Matter

[REDACTED] Grand Jury

²⁴⁹ Harm to Ongoing Matter

[REDACTED] ²⁵⁰ HOM Grand Jury Harm to Ongoing Matter

[REDACTED] ²⁵¹ HOM Grand Jury Harm to Ongoing Matter

[REDACTED] Harm to Ongoing Matter Grand Jury

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

to Russia, PutinTrump.org.²⁵² WikiLeaks publicly tweeted: “‘Let’s bomb Iraq’ Progress for America PAC to launch ‘PutinTrump.org’ at 9:30am. Oops pw is ‘putintrump’ putintrump.org.” Several hours later, WikiLeaks sent a Twitter direct message to Donald Trump Jr., “A PAC run anti-Trump site putintrump.org is about to launch. The PAC is a recycled pro-Iraq war PAC. We have guessed the password. It is ‘putintrump.’ See ‘About’ for who is behind it. Any comments?”²⁵³

Several hours later, Trump Jr. emailed a variety of senior campaign staff:

Guy I got a weird Twitter DM from wikileaks. See below. I tried the password and it works and the about section they reference contains the next pic in terms of who is behind it. Not sure if this is anything but it seems like it’s really wikileaks asking me as I follow them and it is a DM. Do you know the people mentioned and what the conspiracy they are looking for could be? These are just screen shots but it’s a fully built out page claiming to be a PAC let me know your thoughts and if we want to look into it.²⁵⁴

Trump Jr. attached a screenshot of the “About” page for the unlaunched site PutinTrump.org. The next day (after the website had launched publicly), Trump Jr. sent a direct message to WikiLeaks: “Off the record, I don’t know who that is but I’ll ask around. Thanks.”²⁵⁵

On October 3, 2016, WikiLeaks sent another direct message to Trump Jr., asking “you guys” to help disseminate a link alleging candidate Clinton had advocated using a drone to target Julian Assange. Trump Jr. responded that he already “had done so,” and asked, “what’s behind this Wednesday leak I keep reading about?”²⁵⁶ WikiLeaks did not respond.

On October 12, 2016, WikiLeaks wrote again that it was “great to see you and your dad talking about our publications. Strongly suggest your dad tweets this link if he mentions us wlsearch.tk.”²⁵⁷ WikiLeaks wrote that the link would help Trump in “digging through” leaked emails and stated, “we just released Podesta emails Part 4.”²⁵⁸ Two days later, Trump Jr. publicly tweeted the wlsearch.tk link.²⁵⁹

²⁵² 9/20/16 Twitter DM, @JasonFishbein to @WikiLeaks; see JF00587 (9/21/16 Messages, **PP** @jabber.cryptoparty.is & **PP** @jabber.cryptoparty.is); Fishbein 9/5/18 302, at 4. When interviewed by our Office, Fishbein produced what he claimed to be logs from a chatroom in which the participants discussed U.S. politics; one of the other participants had posted the website and password that Fishbein sent to WikiLeaks.

²⁵³ 9/20/16 Twitter DM, @WikiLeaks to @DonaldJTrumpJr.

²⁵⁴ TRUMPORG_28_000629-33 (9/21/16 Email, Trump Jr. to Conway et al. (subject “Wikileaks”).

²⁵⁵ 9/21/16 Twitter DM, @DonaldJTrumpJr to @WikiLeaks.

²⁵⁶ 10/3/16 Twitter DMs, @DonaldJTrumpJr & @WikiLeaks.

²⁵⁷ At the time, the link took users to a WikiLeaks archive of stolen Clinton Campaign documents.

²⁵⁸ 10/12/16 Twitter DM, @WikiLeaks to @DonaldJTrumpJr.

²⁵⁹ @DonaldJTrumpJr 10/14/16 (6:34 a.m.) Tweet.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

2. Other Potential Campaign Interest in Russian Hacked Materials

Throughout 2016, the Trump Campaign expressed interest in Hillary Clinton's private email server and whether approximately 30,000 emails from that server had in fact been permanently destroyed, as reported by the media. Several individuals associated with the Campaign were contacted in 2016 about various efforts to obtain the missing Clinton emails and other stolen material in support of the Trump Campaign. Some of these contacts were met with skepticism, and nothing came of them; others were pursued to some degree. The investigation did not find evidence that the Trump Campaign recovered any such Clinton emails, or that these contacts were part of a coordinated effort between Russia and the Trump Campaign.

a. *Henry Oknyansky (a/k/a Henry Greenberg)*

In the spring of 2016, Trump Campaign advisor Michael Caputo learned through a Florida-based Russian business partner that another Florida-based Russian, Henry Oknyansky (who also went by the name Henry Greenberg), claimed to have information pertaining to Hillary Clinton. Caputo notified Roger Stone and brokered communication between Stone and Oknyansky. Oknyansky and Stone set up a May 2016 in-person meeting.²⁶⁰

Oknyansky was accompanied to the meeting by Alexei Rasin, a Ukrainian associate involved in Florida real estate. At the meeting, Rasin offered to sell Stone derogatory information on Clinton that Rasin claimed to have obtained while working for Clinton. Rasin claimed to possess financial statements demonstrating Clinton's involvement in money laundering with Rasin's companies. According to Oknyansky, Stone asked if the amounts in question totaled millions of dollars but was told it was closer to hundreds of thousands. Stone refused the offer, stating that Trump would not pay for opposition research.²⁶¹

Oknyansky claimed to the Office that Rasin's motivation was financial. According to Oknyansky, Rasin had tried unsuccessfully to shop the Clinton information around to other interested parties, and Oknyansky would receive a cut if the information was sold.²⁶² Rasin is noted in public source documents as the director and/or registered agent for a number of Florida companies, none of which appears to be connected to Clinton. The Office found no other evidence that Rasin worked for Clinton or any Clinton-related entities.

In their statements to investigators, Oknyansky and Caputo had contradictory recollections about the meeting. Oknyansky claimed that Caputo accompanied Stone to the meeting and provided an introduction, whereas Caputo did not tell us that he had attended and claimed that he was never told what information Oknyansky offered. Caputo also stated that he was unaware Oknyansky sought to be paid for the information until Stone informed him after the fact.²⁶³

²⁶⁰ Caputo 5/2/18 302, at 4; Oknyansky 7/13/18 302, at 1.

²⁶¹ Oknyansky 7/13/18 302, at 1-2.

²⁶² Oknyansky 7/13/18 302, at 2.

²⁶³ Caputo 5/2/18 302, at 4; Oknyansky 7/13/18 302, at 1.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

The Office did not locate Rasin in the United States, although the Office confirmed Rasin had been issued a Florida driver's license. The Office otherwise was unable to determine the content and origin of the information he purportedly offered to Stone. Finally, the investigation did not identify evidence of a connection between the outreach or the meeting and Russian interference efforts.

b. Campaign Efforts to Obtain Deleted Clinton Emails

After candidate Trump stated on July 27, 2016, that he hoped Russia would “find the 30,000 emails that are missing,” Trump asked individuals affiliated with his Campaign to find the deleted Clinton emails.²⁶⁴ Michael Flynn—who would later serve as National Security Advisor in the Trump Administration—recalled that Trump made this request repeatedly, and Flynn subsequently contacted multiple people in an effort to obtain the emails.²⁶⁵

Barbara Ledeen and Peter Smith were among the people contacted by Flynn. Ledeen, a long-time Senate staffer who had previously sought the Clinton emails, provided updates to Flynn about her efforts throughout the summer of 2016.²⁶⁶ Smith, an investment advisor who was active in Republican politics, also attempted to locate and obtain the deleted Clinton emails.²⁶⁷

Ledeen began her efforts to obtain the Clinton emails before Flynn's request, as early as December 2015.²⁶⁸ On December 3, 2015, she emailed Smith a proposal to obtain the emails, stating, “Here is the proposal I briefly mentioned to you. The person I described to you would be happy to talk with you either in person or over the phone. The person can get the emails which 1. Were classified and 2. Were purloined by our enemies. That would demonstrate what needs to be demonstrated.”²⁶⁹

Attached to the email was a 25-page proposal stating that the “Clinton email server was, in all likelihood, breached long ago,” and that the Chinese, Russian, and Iranian intelligence services could “re-assemble the server's email content.”²⁷⁰ The proposal called for a three-phase approach. The first two phases consisted of open-source analysis. The third phase consisted of checking with certain intelligence sources “that have access through liaison work with various foreign services” to determine if any of those services had gotten to the server. The proposal noted, “Even if a single email was recovered and the providence [sic] of that email was a foreign service, it would be catastrophic to the Clinton campaign[.]” Smith forwarded the email to two colleagues and

²⁶⁴ Flynn 4/25/18 302, at 5-6; Flynn 5/1/18 302, at 1-3.

²⁶⁵ Flynn 5/1/18 302, at 1-3.

²⁶⁶ Flynn 4/25/18 302, at 7; Flynn 5/4/18 302, at 1-2; Flynn 11/29/17 302, at 7-8.

²⁶⁷ Flynn 11/29/17 302, at 7.

²⁶⁸ Szobocsan 3/29/17 302, at 1.

²⁶⁹ 12/3/15 Email, Ledeen to Smith.

²⁷⁰ 12/3/15 Email, Ledeen to Smith (attachment).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

wrote, “we can discuss to whom it should be referred.”²⁷¹ On December 16, 2015, Smith informed Ledeen that he declined to participate in her “initiative.” According to one of Smith’s business associates, Smith believed Ledeen’s initiative was not viable at that time.²⁷²

Just weeks after Trump’s July 2016 request to find the Clinton emails, however, Smith tried to locate and obtain the emails himself. He created a company, raised tens of thousands of dollars, and recruited security experts and business associates. Smith made claims to others involved in the effort (and those from whom he sought funding) that he was in contact with hackers with “ties and affiliations to Russia” who had access to the emails, and that his efforts were coordinated with the Trump Campaign.²⁷³

On August 28, 2016, Smith sent an email from an encrypted account with the subject “Sec. Clinton’s unsecured private email server” to an undisclosed list of recipients, including Campaign co-chairman Sam Clovis. The email stated that Smith was “[j]ust finishing two days of sensitive meetings here in DC with involved groups to poke and probe on the above. It is clear that the Clinton’s home-based, unprotected server was hacked with ease by both State-related players, and private mercenaries. Parties with varying interests, are circling to release ahead of the election.”²⁷⁴

On September 2, 2016, Smith directed a business associate to establish KLS Research LLC in furtherance of his search for the deleted Clinton emails.²⁷⁵ One of the purposes of KLS Research was to manage the funds Smith raised in support of his initiative.²⁷⁶ KLS Research received over \$30,000 during the presidential campaign, although Smith represented that he raised even more money.²⁷⁷

Smith recruited multiple people for his initiative, including security experts to search for and authenticate the emails.²⁷⁸ In early September 2016, as part of his recruitment and fundraising effort, Smith circulated a document stating that his initiative was “in coordination” with the Trump Campaign, “to the extent permitted as an independent expenditure organization.”²⁷⁹ The document listed multiple individuals affiliated with the Trump Campaign, including Flynn, Clovis, Bannon,

²⁷¹ 12/3/15 Email, Smith to Szobocsan & Safron.

²⁷² Szobocsan 3/29/18 302, at 1.

²⁷³ 8/31/16 Email, Smith to Smith.

²⁷⁴ 8/28/16 Email, Smith to Smith.

²⁷⁵ Incorporation papers of KLS Research LLC, 7/26/17 **Grand Jury**
Szobocsan 3/29/18 302, at 2.

²⁷⁶ Szobocsan 3/29/18 302, at 3.

²⁷⁷ Financial Institution Record of Peter Smith and KLS Research LLC, 10/31/17 **Grand Jury**
10/11/16 Email, Smith to **Personal Privacy**

²⁷⁸ Tait 8/22/17 302, at 3; York 7/12/17 302, at 1-2; York 11/22/17 302, at 1.

²⁷⁹ York 7/13/17 302 (attachment KLS Research, LLC, “Clinton Email Reconnaissance Initiative,” Sept. 9, 2016).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

and Kellyanne Conway.²⁸⁰ The investigation established that Smith communicated with at least Flynn and Clovis about his search for the deleted Clinton emails,²⁸¹ but the Office did not identify evidence that any of the listed individuals initiated or directed Smith's efforts.

In September 2016, Smith and Ledeen got back in touch with each other about their respective efforts. Ledeen wrote to Smith, "wondering if you had some more detailed reports or memos or other data you could share because we have come a long way in our efforts since we last visited. . . . We would need as much technical discussion as possible so we could marry it against the new data we have found and then could share it back to you 'your eyes only.'"²⁸²

Ledeen claimed to have obtained a trove of emails (from what she described as the "dark web") that purported to be the deleted Clinton emails. Ledeen wanted to authenticate the emails and solicited contributions to fund that effort. Erik Prince provided funding to hire a tech advisor to ascertain the authenticity of the emails. According to Prince, the tech advisor determined that the emails were not authentic.²⁸³

A backup of Smith's computer contained two files that had been downloaded from WikiLeaks and that were originally attached to emails received by John Podesta. The files on Smith's computer had creation dates of October 2, 2016, which was prior to the date of their release by WikiLeaks. Forensic examination, however, established that the creation date did not reflect when the files were downloaded to Smith's computer. (It appears the creation date was when WikiLeaks staged the document for release, as discussed in Volume I, Section III.B.3.c, *supra*.²⁸⁴) The investigation did not otherwise identify evidence that Smith obtained the files before their release by WikiLeaks.

Smith continued to send emails to an undisclosed recipient list about Clinton's deleted emails until shortly before the election. For example, on October 28, 2016, Smith wrote that there was a "tug-of-war going on within WikiLeaks over its planned releases in the next few days," and that WikiLeaks "has maintained that it will save its best revelations for last, under the theory this allows little time for response prior to the U.S. election November 8."²⁸⁵ An attachment to the

²⁸⁰ The same recruitment document listed Jerome Corsi under "Independent Groups/Organizations/Individuals," and described him as an "established author and writer from the right on President Obama and Sec. Clinton."

²⁸¹ Flynn 11/29/17 302, at 7-8; 10/15/16 Email, Smith to Flynn et al.; 8/28/16 Email, Smith to Smith (bcc: Clovis et al.).

²⁸² 9/16/16 Email, Ledeen to Smith.

²⁸³ Prince 4/4/18 302, at 4-5.

²⁸⁴ The forensic analysis of Smith's computer devices found that Smith used an older Apple operating system that would have preserved that October 2, 2016 creation date when it was downloaded (no matter what day it was in fact downloaded by Smith). See Volume I, Section III.B.3.c, *supra*. The Office tested this theory in March 2019 by downloading the two files found on Smith's computer from WikiLeaks's site using the same Apple operating system on Smith's computer; both files were successfully downloaded and retained the October 2, 2016 creation date. See SM-2284941, serial 62.

²⁸⁵ 10/28/16 Email, Smith to Smith.

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

email claimed that WikiLeaks would release "All 33k deleted Emails" by "November 1st." No emails obtained from Clinton's server were subsequently released.

Smith drafted multiple emails stating or intimating that he was in contact with Russian hackers. For example, in one such email, Smith claimed that, in August 2016, KLS Research had organized meetings with parties who had access to the deleted Clinton emails, including parties with "ties and affiliations to Russia."²⁸⁶ The investigation did not identify evidence that any such meetings occurred. Associates and security experts who worked with Smith on the initiative did not believe that Smith was in contact with Russian hackers and were aware of no such connection.²⁸⁷ The investigation did not establish that Smith was in contact with Russian hackers or that Smith, Ledeen, or other individuals in touch with the Trump Campaign ultimately obtained the deleted Clinton emails.

* * *

In sum, the investigation established that the GRU hacked into email accounts of persons affiliated with the Clinton Campaign, as well as the computers of the DNC and DCCC. The GRU then exfiltrated data related to the 2016 election from these accounts and computers, and disseminated that data through fictitious online personas (DCLeaks and Guccifer 2.0) and later through WikiLeaks. The investigation also established that the Trump Campaign displayed interest in the WikiLeaks releases, and that Harm to Ongoing Matter

As explained in Volume I, Section V.B, *infra*, the evidence was sufficient to support computer-intrusion (and other) charges against GRU officers for their role in election-related hacking. Harm to Ongoing Matter

²⁸⁶ 8/31/16 Email, Smith to Smith.

²⁸⁷ Safron 3/20/18 302, at 3; Szobocsan 3/29/18 302, at 6.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

IV. RUSSIAN GOVERNMENT LINKS TO AND CONTACTS WITH THE TRUMP CAMPAIGN

The Office identified multiple contacts—“links,” in the words of the Appointment Order—between Trump Campaign officials and individuals with ties to the Russian government. The Office investigated whether those contacts constituted a third avenue of attempted Russian interference with or influence on the 2016 presidential election. In particular, the investigation examined whether these contacts involved or resulted in coordination or a conspiracy with the Trump Campaign and Russia, including with respect to Russia providing assistance to the Campaign in exchange for any sort of favorable treatment in the future. Based on the available information, the investigation did not establish such coordination.

This Section describes the principal links between the Trump Campaign and individuals with ties to the Russian government, including some contacts with Campaign officials or associates that have been publicly reported to involve Russian contacts. Each subsection begins with an overview of the Russian contact at issue and then describes in detail the relevant facts, which are generally presented in chronological order, beginning with the early months of the Campaign and extending through the post-election, transition period.

A. Campaign Period (September 2015 – November 8, 2016)

Russian-government-connected individuals and media entities began showing interest in Trump’s campaign in the months after he announced his candidacy in June 2015.²⁸⁸ Because Trump’s status as a public figure at the time was attributable in large part to his prior business and entertainment dealings, this Office investigated whether a business contact with Russia-linked individuals and entities during the campaign period—the Trump Tower Moscow project, *see* Volume I, Section IV.A.1, *infra*—led to or involved coordination of election assistance.

Outreach from individuals with ties to Russia continued in the spring and summer of 2016, when Trump was moving toward—and eventually becoming—the Republican nominee for President. As set forth below, the Office also evaluated a series of links during this period: outreach to two of Trump’s then-recently named foreign policy advisors, including a representation that Russia had “dirt” on Clinton in the form of thousands of emails (Volume I, Sections IV.A.2 & IV.A.3); dealings with a D.C.-based think tank that specializes in Russia and has connections with its government (Volume I, Section IV.A.4); a meeting at Trump Tower between the Campaign and a Russian lawyer promising dirt on candidate Clinton that was “part of Russia and its government’s support for [Trump]” (Volume I, Section IV.A.5); events at the Republican National Convention (Volume I, Section IV.A.6); post-Convention contacts between Trump Campaign officials and Russia’s ambassador to the United States (Volume I, Section IV.A.7); and contacts through campaign chairman Paul Manafort, who had previously worked for a Russian oligarch and a pro-Russian political party in Ukraine (Volume I, Section IV.A.8).

²⁸⁸ For example, on August 18, 2015, on behalf of the editor-in-chief of the internet newspaper *Vzglyad*, Georgi Asatryan emailed campaign press secretary Hope Hicks asking for a phone or in-person candidate interview. 8/18/15 Email, Asatryan to Hicks. One day earlier, the publication’s founder (and former Russian parliamentarian) Konstantin Rykov had registered two Russian websites—Trump2016.ru and DonaldTrump2016.ru. No interview took place.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

1. Trump Tower Moscow Project

The Trump Organization has pursued and completed projects outside the United States as part of its real estate portfolio. Some projects have involved the acquisition and ownership (through subsidiary corporate structures) of property. In other cases, the Trump Organization has executed licensing deals with real estate developers and management companies, often local to the country where the project was located.²⁸⁹

Between at least 2013 and 2016, the Trump Organization explored a similar licensing deal in Russia involving the construction of a Trump-branded property in Moscow. The project, commonly referred to as a “Trump Tower Moscow” or “Trump Moscow” project, anticipated a combination of commercial, hotel, and residential properties all within the same building. Between 2013 and June 2016, several employees of the Trump Organization, including then-president of the organization Donald J. Trump, pursued a Moscow deal with several Russian counterparties. From the fall of 2015 until the middle of 2016, Michael Cohen spearheaded the Trump Organization’s pursuit of a Trump Tower Moscow project, including by reporting on the project’s status to candidate Trump and other executives in the Trump Organization.²⁹⁰

a. Trump Tower Moscow Venture with the Crocus Group (2013-2014)

The Trump Organization and the Crocus Group, a Russian real estate conglomerate owned and controlled by Aras Agalarov, began discussing a Russia-based real estate project shortly after the conclusion of the 2013 Miss Universe pageant in Moscow.²⁹¹ Donald J. Trump Jr. served as the primary negotiator on behalf of the Trump Organization; Emin Agalarov (son of Aras Agalarov) and Irakli “Ike” Kaveladze represented the Crocus Group during negotiations,²⁹² with the occasional assistance of Robert Goldstone.²⁹³

In December 2013, Kaveladze and Trump Jr. negotiated and signed preliminary terms of

²⁸⁹ See, e.g., *Interview of: Donald J. Trump, Jr., Senate Judiciary Committee*, 115th Cong. 151-52 (Sept. 7, 2017) (discussing licensing deals of specific projects).

²⁹⁰ As noted in Volume I, Section III.D.1, *supra*, in November 2018, Cohen pleaded guilty to making false statements to Congress concerning, among other things, the duration of the Trump Tower Moscow project. See Information ¶ 7(a), *United States v. Michael Cohen*, 1:18-cr-850 (S.D.N.Y. Nov. 29, 2018), Doc. 2 (“Cohen Information”).

²⁹¹ See *Interview of: Donald J. Trump, Jr., Senate Judiciary Committee*, 115th Cong. 13 (Sept. 7, 2017) (“Following the pageant the Trump Organization and Mr. Agalarov’s company, Crocus Group, began preliminarily discussion [sic] potential real estate projects in Moscow.”). As has been widely reported, the Miss Universe pageant—which Trump co-owned at the time—was held at the Agalarov-owned Crocus City Hall in Moscow in November 2013. Both groups were involved in organizing the pageant, and Aras Agalarov’s son Emin was a musical performer at the event, which Trump attended.

²⁹² Kaveladze 11/16/17 302, at 2, 4-6; **Grand Jury** OSC-KAV_00385 (12/6/13 Email, Trump Jr. to Kaveladze & E. Agalarov).

²⁹³ **Grand Jury**

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

an agreement for the Trump Tower Moscow project.²⁹⁴ On December 23, 2013, after discussions with Donald J. Trump, the Trump Organization agreed to accept an arrangement whereby the organization received a flat 3.5% commission on all sales, with no licensing fees or incentives.²⁹⁵ The parties negotiated a letter of intent during January and February 2014.²⁹⁶

From January 2014 through November 2014, the Trump Organization and Crocus Group discussed development plans for the Moscow project. Some time before January 24, 2014, the Crocus Group sent the Trump Organization a proposal for a 800-unit, 194-meter building to be constructed at an Agalarov-owned site in Moscow called "Crocus City," which had also been the site of the Miss Universe pageant.²⁹⁷ In February 2014, Ivanka Trump met with Emin Agalarov and toured the Crocus City site during a visit to Moscow.²⁹⁸ From March 2014 through July 2014, the groups discussed "design standards" and other architectural elements.²⁹⁹ For example, in July 2014, members of the Trump Organization sent Crocus Group counterparties questions about the "demographics of these prospective buyers" in the Crocus City area, the development of neighboring parcels in Crocus City, and concepts for redesigning portions of the building.³⁰⁰ In August 2014, the Trump Organization requested specifications for a competing Marriott-branded tower being built in Crocus City.³⁰¹

Beginning in September 2014, the Trump Organization stopped responding in a timely fashion to correspondence and proposals from the Crocus Group.³⁰² Communications between the two groups continued through November 2014 with decreasing frequency; what appears to be the last communication is dated November 24, 2014.³⁰³ The project appears not to have developed past the planning stage, and no construction occurred.

²⁹⁴ **Grand Jury**

²⁹⁵ OSC-KAV_00452 (12/23/13 Email, Trump Jr. to Kaveladze & E. Agalarov).

²⁹⁶ See, e.g., OSC-KAV_01158 (Letter agreement signed by Trump Jr. & E. Agalarov); OSC-KAV_01147 (1/20/14 Email, Kaveladze to Trump Jr. et al.).

²⁹⁷ See, e.g., OSC-KAV_00972 (10/14/14 Email, McGee to Khoo et al.) (email from Crocus Group contractor about specifications); OSC-KAV_00540 (1/24/14 Email, McGee to Trump Jr. et al.).

²⁹⁸ See OSC-KAV_00631 (2/5/14 Email, E. Agalarov to Ivanka Trump, Trump Jr. & Kaveladze); Goldstone Facebook post, 2/4/14 (8:01 a.m.) **Investigative Technique**

²⁹⁹ See, e.g., OSC-KAV_00791 (6/3/14 Email, Kaveladze to Trump Jr. et al.; OSC-KAV_00799 (6/10/14 Email, Trump Jr. to Kaveladze et al.); OSC-KAV_00817 (6/16/14 Email, Trump Jr. to Kaveladze et al.).

³⁰⁰ OSC-KAV_00870 (7/17/14 Email, Khoo to McGee et al.).

³⁰¹ OSC-KAV_00855 (8/4/14 Email, Khoo to McGee et al.).

³⁰² OSC-KAV_00903 (9/29/14 Email, Tropea to McGee & Kaveladze (noting last response was on August 26, 2014)); OSC-KAV_00906 (9/29/14 Email, Kaveladze to Tropea & McGee (suggesting silence "proves my fear that those guys are bailing out of the project")); OSC-KAV_00972 (10/14/14 Email, McGee to Khoo et al.) (email from Crocus Group contractor about development specifications)).

³⁰³ OSC-KAV_01140 (11/24/14 Email, Khoo to McGee et al.).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

b. Communications with I.C. Expert Investment Company and Giorgi Rtskhiladze (Summer and Fall 2015)

In the late summer of 2015, the Trump Organization received a new inquiry about pursuing a Trump Tower project in Moscow. In approximately September 2015, Felix Sater, a New York-based real estate advisor, contacted Michael Cohen, then-executive vice president of the Trump Organization and special counsel to Donald J. Trump.³⁰⁴ Sater had previously worked with the Trump Organization and advised it on a number of domestic and international projects. Sater had explored the possibility of a Trump Tower project in Moscow while working with the Trump Organization and therefore knew of the organization's general interest in completing a deal there.³⁰⁵ Sater had also served as an informal agent of the Trump Organization in Moscow previously and had accompanied Ivanka Trump and Donald Trump Jr. to Moscow in the mid-2000s.³⁰⁶

Sater contacted Cohen on behalf of I.C. Expert Investment Company (I.C. Expert), a Russian real-estate development corporation controlled by Andrei Vladimirovich Rozov.³⁰⁷ Sater had known Rozov since approximately 2007 and, in 2014, had served as an agent on behalf of Rozov during Rozov's purchase of a building in New York City.³⁰⁸ Sater later contacted Rozov and proposed that I.C. Expert pursue a Trump Tower Moscow project in which I.C. Expert would license the name and brand from the Trump Organization but construct the building on its own. Sater worked on the deal with Rozov and another employee of I.C. Expert.³⁰⁹

Cohen was the only Trump Organization representative to negotiate directly with I.C. Expert or its agents. In approximately September 2015, Cohen obtained approval to negotiate with I.C. Expert from candidate Trump, who was then president of the Trump Organization. Cohen provided updates directly to Trump about the project throughout 2015 and into 2016, assuring him the project was continuing.³¹⁰ Cohen also discussed the Trump Moscow project with Ivanka Trump as to design elements (such as possible architects to use for the project³¹¹) and Donald J. Trump Jr. (about his experience in Moscow and possible involvement in the project³¹²) during the fall of 2015.

³⁰⁴ Sater provided information to our Office in two 2017 interviews conducted under a proffer agreement. **Grand Jury**

³⁰⁵ **Grand Jury**

³⁰⁶ Sater 9/19/17 302, at 1-2, 5.

³⁰⁷ Sater 9/19/17 302, at 3.

³⁰⁸ Rozov 1/25/18 302, at 1.

³⁰⁹ Rozov 1/25/18 302, at 1; *see also* 11/2/15 Email, Cohen to Rozov et al. (sending letter of intent).

³¹⁰ Cohen 9/12/18 302, at 1-2, 4-6.

³¹¹ Cohen 9/12/18 302, at 5.

³¹² Cohen 9/12/18 302, at 4-5.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Also during the fall of 2015, Cohen communicated about the Trump Moscow proposal with Giorgi Rtskhaladze, a business executive who previously had been involved in a development deal with the Trump Organization in Batumi, Georgia.³¹³ Cohen stated that he spoke to Rtskhaladze in part because Rtskhaladze had pursued business ventures in Moscow, including a licensing deal with the Agalarov-owned Crocus Group.³¹⁴ On September 22, 2015, Cohen forwarded a preliminary design study for the Trump Moscow project to Rtskhaladze, adding “I look forward to your reply about this spectacular project in Moscow.” Rtskhaladze forwarded Cohen’s email to an associate and wrote, “[i]f we could organize the meeting in New York at the highest level of the Russian Government and Mr. Trump this project would definitely receive the worldwide attention.”³¹⁵

On September 24, 2015, Rtskhaladze sent Cohen an attachment that he described as a proposed “[l]etter to the Mayor of Moscow from Trump org,” explaining that “[w]e need to send this letter to the Mayor of Moscow (second guy in Russia) he is aware of the potential project and will pledge his support.”³¹⁶ In a second email to Cohen sent the same day, Rtskhaladze provided a translation of the letter, which described the Trump Moscow project as a “symbol of stronger economic, business and cultural relationships between New York and Moscow and therefore United States and the Russian Federation.”³¹⁷ On September 27, 2015, Rtskhaladze sent another email to Cohen, proposing that the Trump Organization partner on the Trump Moscow project with “Global Development Group LLC,” which he described as being controlled by Michail Posikhin, a Russian architect, and Simon Nizharadze.³¹⁸ Cohen told the Office that he ultimately declined the proposal and instead continued to work with I.C. Expert, the company represented by Felix Sater.³¹⁹

c. Letter of Intent and Contacts to Russian Government (October 2015-January 2016)

i. Trump Signs the Letter of Intent on behalf of the Trump Organization

Between approximately October 13, 2015 and November 2, 2015, the Trump Organization (through its subsidiary Trump Acquisition, LLC) and I.C. Expert completed a letter of intent (LOI) for a Trump Moscow property. The LOI, signed by Trump for the Trump Organization and Rozov on behalf of I.C. Expert, was “intended to facilitate further discussions” in order to “attempt to

³¹³ Rtskhaladze was a U.S.-based executive of the Georgian company Silk Road Group. In approximately 2011, Silk Road Group and the Trump Organization entered into a licensing agreement to build a Trump-branded property in Batumi, Georgia. Rtskhaladze was also involved in discussions for a Trump-branded project in Astana, Kazakhstan. The Office twice interviewed Rtskhaladze, [REDACTED]

Grand Jury

³¹⁴ Cohen 9/12/18 302, at 12; *see also* Rtskhaladze 5/10/18 302, at 1.

³¹⁵ 9/22/15 Email, Rtskhaladze to Nizharadze.

³¹⁶ 9/24/15 Email, Rtskhaladze to Cohen.

³¹⁷ 9/24/15 Email, Rtskhaladze to Cohen.

³¹⁸ 9/27/15 Email, Rtskhaladze to Cohen.

³¹⁹ Cohen 9/12/18 302, at 12.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

enter into a mutually acceptable agreement” related to the Trump-branded project in Moscow.³²⁰ The LOI contemplated a development with residential, hotel, commercial, and office components, and called for “[a]pproximately 250 first class, luxury residential condominiums,” as well as “[o]ne first class, luxury hotel consisting of approximately 15 floors and containing not fewer than 150 hotel rooms.”³²¹ For the residential and commercial portions of the project, the Trump Organization would receive between 1% and 5% of all condominium sales,³²² plus 3% of all rental and other revenue.³²³ For the project’s hotel portion, the Trump Organization would receive a base fee of 3% of gross operating revenues for the first five years and 4% thereafter, plus a separate incentive fee of 20% of operating profit.³²⁴ Under the LOI, the Trump Organization also would receive a \$4 million “up-front fee” prior to groundbreaking.³²⁵ Under these terms, the Trump Organization stood to earn substantial sums over the lifetime of the project, without assuming significant liabilities or financing commitments.³²⁶

On November 3, 2015, the day after the Trump Organization transmitted the LOI, Sater emailed Cohen suggesting that the Trump Moscow project could be used to increase candidate Trump’s chances at being elected, writing:

Buddy our boy can become President of the USA and we can engineer it. I will get all of Putin’s team to buy in on this, I will manage this process. . . . Michael, Putin gets on stage with Donald for a ribbon cutting for Trump Moscow, and Donald owns the republican nomination. And possibly beats Hillary and our boy is in. . . . We will manage this process better than anyone. You and I will get Donald and Vladimir on a stage together very shortly. That the game changer.³²⁷

Later that day, Sater followed up:

Donald doesn’t stare down, he negotiates and understands the economic issues and Putin only want to deal with a pragmatic leader, and a successful business man is a good candidate for someone who knows how to negotiate. “Business, politics, whatever it all is the same for someone who knows how to deal”

³²⁰ 11/2/15 Email, Cohen to Rozov et al. (attachment) (hereinafter “LOI”); *see also* 10/13/15 Email, Sater to Cohen & Davis (attaching proposed letter of intent).

³²¹ LOI, p. 2.

³²² The LOI called for the Trump Organization to receive 5% of all gross sales up to \$100 million; 4% of all gross sales from \$100 million to \$250 million; 3% of all gross sales from \$250 million to \$500 million; 2% of all gross sales from \$500 million to \$1 billion; and 1% of all gross sales over \$1 billion. LOI, Schedule 2.

³²³ LOI, Schedule 2.

³²⁴ LOI, Schedule 1.

³²⁵ LOI, Schedule 2.

³²⁶ Cohen 9/12/18 302, at 3.

³²⁷ 11/3/15 Email, Sater to Cohen (12:14 p.m.).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

I think I can get Putin to say that at the Trump Moscow press conference.
 If he says it we own this election. Americas most difficult adversary agreeing that Donald is a good guy to negotiate. . . .
 We can own this election.
 Michael my next steps are very sensitive with Putins very very close people, we can pull this off.
 Michael lets go. 2 boys from Brooklyn getting a USA president elected. This is good really good.³²⁸

According to Cohen, he did not consider the political import of the Trump Moscow project to the 2016 U.S. presidential election at the time. Cohen also did not recall candidate Trump or anyone affiliated with the Trump Campaign discussing the political implications of the Trump Moscow project with him. However, Cohen recalled conversations with Trump in which the candidate suggested that his campaign would be a significant “infomercial” for Trump-branded properties.³²⁹

ii. Post-LOI Contacts with Individuals in Russia

Given the size of the Trump Moscow project, Sater and Cohen believed the project required approval (whether express or implicit) from the Russian national government, including from the Presidential Administration of Russia.³³⁰ Sater stated that he therefore began to contact the Presidential Administration through another Russian business contact.³³¹ In early negotiations with the Trump Organization, Sater had alluded to the need for government approval and his attempts to set up meetings with Russian officials. On October 12, 2015, for example, Sater wrote to Cohen that “all we need is Putin on board and we are golden,” and that a “meeting with Putin and top deputy is tentatively set for the 14th [of October].”³³² **Grand Jury** this meeting was being coordinated by associates in Russia and that he had no direct interaction with the Russian government.³³³

Approximately a month later, after the LOI had been signed, Lana Erchova emailed Ivanka Trump on behalf of Erchova’s then-husband Dmitry Klokov, to offer Klokov’s assistance to the Trump Campaign.³³⁴ Klokov was at that time Director of External Communications for PJSC Federal Grid Company of Unified Energy System, a large Russian electricity transmission

³²⁸ 11/3/15 Email, Sater to Cohen (12:40 p.m.).

³²⁹ Cohen 9/12/18 302, at 3-4; Cohen 8/7/18 302, at 15.

³³⁰ **Grand Jury** Sater 12/15/17 302, at 2.

³³¹ Sater 12/15/17 302, at 3-4.

³³² 10/12/15 Email, Sater to Cohen (8:07 a.m.).

³³³ **Grand Jury**

³³⁴ Ivanka Trump received an email from a woman who identified herself as “Lana E. Alexander,” which said in part, “If you ask anyone who knows Russian to google my husband Dmitry Klokov, you’ll see who he is close to and that he has done Putin’s political campaigns.” 11/16/15 Email, Erchova to I. Trump.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

company, and had been previously employed as an aide and press secretary to Russia's energy minister. Ivanka Trump forwarded the email to Cohen.³³⁵ He told the Office that, after receiving this inquiry, he had conducted an internet search for Klovov's name and concluded (incorrectly) that Klovov was a former Olympic weightlifter.³³⁶

Between November 18 and 19, 2015, Klovov and Cohen had at least one telephone call and exchanged several emails. Describing himself in emails to Cohen as a "trusted person" who could offer the Campaign "political synergy" and "synergy on a government level," Klovov recommended that Cohen travel to Russia to speak with him and an unidentified intermediary. Klovov said that those conversations could facilitate a later meeting in Russia between the candidate and an individual Klovov described as "our person of interest."³³⁷ In an email to the Office, Erchova later identified the "person of interest" as Russian President Vladimir Putin.³³⁸

In the telephone call and follow-on emails with Klovov, Cohen discussed his desire to use a near-term trip to Russia to do site surveys and talk over the Trump Moscow project with local developers. Cohen registered his willingness also to meet with Klovov and the unidentified intermediary, but was emphatic that all meetings in Russia involving him or candidate Trump—including a possible meeting between candidate Trump and Putin—would need to be "in conjunction with the development and an official visit" with the Trump Organization receiving a formal invitation to visit.³³⁹ (Klovov had written previously that "the visit [by candidate Trump to Russia] has to be informal.")³⁴⁰

Klovov had also previously recommended to Cohen that he separate their negotiations over a possible meeting between Trump and "the person of interest" from any existing business track.³⁴¹ Re-emphasizing that his outreach was not done on behalf of any business, Klovov added in second email to Cohen that, if publicized well, such a meeting could have "phenomenal" impact "in a business dimension" and that the "person of interest[s]" "most important support" could have significant ramifications for the "level of projects and their capacity." Klovov concluded by telling

³³⁵ 11/16/15 Email, I. Trump to Cohen.

³³⁶ Cohen 8/7/18 302, at 17. During his interviews with the Office, Cohen still appeared to believe that the Klovov he spoke with was that Olympian. The investigation, however, established that the email address used to communicate with Cohen belongs to a different Dmitry Klovov, as described above.

³³⁷ 11/18/15 Email, Klovov to Cohen (6:51 a.m.).

³³⁸ In July 2018, the Office received an unsolicited email purporting to be from Erchova, in which she wrote that "[a]t the end of 2015 and beginning of 2016 I was asked by my ex-husband to contact Ivanka Trump . . . and offer cooperation to Trump's team on behalf of the Russian officials." 7/27/18 Email, Erchova to Special Counsel's Office. The email claimed that the officials wanted to offer candidate Trump "land in Crimea among other things and unofficial meeting with Putin." *Id.* In order to vet the email's claims, the Office responded requesting more details. The Office did not receive any reply.

³³⁹ 11/18/15 Email, Cohen to Klovov (7:15 a.m.).

³⁴⁰ 11/18/15 Email, Klovov to Cohen (6:51 a.m.).

³⁴¹ 11/18/15 Email, Klovov to Cohen (6:51 a.m.) ("I would suggest separating your negotiations and our proposal to meet. I assure you, after the meeting level of projects and their capacity can be completely different, having the most important support.").

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Cohen that there was “no bigger warranty in any project than [the] consent of the person of interest.”³⁴² Cohen rejected the proposal, saying that “[c]urrently our LOI developer is in talks with VP’s Chief of Staff and arranging a formal invite for the two to meet.”³⁴³ This email appears to be their final exchange, and the investigation did not identify evidence that Cohen brought Klovov’s initial offer of assistance to the Campaign’s attention or that anyone associated with the Trump Organization or the Campaign dealt with Klovov at a later date. Cohen explained that he did not pursue the proposed meeting because he was already working on the Moscow Project with Sater, who Cohen understood to have his own connections to the Russian government.³⁴⁴

By late December 2015, however, Cohen was complaining that Sater had not been able to use those connections to set up the promised meeting with Russian government officials. Cohen told Sater that he was “setting up the meeting myself.”³⁴⁵ On January 11, 2016, Cohen emailed the office of Dmitry Peskov, the Russian government’s press secretary, indicating that he desired contact with Sergei Ivanov, Putin’s chief of staff. Cohen erroneously used the email address “Pr_peskov@prpress.gof.ru” instead of “Pr_peskov@prpress.gov.ru,” so the email apparently did not go through.³⁴⁶ On January 14, 2016, Cohen emailed a different address (info@prpress.gov.ru) with the following message:

Dear Mr. Peskov,

Over the past few months, I have been working with a company based in Russia regarding the development of a Trump Tower-Moscow project in Moscow City.

Without getting into lengthy specifics, the communication between our two sides has stalled. As this project is too important, I am hereby requesting your assistance.

I respectfully request someone, preferably you, contact me so that I might discuss the specifics as well as arranging meetings with the appropriate individuals.

I thank you in advance for your assistance and look forward to hearing from you soon.³⁴⁷

Two days later, Cohen sent an email to Pr_peskov@prpress.gov.ru, repeating his request to speak with Sergei Ivanov.³⁴⁸

Cohen testified to Congress, and initially told the Office, that he did not recall receiving a response to this email inquiry and that he decided to terminate any further work on the Trump Moscow project as of January 2016. Cohen later admitted that these statements were false. In

³⁴² 11/19/15 Email, Klovov to Cohen (7:40 a.m.).

³⁴³ 11/19/15 Email, Cohen to Klovov (12:56 p.m.).

³⁴⁴ Cohen 9/18/18 302, at 12.

³⁴⁵ FS00004 (12/30/15 Text Message, Cohen to Sater (6:17 p.m.)).

³⁴⁶ 1/11/16 Email, Cohen to pr_peskov@prpress.gof.ru (9:12 a.m.).

³⁴⁷ 1/14/16 Email, Cohen to info@prpress.gov.ru (9:21 a.m.).

³⁴⁸ 1/16/16 Email, Cohen to pr_peskov@prpress.gov.ru (10:28 a.m.).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

fact, Cohen had received (and recalled receiving) a response to his inquiry, and he continued to work on and update candidate Trump on the project through as late as June 2016.³⁴⁹

On January 20, 2016, Cohen received an email from Elena Poliakova, Peskov's personal assistant. Writing from her personal email account, Poliakova stated that she had been trying to reach Cohen and asked that he call her on the personal number that she provided.³⁵⁰ Shortly after receiving Poliakova's email, Cohen called and spoke to her for 20 minutes.³⁵¹ Cohen described to Poliakova his position at the Trump Organization and outlined the proposed Trump Moscow project, including information about the Russian counterparty with which the Trump Organization had partnered. Cohen requested assistance in moving the project forward, both in securing land to build the project and with financing. According to Cohen, Poliakova asked detailed questions and took notes, stating that she would need to follow up with others in Russia.³⁵²

Cohen could not recall any direct follow-up from Poliakova or from any other representative of the Russian government, nor did the Office identify any evidence of direct follow-up. However, the day after Cohen's call with Poliakova, Sater texted Cohen, asking him to "[c]all me when you have a few minutes to chat . . . It's about Putin they called today."³⁵³ Sater then sent a draft invitation for Cohen to visit Moscow to discuss the Trump Moscow project,³⁵⁴ along with a note to "[t]ell me if the letter is good as amended by me or make whatever changes you want and send it back to me."³⁵⁵ After a further round of edits, on January 25, 2016, Sater sent Cohen an invitation—signed by Andrey Ryabinskiy of the company MHJ—to travel to "Moscow for a working visit" about the "prospects of development and the construction business in Russia," "the various land plots available suited for construction of this enormous Tower," and "the opportunity to co-ordinate a follow up visit to Moscow by Mr. Donald Trump."³⁵⁶ According

³⁴⁹ *Cohen Information ¶¶ 4, 7.* Cohen's interactions with President Trump and the President's lawyers when preparing his congressional testimony are discussed further in Volume II. See Vol. II, Section II.K.3, *infra*.

³⁵⁰ 1/20/16 Email, Poliakova to Cohen (5:57 a.m.) ("Mr. Cohen[,] I can't get through to both your phones. Pls, call me.").

³⁵¹ Telephone records show a 20-minute call on January 20, 2016 between Cohen and the number Poliakova provided in her email. Call Records of Michael Cohen **Grand Jury**. After the call, Cohen saved Poliakova's contact information in his Trump Organization Outlook contact list. 1/20/16 Cohen Microsoft Outlook Entry (6:22 a.m.).

³⁵² Cohen 9/12/18 302, at 2-3.

³⁵³ FS00011 (1/21/16 Text Messages, Sater to Cohen).

³⁵⁴ The invitation purported to be from Genbank, a Russian bank that was, according to Sater, working at the behest of a larger bank, VTB, and would consider providing financing. FS00008 (12/31/15 Text Messages, Sater & Cohen). Additional information about Genbank can be found *infra*.

³⁵⁵ FS00011 (1/21/16 Text Message, Sater to Cohen (7:44 p.m.)); 1/21/16 Email, Sater to Cohen (6:49 p.m.).

³⁵⁶ 1/25/16 Email, Sater to Cohen (12:01 p.m.) (attachment).

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

to Cohen, he elected not to travel at the time because of concerns about the lack of concrete proposals about land plots that could be considered as options for the project.³⁵⁷

*d. Discussions about Russia Travel by Michael Cohen or Candidate Trump
 (December 2015-June 2016)*

i. Sater's Overtures to Cohen to Travel to Russia

The late January communication was neither the first nor the last time that Cohen contemplated visiting Russia in pursuit of the Trump Moscow project. Beginning in late 2015, Sater repeatedly tried to arrange for Cohen and candidate Trump, as representatives of the Trump Organization, to travel to Russia to meet with Russian government officials and possible financing partners. In December 2015, Sater sent Cohen a number of emails about logistics for traveling to Russia for meetings.³⁵⁸ On December 19, 2015, Sater wrote:

Please call me I have Evgeny [Dvoskin] on the other line.^[359] He needs a copy of your and Donald's passports they need a scan of every page of the passports. Invitations & Visas will be issued this week by VTB Bank to discuss financing for Trump Tower Moscow. Politically neither Putins office nor Ministry of Foreign Affairs cannot issue invite, so they are inviting commercially/ business. VTB is Russia's 2 biggest bank and VTB Bank CEO Andrey Kostin, will be at all meetings with Putin so that it is a business meeting not political. We will be invited to Russian consulate this week to receive invite & have visa issued.³⁶⁰

In response, Cohen texted Sater an image of his own passport.³⁶¹ Cohen told the Office that at one point he requested a copy of candidate Trump's passport from Rhona Graff, Trump's executive assistant at the Trump Organization, and that Graff later brought Trump's passport to Cohen's

³⁵⁷ Cohen 9/12/18 302, at 6-7.

³⁵⁸ See, e.g., 12/1/15 Email, Sater to Cohen (12:41 p.m.) ("Please scan and send me a copy of your passport for the Russian Ministry of Foreign Affairs.")

³⁵⁹ Toll records show that Sater was speaking to Evgeny Dvoskin. Call Records of Felix Sater **Grand Jury** [REDACTED] Dvoskin is an executive of Genbank, a large bank with lending focused in Crimea, Ukraine. At the time that Sater provided this financing letter to Cohen, Genbank was subject to U.S. government sanctions, see *Russia/Ukraine-related Sanctions and Identifications*, Office of Foreign Assets Control (Dec. 22, 2015), available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20151222.aspx>. Dvoskin, who had been deported from the United States in 2000 for criminal activity, was under indictment in the United States for stock fraud under the aliases Eugene Slusker and Gene Shustar. See *United States v. Rizzo, et al.*, 2:03-cr-63 (E.D.N.Y. Feb. 6, 2003).

³⁶⁰ 12/19/15 Email, Sater to Cohen (10:50 a.m.); FS00002 (12/19/15 Text Messages, Sater to Cohen, (10:53 a.m.).

³⁶¹ FS00004 (12/19/15 Text Message, Cohen to Sater); ERT_0198-256 (12/19/15 Text Messages, Cohen & Sater).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

office.³⁶² The investigation did not, however, establish that the passport was forwarded to Sater.³⁶³

Into the spring of 2016, Sater and Cohen continued to discuss a trip to Moscow in connection with the Trump Moscow project. On April 20, 2016, Sater wrote Cohen, “[t]he People wanted to know when you are coming?”³⁶⁴ On May 4, 2016, Sater followed up:

I had a chat with Moscow. ASSUMING the trip does happen the question is before or after the convention. I said I believe, but don't know for sure, that's it's probably after the convention. Obviously the pre-meeting trip (you only) can happen anytime you want but the 2 big guys where [sic] the question. I said I would confirm and revert. . . . Let me know about If I was right by saying I believe after Cleveland and also when you want to speak to them and possibly fly over.³⁶⁵

Cohen responded, “My trip before Cleveland. Trump once he becomes the nominee after the convention.”³⁶⁶

The day after this exchange, Sater tied Cohen's travel to Russia to the St. Petersburg International Economic Forum (“Forum”), an annual event attended by prominent Russian politicians and businessmen. Sater told the Office that he was informed by a business associate that Peskov wanted to invite Cohen to the Forum.³⁶⁷ On May 5, 2016, Sater wrote to Cohen:

Peskov would like to invite you as his guest to the St. Petersburg Forum which is Russia's Davos it's June 16-19. He wants to meet there with you and possibly introduce you to either Putin or Medvedev, as they are not sure if 1 or both will be there. This is perfect. The entire business class of Russia will be there as well. He said anything you want to discuss including dates and subjects are on the table to discuss[.]³⁶⁸

The following day, Sater asked Cohen to confirm those dates would work for him to travel; Cohen wrote back, “[w]orks for me.”³⁶⁹

³⁶² Cohen 9/12/18 302, at 5.

³⁶³ On December 21, 2015, Sater sent Cohen a text message that read, “They need a copy of DJT passport,” to which Cohen responded, “After I return from Moscow with you with a date for him.” FS00004 (12/21/15 Text Messages, Cohen & Sater).

³⁶⁴ FS00014 (4/20/16 Text Message, Sater to Cohen (9:06 p.m.)).

³⁶⁵ FS00015 (5/4/16 Text Message, Sater to Cohen (7:38 p.m.)).

³⁶⁶ FS00015 (5/4/16 Text Message, Cohen to Sater (8:03 p.m.)).

³⁶⁷ Sater 12/15/17 302, at 4.

³⁶⁸ FS00016 (5/5/16 Text Messages, Sater to Cohen (6:26 & 6:27 a.m.)).

³⁶⁹ FS00016 (5/6/16 Text Messages, Cohen & Sater).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

On June 9, 2016, Sater sent Cohen a notice that he (Sater) was completing the badges for the Forum, adding, "Putin is there on the 17th very strong chance you will meet him as well."³⁷⁰ On June 13, 2016, Sater forwarded Cohen an invitation to the Forum signed by the Director of the Roscongress Foundation, the Russian entity organizing the Forum.³⁷¹ Sater also sent Cohen a Russian visa application and asked him to send two passport photos.³⁷² According to Cohen, the invitation gave no indication that Peskov had been involved in inviting him. Cohen was concerned that Russian officials were not actually involved or were not interested in meeting with him (as Sater had alleged), and so he decided not to go to the Forum.³⁷³ On June 14, 2016, Cohen met Sater in the lobby of the Trump Tower in New York and informed him that he would not be traveling at that time.³⁷⁴

ii. Candidate Trump's Opportunities to Travel to Russia

The investigation identified evidence that, during the period the Trump Moscow project was under consideration, the possibility of candidate Trump visiting Russia arose in two contexts.

First, in interviews with the Office, Cohen stated that he discussed the subject of traveling to Russia with Trump twice: once in late 2015; and again in spring 2016.³⁷⁵ According to Cohen, Trump indicated a willingness to travel if it would assist the project significantly. On one occasion, Trump told Cohen to speak with then-campaign manager Corey Lewandowski to coordinate the candidate's schedule. Cohen recalled that he spoke with Lewandowski, who suggested that they speak again when Cohen had actual dates to evaluate. Cohen indicated, however, that he knew that travel prior to the Republican National Convention would be impossible given the candidate's preexisting commitments to the Campaign.³⁷⁶

Second, like Cohen, Trump received and turned down an invitation to the St. Petersburg International Economic Forum. In late December 2015, Mira Duma—a contact of Ivanka Trump's from the fashion industry—first passed along invitations for Ivanka Trump and candidate Trump from Sergei Prikhodko, a Deputy Prime Minister of the Russian Federation.³⁷⁷ On January 14, 2016, Rhona Graff sent an email to Duma stating that Trump was "honored to be asked to participate in the highly prestigious" Forum event, but that he would "have to decline" the invitation given his "very grueling and full travel schedule" as a presidential candidate.³⁷⁸ Graff

³⁷⁰ FS00018 (6/9/16 Text Messages, Sater & Cohen).

³⁷¹ 6/13/16 Email, Sater to Cohen (2:10 p.m.).

³⁷² FS00018 (6/13/16 Text Message, Sater to Cohen (2:20 p.m.)); 6/13/16 Email, Sater to Cohen.

³⁷³ Cohen 9/12/18 302, at 6-8.

³⁷⁴ FS00019 (6/14/16 Text Messages, Cohen & Sater (12:06 and 2:50 p.m.)).

³⁷⁵ Cohen 9/12/18 302, at 2.

³⁷⁶ Cohen 9/12/18 302, at 7.

³⁷⁷ 12/21/15 Email, Mira to Ivanka Trump (6:57 a.m.) (attachments); TRUMPORG_16_000057 (1/7/16 Email, I. Trump to Graff (9:18 a.m.)).

³⁷⁸ 1/14/16 Email, Graff to Mira.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

asked Duma whether she recommended that Graff “send a formal note to the Deputy Prime Minister” declining his invitation; Duma replied that a formal note would be “great.”³⁷⁹

It does not appear that Graff prepared that note immediately. According to written answers from President Trump,³⁸⁰ Graff received an email from Deputy Prime Minister Prikhodko on March 17, 2016, again inviting Trump to participate in the 2016 Forum in St. Petersburg.³⁸¹ Two weeks later, on March 31, 2016, Graff prepared for Trump’s signature a two-paragraph letter declining the invitation.³⁸² The letter stated that Trump’s “schedule has become extremely demanding” because of the presidential campaign, that he “already ha[d] several commitments in the United States” for the time of the Forum, but that he otherwise “would have gladly given every consideration to attending such an important event.”³⁸³ Graff forwarded the letter to another executive assistant at the Trump Organization with instructions to print the document on letterhead for Trump to sign.³⁸⁴

At approximately the same time that the letter was being prepared, Robert Foresman—a New York-based investment banker—began reaching out to Graff to secure an in-person meeting with candidate Trump. According to Foresman, he had been asked by Anton Kobayakov, a Russian presidential aide involved with the Roscongress Foundation, to see if Trump could speak at the Forum.³⁸⁵ Foresman first emailed Graff on March 31, 2016, following a phone introduction brokered through Trump business associate Mark Burnett (who produced the television show *The Apprentice*). In his email, Foresman referenced his long-standing personal and professional expertise in Russia and Ukraine, his work setting up an early “private channel” between Vladimir Putin and former U.S. President George W. Bush, and an “approach” he had received from “senior Kremlin officials” about the candidate. Foresman asked Graff for a meeting with the candidate, Corey Lewandowski, or “another relevant person” to discuss this and other “concrete things” Foresman felt uncomfortable discussing over “unsecure email.”³⁸⁶ On April 4, 2016, Graff forwarded Foresman’s meeting request to Jessica Macchia, another executive assistant to Trump.³⁸⁷

³⁷⁹ 1/15/16 Email, Mira to Graff.

³⁸⁰ As explained in Volume II and Appendix C, on September 17, 2018, the Office sent written questions to the President’s counsel. On November 20, 2018, the President provided written answers to those questions through counsel.

³⁸¹ Written Responses of Donald J. Trump (Nov. 20, 2018), at 17 (Response to Question IV, Part (c)) (“[D]ocuments show that Ms. Graff prepared for my signature a brief response declining the invitation.”).

³⁸² Written Responses of Donald J. Trump (Nov. 20, 2018), at 17 (Response to Question IV, Part (c)); see also TRUMPORG_16_000134 (unsigned letter dated March 31, 2016).

³⁸³ TRUMPORG_16_000134 (unsigned letter).

³⁸⁴ TRUMPORG_16_000133 (3/31/16 Email, Graff to Macchia).

³⁸⁵ Foresman 10/17/18 302, at 3-4.

³⁸⁶ See TRUMPORG_16_00136 (3/31/16 Email, Foresman to Graff); see also Foresman 10/17/18 302, at 3-4.

³⁸⁷ See TRUMPORG_16_00136 (4/4/16 Email, Graff to Macchia).

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

With no response forthcoming, Foresman twice sent reminders to Graff—first on April 26 and again on April 30, 2016.³⁸⁸ Graff sent an apology to Foresman and forwarded his April 26 email (as well as his initial March 2016 email) to Lewandowski.³⁸⁹ On May 2, 2016, Graff forwarded Foresman’s April 30 email—which suggested an alternative meeting with Donald Trump Jr. or Eric Trump so that Foresman could convey to them information that “should be conveyed to [the candidate] personally or [to] someone [the candidate] absolutely trusts”—to policy advisor Stephen Miller.³⁹⁰

No communications or other evidence obtained by the Office indicate that the Trump Campaign learned that Foresman was reaching out to invite the candidate to the Forum or that the Campaign otherwise followed up with Foresman until after the election, when he interacted with the Transition Team as he pursued a possible position in the incoming Administration.³⁹¹ When interviewed by the Office, Foresman denied that the specific “approach” from “senior Kremlin officials” noted in his March 31, 2016 email was anything other than Kobyakov’s invitation to Roscongress. According to Foresman, the “concrete things” he referenced in the same email were a combination of the invitation itself, Foresman’s personal perspectives on the invitation and Russia policy in general, and details of a Ukraine plan supported by a U.S. think tank (EastWest Institute). Foresman told the Office that Kobyakov had extended similar invitations through him to another Republican presidential candidate and one other politician. Foresman also said that Kobyakov had asked Foresman to invite Trump to speak after that other presidential candidate withdrew from the race and the other politician’s participation did not work out.³⁹² Finally, Foresman claimed to have no plans to establish a back channel involving Trump, stating the reference to his involvement in the Bush-Putin back channel was meant to burnish his credentials to the Campaign. Foresman commented that he had not recognized any of the experts announced as Trump’s foreign policy team in March 2016, and wanted to secure an in-person meeting with the candidate to share his professional background and policy views, including that Trump should decline Kobyakov’s invitation to speak at the Forum.³⁹³

2. George Papadopoulos

George Papadopoulos was a foreign policy advisor to the Trump Campaign from March

³⁸⁸ See TRUMPORG_16_00137 (4/26/16 Email, Foresman to Graff); TRUMPORG_16_00141 (4/30/16 Email, Foresman to Graff).

³⁸⁹ See TRUMPORG_16_00139 (4/27/16 Email, Graff to Foresman); TRUMPORG_16_00137 (4/27/16 Email, Graff to Lewandowski).

³⁹⁰ TRUMPORG_16_00142 (5/2/16 Email, Graff to S. Miller); *see also* TRUMPORG_16_00143 (5/2/16 Email, Graff to S. Miller) (forwarding March 2016 email from Foresman).

³⁹¹ Foresman’s contacts during the transition period are discussed further in Volume I, Section IV.B.3, *infra*.

³⁹² Foresman 10/17/18 302, at 4.

³⁹³ Foresman 10/17/18 302, at 8-9.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

2016 to early October 2016.³⁹⁴ In late April 2016, Papadopoulos was told by London-based professor Joseph Mifsud, immediately after Mifsud's return from a trip to Moscow, that the Russian government had obtained "dirt" on candidate Clinton in the form of thousands of emails. One week later, on May 6, 2016, Papadopoulos suggested to a representative of a foreign government that the Trump Campaign had received indications from the Russian government that it could assist the Campaign through the anonymous release of information that would be damaging to candidate Clinton.

Papadopoulos shared information about Russian "dirt" with people outside of the Campaign, and the Office investigated whether he also provided it to a Campaign official. Papadopoulos and the Campaign officials with whom he interacted told the Office that they did not recall that Papadopoulos passed them the information. Throughout the relevant period of time and for several months thereafter, Papadopoulos worked with Mifsud and two Russian nationals to arrange a meeting between the Campaign and the Russian government. That meeting never came to pass.

a. Origins of Campaign Work

In March 2016, Papadopoulos became a foreign policy advisor to the Trump Campaign.³⁹⁵ As early as the summer of 2015, he had sought a role as a policy advisor to the Campaign but, in a September 30, 2015 email, he was told that the Campaign was not hiring policy advisors.³⁹⁶ In late 2015, Papadopoulos obtained a paid position on the campaign of Republican presidential candidate Ben Carson.³⁹⁷

Although Carson remained in the presidential race until early March 2016, Papadopoulos had stopped actively working for his campaign by early February 2016.³⁹⁸ At that time, Papadopoulos reached out to a contact at the London Centre of International Law Practice (LCILP), which billed itself as a "unique institution . . . comprising high-level professional international law practitioners, dedicated to the advancement of global legal knowledge and the practice of international law."³⁹⁹ Papadopoulos said that he had finished his role with the Carson

³⁹⁴ Papadopoulos met with our Office for debriefings on several occasions in the summer and fall of 2017, after he was arrested and charged in a sealed criminal complaint with making false statements in a January 2017 FBI interview about, *inter alia*, the timing, extent, and nature of his interactions and communications with Joseph Mifsud and two Russian nationals: Olga Polonskaya and Ivan Timofeev. Papadopoulos later pleaded guilty, pursuant to a plea agreement, to an information charging him with making false statements to the FBI, in violation of 18 U.S.C. § 1001(a).

³⁹⁵ *A Transcript of Donald Trump's Meeting with the Washington Post Editorial Board*, Washington Post (Mar. 21, 2016).

³⁹⁶ 7/15/15 LinkedIn Message, Papadopoulos to Lewandowski (6:57 a.m.); 9/30/15 Email, Glassner to Papadopoulos (7:42:21 a.m.).

³⁹⁷ Papadopoulos 8/10/17 302, at 2.

³⁹⁸ Papadopoulos 8/10/17 302, at 2; 2/4/16 Email, Papadopoulos to Idris.

³⁹⁹ London Centre of International Law Practice, at <https://www.lcilkp.org/> (via web.archive.org).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

campaign and asked if LCILP was hiring.⁴⁰⁰ In early February, Papadopoulos agreed to join LCILP and arrived in London to begin work.⁴⁰¹

As he was taking his position at LCILP, Papadopoulos contacted Trump campaign manager Corey Lewandowski via LinkedIn and emailed campaign official Michael Glassner about his interest in joining the Trump Campaign.⁴⁰² On March 2, 2016, Papadopoulos sent Glassner another message reiterating his interest.⁴⁰³ Glassner passed along word of Papadopoulos's interest to another campaign official, Joy Lutes, who notified Papadopoulos by email that she had been told by Glassner to introduce Papadopoulos to Sam Clovis, the Trump Campaign's national co-chair and chief policy advisor.⁴⁰⁴

At the time of Papadopoulos's March 2 email, the media was criticizing the Trump Campaign for lack of experienced foreign policy or national security advisors within its ranks.⁴⁰⁵ To address that issue, senior Campaign officials asked Clovis to put a foreign policy team together on short notice.⁴⁰⁶ After receiving Papadopoulos's name from Lutes, Clovis performed a Google search on Papadopoulos, learned that he had worked at the Hudson Institute, and believed that he had credibility on energy issues.⁴⁰⁷ On March 3, 2016, Clovis arranged to speak with Papadopoulos by phone to discuss Papadopoulos joining the Campaign as a foreign policy advisor, and on March 6, 2016, the two spoke.⁴⁰⁸ Papadopoulos recalled that Russia was mentioned as a topic, and he understood from the conversation that Russia would be an important aspect of the Campaign's foreign policy.⁴⁰⁹ At the end of the conversation, Clovis offered Papadopoulos a role as a foreign policy advisor to the Campaign, and Papadopoulos accepted the offer.⁴¹⁰

b. Initial Russia-Related Contacts

Approximately a week after signing on as a foreign policy advisor, Papadopoulos traveled

⁴⁰⁰ 2/4/16 Email, Papadopoulos to Idris.

⁴⁰¹ 2/5/16 Email, Idris to Papadopoulos (6:11:25 p.m.); 2/6/16 Email, Idris to Papadopoulos (5:34:15 p.m.).

⁴⁰² 2/4/16 LinkedIn Message, Papadopoulos to Lewandowski (1:28 p.m.); 2/4/16 Email, Papadopoulos to Glassner (2:10:36 p.m.).

⁴⁰³ 3/2/16 Email, Papadopoulos to Glassner (11:17:23 a.m.).

⁴⁰⁴ 3/2/16 Email, Lutes to Papadopoulos (10:08:15 p.m.).

⁴⁰⁵ Clovis 10/3/17 302 (1 of 2), at 4.

⁴⁰⁶ Clovis 10/3/17 302 (1 of 2), at 4.

⁴⁰⁷ **Grand Jury**; 3/3/16 Email, Lutes to Clovis & Papadopoulos (6:05:47 p.m.).

⁴⁰⁸ 3/6/16 Email, Papadopoulos to Clovis (4:24:21 p.m.).

⁴⁰⁹ Statement of Offense ¶ 4, *United States v. George Papadopoulos*, 1:17-cr-182 (D.D.C. Oct. 5, 2017), Doc. 19 ("*Papadopoulos* Statement of Offense").

⁴¹⁰ Papadopoulos 8/10/17 302, at 2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

to Rome, Italy, as part of his duties with LCILP.⁴¹¹ The purpose of the trip was to meet officials affiliated with Link Campus University, a for-profit institution headed by a former Italian government official.⁴¹² During the visit, Papadopoulos was introduced to Joseph Mifsud.

Mifsud is a Maltese national who worked as a professor at the London Academy of Diplomacy in London, England.⁴¹³ Although Mifsud worked out of London and was also affiliated with LCILP, the encounter in Rome was the first time that Papadopoulos met him.⁴¹⁴ Mifsud maintained various Russian contacts while living in London, as described further below. Among his contacts was [REDACTED],⁴¹⁵ a one-time employee of the IRA, the entity that carried out the Russian social media campaign (see Volume I, Section II, *supra*). In January and February 2016, Mifsud and [REDACTED] discussed [REDACTED] possibly meeting in Russia. The investigation did not identify evidence of them meeting. Later, in the spring of 2016, [REDACTED] was also in contact [REDACTED] that was linked to an employee of the Russian Ministry of Defense, and that account had overlapping contacts with a group of Russian military-controlled Facebook accounts that included accounts used to promote the DCLeaks releases in the course of the GRU's hack-and-release operations (see Volume I, Section III.B.1, *supra*).

According to Papadopoulos, Mifsud at first seemed uninterested in Papadopoulos when they met in Rome.⁴¹⁶ After Papadopoulos informed Mifsud about his role in the Trump Campaign, however, Mifsud appeared to take greater interest in Papadopoulos.⁴¹⁷ The two discussed Mifsud's European and Russian contacts and had a general discussion about Russia; Mifsud also offered to introduce Papadopoulos to European leaders and others with contacts to the Russian government.⁴¹⁸ Papadopoulos told the Office that Mifsud's claim of substantial connections with Russian government officials interested Papadopoulos, who thought that such connections could increase his importance as a policy advisor to the Trump Campaign.⁴¹⁹

⁴¹¹ Papadopoulos 8/10/17 302, at 2-3; *Papadopoulos Statement of Offense* ¶ 5.

⁴¹² Papadopoulos 8/10/17 302, at 2-3; Stephanie Kirchgaessner et al., *Joseph Mifsud: more questions than answers about mystery professor linked to Russia*, *The Guardian* (Oct. 31, 2017) ("Link Campus University . . . is headed by a former Italian interior minister named Vincenzo Scotti.").

⁴¹³ *Papadopoulos Statement of Offense* ¶ 5.

⁴¹⁴ Papadopoulos 8/10/17 302, at 3.

⁴¹⁵ See, e.g., **Investigative Technique**
Harm to Ongoing Matter

⁴¹⁶ *Papadopoulos Statement of Offense* ¶ 5.

⁴¹⁷ *Papadopoulos Statement of Offense* ¶ 5.

⁴¹⁸ Papadopoulos 8/10/17 302, at 3; Papadopoulos 8/11/17 302, at 2.

⁴¹⁹ *Papadopoulos Statement of Offense* ¶ 5.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

On March 17, 2016, Papadopoulos returned to London.⁴²⁰ Four days later, candidate Trump publicly named him as a member of the foreign policy and national security advisory team chaired by Senator Jeff Sessions, describing Papadopoulos as “an oil and energy consultant” and an “[e]xcellent guy.”⁴²¹

On March 24, 2016, Papadopoulos met with Mifsud in London.⁴²² Mifsud was accompanied by a Russian female named Olga Polonskaya. Mifsud introduced Polonskaya as a former student of his who had connections to Vladimir Putin.⁴²³ Papadopoulos understood at the time that Polonskaya may have been Putin’s niece but later learned that this was not true.⁴²⁴ During the meeting, Polonskaya offered to help Papadopoulos establish contacts in Russia and stated that the Russian ambassador in London was a friend of hers.⁴²⁵ Based on this interaction, Papadopoulos expected Mifsud and Polonskaya to introduce him to the Russian ambassador in London, but that did not occur.⁴²⁶

Following his meeting with Mifsud, Papadopoulos sent an email to members of the Trump Campaign’s foreign policy advisory team. The subject line of the message was “Meeting with Russian leadership—including Putin.”⁴²⁷ The message stated in pertinent part:

I just finished a very productive lunch with a good friend of mine, Joseph Mifsud, the director of the London Academy of Diplomacy—who introduced me to both Putin’s niece and the Russian Ambassador in London—who also acts as the Deputy Foreign Minister.⁴²⁸

The topic of the lunch was to arrange a meeting between us and the Russian leadership to discuss U.S.–Russia ties under President Trump. They are keen to host us in a “neutral” city, or directly in Moscow. They said the leadership, including Putin, is ready to meet with us and Mr. Trump should there be interest. Waiting for everyone’s thoughts on moving forward with this very important issue.⁴²⁹

⁴²⁰ Papadopoulos 8/10/17 302, at 2.

⁴²¹ Phillip Rucker & Robert Costa, *Trump Questions Need for NATO, Outlines Noninterventionist Foreign Policy*, Washington Post (Mar. 21, 2016).

⁴²² Papadopoulos 8/10/17 302, at 3; 3/24/16 Text Messages, Mifsud & Papadopoulos.

⁴²³ Papadopoulos 8/10/17 302, at 3.

⁴²⁴ Papadopoulos 8/10/17 302, at 3; Papadopoulos 2/10/17 302, at 2-3; Papadopoulos Internet Search History (3/24/16) (revealing late-morning and early-afternoon searches on March 24, 2016 for “putin’s niece,” “olga putin,” and “russian president niece olga,” among other terms).

⁴²⁵ Papadopoulos 8/10/17 302, at 3.

⁴²⁶ *Papadopoulos Statement of Offense* ¶ 8 n.1.

⁴²⁷ 3/24/16 Email, Papadopoulos to Page et al. (8:48:21 a.m.).

⁴²⁸ Papadopoulos’s statements to the Campaign were false. As noted above, the woman he met was not Putin’s niece, he had not met the Russian Ambassador in London, and the Ambassador did not also serve as Russia’s Deputy Foreign Minister.

⁴²⁹ 3/24/16 Email, Papadopoulos to Page et al. (8:48:21 a.m.).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Papadopoulos's message came at a time when Clovis perceived a shift in the Campaign's approach toward Russia—from one of engaging with Russia through the NATO framework and taking a strong stance on Russian aggression in Ukraine, **Grand Jury**

Clovis's response to Papadopoulos, however, did not reflect that shift. Replying to Papadopoulos and the other members of the foreign policy advisory team copied on the initial email, Clovis wrote:

This is most informative. Let me work it through the campaign. No commitments until we see how this plays out. My thought is that we probably should not go forward with any meetings with the Russians until we have had occasion to sit with our NATO allies, especially France, Germany and Great Britain. We need to reassure our allies that we are not going to advance anything with Russia until we have everyone on the same page.

More thoughts later today. Great work.⁴³¹

c. March 31 Foreign Policy Team Meeting

The Campaign held a meeting of the foreign policy advisory team with Senator Sessions and candidate Trump approximately one week later, on March 31, 2016, in Washington, D.C.⁴³² The meeting—which was intended to generate press coverage for the Campaign⁴³³—took place at the Trump International Hotel.⁴³⁴ Papadopoulos flew to Washington for the event. At the meeting, Senator Sessions sat at one end of an oval table, while Trump sat at the other. As reflected in the photograph below (which was posted to Trump's Instagram account), Papadopoulos sat between the two, two seats to Sessions's left:

⁴³⁰ **Grand Jury**

⁴³¹ 3/24/16 Email, Clovis to Papadopoulos et al. (8:55:04 a.m.).

⁴³² Papadopoulos 8/10/17 302, at 4; Papadopoulos 8/11/17 302, at 3.

⁴³³ Sessions 1/17/18 302, at 16-17.

⁴³⁴ Papadopoulos 8/10/17 302, at 4.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

March 31, 2016 Meeting of Foreign Policy Team, with Papadopoulos (Fourth from Right of Candidate Trump)

During the meeting, each of the newly announced foreign policy advisors introduced themselves and briefly described their areas of experience or expertise.⁴³⁵ Papadopoulos spoke about his previous work in the energy sector and then brought up a potential meeting with Russian officials.⁴³⁶ Specifically, Papadopoulos told the group that he had learned through his contacts in London that Putin wanted to meet with candidate Trump and that these connections could help arrange that meeting.⁴³⁷

Trump and Sessions both reacted to Papadopoulos's statement. Papadopoulos and Campaign advisor J.D. Gordon—who told investigators in an interview that he had a “crystal clear” recollection of the meeting—have stated that Trump was interested in and receptive to the idea of a meeting with Putin.⁴³⁸ Papadopoulos understood Sessions to be similarly supportive of his efforts to arrange a meeting.⁴³⁹ Gordon and two other attendees, however, recall that Sessions generally opposed the proposal, though they differ in their accounts of the concerns he voiced or the strength of the opposition he expressed.⁴⁴⁰

d. George Papadopoulos Learns That Russia Has “Dirt” in the Form of Clinton Emails

Whatever Sessions's precise words at the March 31 meeting, Papadopoulos did not understand Sessions or anyone else in the Trump Campaign to have directed that he refrain from

⁴³⁵ Papadopoulos 8/10/17 302, at 4.

⁴³⁶ Papadopoulos 8/10/17 302, at 4.

⁴³⁷ *Papadopoulos* Statement of Offense ¶ 9; see Gordon 8/29/17 302, at 14; Carafano 9/12/17 302, at 2; Hoskins 9/14/17 302, at 1.

⁴³⁸ Papadopoulos 8/10/17 302, at 4-5; Gordon 9/7/17 302, at 4-5.

⁴³⁹ Papadopoulos 8/10/17 302, at 5; Papadopoulos 8/11/17 302, at 3.

⁴⁴⁰ Sessions 1/17/18 302, at 17; Gordon 9/7/17 302, at 5; Hoskins 9/14/17 302, at 1; Carafano 9/12/17 302, at 2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

making further efforts to arrange a meeting between the Campaign and the Russian government. To the contrary, Papadopoulos told the Office that he understood the Campaign to be supportive of his efforts to arrange such a meeting.⁴⁴¹ Accordingly, when he returned to London, Papadopoulos resumed those efforts.⁴⁴²

Throughout April 2016, Papadopoulos continued to correspond with, meet with, and seek Russia contacts through Mifsud and, at times, Polonskaya.⁴⁴³ For example, within a week of her initial March 24 meeting with him, Polonskaya attempted to send Papadopoulos a text message—which email exchanges show to have been drafted or edited by Mifsud—addressing Papadopoulos’s “wish to engage with the Russian Federation.”⁴⁴⁴ When Papadopoulos learned from Mifsud that Polonskaya had tried to message him, he sent her an email seeking another meeting.⁴⁴⁵ Polonskaya responded the next day that she was “back in St. Petersburg” but “would be very pleased to support [Papadopoulos’s] initiatives between our two countries” and “to meet [him] again.”⁴⁴⁶ Papadopoulos stated in reply that he thought “a good step” would be to introduce him to “the Russian Ambassador in London,” and that he would like to talk to the ambassador, “or anyone else you recommend, about a potential foreign policy trip to Russia.”⁴⁴⁷

Mifsud, who had been copied on the email exchanges, replied on the morning of April 11, 2016. He wrote, “This is already been agreed. I am flying to Moscow on the 18th for a Valdai meeting, plus other meetings at the Duma. We will talk tomorrow.”⁴⁴⁸ The two bodies referenced by Mifsud are part of or associated with the Russian government: the Duma is a Russian legislative assembly,⁴⁴⁹ while “Valdai” refers to the Valdai Discussion Club, a Moscow-based group that “is close to Russia’s foreign-policy establishment.”⁴⁵⁰ Papadopoulos thanked Mifsud and said that he would see him “tomorrow.”⁴⁵¹ For her part, Polonskaya responded that she had “already alerted my personal links to our conversation and your request,” that “we are all very excited the possibility of a good relationship with Mr. Trump,” and that “[t]he Russian Federation would love to welcome him once his candidature would be officially announced.”⁴⁵²

⁴⁴¹ Papadopoulos 8/10/17 302, at 4-5; Papadopoulos 8/11/17 302, at 3; Papadopoulos 9/20/17 302, at 2.

⁴⁴² *Papadopoulos Statement of Offense* ¶ 10.

⁴⁴³ *Papadopoulos Statement of Offense* ¶¶ 10-15.

⁴⁴⁴ 3/29/16 Emails, Mifsud to Polonskaya (3:39 a.m. and 5:36 a.m.).

⁴⁴⁵ 4/10/16 Email, Papadopoulos to Polonskaya (2:45:59 p.m.).

⁴⁴⁶ 4/11/16 Email, Polonskaya to Papadopoulos (3:11:24 a.m.).

⁴⁴⁷ 4/11/16 Email, Papadopoulos to Polonskaya (9:21:56 a.m.).

⁴⁴⁸ 4/11/16 Email, Mifsud to Papadopoulos (11:43:53).

⁴⁴⁹ *Papadopoulos Statement of Offense* ¶ 10(c).

⁴⁵⁰ Anton Troianovski, *Putin Ally Warns of Arms Race as Russia Considers Response to U.S. Nuclear Stance*, Washington Post (Feb. 10, 2018).

⁴⁵¹ 4/11/16 Email, Papadopoulos to Mifsud (11:51:53 a.m.).

⁴⁵² 4/12/16 Email, Polonskaya to Papadopoulos (4:47:06 a.m.).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Papadopoulos's and Mifsud's mentions of seeing each other "tomorrow" referenced a meeting that the two had scheduled for the next morning, April 12, 2016, at the Andaz Hotel in London. Papadopoulos acknowledged the meeting during interviews with the Office,⁴⁵³ and records from Papadopoulos's UK cellphone and his internet-search history all indicate that the meeting took place.⁴⁵⁴

Following the meeting, Mifsud traveled as planned to Moscow.⁴⁵⁵ On April 18, 2016, while in Russia, Mifsud introduced Papadopoulos over email to Ivan Timofeev, a member of the Russian International Affairs Council (RIAC).⁴⁵⁶ Mifsud had described Timofeev as having connections with the Russian Ministry of Foreign Affairs (MFA),⁴⁵⁷ the executive entity in Russia responsible for Russian-foreign relations.⁴⁵⁸ Over the next several weeks, Papadopoulos and Timofeev had multiple conversations over Skype and email about setting "the groundwork" for a "potential" meeting between the Campaign and Russian government officials.⁴⁵⁹ Papadopoulos told the Office that, on one Skype call, he believed that his conversation with Timofeev was being monitored or supervised by an unknown third party, because Timofeev spoke in an official manner and Papadopoulos heard odd noises on the line.⁴⁶⁰ Timofeev also told Papadopoulos in an April 25, 2016 email that he had just spoken "to Igor Ivanov[,] the President of RIAC and former Foreign Minister of Russia," and conveyed Ivanov's advice about how best to arrange a "Moscow visit."⁴⁶¹

After a stop in Rome, Mifsud returned to England on April 25, 2016.⁴⁶² The next day, Papadopoulos met Mifsud for breakfast at the Andaz Hotel (the same location as their last

⁴⁵³ Papadopoulos 9/19/17 302, at 7.

⁴⁵⁴ 4/12/16 Email, Mifsud to Papadopoulos (5:44:39 a.m.) (forwarding Libya-related document); 4/12/16 Email, Mifsud to Papadopoulos & Obaid (10:28:20 a.m.); Papadopoulos Internet Search History (Apr. 11, 2016 10:56:49 p.m.) (search for "andaz hotel liverpool street"); 4/12/16 Text Messages, Mifsud & Papadopoulos.

⁴⁵⁵ See, e.g., 4/18/16 Email, Mifsud to Papadopoulos (8:04:54 a.m.).

⁴⁵⁶ Papadopoulos 8/10/17 302, at 5.

⁴⁵⁷ *Papadopoulos* Statement of Offense ¶ 11.

⁴⁵⁸ During the campaign period, Papadopoulos connected over LinkedIn with several MFA-affiliated individuals in addition to Timofeev. On April 25, 2016, he connected with Dmitry Andreyko, publicly identified as a First Secretary at the Russian Embassy in Ireland. In July 2016, he connected with Yuriy Melnik, the spokesperson for the Russian Embassy in Washington and with Alexey Krasilnikov, publicly identified as a counselor with the MFA. And on September 16, 2016, he connected with Sergei Nalobin, also identified as an MFA official. See Papadopoulos LinkedIn Connections [REDACTED]

⁴⁵⁹ *Papadopoulos* Statement of Offense ¶ 11.

⁴⁶⁰ Papadopoulos 8/10/17 302, at 5; Papadopoulos 9/19/17 302, at 10.

⁴⁶¹ 4/25/16 Email, Timofeev to Papadopoulos (8:16:35 a.m.).

⁴⁶² 4/22/16 Email, Mifsud to Papadopoulos (12:41:01 a.m.).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

meeting).⁴⁶³ During that meeting, Mifsud told Papadopoulos that he had met with high-level Russian government officials during his recent trip to Moscow. Mifsud also said that, on the trip, he learned that the Russians had obtained “dirt” on candidate Hillary Clinton. As Papadopoulos later stated to the FBI, Mifsud said that the “dirt” was in the form of “emails of Clinton,” and that they “have thousands of emails.”⁴⁶⁴ On May 6, 2016, 10 days after that meeting with Mifsud, Papadopoulos suggested to a representative of a foreign government that the Trump Campaign had received indications from the Russian government that it could assist the Campaign through the anonymous release of information that would be damaging to Hillary Clinton.⁴⁶⁵

e. Russia-Related Communications With The Campaign

While he was discussing with his foreign contacts a potential meeting of campaign officials with Russian government officials, Papadopoulos kept campaign officials apprised of his efforts. On April 25, 2016, the day before Mifsud told Papadopoulos about the emails, Papadopoulos wrote to senior policy advisor Stephen Miller that “[t]he Russian government has an open invitation by Putin for Mr. Trump to meet him when he is ready,” and that “[t]he advantage of being in London is that these governments tend to speak a bit more openly in ‘neutral’ cities.”⁴⁶⁶ On April 27, 2016, after his meeting with Mifsud, Papadopoulos wrote a second message to Miller stating that “some interesting messages [were] coming in from Moscow about a trip when the time is right.”⁴⁶⁷ The same day, Papadopoulos sent a similar email to campaign manager Corey Lewandowski, telling Lewandowski that Papadopoulos had “been receiving a lot of calls over the last month about Putin wanting to host [Trump] and the team when the time is right.”⁴⁶⁸

Papadopoulos’s Russia-related communications with Campaign officials continued throughout the spring and summer of 2016. On May 4, 2016, he forwarded to Lewandowski an email from Timofeev raising the possibility of a meeting in Moscow, asking Lewandowski whether that was “something we want to move forward with.”⁴⁶⁹ The next day, Papadopoulos forwarded the same Timofeev email to Sam Clovis, adding to the top of the email “Russia update.”⁴⁷⁰ He included the same email in a May 21, 2016 message to senior Campaign official Paul Manafort, under the subject line “Request from Russia to meet Mr. Trump,” stating that “Russia has been eager to meet Mr. Trump for quite sometime and have been reaching out to me

⁴⁶³ Papadopoulos Statement of Offense ¶ 14; 4/25/16 Text Messages, Mifsud & Papadopoulos.

⁴⁶⁴ Papadopoulos Statement of Offense ¶ 14.

⁴⁶⁵ This information is contained in the FBI case-opening document and related materials. ~~The information is law enforcement sensitive (LES) and must be treated accordingly in any external dissemination.~~ The foreign government conveyed this information to the U.S. government on July 26, 2016, a few days after WikiLeaks’s release of Clinton-related emails. The FBI opened its investigation of potential coordination between Russia and the Trump Campaign a few days later based on the information.

⁴⁶⁶ 4/25/16 Email, Papadopoulos to S. Miller (8:12:44 p.m.).

⁴⁶⁷ 4/27/16 Email, Papadopoulos to S. Miller (6:55:58 p.m.).

⁴⁶⁸ 4/27/16 Email, Papadopoulos to Lewandowski (7:15:14 p.m.).

⁴⁶⁹ 5/4/16 Email, Papadopoulos to Lewandowski (8:14:49 a.m.).

⁴⁷⁰ 5/5/16 Email, Papadopoulos to Clovis (7:15:21 p.m.).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

to discuss.⁴⁷¹ Manafort forwarded the message to another Campaign official, without including Papadopoulos, and stated: “Let[']s discuss. We need someone to communicate that [Trump] is not doing these trips. It should be someone low level in the Campaign so as not to send any signal.”⁴⁷²

On June 1, 2016, Papadopoulos replied to an earlier email chain with Lewandowski about a Russia visit, asking if Lewandowski “want[ed] to have a call about this topic” and whether “we were following up with it.”⁴⁷³ After Lewandowski told Papadopoulos to “connect with” Clovis because he was “running point,” Papadopoulos emailed Clovis that “the Russian MFA” was asking him “if Mr. Trump is interested in visiting Russia at some point.”⁴⁷⁴ Papadopoulos wrote in an email that he “[w]anted to pass this info along to you for you to decide what’s best to do with it and what message I should send (or to ignore).”⁴⁷⁵

After several email and Skype exchanges with Timofeev,⁴⁷⁶ Papadopoulos sent one more email to Lewandowski on June 19, 2016, Lewandowski’s last day as campaign manager.⁴⁷⁷ The email stated that “[t]he Russian ministry of foreign affairs” had contacted him and asked whether, if Mr. Trump could not travel to Russia, a campaign representative such as Papadopoulos could attend meetings.⁴⁷⁸ Papadopoulos told Lewandowski that he was “willing to make the trip off the record if it’s in the interest of Mr. Trump and the campaign to meet specific people.”⁴⁷⁹

Following Lewandowski’s departure from the Campaign, Papadopoulos communicated with Clovis and Walid Phares, another member of the foreign policy advisory team, about an off-the-record meeting between the Campaign and Russian government officials or with Papadopoulos’s other Russia connections, Mifsud and Timofeev.⁴⁸⁰ Papadopoulos also interacted

⁴⁷¹ 5/21/16 Email, Papadopoulos to Manafort (2:30:14 p.m.).

⁴⁷² *Papadopoulos Statement of Offense* ¶ 19 n.2.

⁴⁷³ 6/1/16 Email, Papadopoulos to Lewandowski (3:08:18 p.m.).

⁴⁷⁴ 6/1/16 Email, Lewandowski to Papadopoulos (3:20:03 p.m.); 6/1/16 Email, Papadopoulos to Clovis (3:29:14 p.m.).

⁴⁷⁵ 6/1/16 Email, Papadopoulos to Clovis (3:29:14 p.m.). Papadopoulos’s email coincided in time with another message to Clovis suggesting a Trump-Putin meeting. First, on May 15, 2016, David Klein—a distant relative of then-Trump Organization lawyer Jason Greenblatt—emailed Clovis about a potential Campaign meeting with Berel Lazar, the Chief Rabbi of Russia. The email stated that Klein had contacted Lazar in February about a possible Trump-Putin meeting and that Lazar was “a very close confidante of Putin.” DJTFP00011547 (5/15/16 Email, Klein to Clovis (5:45:24 p.m.)). The investigation did not find evidence that Clovis responded to Klein’s email or that any further contacts of significance came out of Klein’s subsequent meeting with Greenblatt and Rabbi Lazar at Trump Tower. Klein 8/30/18 302, at 2.

⁴⁷⁶ *Papadopoulos Statement of Offense* ¶ 21(a).

⁴⁷⁷ **Grand Jury**

⁴⁷⁸ 6/19/16 Email, Papadopoulos to Lewandowski (1:11:11 p.m.).

⁴⁷⁹ 6/19/16 Email, Papadopoulos to Lewandowski (1:11:11 p.m.).

⁴⁸⁰ *Papadopoulos Statement of Offense* ¶ 21; 7/14/16 Email, Papadopoulos to Timofeev (11:57:24 p.m.); 7/15/16 Email, Papadopoulos to Mifsud; 7/27/16 Email, Papadopoulos to Mifsud (2:14:18 p.m.).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

directly with Clovis and Phares in connection with the summit of the Transatlantic Parliamentary Group on Counterterrorism (TAG), a group for which Phares was co-secretary general.⁴⁸¹ On July 16, 2016, Papadopoulos attended the TAG summit in Washington, D.C., where he sat next to Clovis (as reflected in the photograph below).⁴⁸²



George Papadopoulos (far right) and Sam Clovis (second from right)

Although Clovis claimed to have no recollection of attending the TAG summit,⁴⁸³ Papadopoulos remembered discussing Russia and a foreign policy trip with Clovis and Phares during the event.⁴⁸⁴ Papadopoulos's recollection is consistent with emails sent before and after the TAG summit. The pre-summit messages included a July 11, 2016 email in which Phares suggested meeting Papadopoulos the day after the summit to chat,⁴⁸⁵ and a July 12 message in the same chain in which Phares advised Papadopoulos that other summit attendees "are very nervous about Russia. So be aware."⁴⁸⁶ Ten days after the summit, Papadopoulos sent an email to Mifsud listing Phares and Clovis as other "participants" in a potential meeting at the London Academy of Diplomacy.⁴⁸⁷

Finally, Papadopoulos's recollection is also consistent with handwritten notes from a

⁴⁸¹ Papadopoulos 9/19/17 302, at 16-17; *9th TAG Summit in Washington DC*, Transatlantic Parliament Group on Counter Terrorism.

⁴⁸² *9th TAG Summit in Washington DC*, Transatlantic Parliament Group on Counter Terrorism.

⁴⁸³ **Grand Jury**

⁴⁸⁴ Papadopoulos 9/19/17 302, at 16-17.

⁴⁸⁵ 7/11/16 Email, Phares to Papadopoulos.

⁴⁸⁶ 7/12/16 Email, Phares to Papadopoulos (14:52:29).

⁴⁸⁷ 7/27/16 Email, Papadopoulos to Mifsud (14:14:18).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

journal that he kept at the time.⁴⁸⁸ Those notes, which are reprinted in part below, appear to refer to potential September 2016 meetings in London with representatives of the “office of Putin,” and suggest that Phares, Clovis, and Papadopoulos (“Walid/Sam me”) would attend without the official backing of the Campaign (“no official letter/no message from Trump”).⁴⁸⁹

<p>September:</p> <p>Have an exploratory meeting to or lose. In September – if allowed they will blast Mr. Trump.</p> <p>We want the meeting in London/England</p> <p>Walid/Sam me</p> <p>No official letter/no message from Trump</p> <p>They are talking to us.</p> <p>-It is a lot of risk.</p> <p>-Office of Putin.</p> <p>-Explore: we are a campaign.</p> <p>off Israel! EGYPT</p> <p>Willingness to meet the FM sp with Walid/Sam</p> <p>-FM coming</p> <p>-Useful to have a session with him.</p>	<p>September: <i>ll</i></p> <p>Have an exploratory meeting to or lose. In September – if allowed they will blast Mr. Trump.</p> <p>• he wants the meeting Walid/Sam me in London/England</p> <p>→ No official letter / no message from Trump</p> <p>• they are talking to us.</p> <p>– It is a lot of risk.</p> <p>– office of Putin.</p> <p>– Explore: we are a campaign.</p> <p>off Israel! <i>EGYPT</i></p> <p>willingness to meet the FM sp with Walid/Sam</p> <p>– FM coming</p> <p>– useful to have a session with him.</p>
---	---

Later communications indicate that Clovis determined that he (Clovis) could not travel. On August 15, 2016, Papadopoulos emailed Clovis that he had received requests from multiple foreign governments, “even Russia[,]” for “closed door workshops/consultations abroad,” and asked whether there was still interest for Clovis, Phares, and Papadopoulos “to go on that trip.”⁴⁹⁰ Clovis copied Phares on his response, which said that he could not “travel before the election” but that he “would encourage [Papadopoulos] and Walid to make the trips, if it is feasible.”⁴⁹¹

⁴⁸⁸ Papadopoulos 9/20/17 302, at 3.

⁴⁸⁹ Papadopoulos declined to assist in deciphering his notes, telling investigators that he could not read his own handwriting from the journal. Papadopoulos 9/19/17 302, at 21. The notes, however, appear to read as listed in the column to the left of the image above.

⁴⁹⁰ 8/15/16 Email, Papadopoulos to Clovis (11:59:07 a.m.).

⁴⁹¹ 8/15/16 Email, Clovis to Papadopoulos (12:01:45 p.m.).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Papadopoulos was dismissed from the Trump Campaign in early October 2016, after an interview he gave to the Russian news agency *Interfax* generated adverse publicity.⁴⁹²

f. Trump Campaign Knowledge of "Dirt"

Papadopoulos admitted telling at least one individual outside of the Campaign—specifically, the then-Greek foreign minister—about Russia's obtaining Clinton-related emails.⁴⁹³ In addition, a different foreign government informed the FBI that, 10 days after meeting with Mifsud in late April 2016, Papadopoulos suggested that the Trump Campaign had received indications from the Russian government that it could assist the Campaign through the anonymous release of information that would be damaging to Hillary Clinton.⁴⁹⁴ (This conversation occurred after the GRU spearphished Clinton Campaign chairman John Podesta and stole his emails, and the GRU hacked into the DCCC and DNC, *see* Volume I, Sections III.A & III.B, *supra*.) Such disclosures raised questions about whether Papadopoulos informed any Trump Campaign official about the emails.

When interviewed, Papadopoulos and the Campaign officials who interacted with him told the Office that they could not recall Papadopoulos's sharing the information that Russia had obtained "dirt" on candidate Clinton in the form of emails or that Russia could assist the Campaign through the anonymous release of information about Clinton. Papadopoulos stated that he could not clearly recall having told anyone on the Campaign and wavered about whether he accurately remembered an incident in which Clovis had been upset after hearing Papadopoulos tell Clovis that Papadopoulos thought "they have her emails."⁴⁹⁵ The Campaign officials who interacted or corresponded with Papadopoulos have similarly stated, with varying degrees of certainty, that he did not tell them. Senior policy advisor Stephen Miller, for example, did not remember hearing anything from Papadopoulos or Clovis about Russia having emails of or dirt on candidate Clinton.⁴⁹⁶ Clovis stated that he did not recall anyone, including Papadopoulos, having given him non-public information that a foreign government might be in possession of material damaging to Hillary Clinton.⁴⁹⁷

Grand Jury

US Grand Jury

⁴⁹² *George Papadopoulos: Sanctions Have Done Little More Than to Turn Russia Towards China*, *Interfax* (Sept. 30, 2016).

⁴⁹³ Papadopoulos 9/19/17 302, at 14-15; Def. Sent. Mem., *United States v. George Papadopoulos*, 1:17-cr-182 (D.D.C. Aug. 31, 2018), Doc. 45.

⁴⁹⁴ *See* footnote 465 of Volume I, Section IV.A.2.d, *supra*.

⁴⁹⁵ Papadopoulos 8/10/17 302, at 5; Papadopoulos 8/11/17 302, at 5; Papadopoulos 9/20/17 302, at 2.

⁴⁹⁶ S. Miller 12/14/17 302, at 10.

⁴⁹⁷ Grand Jury

⁴⁹⁸ Grand Jury

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Grand Jury

⁴⁹⁹ No documentary evidence, and nothing in the email accounts or other communications facilities reviewed by the Office, shows that Papadopoulos shared this information with the Campaign.

g. Additional George Papadopoulos Contact

The Office investigated another Russia-related contact with Papadopoulos. The Office was not fully able to explore the contact because the individual at issue—Sergei Millian—remained out of the country since the inception of our investigation and declined to meet with members of the Office despite our repeated efforts to obtain an interview.

Papadopoulos first connected with Millian via LinkedIn on July 15, 2016, shortly after Papadopoulos had attended the TAG Summit with Clovis.⁵⁰⁰ Millian, an American citizen who is a native of Belarus, introduced himself “as president of [the] New York-based Russian American Chamber of Commerce,” and claimed that through that position he had “insider knowledge and direct access to the top hierarchy in Russian politics.”⁵⁰¹ Papadopoulos asked Timofeev whether he had heard of Millian.⁵⁰² Although Timofeev said no,⁵⁰³ Papadopoulos met Millian in New York City.⁵⁰⁴ The meetings took place on July 30 and August 1, 2016.⁵⁰⁵ Afterwards, Millian invited Papadopoulos to attend—and potentially speak at—two international energy conferences, including one that was to be held in Moscow in September 2016.⁵⁰⁶ Papadopoulos ultimately did not attend either conference.

On July 31, 2016, following his first in-person meeting with Millian, Papadopoulos emailed Trump Campaign official Bo Denysyk to say that he had been contacted “by some leaders of Russian-American voters here in the US about their interest in voting for Mr. Trump,” and to ask whether he should “put you in touch with their group (US-Russia chamber of commerce).”⁵⁰⁷ Denysyk thanked Papadopoulos “for taking the initiative,” but asked him to “hold off with

⁴⁹⁹ **Grand Jury**⁵⁰⁰ 7/15/16 LinkedIn Message, Millian to Papadopoulos.⁵⁰¹ 7/15/16 LinkedIn Message, Millian to Papadopoulos.⁵⁰² 7/22/16 Facebook Message, Papadopoulos to Timofeev (7:40:23 p.m.); 7/26/16 Facebook Message, Papadopoulos to Timofeev (3:08:57 p.m.).⁵⁰³ 7/23/16 Facebook Message, Timofeev to Papadopoulos (4:31:37 a.m.); 7/26/16 Facebook Message, Timofeev to Papadopoulos (3:37:16 p.m.).⁵⁰⁴ 7/16/16 Text Messages, Papadopoulos & Millian (7:55:43 p.m.).⁵⁰⁵ 7/30/16 Text Messages, Papadopoulos & Millian (5:38 & 6:05 p.m.); 7/31/16 Text Messages, Millian & Papadopoulos (3:48 & 4:18 p.m.); 8/1/16 Text Message, Millian to Papadopoulos (8:19 p.m.).⁵⁰⁶ 8/2/16 Text Messages, Millian & Papadopoulos (3:04 & 3:05 p.m.); 8/3/16 Facebook Messages, Papadopoulos & Millian (4:07:37 a.m. & 1:11:58 p.m.).⁵⁰⁷ 7/31/16 Email, Papadopoulos to Denysyk (12:29:59 p.m.).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

outreach to Russian-Americans” because “too many articles” had already portrayed the Campaign, then-campaign chairman Paul Manafort, and candidate Trump as “being pro-Russian.”⁵⁰⁸

On August 23, 2016, Millian sent a Facebook message to Papadopoulos promising that he would “share with you a disruptive technology that might be instrumental in your political work for the campaign.”⁵⁰⁹ Papadopoulos claimed to have no recollection of this matter.⁵¹⁰

On November 9, 2016, shortly after the election, Papadopoulos arranged to meet Millian in Chicago to discuss business opportunities, including potential work with Russian “billionaires who are not under sanctions.”⁵¹¹ The meeting took place on November 14, 2016, at the Trump Hotel and Tower in Chicago.⁵¹² According to Papadopoulos, the two men discussed partnering on business deals, but Papadopoulos perceived that Millian’s attitude toward him changed when Papadopoulos stated that he was only pursuing private-sector opportunities and was not interested in a job in the Administration.⁵¹³ The two remained in contact, however, and had extended online discussions about possible business opportunities in Russia.⁵¹⁴ The two also arranged to meet at a Washington, D.C. bar when both attended Trump’s inauguration in late January 2017.⁵¹⁵

3. Carter Page

Carter Page worked for the Trump Campaign from January 2016 to September 2016. He was formally and publicly announced as a foreign policy advisor by the candidate in March 2016.⁵¹⁶ Page had lived and worked in Russia, and he had been approached by Russian intelligence officers several years before he volunteered for the Trump Campaign. During his time with the Campaign, Page advocated pro-Russia foreign policy positions and traveled to Moscow in his personal capacity. Russian intelligence officials had formed relationships with Page in 2008 and 2013 and Russian officials may have focused on Page in 2016 because of his affiliation with the Campaign. However, the investigation did not establish that Page coordinated with the Russian government in its efforts to interfere with the 2016 presidential election.

⁵⁰⁸ 7/31/16 Email, Denysyk to Papadopoulos (21:54:52).

⁵⁰⁹ 8/23/16 Facebook Message, Millian to Papadopoulos (2:55:36 a.m.).

⁵¹⁰ Papadopoulos 9/20/17 302, at 2.

⁵¹¹ 11/10/16 Facebook Message, Millian to Papadopoulos (9:35:05 p.m.).

⁵¹² 11/14/16 Facebook Message, Millian to Papadopoulos (1:32:11 a.m.).

⁵¹³ Papadopoulos 9/19/17 302, at 19.

⁵¹⁴ *E.g.*, 11/29/16 Facebook Messages, Papadopoulos & Millian (5:09 - 5:11 p.m.); 12/7/16 Facebook Message, Millian to Papadopoulos (5:10:54 p.m.).

⁵¹⁵ 1/20/17 Facebook Messages, Papadopoulos & Millian (4:37-4:39 a.m.).

⁵¹⁶ Page was interviewed by the FBI during five meetings in March 2017, before the Special Counsel’s appointment. [REDACTED]

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~**a. Background**

Before he began working for the Campaign in January 2016, Page had substantial prior experience studying Russian policy issues and living and working in Moscow. From 2004 to 2007, Page was the deputy branch manager of Merrill Lynch's Moscow office.⁵¹⁷ There, he worked on transactions involving the Russian energy company Gazprom and came to know Gazprom's deputy chief financial officer, Sergey Yatsenko.⁵¹⁸

In 2008, Page founded Global Energy Capital LLC (GEC), an investment management and advisory firm focused on the energy sector in emerging markets.⁵¹⁹ ~~Grand Jury~~
~~_____~~⁵²⁰ The company otherwise had no sources of income, and Page was forced to draw down his life savings to support himself and pursue his business venture.⁵²¹ Page asked Yatsenko to work with him at GEC as a senior advisor on a contingency basis, ~~Grand Jury~~
~~_____~~⁵²²

In 2008, Page met Alexander Bulatov, a Russian government official who worked at the Russian Consulate in New York.⁵²³ Page later learned that Bulatov was a Russian intelligence officer, ~~Grand Jury~~
~~_____~~⁵²⁴

In 2013, Victor Podobnyy, another Russian intelligence officer working covertly in the United States under diplomatic cover, formed a relationship with Page.⁵²⁵ Podobnyy met Page at an energy symposium in New York City and began exchanging emails with him.⁵²⁶ Podobnyy and Page also met in person on multiple occasions, during which Page offered his outlook on the future of the energy industry and provided documents to Podobnyy about the energy business.⁵²⁷ In a recorded conversation on April 8, 2013, Podobnyy told another intelligence officer that Page was interested in business opportunities in Russia.⁵²⁸ In Podobnyy's words, Page "got hooked on

⁵¹⁷ *Testimony of Carter Page, Hearing Before the U.S. House of Representatives, Permanent Select Committee on Intelligence*, 115th Cong. 40 (Nov. 2, 2017) (exhibit).

⁵¹⁸ Page 3/30/17 302, at 10.

⁵¹⁹ ~~Grand Jury~~
~~_____~~

⁵²⁰ ~~Grand Jury~~
~~_____~~

⁵²¹ ~~Grand Jury~~
~~_____~~

⁵²² Page 3/30/17 302, at 10; ~~Grand Jury~~
~~_____~~

⁵²³ ~~Grand Jury~~
~~_____~~

⁵²⁴ ~~Grand Jury~~
~~_____~~

⁵²⁵ ~~Grand Jury~~
~~_____~~ Complaint ¶¶ 22, 24, 32, *United States v. Buryakov*, 1:15-mj-215 (S.D.N.Y. Jan. 23, 2015), Doc. 1 ("Buryakov Complaint").

⁵²⁶ *Buryakov* Complaint ¶ 34.

⁵²⁷ *Buryakov* Complaint ¶ 34.

⁵²⁸ *Buryakov* Complaint ¶ 32.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Gazprom thinking that if they have a project, he could . . . rise up. Maybe he can. . . . [I]t's obvious that he wants to earn lots of money."⁵²⁹ Podobnyy said that he had led Page on by "feed[ing] him empty promises" that Podobnyy would use his Russian business connections to help Page.⁵³⁰ Podobnyy told the other intelligence officer that his method of recruiting foreign sources was to promise them favors and then discard them once he obtained relevant information from them.⁵³¹

In 2015, Podobnyy and two other Russian intelligence officers were charged with conspiracy to act as an unregistered agent of a foreign government.⁵³² The criminal complaint detailed Podobnyy's interactions with and conversations about Page, who was identified only as "Male-1."⁵³³ Based on the criminal complaint's description of the interactions, Page was aware that he was the individual described as "Male-1."⁵³⁴ Page later spoke with a Russian government official at the United Nations General Assembly and identified himself so that the official would understand he was "Male-1" from the Podobnyy complaint.⁵³⁵ Page told the official that he "didn't do anything" [REDACTED].⁵³⁶

In interviews with the FBI before the Office's opening, Page acknowledged that he understood that the individuals he had associated with were members of the Russian intelligence services, but he stated that he had only provided immaterial non-public information to them and that he did not view this relationship as a backchannel.⁵³⁷ Page told investigating agents that "the more immaterial non-public information I give them, the better for this country."⁵³⁸

b. Origins of and Early Campaign Work

In January 2016, Page began volunteering on an informal, unpaid basis for the Trump Campaign after Ed Cox, a state Republican Party official, introduced Page to Trump Campaign officials.⁵³⁹ Page told the Office that his goal in working on the Campaign was to help candidate Trump improve relations with Russia.⁵⁴⁰ To that end, Page emailed Campaign officials offering his thoughts on U.S.-Russia relations, prepared talking points and briefing memos on Russia, and

⁵²⁹ Buryakov Complaint.

⁵³⁰ Buryakov Complaint.

⁵³¹ Buryakov Complaint.

⁵³² See Buryakov Complaint; see also Indictment, *United States v. Buryakov*, 1:15-cr-73 (S.D.N.Y. Feb. 9, 2015), Doc. 10; [REDACTED]

⁵³³ Buryakov Complaint ¶¶ 32-34; [REDACTED]

⁵³⁴ [REDACTED]

⁵³⁵ Page 3/16/17 302, at 4; [REDACTED]

⁵³⁶ Page 3/16/17 302, at 4; [REDACTED]

⁵³⁷ Page 3/30/17 302, at 6; Page 3/31/17 302, at 1.

⁵³⁸ Page 3/31/17 302, at 1.

⁵³⁹ Page 3/16/17 302, at 1; [REDACTED]

⁵⁴⁰ Page 3/10/17 302, at 2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

proposed that candidate Trump meet with President Vladimir Putin in Moscow.⁵⁴¹

In communications with Campaign officials, Page also repeatedly touted his high-level contacts in Russia and his ability to forge connections between candidate Trump and senior Russian governmental officials. For example, on January 30, 2016, Page sent an email to senior Campaign officials stating that he had “spent the past week in Europe and ha[d] been in discussions with some individuals with close ties to the Kremlin” who recognized that Trump could have a “game-changing effect . . . in bringing the end of the new Cold War.”⁵⁴² The email stated that “[t]hrough [his] discussions with these high level contacts,” Page believed that “a direct meeting in Moscow between Mr[.] Trump and Putin could be arranged.”⁵⁴³ Page closed the email by criticizing U.S. sanctions on Russia.⁵⁴⁴ [REDACTED]

545

On March 21, 2016, candidate Trump formally and publicly identified Page as a member of his foreign policy team to advise on Russia and the energy sector.⁵⁴⁶ Over the next several months, Page continued providing policy-related work product to Campaign officials. For example, in April 2016, Page provided feedback on an outline for a foreign policy speech that the candidate gave at the Mayflower Hotel,⁵⁴⁷ *see* Volume I, Section IV.A.4, *infra*. In May 2016, Page prepared an outline of an energy policy speech for the Campaign and then traveled to Bismarck, North Dakota, to watch the candidate deliver the speech.⁵⁴⁸ Chief policy advisor Sam Clovis expressed appreciation for Page’s work and praised his work to other Campaign officials.⁵⁴⁹

c. Carter Page’s July 2016 Trip To Moscow

Page’s affiliation with the Trump Campaign took on a higher profile and drew the attention of Russian officials after the candidate named him a foreign policy advisor. As a result, in late April 2016, Page was invited to give a speech at the July 2016 commencement ceremony at the

⁵⁴¹ *See, e.g.*, 1/30/16 Email, Page to Glassner et al.; 3/17/16 Email, Page to Clovis (attaching a “President’s Daily Brief” prepared by Page that discussed the “severe degradation of U.S.-Russia relations following Washington’s meddling” in Ukraine); [REDACTED]

⁵⁴² 1/30/16 Email, Page to Glassner et al.

⁵⁴³ 1/30/16 Email, Page to Glassner et al.

⁵⁴⁴ 1/30/16 Email, Page to Glassner et al.

⁵⁴⁵ [REDACTED]

⁵⁴⁶ *A Transcript of Donald Trump’s Meeting with the Washington Post Editorial Board*, Washington Post (Mar. 21, 2016); [REDACTED]

⁵⁴⁷ [REDACTED]

⁵⁴⁸ [REDACTED]

⁵⁴⁹ *See, e.g.*, 3/28/16 Email, Clovis to Lewandowski et al. (forwarding notes prepared by Page and stating, “I wanted to let you know the type of work some of our advisors are capable of.”).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

New Economic School (NES) in Moscow.⁵⁵⁰ The NES commencement ceremony generally featured high-profile speakers; for example, President Barack Obama delivered a commencement address at the school in 2009.⁵⁵¹ NES officials told the Office that the interest in inviting Page to speak at NES was based entirely on his status as a Trump Campaign advisor who served as the candidate's Russia expert.⁵⁵² Andrej Krickovic, an associate of Page's and assistant professor at the Higher School of Economics in Russia, recommended that NES rector Shlomo Weber invite Page to give the commencement address based on his connection to the Trump Campaign.⁵⁵³ Denis Klimentov, an employee of NES, said that when Russians learned of Page's involvement in the Trump Campaign in March 2016, the excitement was palpable.⁵⁵⁴ Weber recalled that in summer 2016 there was substantial interest in the Trump Campaign in Moscow, and he felt that bringing a member of the Campaign to the school would be beneficial.⁵⁵⁵

Page was eager to accept the invitation to speak at NES, and he sought approval from Trump Campaign officials to make the trip to Russia.⁵⁵⁶ On May 16, 2016, while that request was still under consideration, Page emailed Clovis, J.D. Gordon, and Walid Phares and suggested that candidate Trump take his place speaking at the commencement ceremony in Moscow.⁵⁵⁷ On June 19, 2016, Page followed up again to request approval to speak at the NES event and to reiterate that NES "would love to have Mr. Trump speak at this annual celebration" in Page's place.⁵⁵⁸ Campaign manager Corey Lewandowski responded the same day, saying, "If you want to do this, it would be out side [sic] of your role with the DJT for President campaign. I am certain Mr. Trump will not be able to attend."⁵⁵⁹

In early July 2016, Page traveled to Russia for the NES events. On July 5, 2016, Denis Klimentov, copying his brother, Dmitri Klimentov,⁵⁶⁰ emailed Maria Zakharova, the Director of the Russian Ministry of Foreign Affairs' Information and Press Department, about Page's visit and his connection to the Trump Campaign.⁵⁶¹ Denis Klimentov said in the email that he wanted to draw the Russian government's attention to Page's visit in Moscow.⁵⁶² His message to Zakharova

⁵⁵⁰ Page 3/16/17 302, at 2-3; Page 3/10/17 302, at 3.

⁵⁵¹ S. Weber 7/28/17 302, at 3.

⁵⁵² Y. Weber 6/1/17 302, at 4-5; S. Weber 7/28/17 302, at 3.

⁵⁵³ See Y. Weber 6/1/17 302, at 4; S. Weber 7/28/17 302, at 3.

⁵⁵⁴ De. Klimentov 6/9/17 302, at 2.

⁵⁵⁵ S. Weber 7/28/17 302, at 3.

⁵⁵⁶ See 5/16/16 Email, Page to Phares et al. (referring to submission of a "campaign advisor request form").

⁵⁵⁷ Grand Jury [REDACTED]; 5/16/16 Email, Page to Phares et al.

⁵⁵⁸ 6/19/16 Email, Page to Gordon et al.

⁵⁵⁹ 6/19/16 Email, Lewandowski to Page et al.

⁵⁶⁰ Dmitri Klimentov is a New York-based public relations consultant.

⁵⁶¹ 7/5/16 Email, Klimentov to Zakharova (translated).

⁵⁶² 7/5/16 Email, Klimentov to Zakharova (translated).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

continued: “Page is Trump’s adviser on foreign policy. He is a known businessman; he used to work in Russia. . . . If you have any questions, I will be happy to help contact him.”⁵⁶³ Dmitri Klimentov then contacted Russian Press Secretary Dmitry Peskov about Page’s visit to see if Peskov wanted to introduce Page to any Russian government officials.⁵⁶⁴ The following day, Peskov responded to what appears to have been the same Denis Klimentov-Zakharova email thread. Peskov wrote, “I have read about [Page]. Specialists say that he is far from being the main one. So I better not initiate a meeting in the Kremlin.”⁵⁶⁵

On July 7, 2016, Page delivered the first of his two speeches in Moscow at NES.⁵⁶⁶ In the speech, Page criticized the U.S. government’s foreign policy toward Russia, stating that “Washington and other Western capitals have impeded potential progress through their often hypocritical focus on ideas such as democratization, inequality, corruption and regime change.”⁵⁶⁷ On July 8, 2016, Page delivered a speech during the NES commencement.⁵⁶⁸ After Page delivered his commencement address, Russian Deputy Prime Minister and NES board member Arkady Dvorkovich spoke at the ceremony and stated that the sanctions the United States had imposed on Russia had hurt the NES.⁵⁶⁹ Page and Dvorkovich shook hands at the commencement ceremony, and Weber recalled that Dvorkovich made statements to Page about working together in the future.⁵⁷⁰

Page said that, during his time in Moscow, he met with friends and associates he knew from when he lived in Russia, including Andrey Baranov, a former Gazprom employee who had become the head of investor relations at Rosneft, a Russian energy company.⁵⁷² Page stated that he and Baranov talked about “immaterial non-public” information.⁵⁷³ Page believed he and Baranov discussed Rosneft president Igor Sechin, and he thought Baranov might have mentioned

⁵⁶³ 7/5/16 Email, Klimentov to Zakharova (translated).

⁵⁶⁴ Dm. Klimentov 11/27/18 302, at 1-2.

⁵⁶⁵ 7/6/16 Email, Peskov to Klimentov (translated).

⁵⁶⁶ Page 3/10/17 302, at 3.

⁵⁶⁷ See Carter W. Page, *The Lecture of Trump’s Advisor Carter Page in Moscow*, YouTube Channel Katchon Think Tank, Posted July 7, 2016, available at https://www.youtube.com/watch?time_continue=28&v=1CYF29saA9w. Page also provided the FBI with a copy of his speech and slides from the speech. See Carter Page, “The Evolution of the World Economy: Trends and Potential,” Speech at National Economic Speech (July 7, 2016).

⁵⁶⁸ Page 3/10/17 302, at 3.

⁵⁶⁹ Page 3/16/17 302, at 3.

⁵⁷⁰ S. Weber 7/28/17 302, at 4.

⁵⁷¹ and July

⁵⁷² Page 3/10/17 302, at 3; Page 3/30/17 302, at 3; Page 3/31/17 302, at 2.

⁵⁷³ Page 3/30/17 302, at 3.

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

the possibility of a sale of a stake in Rosneft in passing.⁵⁷⁴ Page recalled mentioning his involvement in the Trump Campaign with Baranov, although he did not remember details of the conversation.⁵⁷⁵ Page also met with individuals from Tatneft, a Russian energy company, to discuss possible business deals, including having Page work as a consultant.⁵⁷⁶

On July 8, 2016, while he was in Moscow, Page emailed several Campaign officials and stated he would send “a readout soon regarding some incredible insights and outreach I’ve received from a few Russian legislators and senior members of the Presidential Administration here.”⁵⁷⁷ On July 9, 2016, Page emailed Clovis, writing in pertinent part:

Russian Deputy Prime minister and NES board member Arkady Dvorkovich also spoke before the event. In a private conversation, Dvorkovich expressed strong support for Mr. Trump and a desire to work together toward devising better solutions in response to the vast range of current international problems. Based on feedback from a diverse array of other sources close to the Presidential Administration, it was readily apparent that this sentiment is widely held at all levels of government.⁵⁷⁸

Despite these representations to the Campaign, Grand Jury

Grand Jury 579
Grand Jury 580 Grand Jury
581 Grand Jury

⁸² The Office was unable to obtain additional evidence or testimony about who Page may have met or communicated with in Moscow; thus, Page’s activities in Russia—as described in his emails with the Campaign—were not fully explained.

⁵⁷⁴ Page 3/30/17 302, at 9. Grand Jury

⁵⁷⁵ Grand Jury Page 3/30/17 302, at 3.

⁵⁷⁶ Page 3/10/17 302, at 3; Page 3/30/17 302, at 7; Page 3/31/17 302, at 2.

⁵⁷⁷ Grand Jury 7/8/16 Email, Page to Dahl & Gordon.

⁵⁷⁸ Grand Jury 7/9/16 Email, Page to Clovis.

⁵⁷⁹ Grand Jury

⁵⁸⁰ Grand Jury

⁵⁸¹ Grand Jury

⁵⁸² Grand Jury

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

d. Later Campaign Work and Removal from the Campaign

In July 2016, after returning from Russia, Page traveled to the Republican National Convention in Cleveland.⁵⁸³ While there, Page met Russian Ambassador to the United States Sergey Kislyak; that interaction is described in Volume I, Section IV.A.6.a, *infra*.⁵⁸⁴ Page later emailed Campaign officials with feedback he said he received from ambassadors he had met at the Convention, and he wrote that Ambassador Kislyak was very worried about candidate Clinton's world views.⁵⁸⁵ Grand Jury [REDACTED]

[REDACTED]⁵⁸⁶

Following the Convention, Page's trip to Moscow and his advocacy for pro-Russia foreign policy drew the media's attention and began to generate substantial press coverage. The Campaign responded by distancing itself from Page, describing him as an "informal foreign policy advisor" who did "not speak for Mr. Trump or the campaign."⁵⁸⁷ On September 23, 2016, Yahoo! News reported that U.S. intelligence officials were investigating whether Page had opened private communications with senior Russian officials to discuss U.S. sanctions policy under a possible Trump Administration.⁵⁸⁸ A Campaign spokesman told Yahoo! News that Page had "no role" in the Campaign and that the Campaign was "not aware of any of his activities, past or present."⁵⁸⁹ On September 24, 2016, Page was formally removed from the Campaign.⁵⁹⁰

Although Page had been removed from the Campaign, after the election he sought a position in the Trump Administration.⁵⁹¹ On November 14, 2016, he submitted an application to the Transition Team that inflated his credentials and experiences, stating that in his capacity as a Trump Campaign foreign policy advisor he had met with "top world leaders" and "effectively

⁵⁸³ Page 3/10/17 302, at 4; Page 3/16/17 302, at 3.

⁵⁸⁴ Page 3/10/17 302, at 4; Page 3/16/17 302, at 3.

⁵⁸⁵ Grand Jury [REDACTED]; 7/23/16 Email, Page to Clovis; 7/25/16 Email, Page to Gordon & Schmitz.

⁵⁸⁶ Grand Jury [REDACTED]

⁵⁸⁷ See, e.g., Steven Mufson & Tom Hamburger, *Trump Advisor's Public Comments, Ties to Moscow Stir Unease in Both Parties*, Washington Post (Aug. 5, 2016).

⁵⁸⁸ Michael Isikoff, *U.S. Intel Officials Probe Ties Between Trump Adviser and Kremlin*, Yahoo! News (Sept. 23, 2016).

⁵⁸⁹ Michael Isikoff, *U.S. Intel Officials Probe Ties Between Trump Adviser and Kremlin*, Yahoo! News (Sept. 23, 2016); see also 9/25/16 Email, Hicks to Conway & Bannon (instructing that inquiries about Page should be answered with "[h]e was announced as an informal adviser in March. Since then he has had no role or official contact with the campaign. We have no knowledge of activities past or present and he now officially has been removed from all lists etc.").

⁵⁹⁰ Page 3/16/17 302, at 2; see, e.g., 9/23/16 Email, J. Miller to Bannon & S. Miller (discussing plans to remove Page from the campaign).

⁵⁹¹ Grand Jury [REDACTED], "Transition Online Form," 11/14/16 (Grand Jury [REDACTED])

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

responded to diplomatic outreach efforts from senior government officials in Asia, Europe, the Middle East, Africa, [and] the Americas.”⁵⁹² Page received no response from the Transition Team. When Page took a personal trip to Moscow in December 2016, he met again with at least one Russian government official. That interaction and a discussion of the December trip are set forth in Volume I, Section IV.B.6, *infra*.

4. Dimitri Simes and the Center for the National Interest

Members of the Trump Campaign interacted on several occasions with the Center for the National Interest (CNI), principally through its President and Chief Executive Officer, Dimitri Simes. CNI is a think tank with expertise in and connections to the Russian government. Simes was born in the former Soviet Union and immigrated to the United States in the 1970s. In April 2016, candidate Trump delivered his first speech on foreign policy and national security at an event hosted by the *National Interest*, a publication affiliated with CNI. Then-Senator Jeff Sessions and Russian Ambassador Kislyak both attended the event and, as a result, it gained some attention in relation to Sessions’s confirmation hearings to become Attorney General. Sessions had various other contacts with CNI during the campaign period on foreign-policy matters, including Russia. Jared Kushner also interacted with Simes about Russian issues during the campaign. The investigation did not identify evidence that the Campaign passed or received any messages to or from the Russian government through CNI or Simes.

a. CNI and Dimitri Simes Connect with the Trump Campaign

CNI is a Washington-based non-profit organization that grew out of a center founded by former President Richard Nixon.⁵⁹³ CNI describes itself “as a voice for strategic realism in U.S. foreign policy,” and publishes a bi-monthly foreign policy magazine, the *National Interest*.⁵⁹⁴ CNI is overseen by a board of directors and an advisory council that is largely honorary and whose members at the relevant time included Sessions, who served as an advisor to candidate Trump on national security and foreign policy issues.⁵⁹⁵

Dimitri Simes is president and CEO of CNI and the publisher and CEO of the *National Interest*.⁵⁹⁶ Simes was born in the former Soviet Union, emigrated to the United States in the early 1970s, and joined CNI’s predecessor after working at the Carnegie Endowment for International

⁵⁹² Grand Jury [REDACTED], “Transition Online Form,” 11/14/16
Grand Jury [REDACTED]

⁵⁹³ Simes 3/8/18 302, at 1-2.

⁵⁹⁴ *About the Center*, CNI, available at <https://cftni.org/about/>.

⁵⁹⁵ *Advisory Counsel*, CNI, available at <https://web.archive.org/web/20161030025331/http://cftni.org/about/advisory-council/>; Simes 3/8/18 302, at 3-4; Saunders 2/15/18 302, at 4; Sessions 1/17/18 302, at 16.

⁵⁹⁶ Simes 3/8/18 302, at 2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Peace.⁵⁹⁷ Simes personally has many contacts with current and former Russian government officials,⁵⁹⁸ as does CNI collectively. As CNI stated when seeking a grant from the Carnegie Corporation in 2015, CNI has “unparalleled access to Russian officials and politicians among Washington think tanks,”⁵⁹⁹ in part because CNI has arranged for U.S. delegations to visit Russia and for Russian delegations to visit the United States as part of so-called “Track II” diplomatic efforts.⁶⁰⁰

On March 14, 2016, CNI board member Richard Plepler organized a luncheon for CNI and its honorary chairman, Henry Kissinger, at the Time Warner Building in New York.⁶⁰¹ The idea behind the event was to generate interest in CNI’s work and recruit new board members for CNI.⁶⁰² Along with Simes, attendees at the event included Jared Kushner, son-in-law of candidate Trump.⁶⁰³ Kushner told the Office that the event came at a time when the Trump Campaign was having trouble securing support from experienced foreign policy professionals and that, as a result, he decided to seek Simes’s assistance during the March 14 event.⁶⁰⁴

Simes and Kushner spoke again on a March 24, 2016 telephone call,⁶⁰⁵ three days after Trump had publicly named the team of foreign policy advisors that had been put together on short notice.⁶⁰⁶ On March 31, 2016, Simes and Kushner had an in-person, one-on-one meeting in Kushner’s New York office.⁶⁰⁷ During that meeting, Simes told Kushner that the best way to handle foreign-policy issues for the Trump Campaign would be to organize an advisory group of experts to meet with candidate Trump and develop a foreign policy approach that was consistent with Trump’s voice.⁶⁰⁸ Simes believed that Kushner was receptive to that suggestion.⁶⁰⁹

Simes also had contact with other individuals associated with the Trump Campaign regarding the Campaign’s foreign policy positions. For example, on June 17, 2016, Simes sent J.D. Gordon an email with a “memo to Senator Sessions that we discussed at our recent meeting”

⁵⁹⁷ Simes 3/8/18 302, at 1-2; Simes 3/27/18 302, at 19.

⁵⁹⁸ Simes 3/27/18 302, at 10-15.

⁵⁹⁹ C00011656 (*Rethinking U.S.-Russia Relations*, CNI (Apr. 18, 2015)).

⁶⁰⁰ Simes 3/8/18 302, at 5; Saunders 2/15/18 302, at 29-30; Zakheim 1/25/18 302, at 3.

⁶⁰¹ Simes 3/8/18 302, at 6; C00006784 (3/11/16 Email, Gilbride to Saunders (3:43:12 p.m.); cf. Zakheim 1/25/18 302, at 1 (Kissinger was CNI’s “Honorary Chairman of the Board”); Boyd 1/24/18 302, at 2; P. Sanders 2/15/18 302, at 5.

⁶⁰² Simes 3/8/18 302, at 5-6; Simes 3/27/18 302, at 2.

⁶⁰³ Simes 3/8/18 302, at 6; Kushner 4/11/18 302 at 2.

⁶⁰⁴ Kushner 4/11/18 302, at 2.

⁶⁰⁵ Simes 3/8/18 302, at 6-7.

⁶⁰⁶ [REDACTED] *see* Volume I, Section IV.A.2, *supra*.

⁶⁰⁷ Simes 3/8/18 302, at 7-9.

⁶⁰⁸ Simes 3/8/18 302, at 7-8.

⁶⁰⁹ Simes 3/8/18 302, at 8; *see also* Boyd 1/24/18 302, at 2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

and asked Gordon to both read it and share it with Sessions. The memorandum proposed building a “small and carefully selected group of experts” to assist Sessions with the Campaign, operating under the assumption “that Hillary Clinton is very vulnerable on national security and foreign policy issues.” The memorandum outlined key issues for the Campaign, including a “new beginning with Russia.”⁶¹⁰

b. National Interest Hosts a Foreign Policy Speech at the Mayflower Hotel

During both their March 24 phone call and their March 31 in-person meeting, Simes and Kushner discussed the possibility of CNI hosting a foreign policy speech by candidate Trump.⁶¹¹ Following those conversations, Simes agreed that he and others associated with CNI would provide behind-the-scenes input on the substance of the foreign-policy speech and that CNI officials would coordinate the logistics of the speech with Sessions and his staff, including Sessions’s chief of staff, Rick Dearborn.⁶¹²

In mid-April 2016, Kushner put Simes in contact with senior policy advisor Stephen Miller and forwarded to Simes an outline of the foreign-policy speech that Miller had prepared.⁶¹³ Simes sent back to the Campaign bullet points with ideas for the speech that he had drafted with CNI Executive Director Paul Saunders and board member Richard Burt.⁶¹⁴ Simes received subsequent draft outlines from Miller, and he and Saunders spoke to Miller by phone about substantive changes to the speech.⁶¹⁵ It is not clear, however, whether CNI officials received an actual draft of the speech for comment; while Saunders recalled having received an actual draft, Simes did not, and the emails that CNI produced to this Office do not contain such a draft.⁶¹⁶

After board members expressed concern to Simes that CNI’s hosting the speech could be perceived as an endorsement of a particular candidate, CNI decided to have its publication, the *National Interest*, serve as the host and to have the event at the National Press Club.⁶¹⁷ Kushner later requested that the event be moved to the Mayflower Hotel, which was another venue that Simes had mentioned during initial discussions with the Campaign, in order to address concerns about security and capacity.⁶¹⁸

⁶¹⁰ C00008187 (6/17/16 Email, Simes to Gordon (3:35:45 p.m.)).

⁶¹¹ Simes 3/8/18 302, at 7.

⁶¹² Simes 3/8/18 302, at 8-11; C00008923 (4/6/16 Email, Simes to Burt (2:22:28 p.m.)); Burt 2/9/18 302, at 7.

⁶¹³ C00008551 (4/17/16 Email, Kushner to Simes (2:44:25 p.m.)); C00006759 (4/14/16 Email Kushner to Simes & S. Miller (12:30 p.m.)).

⁶¹⁴ Burt 2/9/18 302, at 7; Saunders 2/15/18 302, at 7-8.

⁶¹⁵ Simes 3/8/18 302, at 13; Saunders 2/15/18 302, at 7-8.

⁶¹⁶ Simes 3/8/18 302, at 13; Saunders 2/15/18 302, at 7-8.

⁶¹⁷ Saunders 2/15/18 302, at 8; Simes 3/8/18 302, at 12; C00003834-43 (4/22/16 Email, Simes to Boyd et al. (8:47 a.m.)).

⁶¹⁸ Simes 3/8/18 302, at 12, 18; Saunders 2/15/18 302, at 11.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

On April 25, 2016, Saunders booked event rooms at the Mayflower to host both the speech and a VIP reception that was to be held beforehand.⁶¹⁹ Saunders understood that the reception—at which invitees would have the chance to meet candidate Trump—would be a small event.⁶²⁰ Saunders decided who would attend by looking at the list of CNI’s invitees to the speech itself and then choosing a subset for the reception.⁶²¹ CNI’s invitees to the reception included Sessions and Kislyak.⁶²² The week before the speech Simes had informed Kislyak that he would be invited to the speech, and that he would have the opportunity to meet Trump.⁶²³

When the pre-speech reception began on April 27, a receiving line was quickly organized so that attendees could meet Trump.⁶²⁴ Sessions first stood next to Trump to introduce him to the members of Congress who were in attendance.⁶²⁵ After those members had been introduced, Simes stood next to Trump and introduced him to the CNI invitees in attendance, including Kislyak.⁶²⁶ Simes perceived the introduction to be positive and friendly, but thought it clear that Kislyak and Trump had just met for the first time.⁶²⁷ Kislyak also met Kushner during the pre-speech reception. The two shook hands and chatted for a minute or two, during which Kushner recalled Kislyak saying, “we like what your candidate is saying . . . it’s refreshing.”⁶²⁸

Several public reports state that, in addition to speaking to Kushner at the pre-speech reception, Kislyak also met or conversed with Sessions at that time.⁶²⁹ Sessions stated to investigators, however, that he did not remember any such conversation.⁶³⁰ Nor did anyone else affiliated with CNI or the *National Interest* specifically recall a conversation or meeting between Sessions and Kislyak at the pre-speech reception.⁶³¹ It appears that, if a conversation occurred at the pre-speech reception, it was a brief one conducted in public view, similar to the exchange between Kushner and Kislyak.

⁶¹⁹ Saunders 2/15/18 302, at 11-12; C00006651-57 (Mayflower Group Sales Agreement).

⁶²⁰ Saunders 2/15/18 302, at 12-13.

⁶²¹ Saunders 2/15/18 302, at 12.

⁶²² C00002575 (Attendee List); C00008536 (4/25/16 Email, Simes to Kushner (4:53:45 p.m.)).

⁶²³ Simes 3/8/18 302, at 19-20.

⁶²⁴ Simes 3/8/18 302, at 21.

⁶²⁵ Simes 3/8/18 302, at 21.

⁶²⁶ Simes 3/8/18 302, at 21.

⁶²⁷ Simes 3/8/18 302, at 21.

⁶²⁸ Kushner 4/11/18 302, at 4.

⁶²⁹ See, e.g., Ken Dilanian, *Did Trump, Kushner, Sessions Have an Undisclosed Meeting With Russian?*, NBC News (June 1, 2016); Julia Ioffe, *Why Did Jeff Sessions Really Meet With Sergey Kislyak*, The Atlantic (June 13, 2017).

⁶³⁰ Sessions 1/17/18 302, at 22.

⁶³¹ Simes 3/8/18 302, at 21; Saunders 2/15/18 302, at 14, 21; Boyd 1/24/18 302, at 3-4; Heilbrunn 2/1/18 302, at 6; *Statement Regarding President Trump’s April 27, 2016 Foreign Policy Speech at the Center for the National Interest*, CNI (Mar. 8, 2017).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

The Office found no evidence that Kislyak conversed with either Trump or Sessions after the speech, or would have had the opportunity to do so. Simes, for example, did not recall seeing Kislyak at the post-speech luncheon,⁶³² and the only witness who accounted for Sessions's whereabouts stated that Sessions may have spoken to the press after the event but then departed for Capitol Hill.⁶³³ Saunders recalled, based in part on a food-related request he received from a Campaign staff member, that Trump left the hotel a few minutes after the speech to go to the airport.⁶³⁴

c. Jeff Sessions's Post-Speech Interactions with CNI

In the wake of Sessions's confirmation hearings as Attorney General, questions arose about whether Sessions's campaign-period interactions with CNI apart from the Mayflower speech included any additional meetings with Ambassador Kislyak or involved Russian-related matters. With respect to Kislyak contacts, on May 23, 2016, Sessions attended CNI's Distinguished Service Award dinner at the Four Seasons Hotel in Washington, D.C.⁶³⁵ Sessions attended a pre-dinner reception and was seated at one of two head tables for the event.⁶³⁶ A seating chart prepared by Saunders indicates that Sessions was scheduled to be seated next to Kislyak, who appears to have responded to the invitation by indicating he would attend the event.⁶³⁷ Sessions, however, did not remember seeing, speaking with, or sitting next to Kislyak at the dinner.⁶³⁸ Although CNI board member Charles Boyd said he may have seen Kislyak at the dinner,⁶³⁹ Simes, Saunders, and Jacob Heilbrunn—editor of the *National Interest*—all had no recollection of seeing Kislyak at the May 23 event.⁶⁴⁰ Kislyak also does not appear in any of the photos from the event that the Office obtained.

In the summer of 2016, CNI organized at least two dinners in Washington, D.C. for Sessions to meet with experienced foreign policy professionals.⁶⁴¹ The dinners included CNI-affiliated individuals, such as Richard Burt and Zalmay Khalilzad, a former U.S. ambassador to Afghanistan and Iraq and the person who had introduced Trump before the April 27, 2016 foreign-

⁶³² Simes 3/8/18 302, at 22; Heilbrunn 2/1/18 302, at 7.

⁶³³ Luff 1/30/18 302, at 4.

⁶³⁴ Saunders 2/15/18 302, at 15.

⁶³⁵ Sessions 1/17/18 302, at 22; Saunders 2/15/18 302, at 17.

⁶³⁶ Saunders 2/15/18 302, at 17; C00004779-80 (5/23/16 Email, Cantelmo to Saunders & Hagberg (9:30:12 a.m.); C00004362 (5/23/16 Email, Bauman to Cantelmo et al. (2:02:32 a.m.)).

⁶³⁷ C00004362 (5/23/16 Email Bauman to Cantelmo et al. (2:02:32 a.m.)).

⁶³⁸ Sessions 1/17/18 302, at 22.

⁶³⁹ Boyd 1/24/18 302, at 4.

⁶⁴⁰ Simes 3/8/18 302, at 23; Saunders 2/15/18 302, at 18; Heilbrunn 2/1/18 302, at 7.

⁶⁴¹ Simes 3/8/18 302, at 31; Saunders 2/15/18 302, at 19; Burt 2/9/18 302, at 9-10; Khalilzad 1/9/18 302, at 5.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

policy speech.⁶⁴² Khalilzad also met with Sessions one-on-one separately from the dinners.⁶⁴³ At the dinners and in the meetings, the participants addressed U.S. relations with Russia, including how U.S. relations with NATO and European countries affected U.S. policy toward Russia.⁶⁴⁴ But the discussions were not exclusively focused on Russia.⁶⁴⁵ Khalilzad, for example, recalled discussing “nation-building” and violent extremism with Sessions.⁶⁴⁶ In addition, Sessions asked Saunders (of CNI) to draft two memoranda not specific to Russia: one on Hillary Clinton’s foreign policy shortcomings and another on Egypt.⁶⁴⁷

d. Jared Kushner’s Continuing Contacts with Simes

Between the April 2016 speech at the Mayflower Hotel and the presidential election, Jared Kushner had periodic contacts with Simes.⁶⁴⁸ Those contacts consisted of both in-person meetings and phone conversations, which concerned how to address issues relating to Russia in the Campaign and how to move forward with the advisory group of foreign policy experts that Simes had proposed.⁶⁴⁹ Simes recalled that he, not Kushner, initiated all conversations about Russia, and that Kushner never asked him to set up back-channel conversations with Russians.⁶⁵⁰ According to Simes, after the Mayflower speech in late April, Simes raised the issue of Russian contacts with Kushner, advised that it was bad optics for the Campaign to develop hidden Russian contacts, and told Kushner both that the Campaign should not highlight Russia as an issue and should handle any contacts with Russians with care.⁶⁵¹ Kushner generally provided a similar account of his interactions with Simes.⁶⁵²

Among the Kushner-Simes meetings was one held on August 17, 2016, at Simes’s request, in Kushner’s New York office. The meeting was to address foreign policy advice that CNI was providing and how to respond to the Clinton Campaign’s Russia-related attacks on candidate

⁶⁴² Burt 2/9/18 302, at 9-10; Khalilzad 1/9/18 302, at 1-2, 5.

⁶⁴³ Khalilzad 1/9/18 302, at 5-6.

⁶⁴⁴ Simes 3/8/18 302, at 31; Burt 2/9/18 302, at 9-10; Khalilzad 1/9/18 302, at 5.

⁶⁴⁵ Saunders 2/15/18 302, at 20.

⁶⁴⁶ Khalilzad 1/9/18 302, at 6.

⁶⁴⁷ Saunders 2/15/18 302, at 19-20.

⁶⁴⁸ Simes 3/8/18 302, at 27.

⁶⁴⁹ Simes 3/8/18 302, at 27.

⁶⁵⁰ Simes 3/8/18 302, at 27.

⁶⁵¹ Simes 3/8/18 302, at 27. During this period of time, the Campaign received a request for a high-level Campaign official to meet with an officer at a Russian state-owned bank “to discuss an offer [that officer] claims to be carrying from President Putin to meet with” candidate Trump. NOSC00005653 (5/17/16 Email, Dearborn to Kushner (8:12 a.m.)). Copying Manafort and Gates, Kushner responded, “Pass on this. A lot of people come claiming to carry messages. Very few are able to verify. For now I think we decline such meetings. Most likely these people go back home and claim they have special access to gain importance for themselves. Be careful.” NOSC00005653 (5/17/16 Email, Kushner to Dearborn).

⁶⁵² Kushner 4/11/18 302, at 11-13.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Trump.⁶⁵³ In advance of the meeting, Simes sent Kushner a “Russia Policy Memo” laying out “what Mr. Trump may want to say about Russia.”⁶⁵⁴ In a cover email transmitting that memo and a phone call to set up the meeting, Simes mentioned “a well-documented story of highly questionable connections between Bill Clinton” and the Russian government, “parts of [which]” (according to Simes) had even been “discussed with the CIA and the FBI in the late 1990s and shared with the [Independent Counsel] at the end of the Clinton presidency.”⁶⁵⁵ Kushner forwarded the email to senior Trump Campaign officials Stephen Miller, Paul Manafort, and Rick Gates, with the note “suggestion only.”⁶⁵⁶ Manafort subsequently forwarded the email to his assistant and scheduled a meeting with Simes.⁶⁵⁷ (Manafort was on the verge of leaving the Campaign by the time of the scheduled meeting with Simes, and Simes ended up meeting only with Kushner).

During the August 17 meeting, Simes provided Kushner the Clinton-related information that he had promised.⁶⁵⁸ Simes told Kushner that, Personal Privacy

[REDACTED]⁶⁵⁹ Simes claimed that he had received this information from former CIA and Reagan White House official Fritz Ermarth, who claimed to have learned it from U.S. intelligence sources, not from Russians.⁶⁶⁰

Simes perceived that Kushner did not find the information to be of interest or use to the Campaign because it was, in Simes’s words, “old news.”⁶⁶¹ When interviewed by the Office, Kushner stated that he believed that there was little chance of something new being revealed about the Clintons given their long career as public figures, and that he never received from Simes information that could be “operationalized” for the Trump Campaign.⁶⁶² Despite Kushner’s

⁶⁵³ Simes 3/8/18 302, at 29-30; Simes 3/27/18 302, at 6; Kushner 4/11/18 302, at 12; C00007269 (8/10/16 Meeting Invitation, Vargas to Simes et al.); DJTFP00023484 (8/11/16 Email, Hagan to Manafort (5:57:15 p.m.)).

⁶⁵⁴ C00007981-84 (8/9/16 Email, Simes to Kushner (6:09:21 p.m.)). The memorandum recommended “downplaying Russia as a U.S. foreign policy priority at this time” and suggested that “some tend to exaggerate Putin’s flaws.” The memorandum also recommended approaching general Russian-related questions in the framework of “how to work with Russia to advance important U.S. national interests” and that a Trump Administration “not go abroad in search of monsters to destroy.” The memorandum did not discuss sanctions but did address how to handle Ukraine-related questions, including questions about Russia’s invasion and annexation of Crimea.

⁶⁵⁵ C00007981 (8/9/16 Email, Simes to Kushner (6:09:21 p.m.)).

⁶⁵⁶ DJTFP00023459 (8/10/16 Email, Kushner to S. Miller et al. (11:30:13 a.m.)).

⁶⁵⁷ DJTFP00023484 (8/11/16 Email, Hagan to Manafort (5:57:15 p.m.)).

⁶⁵⁸ Simes 3/8/18 302, at 29-30; Simes 3/27/18 302, at 6; Kushner 4/11/18 302, at 12.

⁶⁵⁹ Simes 3/8/18 302, at 30; Simes 3/27/18 302, at 6.

⁶⁶⁰ Simes 3/8/18 302, at 30.

⁶⁶¹ Simes 3/8/18 302, at 30; Simes 3/27/18 302, at 6.

⁶⁶² Kushner 4/11/18 302, at 12.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

reaction, Simes believed that he provided the same information at a small group meeting of foreign policy experts that CNI organized for Sessions.⁶⁶³

5. June 9, 2016 Meeting at Trump Tower

On June 9, 2016, senior representatives of the Trump Campaign met in Trump Tower with a Russian attorney expecting to receive derogatory information about Hillary Clinton from the Russian government. The meeting was proposed to Donald Trump Jr. in an email from Robert Goldstone, at the request of his then-client Emin Agalarov, the son of Russian real-estate developer Aras Agalarov. Goldstone relayed to Trump Jr. that the “Crown prosecutor of Russia . . . offered to provide the Trump Campaign with some official documents and information that would incriminate Hillary and her dealings with Russia” as “part of Russia and its government’s support for Mr. Trump.” Trump Jr. immediately responded that “if it’s what you say I love it,” and arranged the meeting through a series of emails and telephone calls.

Trump Jr. invited campaign chairman Paul Manafort and senior advisor Jared Kushner to attend the meeting, and both attended. Members of the Campaign discussed the meeting before it occurred, and Michael Cohen recalled that Trump Jr. may have told candidate Trump about an upcoming meeting to receive adverse information about Clinton, without linking the meeting to Russia. According to written answers submitted by President Trump, he has no recollection of learning of the meeting at the time, and the Office found no documentary evidence showing that he was made aware of the meeting—or its Russian connection—before it occurred.

The Russian attorney who spoke at the meeting, Natalia Veselnitskaya, had previously worked for the Russian government and maintained a relationship with that government throughout this period of time. She claimed that funds derived from illegal activities in Russia were provided to Hillary Clinton and other Democrats. Trump Jr. requested evidence to support those claims, but Veselnitskaya did not provide such information. She and her associates then turned to a critique of the origins of the Magnitsky Act, a 2012 statute that imposed financial and travel sanctions on Russian officials and that resulted in a retaliatory ban on adoptions of Russian children. Trump Jr. suggested that the issue could be revisited when and if candidate Trump was elected. After the election, Veselnitskaya made additional efforts to follow up on the meeting, but the Trump Transition Team did not engage.

a. Setting Up the June 9 Meeting

i. Outreach to Donald Trump Jr.

Aras Agalarov is a Russian real-estate developer with ties to Putin and other members of the Russian government, including Russia’s Prosecutor General, Yuri Chaika.⁶⁶⁴ Aras Agalarov is the president of the Crocus Group, a Russian enterprise that holds substantial Russian government construction contracts and that—as discussed above, Volume I, Section IV.A.1, *supra*

⁶⁶³ Simes 3/8/18 302, at 30.

⁶⁶⁴ ~~Grand Jury~~ Goldstone 2/8/18 302, at 4.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Grand Jury

675

The Grand Jury mentioned by Emin Agalarov was Natalia Veselnitskaya.⁶⁷⁶ From approximately 1998 until 2001, Veselnitskaya worked as a prosecutor for the Central Administrative District of the Russian Prosecutor's Office,⁶⁷⁷ and she continued to perform government-related work and maintain ties to the Russian government following her departure.⁶⁷⁸ She lobbied and testified about the Magnitsky Act, which imposed financial sanctions and travel restrictions on Russian officials and which was named for a Russian tax specialist who exposed a fraud and later died in a Russian prison.⁶⁷⁹ Putin called the statute "a purely political, unfriendly act," and Russia responded by barring a list of current and former U.S. officials from entering Russia and by halting the adoption of Russian children by U.S. citizens.⁶⁸⁰ Veselnitskaya performed legal work for Denis Katsyv,⁶⁸¹ the son of Russian businessman Peter Katsyv, and for his company Prevezon Holdings Ltd., which was a defendant in a civil-forfeiture action alleging the laundering of proceeds from the fraud exposed by Magnitsky.⁶⁸² She also

⁶⁷⁵ Grand Jury

⁶⁷⁶ In December 2018, a grand jury in the Southern District of New York returned an indictment charging Veselnitskaya with obstructing the *Prevezon* litigation discussed in the text above. See Indictment, *United States v. Natalia Vladimirovna Veselnitskaya*, No. 18-cr-904 (S.D.N.Y.). The indictment alleges, among other things, that Veselnitskaya lied to the district court about her relationship to the Russian Prosecutor General's Office and her involvement in responding to a U.S. document request sent to the Russian government.

⁶⁷⁷ Veselnitskaya 11/20/17 Statement to the Senate Committee on the Judiciary, at 2;

Grand Jury

⁶⁷⁸ Testimony of Natalia Veselnitskaya Before the Senate Committee on Judiciary (Nov. 20, 2017) at 33; Keir Simmons & Rachel Elbaum, *Russian Lawyer Veselnitskaya Says She Didn't Give Trump Jr. Info on Clinton*, NBC News (July 11, 2017); Maria Tsvetkova & Jack Stubbs, *Moscow Lawyer Who Met Trump Jr. Had Russian Spy Agency As Client*, Reuters (July 21, 2017); Andrew E. Kramer & Sharon LaFraniere, *Lawyer Who Was Said to Have Dirt on Clinton Had Closer Ties to Kremlin than She Let On*, New York Times (Apr. 27, 2018).

⁶⁷⁹ See Pub. L. No. 112-208 §§ 402, 404(a)(1), 126 Stat. 1502, 1502-1506. Sergei Magnitsky was a Russian tax specialist who worked for William Browder, a former investment fund manager in Russia. Browder hired Magnitsky to investigate tax fraud by Russian officials, and Magnitsky was charged with helping Browder embezzle money. After Magnitsky died in a Russian prison, Browder lobbied Congress to pass the Magnitsky Act. See, e.g., Andrew E. Kramer, *Turning Tables in Magnitsky Case, Russia Accuses Nemesis of Murder*, New York Times (Oct. 22, 2017); Testimony of Natalia Veselnitskaya Before the Senate Committee on Judiciary (Nov. 20, 2017), Exhibits at 1-4; Rosie Gray, *Bill Browder's Testimony to the Senate Judiciary Committee*, The Atlantic (July 25, 2017).

⁶⁸⁰ Ellen Barry, *Russia Bars 18 Americans After Sanctions by US*, New York Times (Apr. 13, 2013); Tom Porter, *Supporters of the Magnitsky Act Claim They've Been Targets of Russian Assassination and Kidnapping Bids*, Newsweek (July 16, 2017).

⁶⁸¹ Testimony of Natalia Veselnitskaya Before the Senate Committee on Judiciary (Nov. 20, 2017), at 21.

⁶⁸² See Veselnitskaya Decl., *United States v. Prevezon Holdings, Ltd.*, No. 13-cv-6326 (S.D.N.Y.); see *Prevezon Holdings*, Second Amended Complaint; *Prevezon Holdings*, Mem. and Order; *Prevezon Holdings*, Deposition of Oleg Lurie.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

appears to have been involved in an April 2016 approach to a U.S. congressional delegation in Moscow offering “confidential information” from “the Prosecutor General of Russia” about “interactions between certain political forces in our two countries.”⁶⁸³

Shortly after his June 3 call with Emin Agalarov, Goldstone emailed Trump Jr.⁶⁸⁴ The email stated:

Good morning
 Emin just called and asked me to contact you with something very interesting.
 The Crown prosecutor of Russia met with his father Aras this morning and in their meeting offered to provide the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia and would be very useful to your father. This is obviously very high level and sensitive information but is part of Russia and its government's support for Mr. Trump - helped along by Aras and Emin.
 What do you think is the best way to handle this information and would you be able to speak to Emin about it directly?
 I can also send this info to your father via Rhona, but it is ultra sensitive so wanted to send to you first.
 Best
 Rob Goldstone

Within minutes of this email, Trump Jr. responded, emailing back: “Thanks Rob I appreciate that. I am on the road at the moment but perhaps I just speak to Emin first. Seems we have some time and if it’s what you say I love it especially later in the summer. Could we do a call first thing next week when I am back?”⁶⁸⁵ Goldstone conveyed Trump Jr.’s interest to Emin Agalarov, emailing that Trump Jr. “wants to speak personally on the issue.”⁶⁸⁶

On June 6, 2016, Emin Agalarov asked Goldstone if there was “[a]ny news,” and Goldstone explained that Trump Jr. was likely still traveling for the “final elections . . . where [T]rump will be ‘crowned’ the official nominee.”⁶⁸⁷ On the same day, Goldstone again emailed Trump Jr. and asked when Trump Jr. was “free to talk with Emin about this Hillary info.”⁶⁸⁸ Trump Jr. asked if

⁶⁸³ See Gribbin 8/31/17 302, at 1-2 & 1A (undated one-page document given to congressional delegation). The Russian Prosecutor General is an official with broad national responsibilities in the Russian legal system. See *Federal Law on the Prosecutor's Office of the Russian Federation* (1992, amended 2004).

⁶⁸⁴ RG000061 (6/3/16 Email, Goldstone to Trump Jr.); DJTJR00446 (6/3/16 Email, Goldstone to Donald Trump Jr.); @DonaldJTrumpJr 07/11/17 (11:00) Tweet.

⁶⁸⁵ DJTJR00446 (6/3/16 Email, Trump Jr. to Goldstone); @DonaldJTrumpJr 07/11/17 (11:00) Tweet; RG000061 (6/3/16 Email, Trump Jr. to Goldstone).

⁶⁸⁶ **Grand Jury** RG000062 (6/3/16 Email, Goldstone & Trump Jr.).

⁶⁸⁷ RG000063 (6/6/16 Email, A. Agalarov to Goldstone); RG000064 (6/6/16 Email, Goldstone to A. Agalarov).

⁶⁸⁸ RG000065 (6/6/16 Email, Goldstone to Trump Jr.); DJTJR00446 (6/6/16 Email, Goldstone to Trump Jr.).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

they could “speak now,” and Goldstone arranged a call between Trump Jr. and Emin Agalarov.⁶⁸⁹ On June 6 and June 7, Trump Jr. and Emin Agalarov had multiple brief calls.⁶⁹⁰

Also on June 6, 2016, Aras Agalarov called Ike Kaveladze and asked him to attend a meeting in New York with the Trump Organization.⁶⁹¹ Kaveladze is a Georgia-born, naturalized U.S. citizen who worked in the United States for the Crocus Group and reported to Aras Agalarov.⁶⁹² Kaveladze told the Office that, in a second phone call on June 6, 2016, Aras Agalarov asked Kaveladze if he knew anything about the Magnitsky Act, and Aras sent him a short synopsis for the meeting and Veselnitskaya’s business card. According to Kaveladze, Aras Agalarov said the purpose of the meeting was to discuss the Magnitsky Act, and he asked Kaveladze to translate.⁶⁹³

ii. Awareness of the Meeting Within the Campaign

On June 7, Goldstone emailed Trump Jr. and said that “Emin asked that I schedule a meeting with you and [t]he Russian government attorney who is flying over from Moscow.”⁶⁹⁴ Trump Jr. replied that Manafort (identified as the “campaign boss”), Jared Kushner, and Trump Jr. would likely attend.⁶⁹⁵ Goldstone was surprised to learn that Trump Jr., Manafort, and Kushner would attend.⁶⁹⁶ Kaveladze [REDACTED] “puzzled” by the list of attendees and that he checked with one of Emin Agalarov’s assistants, Roman Benjaminov, who said that the purpose of the meeting was for Veselnitskaya to convey “negative information on Hillary Clinton.”⁶⁹⁷ Benjaminov, however, stated that he did not recall having known or said that.⁶⁹⁸

Early on June 8, 2016 Kushner emailed his assistant, asking her to discuss a 3:00 p.m.

⁶⁸⁹ DJTJR00445 (6/6/16 Email, Goldstone and Trump Jr.); RG000065-67 (6/6/16 Email, Goldstone and Trump Jr.); [REDACTED]

⁶⁹⁰ DJTJR00499 (Call Records of Donald Trump Jr. [REDACTED]); Call Records of Donald Trump Jr. [REDACTED].

⁶⁹¹ Kaveladze 11/16/17 302, at 6; [REDACTED]

⁶⁹² Kaveladze 11/16/17 302, at 1-2; [REDACTED] Benjaminov 1/6/18 302, at 2-3; [REDACTED]

⁶⁹³ Kaveladze 11/16/17 302, at 6.

⁶⁹⁴ DJTJR00467 (6/7/16 Email, Goldstone to Trump Jr.); @DonaldJTrumpJr 07/11/17 (11:00) Tweet; RG000068 (6/7/16 Email, Goldstone to Trump Jr.); [REDACTED]

⁶⁹⁵ DJTJR00469 (6/7/16 Email, Trump Jr. to Goldstone); @DonaldJTrumpJr 07/11/17 (11:00) Tweet; RG000071 (6/7/16 Email, Trump Jr. to Goldstone); OSC-KAV_00048 (6/7/16 Email, Goldstone to Kaveladze); [REDACTED]

⁶⁹⁶ Goldstone 2/8/18 302, at 7; [REDACTED]

⁶⁹⁷ [REDACTED] see Kaveladze 11/16/17 302 at 7; OSC-KAV_00048 (6/7/16 Email, Goldstone to Kaveladze).

⁶⁹⁸ Benjaminov 1/6/18 302, at 3.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

meeting the following day with Trump Jr.⁶⁹⁹ Later that day, Trump Jr. forwarded the entirety of his email correspondence regarding the meeting with Goldstone to Manafort and Kushner, under the subject line “FW: Russia - Clinton – private and confidential,” adding a note that the “[m]eeting got moved to 4 tomorrow at my offices.”⁷⁰⁰ Kushner then sent his assistant a second email, informing her that the “[m]eeting with don jr is 4pm now.”⁷⁰¹ Manafort responded, “See you then. P.”⁷⁰²

Rick Gates, who was the deputy campaign chairman, stated during interviews with the Office that in the days before June 9, 2016 Trump Jr. announced at a regular morning meeting of senior campaign staff and Trump family members that he had a lead on negative information about the Clinton Foundation.⁷⁰³ Gates believed that Trump Jr. said the information was coming from a group in Kyrgyzstan and that he was introduced to the group by a friend.⁷⁰⁴ Gates recalled that the meeting was attended by Trump Jr., Eric Trump, Paul Manafort, Hope Hicks, and, joining late, Ivanka Trump and Jared Kushner. According to Gates, Manafort warned the group that the meeting likely would not yield vital information and they should be careful.⁷⁰⁵ Hicks denied any knowledge of the June 9 meeting before 2017,⁷⁰⁶ and Kushner did not recall if the planned June 9 meeting came up at all earlier that week.⁷⁰⁷

Michael Cohen recalled being in Donald J. Trump’s office on June 6 or 7 when Trump Jr. told his father that a meeting to obtain adverse information about Clinton was going forward.⁷⁰⁸ Cohen did not recall Trump Jr. stating that the meeting was connected to Russia.⁷⁰⁹ From the tenor of the conversation, Cohen believed that Trump Jr. had previously discussed the meeting with his father, although Cohen was not involved in any such conversation.⁷¹⁰ In an interview with the Senate Judiciary Committee, however, Trump Jr. stated that he did not inform his father about the

⁶⁹⁹ NOSC0000007-08 (6/8/18 Email, Kushner to Vargas).

⁷⁰⁰ NOSC00000039-42 (6/8/16 Email, Trump Jr. to Kushner & Manafort); DJTJR00485 (6/8/16 Email, Trump Jr. to Kushner & Manafort).

⁷⁰¹ NOSC0000004 (6/8/16 Email, Kushner to Vargas).

⁷⁰² 6/8/16 Email, Manafort to Trump Jr.

⁷⁰³ Gates 1/30/18 302, at 7; Gates 3/1/18 302, at 3-4. Although the March 1 302 refers to “June 19,” that is likely a typographical error; external emails indicate that a meeting with those participants occurred on June 6. See NOSC00023603 (6/6/16 Email, Gates to Trump Jr. et al.).

⁷⁰⁴ Gates 1/30/18 302, at 7. Aras Agalarov is originally from Azerbaijan, and public reporting indicates that his company, the Crocus Group, has done substantial work in Kyrgyzstan. See Neil MacFarquhar, *A Russian Developer Helps Out the Kremlin on Occasion. Was He a Conduit to Trump?*, New York Times (July 16, 2017).

⁷⁰⁵ Gates 3/1/18 302, at 3-4.

⁷⁰⁶ Hicks 12/7/17 302, at 6.

⁷⁰⁷ Kushner 4/11/18 302, at 8.

⁷⁰⁸ Cohen 8/7/18 302, at 4-6.

⁷⁰⁹ Cohen 8/7/18 302, at 4-5.

⁷¹⁰ Cohen 9/12/18 302, at 15-16.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

emails or the upcoming meeting.⁷¹¹ Similarly, neither Manafort nor Kushner recalled anyone informing candidate Trump of the meeting, including Trump Jr.⁷¹² President Trump has stated to this Office, in written answers to questions, that he has “no recollection of learning at the time” that his son, Manafort, or “Kushner was considering participating in a meeting in June 2016 concerning potentially negative information about Hillary Clinton.”⁷¹³

b. The Events of June 9, 2016

i. Arrangements for the Meeting

Veselnitskaya was in New York on June 9, 2016, for appellate proceedings in the *Prevezon* civil forfeiture litigation.⁷¹⁴ That day, Veselnitskaya called Rinat Akhmetshin, a Soviet-born U.S. lobbyist, ~~Grand Jury~~ and when she learned that he was in New York, invited him to lunch.⁷¹⁵ Akhmetshin told the Office that he had worked on issues relating to the Magnitsky Act and had worked on the *Prevezon* litigation.⁷¹⁶ Kaveladze and Anatoli Samochnov, a

⁷¹¹ Interview of: Donald J. Trump, Jr., Senate Judiciary Committee, 115th Cong. 28-29, 84, 94-95 (Sept. 7, 2017). The Senate Judiciary Committee interview was not under oath, but Trump Jr. was advised that it is a violation of 18 U.S.C. § 1001 to make materially false statements in a congressional investigation. *Id.* at 10-11.

⁷¹² Manafort 9/11/18 302, at 3-4; Kushner 4/11/18 302, at 10.

⁷¹³ Written Responses of Donald J. Trump (Nov. 20, 2018), at 8 (Response to Question I, Parts (a)-(c)). We considered whether one sequence of events suggested that candidate Trump had contemporaneous knowledge of the June 9 meeting. On June 7, 2016 Trump announced his intention to give “a major speech” “probably Monday of next week”—which would have been June 13—about “all of the things that have taken place with the Clintons.” See, e.g., Phillip Bump, *What we know about the Trump Tower meeting*, Washington Post (Aug. 7, 2018). Following the June 9 meeting, Trump changed the subject of his planned speech to national security. But the Office did not find evidence that the original idea for the speech was connected to the anticipated June 9 meeting or that the change of topic was attributable to the failure of that meeting to produce concrete evidence about Clinton. Other events, such as the Pulse nightclub shooting on June 12, could well have caused the change. The President’s written answers to our questions state that the speech’s focus was altered “[i]n light of” the Pulse nightclub shooting. See Written Responses, *supra*. As for the original topic of the June 13 speech, Trump has said that “he expected to give a speech referencing the publicly available, negative information about the Clintons,” and that the draft of the speech prepared by Campaign staff “was based on publicly available material, including, in particular, information from the book *Clinton Cash* by Peter Schweizer.” Written Responses, *supra*. In a later June 22 speech, Trump did speak extensively about allegations that Clinton was corrupt, drawing from the *Clinton Cash* book. See *Full Transcript: Donald Trump NYC Speech on Stakes of the Election*, politico.com (June 22, 2016).

⁷¹⁴ Testimony of Natalia Veselnitskaya Before the Senate Committee on Judiciary (Nov. 20, 2017) at 41, 42; Alison Frankel, *How Did Russian Lawyer Veselnitskaya Get into U.S. for Trump Tower Meeting?* Reuters, (Nov. 6, 2017); Michael Kranish et al., *Russian Lawyer who Met with Trump Jr. Has Long History Fighting Sanctions*, Washington Post (July 11, 2017); see OSC-KAV00113 (6/8/16 Email, Goldstone to Kaveladze); RG000073 (6/8/16 Email, Goldstone to Trump Jr.); Lieberman 12/13/17 302, at 5; see also *Prevezon Holdings Order* (Oct. 17, 2016).

⁷¹⁵ ~~Grand Jury~~

⁷¹⁶ Akhmetshin 11/14/17 302, at 4-6; ~~Grand Jury~~

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Russian-born translator who had assisted Veselnitskaya with Magnitsky-related lobbying and the Prevezon case, also attended the lunch.⁷¹⁷ Grand Jury Veselnitskaya said she was meeting Grand Jury and asked Akhmetshin what she should tell him.⁷¹⁸ According to several participants in the lunch, Veselnitskaya showed Akhmetshin a document alleging financial misconduct by Bill Browder and the Ziff brothers (Americans with business in Russia), and those individuals subsequently making political donations to the DNC.⁷¹⁹ Grand Jury

The group then went to Trump Tower for the meeting.⁷²¹

ii. Conduct of the Meeting

Trump Jr., Manafort, and Kushner participated on the Trump side, while Kaveladze, Samochnov, Akhmetshin, and Goldstone attended with Veselnitskaya.⁷²² The Office spoke to every participant except Veselnitskaya and Trump Jr., the latter of whom declined to be voluntarily interviewed by the Office. Grand Jury

The meeting lasted approximately 20 minutes.⁷²³ Grand Jury

Goldstone recalled that Trump Jr. invited Veselnitskaya to begin but did not say anything about the subject of the meeting.⁷²⁵ Participants agreed that Veselnitskaya stated that the Ziff brothers had broken Russian laws and had donated their profits to the DNC or the Clinton Campaign.⁷²⁶ She asserted that the Ziff brothers had engaged in tax evasion and money laundering

⁷¹⁷ Kaveladze 11/16/17 302, at 7; Grand Jury Samochnov 7/13/17 302, at 2, 4; Grand Jury

⁷¹⁸ Grand Jury

⁷¹⁹ Grand Jury Kaveladze 11/16/17 302, at 7; Grand Jury

Samochnov did not recall the planned subject matter of the Trump Tower meeting coming up at lunch. Grand Jury Samochnov 7/12/17 302, at 4. In her later Senate statement and interactions with the press, Veselnitskaya produced what she claimed were the talking points that she brought to the June 9 meeting.

⁷²⁰ Grand Jury

⁷²¹ E.g., Samochnov 7/12/17 302, at 4.

⁷²² E.g., Samochnov 7/12/17 302, at 4.

⁷²³ E.g., Samochnov 7/12/17 302, at 4; Goldstone 2/8/18 302, at 9.

⁷²⁴ Grand Jury

⁷²⁵ Grand Jury

⁷²⁶ Grand Jury

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

in both the United States and Russia,⁷²⁷ [REDACTED]
 [REDACTED]⁷²⁸ According to Akhmetshin, Trump Jr. asked follow-up questions about how the alleged payments could be tied specifically to the Clinton Campaign, but Veselnitskaya indicated that she could not trace the money once it entered the United States.⁷²⁹ Kaveladze similarly recalled that Trump Jr. asked what they have on Clinton, and Kushner became aggravated and asked “[w]hat are we doing here?”⁷³⁰

Akhmetshin then spoke about U.S. sanctions imposed under the Magnitsky Act and Russia’s response prohibiting U.S. adoption of Russian children.⁷³¹ Several participants recalled that Trump Jr. commented that Trump is a private citizen, and there was nothing they could do at that time.⁷³² Trump Jr. also said that they could revisit the issue if and when they were in government.⁷³³ Notes that Manafort took on his phone reflect the general flow of the conversation, although not all of its details.⁷³⁴

At some point in the meeting, Kushner sent an iMessage to Manafort stating “waste of time,” followed immediately by two separate emails to assistants at Kushner Companies with requests that

727

728

729

730

731

732

733

734

Manafort’s notes state:

- Bill Browder
- Offshore - Cyprus
- 133m shares
- Companies
- Not invest - loan
- Value in Cyprus as inter
- Illici
- Active sponsors of RNC
- Browder hired Joanna Glover
- Tied into Cheney
- Russian adoption by American families

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

they call him to give him an excuse to leave.⁷³⁵ Samochornov recalled that Kushner departed the meeting before it concluded; Veselnitskaya recalled the same when interviewed by the press in July 2017.⁷³⁶

Veselnitskaya's press interviews and written statements to Congress differ materially from other accounts. In a July 2017 press interview, Veselnitskaya claimed that she has no connection to the Russian government and had not referred to any derogatory information concerning the Clinton Campaign when she met with Trump Campaign officials.⁷³⁷ Veselnitskaya's November 2017 written submission to the Senate Judiciary Committee stated that the purpose of the June 9 meeting was not to connect with "the Trump Campaign" but rather to have "a private meeting with Donald Trump Jr.—a friend of my good acquaintance's son on the matter of assisting me or my colleagues in informing the Congress members as to the criminal nature of manipulation and interference with the legislative activities of the US Congress."⁷³⁸ In other words, Veselnitskaya claimed her focus was on Congress and not the Campaign. No witness, however, recalled any reference to Congress during the meeting. Veselnitskaya also maintained that she "attended the meeting as a lawyer of Denis Katsyv," the previously mentioned owner of Prevezon Holdings, but she did not "introduce [her]self in this capacity."⁷³⁹

In a July 2017 television interview, Trump Jr. stated that while he had no way to gauge the reliability, credibility, or accuracy of what Goldstone had stated was the purpose of the meeting, if "someone has information on our opponent . . . maybe this is something. I should hear them out."⁷⁴⁰ Trump Jr. further stated in September 2017 congressional testimony that he thought he should "listen to what Rob and his colleagues had to say."⁷⁴¹ Depending on what, if any, information was provided, Trump Jr. stated he could then "consult with counsel to make an informed decision as to whether to give it any further consideration."⁷⁴²

⁷³⁵ NOSC00003992 (6/9/16 Text Message, Kushner to Manafort); Kushner 4/11/18 302, at 9; Vargas 4/4/18 302, at 7; NOSC00000044 (6/9/16 Email, Kushner to Vargas); NOSC00000045 (6/9/16 Email, Kushner to Cain).

⁷³⁶ Samochornov 7/12/17 302, at 4; ~~Grand Jury~~ Kushner 4/11/18 302, at 9-10; *see also Interview of: Donald J. Trump, Jr., Senate Judiciary Committee*, 115th Cong. 48-49 (Sept. 7, 2017).

⁷³⁷ *Russian Lawyer Veselnitskaya Says She Didn't Give Trump Jr. Info on Clinton*, NBC News (July 11, 2017).

⁷³⁸ *Testimony of Natalia Veselnitskaya before the United States Senate Committee on the Judiciary*, 115th Cong. 10 (Nov 20, 2017).

⁷³⁹ *Testimony of Natalia Veselnitskaya before the United States Senate Committee on the Judiciary*, 115th Cong. 21 (Nov. 20, 2017).

⁷⁴⁰ Sean Hannity, *Transcript-Donald Trump Jr.*, Fox News (July 11, 2017).

⁷⁴¹ *Interview of: Donald J. Trump, Jr., Senate Judiciary Committee*, 115th Cong. 16 (Sept. 7, 2017).

⁷⁴² *Interview of: Donald J. Trump, Jr., Senate Judiciary Committee*, 115th Cong. 16-17 (Sept. 7, 2017).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

After the June 9 meeting concluded, Goldstone apologized to Trump Jr.⁷⁴³ According to Goldstone, he told Trump Jr. ~~Grand Jury~~⁷⁴⁴ and told Emin Agalarov in a phone call that the meeting was about adoption. ~~Grand Jury~~⁷⁴⁵

~~Grand Jury~~⁷⁴⁶ Aras Agalarov asked Kaveladze to report in after the meeting, but before Kaveladze could call, Aras Agalarov called him.⁷⁴⁷ With Veselnitskaya next to him, Kaveladze reported that the meeting had gone well, but he later told Aras Agalarov that the meeting about the Magnitsky Act had been a waste of time because it was not with lawyers and they were “preaching to the wrong crowd.”⁷⁴⁸

c. Post-June 9 Events

Veselnitskaya and Aras Agalarov made at least two unsuccessful attempts after the election to meet with Trump representatives to convey similar information about Browder and the Magnitsky Act.⁷⁴⁹ On November 23, 2016, Kaveladze emailed Goldstone about setting up another meeting “with T people” and sent a document bearing allegations similar to those conveyed on June 9.⁷⁵⁰ Kaveladze followed up with Goldstone, stating that “Mr. A,” which Goldstone understood to mean Aras Agalarov, called to ask about the meeting.⁷⁵¹ Goldstone emailed the document to Rhona Graff, saying that “Aras Agalarov has asked me to pass on this document in the hope it can be passed on to the appropriate team. If needed, a lawyer representing the case is

⁷⁴³ Kaveladze 11/16/17 302, at 8; ~~Grand Jury~~ Goldstone 2/8/18 302, at 9; ~~Grand Jury~~

⁷⁴⁴ ~~Grand Jury~~

⁷⁴⁵ ~~Grand Jury~~ The week after the June 9 meeting, a cybersecurity firm and the DNC announced the Russian hack of the DNC. See Volume I, Section III.B.2, *supra*. ~~Grand Jury~~

~~Grand Jury~~ (and one text message shows) that, shortly after the DNC announcement, Goldstone made comments connecting the DNC hacking announcement to the June 9 meeting. ~~Grand Jury~~ OSC-KAV_00029 (6/14/16 Email, Goldstone to E. Agalarov & Kaveladze (10:09 a.m.)). The investigation did not identify evidence connecting the events of June 9 to the GRU’s hack-and-dump operation. OSC-KAV_00029-30 (6/14/16 Email, Goldstone to E. Agalarov).

⁷⁴⁶ ~~Grand Jury~~

⁷⁴⁷ Kaveladze 11/16/17 302, at 8; Call Records of Ike Kaveladze ~~Grand Jury~~

⁷⁴⁸ Kaveladze 11/16/17 302, at 8; Call Records of Ike Kaveladze ~~Grand Jury~~. On June 14, 2016 Kaveladze’s teenage daughter emailed asking how the June 9 meeting had gone, and Kaveladze responded, “meeting was boring. The Russians did not have any bad info on Hilary.” OSC-KAV_00257 (6/14/16 Email, I. Kaveladze to A. Kaveladze; ~~Grand Jury~~

⁷⁴⁹ Goldstone 2/8/18 302, at 11; ~~Grand Jury~~

⁷⁵⁰ OSC-KAV_00138 (11/23/16 Email, Goldstone to Kaveladze); ~~Grand Jury~~

⁷⁵¹ RG000196 (11/26-29/16 Text Messages, Goldstone & Kaveladze); ~~Grand Jury~~

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

in New York currently and happy to meet with any member of his transition team.”⁷⁵² According to Goldstone, around January 2017, Kaveladze contacted him again to set up another meeting, but Goldstone did not make the request.⁷⁵³ The investigation did not identify evidence of the transition team following up.

Participants in the June 9, 2016 meeting began receiving inquiries from attorneys representing the Trump Organization starting in approximately June 2017.⁷⁵⁴ On approximately June 2, 2017, Goldstone spoke with Alan Garten, general counsel of the Trump Organization, about his participation in the June 9 meeting.⁷⁵⁵ The same day, Goldstone emailed Veselnitskaya’s name to Garten, identifying her as the “woman who was the attorney who spoke at the meeting from Moscow.”⁷⁵⁶ Later in June 2017, Goldstone participated in a lengthier call with Garten and Alan Futerfas, outside counsel for the Trump Organization (and, subsequently, personal counsel for Trump Jr.).⁷⁵⁷ On June 27, 2017, Goldstone emailed Emin Agalarov with the subject “Trump attorneys” and stated that he was “interviewed by attorneys” about the June 9 meeting who were “concerned because it links Don Jr. to officials from Russia—which he has always denied meeting.”⁷⁵⁸ Goldstone stressed that he “did say at the time this was an awful idea and a terrible meeting.”⁷⁵⁹ Emin Agalarov sent a screenshot of the message to Kaveladze.⁷⁶⁰

The June 9 meeting became public in July 2017. In a July 9, 2017 text message to Emin Agalarov, Goldstone wrote “I made sure I kept you and your father out of [t]his story,”⁷⁶¹ and “[i]f contacted I can do a dance and keep you out of it.”⁷⁶² Goldstone added, “FBI now investigating,” and “I hope this favor was worth for your dad—it could blow up.”⁷⁶³ On July 12, 2017 Emin Agalarov complained to Kaveladze that his father, Aras, “never listens” to him and that their

⁷⁵² Goldstone 2/8/18 302, at 11; ~~Grand Jury~~ [REDACTED] DJTJR00118 (11/28/16 Email, Goldstone to Graff).

⁷⁵³ ~~Grand Jury~~ [REDACTED]

⁷⁵⁴ ~~Grand Jury~~ [REDACTED]

⁷⁵⁵ ~~Grand Jury~~ [REDACTED]

⁷⁵⁶ RG000256 (6/2/17 Email, Goldstone to Garten).

⁷⁵⁷ ~~Grand Jury~~ [REDACTED]

⁷⁵⁸ RG000092 (6/27/17 Email, Goldstone to E. Agalarov).

⁷⁵⁹ RG000092 (6/27/17 Email, Goldstone to E. Agalarov). ~~Grand Jury~~ [REDACTED]

⁷⁶⁰ OSC-KAV_01190 (6/27/17 Text Message, E. Agalarov to Kaveladze).

⁷⁶¹ RG000286-87 (7/9/17 Text Messages, E. Agalarov & Goldstone); ~~Grand Jury~~ [REDACTED]

⁷⁶² ~~Investigative Technique~~ [REDACTED]

⁷⁶³ ~~Investigative Technique~~ [REDACTED]

~~Grand Jury~~ [REDACTED]

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

relationship with “mr T has been thrown down the drain.”⁷⁶⁴ The next month, Goldstone commented to Emin Agalarov about the volume of publicity the June 9 meeting had generated, stating that his “reputation [was] basically destroyed by this dumb meeting which your father insisted on even though Ike and Me told him would be bad news and not to do.”⁷⁶⁵ Goldstone added, “I am not able to respond out of courtesy to you and your father. So am painted as some mysterious link to Putin.”⁷⁶⁶

After public reporting on the June 9 meeting began, representatives from the Trump Organization again reached out to participants. On July 10, 2017, Futerfas sent Goldstone an email with a proposed statement for Goldstone to issue, which read:

As the person who arranged the meeting, I can definitively state that the statements I have read by Donald Trump Jr. are 100% accurate. The meeting was a complete waste of time and Don was never told Ms. Veselnitskaya’s name prior to the meeting. Ms. Veselnitskaya mostly talked about the Magnitsky Act and Russian adoption laws and the meeting lasted 20 to 30 minutes at most. There was never any follow up and nothing ever came of the meeting.⁷⁶⁷

~~_____~~ the statement drafted by Trump Organization representatives was ~~_____~~⁷⁶⁸ He proposed a different statement, asserting that he had been asked “by [his] client in Moscow – Emin Agalarov – to facilitate a meeting between a Russian attorney (Natalia Veselnitskaya [sic]) and Donald Trump Jr. The lawyer had apparently stated that she had some information regarding funding to the DNC from Russia, which she believed Mr. Trump Jr. might find interesting.”⁷⁶⁹ Goldstone never released either statement.⁷⁷⁰

On the Russian end, there were also communications about what participants should say about the June 9 meeting. Specifically, the organization that hired Samochnov—an anti-Magnitsky Act group controlled by Veselnitskaya and the owner of Prevezon—offered to pay \$90,000 of Samochnov’s legal fees.⁷⁷¹ At Veselnitskaya’s request, the organization sent Samochnov a transcript of a Veselnitskaya press interview, and Samochnov understood that the organization would pay his legal fees only if he made statements consistent with Veselnitskaya’s.⁷⁷² Samochnov declined, telling the Office that he did not want to perjure

⁷⁶⁴ OSC-KAV 01197 (7/11-12/17 Text Messages, Kaveladze & E. Agalarov); ~~_____~~

⁷⁶⁵ ~~_____~~ Investigative Technique ~~_____~~

⁷⁶⁶ ~~_____~~ Investigative Technique ~~_____~~

⁷⁶⁷ 7/10/17 Email, Goldstone to Futerfas & Garten.

⁷⁶⁸ ~~_____~~ Grand Jury ~~_____~~

⁷⁶⁹ 7/10/17 Email, Goldstone to Futerfas & Garten.

⁷⁷⁰ ~~_____~~ Grand Jury ~~_____~~

⁷⁷¹ Samochnov 7/13/17 302, at 1; ~~_____~~ Grand Jury ~~_____~~

⁷⁷² ~~_____~~ Samochnov 7/13/17 302, at 1.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

himself.⁷⁷³ The individual who conveyed Veselnitskaya's request to Samochornov stated that he did not expressly condition payment on following Veselnitskaya's answers but, in hindsight, recognized that by sending the transcript, Samochornov could have interpreted the offer of assistance to be conditioned on his not contradicting Veselnitskaya's account.⁷⁷⁴

Volume II, Section II.G, *infra*, discusses interactions between President Trump, Trump Jr., and others in June and July 2017 regarding the June 9 meeting.

6. Events at the Republican National Convention

Trump Campaign officials met with Russian Ambassador Sergey Kislyak during the week of the Republican National Convention. The evidence indicates that those interactions were brief and non-substantive. During platform committee meetings immediately before the Convention, J.D. Gordon, a senior Campaign advisor on policy and national security, diluted a proposed amendment to the Republican Party platform expressing support for providing "lethal" assistance to Ukraine in response to Russian aggression. Gordon requested that platform committee personnel revise the proposed amendment to state that only "appropriate" assistance be provided to Ukraine. The original sponsor of the "lethal" assistance amendment stated that Gordon told her (the sponsor) that he was on the phone with candidate Trump in connection with his request to dilute the language. Gordon denied making that statement to the sponsor, although he acknowledged it was possible he mentioned having previously spoken to the candidate about the subject matter. The investigation did not establish that Gordon spoke to or was directed by the candidate to make that proposal. Gordon said that he sought the change because he believed the proposed language was inconsistent with Trump's position on Ukraine.

a. Ambassador Kislyak's Encounters with Senator Sessions and J.D. Gordon the Week of the RNC

In July 2016, Senator Sessions and Gordon spoke at the Global Partners in Diplomacy event, a conference co-sponsored by the State Department and the Heritage Foundation held in Cleveland, Ohio the same week as the Republican National Convention (RNC or "Convention").⁷⁷⁵ Approximately 80 foreign ambassadors to the United States, including Kislyak, were invited to the conference.⁷⁷⁶

On July 20, 2016, Gordon and Sessions delivered their speeches at the conference.⁷⁷⁷ In his speech, Gordon stated in pertinent part that the United States should have better relations with

⁷⁷³ Samochornov 7/13/17 302, at 1.

⁷⁷⁴ [REDACTED]

⁷⁷⁵ Gordon 8/29/17 302, at 9; Sessions 1/17/18 302, at 22; Allan Smith, *We Now Know More About why Jeff Sessions and a Russian Ambassador Crossed Paths at the Republican Convention*, Business Insider (Mar. 2, 2017).

⁷⁷⁶ Gordon 8/29/17 302, at 9; Laura DeMarco, *Global Cleveland and Sen. Bob Corker Welcome International Republican National Convention Guests*, Cleveland Plain Dealer (July 20, 2016).

⁷⁷⁷ Gordon 8/29/17 302, at 9; Sessions 1/17/18 302, at 22.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Russia.⁷⁷⁸ During Sessions's speech, he took questions from the audience, one of which may have been asked by Kislyak.⁷⁷⁹ When the speeches concluded, several ambassadors lined up to greet the speakers.⁷⁸⁰ Gordon shook hands with Kislyak and reiterated that he had meant what he said in the speech about improving U.S.-Russia relations.⁷⁸¹ Sessions separately spoke with between six and 12 ambassadors, including Kislyak.⁷⁸² Although Sessions stated during interviews with the Office that he had no specific recollection of what he discussed with Kislyak, he believed that the two spoke for only a few minutes and that they would have exchanged pleasantries and said some things about U.S.-Russia relations.⁷⁸³

Later that evening, Gordon attended a reception as part of the conference.⁷⁸⁴ Gordon ran into Kislyak as the two prepared plates of food, and they decided to sit at the same table to eat.⁷⁸⁵ They were joined at that table by the ambassadors from Azerbaijan and Kazakhstan, and by Trump Campaign advisor Carter Page.⁷⁸⁶ As they ate, Gordon and Kislyak talked for what Gordon estimated to have been three to five minutes, during which Gordon again mentioned that he meant what he said in his speech about improving U.S.-Russia relations.⁷⁸⁷

b. Change to Republican Party Platform

In preparation for the 2016 Convention, foreign policy advisors to the Trump Campaign, working with the Republican National Committee, reviewed the 2012 Convention's foreign policy platform to identify divergence between the earlier platform and candidate Trump's positions.⁷⁸⁸ The Campaign team discussed toning down language from the 2012 platform that identified Russia as the country's number one threat, given the candidate's belief that there needed to be better U.S. relations with Russia.⁷⁸⁹ The RNC Platform Committee sent the 2016 draft platform to the National Security and Defense Platform Subcommittee on July 10, 2016, the evening before its

⁷⁷⁸ Gordon 8/29/17 302, at 9.

⁷⁷⁹ Sessions 1/17/18 302, at 22; Luff 1/30/18 302, at 3.

⁷⁸⁰ Gordon 8/29/17 302, at 9; Luff 1/30/18 302, at 3.

⁷⁸¹ Gordon 8/29/17 302, at 9.

⁷⁸² Sessions 1/17/18 302, at 22; Luff 1/30/18 302, at 3; *see also* Volume I, Section IV.A.4.b, *supra* (explaining that Sessions and Kislyak may have met three months before this encounter during a reception held on April 26, 2016, at the Mayflower Hotel).

⁷⁸³ Sessions 1/17/18 302, at 22.

⁷⁸⁴ Gordon 8/29/17 302, at 9-10.

⁷⁸⁵ Gordon 8/29/17 302, at 9-10.

⁷⁸⁶ Gordon 8/29/17 302, at 10; *see also* Volume I, Section IV.A.3.d, *supra* (explaining that Page acknowledged meeting Kislyak at this event).

⁷⁸⁷ Gordon 8/29/17 302, at 10.

⁷⁸⁸ Gordon 8/29/17 302, at 10.

⁷⁸⁹ Gordon 8/29/17 302, at 10.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

first meeting to propose amendments.⁷⁹⁰

Although only delegates could participate in formal discussions and vote on the platform, the Trump Campaign could request changes, and members of the Trump Campaign attended committee meetings.⁷⁹¹ John Mashburn, the Campaign's policy director, helped oversee the Campaign's involvement in the platform committee meetings.⁷⁹² He told the Office that he directed Campaign staff at the Convention, including J.D. Gordon, to take a hands-off approach and only to challenge platform planks if they directly contradicted Trump's wishes.⁷⁹³

On July 11, 2016, delegate Diana Denman submitted a proposed platform amendment that included provision of armed support for Ukraine.⁷⁹⁴ The amendment described Russia's "ongoing military aggression" in Ukraine and announced "support" for "maintaining (and, if warranted, increasing) sanctions against Russia until Ukraine's sovereignty and territorial integrity are fully restored" and for "providing lethal defensive weapons to Ukraine's armed forces and greater coordination with NATO on defense planning."⁷⁹⁵ Gordon reviewed the proposed platform changes, including Denman's.⁷⁹⁶ Gordon stated that he flagged this amendment because of Trump's stated position on Ukraine, which Gordon personally heard the candidate say at the March 31 foreign policy meeting—namely, that the Europeans should take primary responsibility for any assistance to Ukraine, that there should be improved U.S.-Russia relations, and that he did not want to start World War III over that region.⁷⁹⁷ Gordon told the Office that Trump's statements on the campaign trail following the March meeting underscored those positions to the point where Gordon felt obliged to object to the proposed platform change and seek its dilution.⁷⁹⁸

On July 11, 2016, at a meeting of the National Security and Defense Platform Subcommittee, Denman offered her amendment.⁷⁹⁹ Gordon and another Campaign staffer, Matt Miller, approached a committee co-chair and asked him to table the amendment to permit further discussion.⁸⁰⁰ Gordon's concern with the amendment was the language about providing "lethal

⁷⁹⁰ Gordon 8/29/17 302, at 10; Hoff 5/26/17 302, at 1-2.

⁷⁹¹ Hoff 5/26/17 302, at 1; Gordon 9/7/17 302, at 10.

⁷⁹² Mashburn 6/25/18 302, at 4; Manafort 9/20/18 302, at 7-8.

⁷⁹³ Mashburn 6/25/18 302, at 4; Gordon 8/29/17 302, at 10.

⁷⁹⁴ DENMAN 000001-02, DENMAN 000012, DENMAN 000021-22; Denman 12/4/17 302, at 1; Denman 6/7/17 302, at 2.

⁷⁹⁵ DENMAN 000001-02, DENMAN 000012, DENMAN 000021-22.

⁷⁹⁶ Gordon 8/29/17 302, at 10-11.

⁷⁹⁷ Gordon 8/29/17 302, at 11; Gordon 9/7/17 302, at 11; Gordon 2/14/19 302, at 1-2, 5-6.

⁷⁹⁸ Gordon 2/14/19 302, at 5-6.

⁷⁹⁹ Denman 6/7/17 302, at 2; *see* DENMAN 000014.

⁸⁰⁰ Denman 6/7/17 302, at 2; Denman 12/4/17 302, at 2; Gordon 9/7/17 302, at 11-12; *see* Hoff 5/26/17 302, at 2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

defensive weapons to Ukraine.⁸⁰¹ Miller did not have any independent basis to believe that this language contradicted Trump's views and relied on Gordon's recollection of the candidate's views.⁸⁰²

According to Denman, she spoke with Gordon and Matt Miller, and they told her that they had to clear the language and that Gordon was "talking to New York."⁸⁰³ Denman told others that she was asked by the two Trump Campaign staffers to strike "lethal defense weapons" from the proposal but that she refused.⁸⁰⁴ Denman recalled Gordon saying that he was on the phone with candidate Trump, but she was skeptical whether that was true.⁸⁰⁵ Gordon denied having told Denman that he was on the phone with Trump, although he acknowledged it was possible that he mentioned having previously spoken to the candidate about the subject matter.⁸⁰⁶ Gordon's phone records reveal a call to Sessions's office in Washington that afternoon, but do not include calls directly to a number associated with Trump.⁸⁰⁷ And according to the President's written answers to the Office's questions, he does not recall being involved in the change in language of the platform amendment.⁸⁰⁸

Gordon stated that he tried to reach Rick Dearborn, a senior foreign policy advisor, and Mashburn, the Campaign policy director. Gordon stated that he connected with both of them (he could not recall if by phone or in person) and apprised them of the language he took issue with in the proposed amendment. Gordon recalled no objection by either Dearborn or Mashburn and that all three Campaign advisors supported the alternative formulation ("appropriate assistance").⁸⁰⁹ Dearborn recalled Gordon warning them about the amendment, but not weighing in because Gordon was more familiar with the Campaign's foreign policy stance.⁸¹⁰ Mashburn stated that Gordon reached him, and he told Gordon that Trump had not taken a stance on the issue and that the Campaign should not intervene.⁸¹¹

When the amendment came up again in the committee's proceedings, the subcommittee changed the amendment by striking the "lethal defense weapons" language and replacing it with

⁸⁰¹ Denman 6/7/17 302, at 3.

⁸⁰² M. Miller 10/25/17 302 at 3.

⁸⁰³ Denman 12/4/17 302, at 2; Denman 6/7/17 302, at 2.

⁸⁰⁴ Hoff 5/26/17 302, at 2.

⁸⁰⁵ Denman 6/7/17 302, at 2-3, 3-4; Denman 12/4/17 302, at 2.

⁸⁰⁶ Gordon 2/14/19 302, at 7.

⁸⁰⁷ Call Records of J.D. Gordon [REDACTED]. Gordon stated to the Office that his calls with Sessions were unrelated to the platform change. Gordon 2/14/19 302, at 7.

⁸⁰⁸ Written Responses of Donald J. Trump (Nov. 20, 2018), at 17 (Response to Question IV, Part (f)).

⁸⁰⁹ Gordon 2/14/19 302, at 6-7; Gordon 9/7/17 302, at 11-12; *see* Gordon 8/29/17 302, at 11.

⁸¹⁰ Dearborn 11/28/17 302, at 7-8.

⁸¹¹ Mashburn 6/25/18 302, at 4.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

“appropriate assistance.”⁸¹² Gordon stated that he and the subcommittee co-chair ultimately agreed to replace the language about armed assistance with “appropriate assistance.”⁸¹³ The subcommittee accordingly approved Denman’s amendment but with the term “appropriate assistance.”⁸¹⁴ Gordon stated that, to his recollection, this was the only change sought by the Campaign.⁸¹⁵ Sam Clovis, the Campaign’s national co-chair and chief policy advisor, stated he was surprised by the change and did not believe it was in line with Trump’s stance.⁸¹⁶ Mashburn stated that when he saw the word “appropriate assistance,” he believed that Gordon had violated Mashburn’s directive not to intervene.⁸¹⁷

7. Post-Convention Contacts with Kislyak

Ambassador Kislyak continued his efforts to interact with Campaign officials with responsibility for the foreign-policy portfolio—among them Sessions and Gordon—in the weeks after the Convention. The Office did not identify evidence in those interactions of coordination between the Campaign and the Russian government.

a. Ambassador Kislyak Invites J.D. Gordon to Breakfast at the Ambassador’s Residence

On August 3, 2016, an official from the Embassy of the Russian Federation in the United States wrote to Gordon “[o]n behalf of” Ambassador Kislyak inviting Gordon “to have breakfast/tea with the Ambassador at his residence” in Washington, D.C. the following week.⁸¹⁸ Gordon responded five days later to decline the invitation. He wrote, “[t]hese days are not optimal for us, as we are busily knocking down a constant stream of false media stories while also preparing for the first debate with HRC. Hope to take a raincheck for another time when things quiet down a bit. Please pass along my regards to the Ambassador.”⁸¹⁹ The investigation did not identify evidence that Gordon made any other arrangements to meet (or met) with Kislyak after this email.

b. Senator Sessions’s September 2016 Meeting with Ambassador Kislyak

Also in August 2016, a representative of the Russian Embassy contacted Sessions’s Senate office about setting up a meeting with Kislyak.⁸²⁰ At the time, Sessions was a member of the

⁸¹² Hoff 5/26/17 302, at 2-3; see Denman 12/4/17 302, at 2-3; Gordon 8/29/17 302, at 11.

⁸¹³ Gordon 8/29/17 302, at 11; Gordon 9/7/17 302, at 12.

⁸¹⁴ Hoff 5/26/17 302, at 2-3.

⁸¹⁵ Gordon 2/14/19 302, at 6.

⁸¹⁶ Clovis 10/3/17 302, at 10-11.

⁸¹⁷ Mashburn 6/25/18 302, at 4.

⁸¹⁸ DJTFP00004828 (8/3/16 Email, Pchelyakov [embassy@russianembassy.org] to Gordon).

⁸¹⁹ DJTFP00004953 (8/8/16 Email, Gordon to embassy@russianembassy.org).

⁸²⁰ Luff 1/30/18 302, at 5.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Senate Foreign Relations Committee and would meet with foreign officials in that capacity.⁸²¹ But Sessions's staff reported, and Sessions himself acknowledged, that meeting requests from ambassadors increased substantially in 2016, as Sessions assumed a prominent role in the Trump Campaign and his name was mentioned for potential cabinet-level positions in a future Trump Administration.⁸²²

On September 8, 2016, Sessions met with Kislyak in his Senate office.⁸²³ Sessions said that he believed he was doing the Campaign a service by meeting with foreign ambassadors, including Kislyak.⁸²⁴ He was accompanied in the meeting by at least two of his Senate staff: Sandra Luff, his legislative director; and Pete Landrum, who handled military affairs.⁸²⁵ The meeting lasted less than 30 minutes.⁸²⁶ Sessions voiced concerns about Russia's sale of a missile-defense system to Iran, Russian planes buzzing U.S. military assets in the Middle East, and Russian aggression in emerging democracies such as Ukraine and Moldova.⁸²⁷ Kislyak offered explanations on these issues and complained about NATO land forces in former Soviet-bloc countries that border Russia.⁸²⁸ Landrum recalled that Kislyak referred to the presidential campaign as "an interesting campaign,"⁸²⁹ and Sessions also recalled Kislyak saying that the Russian government was receptive to the overtures Trump had laid out during his campaign.⁸³⁰ None of the attendees, though, remembered any discussion of Russian election interference or any request that Sessions convey information from the Russian government to the Trump Campaign.⁸³¹

During the meeting, Kislyak invited Sessions to further discuss U.S.-Russia relations with him over a meal at the ambassador's residence.⁸³² Sessions was non-committal when Kislyak extended the invitation. After the meeting ended, Luff advised Sessions against accepting the one-on-one meeting with Kislyak, whom she assessed to be an "old school KGB guy."⁸³³ Neither Luff nor Landrum recalled that Sessions followed up on the invitation or made any further effort to dine

⁸²¹ Sessions 1/17/18 302, at 23-24; Luff 1/30/18 302, at 5.

⁸²² Sessions 1/17/18 302, at 23-24; Luff 1/30/18 302, at 5; Landrum 2/27/18 302, at 3-5.

⁸²³ Sessions 1/17/18 302, at 23.

⁸²⁴ Sessions 1/17/18 302, at 23.

⁸²⁵ Sessions 1/17/18 302, at 23; Luff 1/30/18 302, at 5-6; Landrum 2/27/18 302, at 4-5 (stating he could not remember if election was discussed).

⁸²⁶ Luff 1/30/18 302, at 6; Landrum 2/27/18 302, at 5.

⁸²⁷ Luff 1/30/18 302, at 6; Landrum 2/27/18 302, at 4-5.

⁸²⁸ Luff 1/30/18 302, at 6; Landrum 2/27/18 302 at 4-5.

⁸²⁹ Landrum 2/27/18 302, at 5.

⁸³⁰ Sessions 1/17/18 302, at 23. Sessions also noted that ambassadors came to him for information about Trump and hoped he would pass along information to Trump. Sessions 1/17/18 302, at 23-24.

⁸³¹ Sessions 1/17/18 302, at 23; Luff 1/30/18 302, at 6; Landrum 2/27/18 302, at 5.

⁸³² Luff 1/30/18 302, at 5; Landrum 2/27/18 302, at 4.

⁸³³ Luff 1/30/18 302, at 5.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

or meet with Kislyak before the November 2016 election.⁸³⁴ Sessions and Landrum recalled that, after the election, some efforts were made to arrange a meeting between Sessions and Kislyak.⁸³⁵ According to Sessions, the request came through CNI and would have involved a meeting between Sessions and Kislyak, two other ambassadors, and the Governor of Alabama.⁸³⁶ Sessions, however, was in New York on the day of the anticipated meeting and was unable to attend.⁸³⁷ The investigation did not identify evidence that the two men met at any point after their September 8 meeting.

8. Paul Manafort

Paul Manafort served on the Trump Campaign, including a period as campaign chairman, from March to August 2016.⁸³⁸ Manafort had connections to Russia through his prior work for Russian oligarch Oleg Deripaska and later through his work for a pro-Russian regime in Ukraine. Manafort stayed in touch with these contacts during the campaign period through Konstantin Kilimnik, a longtime Manafort employee who previously ran Manafort's office in Kiev and who the FBI assesses to have ties to Russian intelligence.

Manafort instructed Rick Gates, his deputy on the Campaign and a longtime employee,⁸³⁹ to provide Kilimnik with updates on the Trump Campaign—including internal polling data, although Manafort claims not to recall that specific instruction. Manafort expected Kilimnik to share that information with others in Ukraine and with Deripaska. Gates periodically sent such polling data to Kilimnik during the campaign.

⁸³⁴ Luff 1/30/18 302, at 6; Landrum 2/27/18 302, at 4-5.

⁸³⁵ Sessions 1/17/18 302, at 23.

⁸³⁶ Sessions 1/17/18 302, at 23.

⁸³⁷ Sessions 1/17/18 302, at 23.

⁸³⁸ On August 21, 2018, Manafort was convicted in the Eastern District of Virginia on eight tax, Foreign Bank Account Registration (FBAR), and bank fraud charges. On September 14, 2018, Manafort pleaded guilty in the District of Columbia to (1) conspiracy to defraud the United States and conspiracy to commit offenses against the United States (money laundering, tax fraud, FBAR, Foreign Agents Registration Act (FARA), and FARA false statements), and (2) conspiracy to obstruct justice (witness tampering). Manafort also admitted criminal conduct with which he had been charged in the Eastern District of Virginia, but as to which the jury hung. The conduct at issue in both cases involved Manafort's work in Ukraine and the money he earned for that work, as well as crimes after the Ukraine work ended. On March 7, 2019, Manafort was sentenced to 47 months of imprisonment in the Virginia prosecution. On March 13, the district court in D.C. sentenced Manafort to a total term of 73 months: 60 months on the Count 1 conspiracy (with 30 of those months to run concurrent to the Virginia sentence), and 13 months on the Count 1 conspiracy, to be served consecutive to the other two sentences. The two sentences resulted in a total term of 90 months.

⁸³⁹ As noted in Volume I, Section III.D.1.b, *supra*, Gates pleaded guilty to two criminal charges in the District of Columbia, including making a false statement to the FBI, pursuant to a plea agreement. He has provided information and in-court testimony that the Office has deemed to be reliable. *See also* Transcript at 16, *United States v. Paul J. Manafort, Jr.*, 1:17-cr-201 (D.D.C. Feb. 13, 2019), Doc. 514 ("*Manafort 2/13/19 Transcript*") (court's explanation of reasons to credit Gates's statements in one instance).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Manafort also twice met Kilimnik in the United States during the campaign period and conveyed campaign information. The second meeting took place on August 2, 2016, in New York City. Kilimnik requested the meeting to deliver in person a message from former Ukrainian President Viktor Yanukovich, who was then living in Russia. The message was about a peace plan for Ukraine that Manafort has since acknowledged was a “backdoor” means for Russia to control eastern Ukraine. Several months later, after the presidential election, Kilimnik wrote an email to Manafort expressing the view—which Manafort later said he shared—that the plan’s success would require U.S. support to succeed: “all that is required to start the process is a very minor ‘wink’ (or slight push) from [Donald Trump].”⁸⁴⁰ The email also stated that if Manafort were designated as the U.S. representative and started the process, Yanukovich would ensure his reception in Russia “at the very top level.”

Manafort communicated with Kilimnik about peace plans for Ukraine on at least four occasions after their first discussion of the topic on August 2: December 2016 (the Kilimnik email described above); January 2017; February 2017; and again in the spring of 2018. The Office reviewed numerous Manafort email and text communications, and asked President Trump about the plan in written questions.⁸⁴¹ The investigation did not uncover evidence of Manafort’s passing along information about Ukrainian peace plans to the candidate or anyone else in the Campaign or the Administration. The Office was not, however, able to gain access to all of Manafort’s electronic communications (in some instances, messages were sent using encryption applications). And while Manafort denied that he spoke to members of the Trump Campaign or the new Administration about the peace plan, he lied to the Office and the grand jury about the peace plan and his meetings with Kilimnik, and his unreliability on this subject was among the reasons that the district judge found that he breached his cooperation agreement.⁸⁴²

The Office could not reliably determine Manafort’s purpose in sharing internal polling data with Kilimnik during the campaign period. Manafort ~~Grand Jury~~ did not see a downside to sharing campaign information, and told Gates that his role in the Campaign would

⁸⁴⁰ The email was drafted in Kilimnik’s DMP email account (in English)

Investigative Technique

⁸⁴¹ According to the President’s written answers, he does not remember Manafort communicating to him any particular positions that Ukraine or Russia would want the United States to support. Written Responses of Donald J. Trump (Nov. 20, 2018), at 16-17 (Response to Question IV, Part (d)).

⁸⁴² Manafort made several false statements during debriefings. Based on that conduct, the Office determined that Manafort had breached his plea agreement and could not be a cooperating witness. The judge presiding in Manafort’s D.C. criminal case found by a preponderance of the evidence that Manafort intentionally made multiple false statements to the FBI, the Office, and the grand jury concerning his interactions and communications with Kilimnik (and concerning two other issues). Although the report refers at times to Manafort’s statements, it does so only when those statements are sufficiently corroborated to be trustworthy, to identify issues on which Manafort’s untruthful responses may themselves be of evidentiary value, or to provide Manafort’s explanations for certain events, even when we were unable to determine whether that explanation was credible.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

be “good for business” and potentially a way to be made whole for work he previously completed in the Ukraine. As to Deripaska, Manafort claimed that by sharing campaign information with him, Deripaska might see value in their relationship and resolve a “disagreement”—a reference to one or more outstanding lawsuits. Because of questions about Manafort’s credibility and our limited ability to gather evidence on what happened to the polling data after it was sent to Kilimnik, the Office could not assess what Kilimnik (or others he may have given it to) did with it. The Office did not identify evidence of a connection between Manafort’s sharing polling data and Russia’s interference in the election, which had already been reported by U.S. media outlets at the time of the August 2 meeting. The investigation did not establish that Manafort otherwise coordinated with the Russian government on its election-interference efforts.

a. Paul Manafort’s Ties to Russia and Ukraine

Manafort’s Russian contacts during the campaign and transition periods stem from his consulting work for Deripaska from approximately 2005 to 2009 and his separate political consulting work in Ukraine from 2005 to 2015, including through his company DMP International LLC (DMI). Kilimnik worked for Manafort in Kiev during this entire period and continued to communicate with Manafort through at least June 2018. Kilimnik, who speaks and writes Ukrainian and Russian, facilitated many of Manafort’s communications with Deripaska and Ukrainian oligarchs.

i. Oleg Deripaska Consulting Work

In approximately 2005, Manafort began working for Deripaska, a Russian oligarch who has a global empire involving aluminum and power companies and who is closely aligned with Vladimir Putin.⁸⁴³ A memorandum describing work that Manafort performed for Deripaska in 2005 regarding the post-Soviet republics referenced the need to brief the Kremlin and the benefits that the work could confer on “the Putin Government.”⁸⁴⁴ Gates described the work Manafort did for Deripaska as “political risk insurance,” and explained that Deripaska used Manafort to install friendly political officials in countries where Deripaska had business interests.⁸⁴⁵ Manafort’s company earned tens of millions of dollars from its work for Deripaska and was loaned millions of dollars by Deripaska as well.⁸⁴⁶

In 2007, Deripaska invested through another entity in Pericles Emerging Market Partners L.P. (“Pericles”), an investment fund created by Manafort and former Manafort business partner Richard Davis. The Pericles fund was established to pursue investments in Eastern Europe.⁸⁴⁷ Deripaska was the sole investor.⁸⁴⁸ Gates stated in interviews with the Office that the venture led

⁸⁴³ Pinchuk et al., *Russian Tycoon Deripaska in Putin Delegation to China*, Reuters (June 8, 2018).

⁸⁴⁴ 6/23/05 Memo, Manafort & Davis to Deripaska & Rothchild.

⁸⁴⁵ Gates 2/2/18 302, at 7.

⁸⁴⁶ Manafort 9/20/18 302, at 2-5; Manafort Income by Year, 2005 – 2015; Manafort Loans from Wire Transfers, 2005 – 2015.

⁸⁴⁷ Gates 3/12/18 302, at 5.

⁸⁴⁸ Manafort 12/16/15 Dep., at 157:8-11.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

to a deterioration of the relationship between Manafort and Deripaska.⁸⁴⁹ In particular, when the fund failed, litigation between Manafort and Deripaska ensued. Gates stated that, by 2009, Manafort's business relationship with Deripaska had "dried up."⁸⁵⁰ According to Gates, various interactions with Deripaska and his intermediaries over the past few years have involved trying to resolve the legal dispute.⁸⁵¹ As described below, in 2016, Manafort, Gates, Kilimnik, and others engaged in efforts to revive the Deripaska relationship and resolve the litigation.

ii. Political Consulting Work

Through Deripaska, Manafort was introduced to Rinat Akhmetov, a Ukrainian oligarch who hired Manafort as a political consultant.⁸⁵² In 2005, Akhmetov hired Manafort to engage in political work supporting the Party of Regions,⁸⁵³ a political party in Ukraine that was generally understood to align with Russia. Manafort assisted the Party of Regions in regaining power, and its candidate, Viktor Yanukovych, won the presidency in 2010. Manafort became a close and trusted political advisor to Yanukovych during his time as President of Ukraine. Yanukovych served in that role until 2014, when he fled to Russia amidst popular protests.⁸⁵⁴

iii. Konstantin Kilimnik

Kilimnik is a Russian national who has lived in both Russia and Ukraine and was a longtime Manafort employee.⁸⁵⁵ Kilimnik had direct and close access to Yanukovych and his senior entourage, and he facilitated communications between Manafort and his clients, including Yanukovych and multiple Ukrainian oligarchs.⁸⁵⁶ Kilimnik also maintained a relationship with Deripaska's deputy, Viktor Boyarkin,⁸⁵⁷ a Russian national who previously served in the defense attaché office of the Russian Embassy to the United States.⁸⁵⁸

⁸⁴⁹ Gates 2/2/18 302, at 9.

⁸⁵⁰ Gates 2/2/18 302, at 6.

⁸⁵¹ Gates 2/2/18 302, at 9-10.

⁸⁵² Manafort 7/30/14 302, at 1; Manafort 9/20/18 302, at 2.

⁸⁵³ Manafort 9/11/18 302, at 5-6.

⁸⁵⁴ Gates 3/16/18 302, at 1; Davis 2/8/18 302, at 9; Devine 7/6/18 302, at 2-3.

⁸⁵⁵ Patten 5/22/18 302, at 5; Gates 1/29/18 302, at 18-19; 10/28/97 Kilimnik Visa Record, U.S. Department of State.

⁸⁵⁶ Gates 1/29/18 302, at 18-19; Patten 5/22/18 302, at 8; Gates 1/31/18 302, at 4-5; Gates 1/30/18 302, at 2; Gates 2/2/18 302, at 11.

⁸⁵⁷ Gates 1/29/18 302, at 18; Patten 5/22/18 302, at 8.

⁸⁵⁸ Boyarkin Visa Record, U.S. Department of State.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Manafort told the Office that he did not believe Kilimnik was working as a Russian “spy.”⁸⁵⁹ The FBI, however, assesses that Kilimnik has ties to Russian intelligence.⁸⁶⁰ Several pieces of the Office’s evidence—including witness interviews and emails obtained through court-authorized search warrants—support that assessment:

- Kilimnik was born on April 27, 1970, in Dnipropetrovsk Oblast, then of the Soviet Union, and attended the Military Institute of the Ministry of Defense from 1987 until 1992.⁸⁶¹ Sam Patten, a business partner to Kilimnik,⁸⁶² stated that Kilimnik told him that he was a translator in the Russian army for seven years and that he later worked in the Russian armament industry selling arms and military equipment.⁸⁶³
- U.S. government visa records reveal that Kilimnik obtained a visa to travel to the United States with a Russian diplomatic passport in 1997.⁸⁶⁴
- Kilimnik worked for the International Republican Institute’s (IRI) Moscow office, where he did translation work and general office management from 1998 to 2005.⁸⁶⁵ While another official recalled the incident differently,⁸⁶⁶ one former associate of Kilimnik’s at IRI told the FBI that Kilimnik was fired from his post because his links to Russian intelligence were too strong. The same individual stated that it was well known at IRI that Kilimnik had links to the Russian government.⁸⁶⁷
- Jonathan Hawker, a British national who was a public relations consultant at FTI Consulting, worked with DMI on a public relations campaign for Yanukovych. After Hawker’s work for DMI ended, Kilimnik contacted Hawker about working for a Russian

⁸⁵⁹ Manafort 9/11/18 302, at 5.

⁸⁶⁰ The Office has noted Kilimnik’s assessed ties to Russian intelligence in public court filings. *E.g.*, Gov’t Opp. to Mot. to Modify, *United States v. Paul J. Manafort, Jr.*, 1:17-cr-201 (D.D.C. Dec. 4, 2017), Doc. 73, at 2 (“*Manafort* (D.D.C.) Gov’t Opp. to Mot. to Modify”).

⁸⁶¹ 12/17/16 Kilimnik Visa Record, U.S. Department of State.

⁸⁶² In August 2018, Patten pleaded guilty pursuant to a plea agreement to violating the Foreign Agents Registration Act, and admitted in his Statement of Offense that he also misled and withheld documents from the Senate Select Committee on Intelligence in the course of its investigation of Russian election interference. Plea Agreement, *United States v. W. Samuel Patten*, 1:18-cr-260 (D.D.C. Aug. 31, 2018), Doc. 6; Statement of Offense, *United States v. W. Samuel Patten*, 1:18-cr-260 (D.D.C. Aug. 31, 2018), Doc. 7.

⁸⁶³ Patten 5/22/18 302, at 5-6.

⁸⁶⁴ 10/28/97 Kilimnik Visa Record, U.S. Department of State.

⁸⁶⁵ Nix 3/30/18 302, at 1-2.

⁸⁶⁶ Nix 3/30/18 302, at 2.

⁸⁶⁷ Lenzi 1/30/18 302, at 2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

government entity on a public-relations project that would promote, in Western and Ukrainian media, Russia's position on its 2014 invasion of Crimea.⁸⁶⁸

- Gates suspected that Kilimnik was a “spy,” a view that he shared with Manafort, Hawker, and Alexander van der Zwaan,⁸⁶⁹ an attorney who had worked with DMI on a report for the Ukrainian Ministry of Foreign Affairs.⁸⁷⁰

Investigative Technique

b. Contacts during Paul Manafort's Time with the Trump Campaign

i. Paul Manafort Joins the Campaign

Manafort served on the Trump Campaign from late March to August 19, 2016. On March 29, 2016, the Campaign announced that Manafort would serve as the Campaign's “Convention Manager.”⁸⁷¹ On May 19, 2016, Manafort was promoted to campaign chairman and chief strategist, and Gates, who had been assisting Manafort on the Campaign, was appointed deputy campaign chairman.⁸⁷²

Thomas Barrack and Roger Stone both recommended Manafort to candidate Trump.⁸⁷³ In early 2016, at Manafort's request, Barrack suggested to Trump that Manafort join the Campaign to manage the Republican Convention.⁸⁷⁴ Stone had worked with Manafort from approximately 1980 until the mid-1990s through various consulting and lobbying firms. Manafort met Trump in 1982 when Trump hired the Black, Manafort, Stone and Kelly lobbying firm.⁸⁷⁵ Over the years, Manafort saw Trump at political and social events in New York City and at Stone's wedding, and Trump requested VIP status at the 1988 and 1996 Republican conventions worked by Manafort.⁸⁷⁶

⁸⁶⁸ Hawker 1/9/18 302, at 13; 3/18/14 Email, Hawker & Tulukbaev.

⁸⁶⁹ van der Zwaan pleaded guilty in the U.S. District Court for the District of Columbia to making false statements to the Special Counsel's Office. Plea Agreement, *United States v. Alex van der Zwaan*, 1:18-cr-31 (D.D.C. Feb. 20, 2018), Doc. 8.

⁸⁷⁰ Hawker 6/9/18 302, at 4; van der Zwaan 11/3/17 302, at 22. Manafort said in an interview that Gates had joked with Kilimnik about Kilimnik's going to meet with his KGB handler. Manafort 10/16/18 302, at 7.

⁸⁷¹ *Press Release – Donald J. Trump Announces Campaign Convention Manager Paul J. Manafort*, The American Presidency Project – U.C. Santa Barbara (Mar. 29, 2016).

⁸⁷² Gates 1/29/18 302, at 8; Meghan Keneally, *Timeline of Manafort's role in the Trump Campaign*, ABC News (Oct. 20, 2017).

⁸⁷³ Gates 1/29/18 302, at 7-8; Manafort 9/11/18 302, at 1-2; Barrack 12/12/17 302, at 3.

⁸⁷⁴ Barrack 12/12/17 302, at 3; Gates 1/29/18 302, at 7-8.

⁸⁷⁵ Manafort 10/16/18 302, at 6.

⁸⁷⁶ Manafort 10/16/18 302, at 6.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

According to Gates, in March 2016, Manafort traveled to Trump's Mar-a-Lago estate in Florida to meet with Trump. Trump hired him at that time.⁸⁷⁷ Manafort agreed to work on the Campaign without pay. Manafort had no meaningful income at this point in time, but resuscitating his domestic political campaign career could be financially beneficial in the future. Gates reported that Manafort intended, if Trump won the Presidency, to remain outside the Administration and monetize his relationship with the Administration.⁸⁷⁸

ii. Paul Manafort's Campaign-Period Contacts

Immediately upon joining the Campaign, Manafort directed Gates to prepare for his review separate memoranda addressed to Deripaska, Akhmetov, Serhiy Lyovochkin, and Boris Kolesnikov,⁸⁷⁹ the last three being Ukrainian oligarchs who were senior Opposition Bloc officials.⁸⁸⁰ The memoranda described Manafort's appointment to the Trump Campaign and indicated his willingness to consult on Ukrainian politics in the future. On March 30, 2016, Gates emailed the memoranda and a press release announcing Manafort's appointment to Kilimnik for translation and dissemination.⁸⁸¹ Manafort later followed up with Kilimnik to ensure his messages had been delivered, emailing on April 11, 2016 to ask whether Kilimnik had shown "our friends" the media coverage of his new role.⁸⁸² Kilimnik replied, "Absolutely. Every article." Manafort further asked: "How do we use to get whole. Has Ovd [Oleg Vladimirovich Deripaska] operation seen?" Kilimnik wrote back the same day, "Yes, I have been sending everything to Victor [Boyarkin, Deripaska's deputy], who has been forwarding the coverage directly to OVD."⁸⁸³

Gates reported that Manafort said that being hired on the Campaign would be "good for business" and increase the likelihood that Manafort would be paid the approximately \$2 million he was owed for previous political consulting work in Ukraine.⁸⁸⁴ Gates also explained to the Office that Manafort thought his role on the Campaign could help "confirm" that Deripaska had dropped the Pericles lawsuit, and that Gates believed Manafort sent polling data to Deripaska (as

⁸⁷⁷ Gates 2/2/18 302, at 10.

⁸⁷⁸ Gates 1/30/18 302, at 4.

⁸⁷⁹ Gates 2/2/18 302, at 11.

⁸⁸⁰ See Sharon LaFraniere, Manafort's Trial Isn't About Russia, but It Will Be in the Air, *New York Times* (July 30, 2018); Tierney Sneed, *Prosecutors Believe Manafort Made \$60 Million Consulting in Ukraine*, Talking Points Memo (July 30, 2018); Mykola Vorobiov, *How Pro-Russian Forces Will Take Revenge on Ukraine*, Atlantic Council (Sept. 23, 2018); Sergii Leshchenko, *Ukraine's Oligarchs Are Still Calling the Shots*, Foreign Policy (Aug. 14, 2014); Interfax-Ukraine, *Kolesnikov: Inevitability of Punishment Needed for Real Fight Against Smuggling in Ukraine*, Kyiv Post (June 23, 2018); Igor Kosssov, *Kyiv Hotel Industry Makes Room for New Entrants*, Kyiv Post (Mar. 7, 2019); Markian Kuzmowycz, *How the Kremlin Can Win Ukraine's Elections*, Atlantic Council (Nov. 19, 2018). The Opposition Bloc is a Ukraine political party that largely reconstituted the Party of Regions.

⁸⁸¹ 3/30/16 Email, Gates to Kilimnik.

⁸⁸² 4/11/16 Email, Manafort & Kilimnik.

⁸⁸³ 4/11/16 Email, Manafort & Kilimnik.

⁸⁸⁴ Gates 2/2/18 302, at 10.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

discussed further below) so that Deripaska would not move forward with his lawsuit against Manafort.⁸⁸⁵ Gates further stated that Deripaska wanted a visa to the United States, that Deripaska could believe that having Manafort in a position inside the Campaign or Administration might be helpful to Deripaska, and that Manafort's relationship with Trump could help Deripaska in other ways as well.⁸⁸⁶ Gates stated, however, that Manafort never told him anything specific about what, if anything, Manafort might be offering Deripaska.⁸⁸⁷

Gates also reported that Manafort instructed him in April 2016 or early May 2016 to send Kilimnik Campaign internal polling data and other updates so that Kilimnik, in turn, could share it with Ukrainian oligarchs.⁸⁸⁸ Gates understood that the information would also be shared with Deripaska. ~~Grand Jury~~⁸⁸⁹ Gates reported to the Office that he did not know why Manafort wanted him to send polling information, but Gates thought it was a way to showcase Manafort's work, and Manafort wanted to open doors to jobs after the Trump Campaign ended.⁸⁹⁰ Gates said that Manafort's instruction included sending internal polling data prepared for the Trump Campaign by pollster Tony Fabrizio.⁸⁹¹ Fabrizio had worked with Manafort for years and was brought into the Campaign by Manafort. Gates stated that, in accordance with Manafort's instruction, he periodically sent Kilimnik polling data via WhatsApp; Gates then deleted the communications on a daily basis.⁸⁹² Gates further told the Office that, after Manafort left the Campaign in mid-August, Gates sent Kilimnik polling data less frequently and that the data he sent was more publicly available information and less internal data.⁸⁹³

Gates's account about polling data is consistent ~~Grand Jury~~⁸⁹⁴ with multiple emails that Kilimnik sent to U.S. associates and press contacts between late July and mid-August of 2016. Those emails referenced "internal polling," described the status of the Trump Campaign and

⁸⁸⁵ Gates 2/2/18 302, at 11; Gates 9/27/18 302 (serial 740), at 2.

⁸⁸⁶ Gates 2/2/18 302, at 12.

⁸⁸⁷ Gates 2/2/18 302, at 12.

⁸⁸⁸ Gates 1/31/18 302, at 17; Gates 9/27/18 302 (serial 740), at 2. In a later interview with the Office, Gates stated that Manafort directed him to send polling data to Kilimnik after a May 7, 2016 meeting between Manafort and Kilimnik in New York, discussed in Volume I, Section IV.A.8.b.iii, *infra*. Gates 11/7/18 302, at 3.

⁸⁸⁹ Gates 9/27/18 302, Part II, at 2; ~~Grand Jury~~.

⁸⁹⁰ Gates 2/12/18 302, at 10; Gates 1/31/18 302, at 17.

⁸⁹¹ Gates 9/27/18 302 (serial 740), at 2; Gates 2/7/18 302, at 15.

⁸⁹² Gates 1/31/18 302, at 17.

⁸⁹³ Gates 2/12/18 302, at 11-12. According to Gates, his access to internal polling data was more limited because Fabrizio was himself distanced from the Campaign at that point.

⁸⁹⁴ ~~Grand Jury~~

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Manafort's role in it, and assessed Trump's prospects for victory.⁸⁹⁵ Manafort did not acknowledge instructing Gates to send Kilimnik internal data. ~~Grand Jury~~

896

The Office also obtained contemporaneous emails that shed light on the purpose of the communications with Deripaska and that are consistent with Gates's account. For example, in response to a July 7, 2016, email from a Ukrainian reporter about Manafort's failed Deripaska-backed investment, Manafort asked Kilimnik whether there had been any movement on "this issue with our friend."⁸⁹⁷ Gates stated that "our friend" likely referred to Deripaska,⁸⁹⁸ and Manafort told the Office that the "issue" (and "our biggest interest," as stated below) was a solution to the Deripaska-Pericles issue.⁸⁹⁹ Kilimnik replied:

I am carefully optimistic on the question of our biggest interest.

Our friend [Boyarkin] said there is lately significantly more attention to the campaign in his boss' [Deripaska's] mind, and he will be most likely looking for ways to reach out to you pretty soon, understanding all the time sensitivity. I am more than sure that it will be resolved and we will get back to the original relationship with V.'s boss [Deripaska].⁹⁰⁰

Eight minutes later, Manafort replied that Kilimnik should tell Boyarkin's "boss," a reference to Deripaska, "that if he needs private briefings we can accommodate."⁹⁰¹ Manafort has alleged to the Office that he was willing to brief Deripaska only on public campaign matters and gave an example: why Trump selected Mike Pence as the Vice-Presidential running mate.⁹⁰² Manafort said he never gave Deripaska a briefing.⁹⁰³ Manafort noted that if Trump won, Deripaska would want to use Manafort to advance whatever interests Deripaska had in the United States and elsewhere.⁹⁰⁴

⁸⁹⁵ 8/18/16 Email, Kilimnik to Dirkse; 8/18/16 Email, Kilimnik to Schultz; 8/18/16 Email, Kilimnik to Marson; 7/27/16 Email, Kilimnik to Ash; 8/18/16 Email, Kilimnik to Ash; 8/18/16 Email, Kilimnik to Jackson; 8/18/16 Email, Kilimnik to Mendoza-Wilson; 8/19/16 Email, Kilimnik to Patten.

⁸⁹⁶ ~~Grand Jury~~

⁸⁹⁷ 7/7/16 Email, Manafort to Kilimnik.

⁸⁹⁸ Gates 2/2/18 302, at 13.

⁸⁹⁹ Manafort 9/11/18 302, at 6.

⁹⁰⁰ 7/8/16 Email, Kilimnik to Manafort.

⁹⁰¹ 7/8/16 Email, Kilimnik to Manafort; Gates 2/2/18 302, at 13.

⁹⁰² Manafort 9/11/18 302, at 6.

⁹⁰³ Manafort 9/11/18 302, at 6.

⁹⁰⁴ Manafort 9/11/18 302, at 6.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

iii. Paul Manafort's Two Campaign-Period Meetings with Konstantin Kilimnik in the United States

Manafort twice met with Kilimnik in person during the campaign period—once in May and again in August 2016. The first meeting took place on May 7, 2016, in New York City.⁹⁰⁵ In the days leading to the meeting, Kilimnik had been working to gather information about the political situation in Ukraine. That included information gleaned from a trip that former Party of Regions official Yuriy Boyko had recently taken to Moscow—a trip that likely included meetings between Boyko and high-ranking Russian officials.⁹⁰⁶ Kilimnik then traveled to Washington, D.C. on or about May 5, 2016; while in Washington, Kilimnik had pre-arranged meetings with State Department employees.⁹⁰⁷

Late on the evening of May 6, Gates arranged for Kilimnik to take a 3:00 a.m. train to meet Manafort in New York for breakfast on May 7.⁹⁰⁸ According to Manafort, during the meeting, he and Kilimnik talked about events in Ukraine, and Manafort briefed Kilimnik on the Trump Campaign, expecting Kilimnik to pass the information back to individuals in Ukraine and elsewhere.⁹⁰⁹ Manafort stated that Opposition Bloc members recognized Manafort's position on the Campaign was an opportunity, but Kilimnik did not ask for anything.⁹¹⁰ Kilimnik spoke about a plan of Boyko to boost election participation in the eastern zone of Ukraine, which was the base for the Opposition Bloc.⁹¹¹ Kilimnik returned to Washington, D.C. right after the meeting with Manafort.

Manafort met with Kilimnik a second time at the Grand Havana Club in New York City on the evening of August 2, 2016. The events leading to the meeting are as follows. On July 28, 2016, Kilimnik flew from Kiev to Moscow.⁹¹² The next day, Kilimnik wrote to Manafort requesting that they meet, using coded language about a conversation he had that day.⁹¹³ In an email with a subject line "Black Caviar," Kilimnik wrote:

I met today with the guy who gave you your biggest black caviar jar several years ago. We spent about 5 hours talking about his story, and I have several important messages from him to you. He asked me to go and brief you on our conversation. I said I have to run it by you first, but in principle I am prepared to do it. . . . It has to do about the future of his

⁹⁰⁵ Investigative Technique

⁹⁰⁶ 4/26/16 Email, Kilimnik to Purcell, at 2; Gates 2/2/18 302, at 12; Patten 5/22/18 302, at 6-7; Gates 11/7/18 302, at 3.

⁹⁰⁷ 5/7/16 Email, Kilimnik to Charap & Kimmage; 5/7/16 Email, Kasanof to Kilimnik.

⁹⁰⁸ 5/6/16 Email, Manafort to Gates; 5/6/16 Email, Gates to Kilimnik.

⁹⁰⁹ Manafort 10/11/18 302, at 1.

⁹¹⁰ Manafort 10/11/18 302, at 1.

⁹¹¹ Manafort 10/11/18 302, at 1.

⁹¹² 7/25/16 Email, Kilimnik to katrin@yana.kiev.ua (2:17:34 a.m.).

⁹¹³ 7/29/16 Email, Kilimnik to Manafort (10:51 a.m.).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

country, and is quite interesting.⁹¹⁴

Manafort identified “the guy who gave you your biggest black caviar jar” as Yanukovych. He explained that, in 2010, he and Yanukovych had lunch to celebrate the recent presidential election. Yanukovych gave Manafort a large jar of black caviar that was worth approximately \$30,000 to \$40,000.⁹¹⁵ Manafort’s identification of Yanukovych as “the guy who gave you your biggest black caviar jar” is consistent with Kilimnik being in Moscow—where Yanukovych resided—when Kilimnik wrote “I met today with the guy,” and with a December 2016 email in which Kilimnik referred to Yanukovych as “BG,” [REDACTED]⁹¹⁶ Manafort replied to Kilimnik’s July 29 email, “Tuesday [August 2] is best . . . Tues or weds in NYC.”⁹¹⁷

Three days later, on July 31, 2016, Kilimnik flew back to Kiev from Moscow, and on that same day, wrote to Manafort that he needed “about 2 hours” for their meeting “because it is a long caviar story to tell.”⁹¹⁸ Kilimnik wrote that he would arrive at JFK on August 2 at 7:30 p.m., and he and Manafort agreed to a late dinner that night.⁹¹⁹ Documentary evidence—including flight, phone, and hotel records, and the timing of text messages exchanged⁹²⁰—confirms the dinner took place as planned on August 2.⁹²¹

As to the contents of the meeting itself, the accounts of Manafort and Gates—who arrived late to the dinner—differ in certain respects. But their versions of events, when assessed alongside available documentary evidence and what Kilimnik told business associate Sam Patten, indicate that at least three principal topics were discussed.

First, Manafort and Kilimnik discussed a plan to resolve the ongoing political problems in Ukraine by creating an autonomous republic in its more industrialized eastern region of Donbas,⁹²²

⁹¹⁴ 7/29/16 Email, Kilimnik to Manafort (10:51 a.m.).

⁹¹⁵ Manafort 9/12/18 302, at 3.

⁹¹⁶ 7/29/16 Email, Manafort to Kilimnik; [REDACTED] Investigative Technique [REDACTED] Grand Jury [REDACTED]

⁹¹⁷ 7/29/16 Email, Manafort to Kilimnik.

⁹¹⁸ 7/31/16 Email, Manafort to Kilimnik.

⁹¹⁹ 7/31/16 Email, Manafort to Kilimnik.

⁹²⁰ Kilimnik 8/2/16 CBP Record; Call Records of Konstantin Kilimnik [REDACTED] Grand Jury [REDACTED]; Call Records of Rick Gates [REDACTED] Grand Jury [REDACTED]; 8/2-3/16, Kilimnik Park Lane Hotel Receipt.

⁹²¹ Deripaska’s private plane also flew to Teterboro Airport in New Jersey on the evening of August 2, 2016. According to Customs and Border Protection records, the only passengers on the plane were Deripaska’s wife, daughter, mother, and father-in-law, and separate records obtained by our Office confirm that Kilimnik flew on a commercial flight to New York.

⁹²² The Luhansk and Donetsk People’s Republics, which are located in the Donbas region of Ukraine, declared themselves independent in response to the popular unrest in 2014 that removed President Yanukovych from power. Pro-Russian Ukrainian militia forces, with backing from the Russian military, have occupied the region since 2014. Under the Yanukovych-backed plan, Russia would assist in withdrawing the military, and Donbas would become an autonomous region within Ukraine with its own

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

and having Yanukovich, the Ukrainian President ousted in 2014, elected to head that republic.⁹²³ That plan, Manafort later acknowledged, constituted a “backdoor” means for Russia to control eastern Ukraine.⁹²⁴ Manafort initially said that, if he had not cut off the discussion, Kilimnik would have asked Manafort in the August 2 meeting to convince Trump to come out in favor of the peace plan, and Yanukovich would have expected Manafort to use his connections in Europe and Ukraine to support the plan.⁹²⁵ Manafort also initially told the Office that he had said to Kilimnik that the plan was crazy, that the discussion ended, and that he did not recall Kilimnik asking Manafort to reconsider the plan after their August 2 meeting.⁹²⁶ Manafort said [Grand Jury]

[Grand Jury] that he reacted negatively to Yanukovich sending—years later—an “urgent” request when Yanukovich needed him.⁹²⁷ When confronted with an email written by Kilimnik on or about December 8, 2016, however, Manafort acknowledged Kilimnik raised the peace plan again in that email.⁹²⁸ Manafort ultimately acknowledged Kilimnik also raised the peace plan in January and February 2017 meetings with Manafort. [Grand Jury]

Second, Manafort briefed Kilimnik on the state of the Trump Campaign and Manafort’s plan to win the election.⁹³⁰ That briefing encompassed the Campaign’s messaging and its internal polling data. According to Gates, it also included discussion of “battleground” states, which Manafort identified as Michigan, Wisconsin, Pennsylvania, and Minnesota.⁹³¹ Manafort did not refer explicitly to “battleground” states in his telling of the August 2 discussion. [Grand Jury]

32

prime minister. The plan emphasized that Yanukovich would be an ideal candidate to bring peace to the region as prime minister of the republic, and facilitate the reintegration of the region into Ukraine with the support of the U.S. and Russian presidents. As noted above, according to [Grand Jury] the written documentation describing the plan, for the plan to work, both U.S. and Russian support were necessary. [Grand Jury] 2/21/18 Email, Manafort, Ward, & Fabrizio, at 3-5.

⁹²³ Manafort 9/11/18 302, at 4; [Grand Jury]

⁹²⁴ [Grand Jury]

⁹²⁵ Manafort 9/11/18 302, at 4.

⁹²⁶ Manafort 9/12/18 302, at 4.

⁹²⁷ [Grand Jury] Manafort 9/11/18 302, at 5; Manafort 9/12/18 302, at 4.

⁹²⁸ Manafort 9/12/18 302, at 4; **Investigative Technique**

⁹²⁹ [Grand Jury] Documentary evidence confirms the peace-plan discussions in 2018. 2/19/18 Email, Fabrizio to Ward (forwarding email from Manafort); 2/21/18 Email, Manafort to Ward & Fabrizio.

⁹³⁰ Manafort 9/11/18 302, at 5.

⁹³¹ Gates 1/30/18 302, at 3, 5.

⁹³² [Grand Jury]

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Third, according to Gates and what Kilimnik told Patten, Manafort and Kilimnik discussed two sets of financial disputes related to Manafort's previous work in the region. Those consisted of the unresolved Deripaska lawsuit and the funds that the Opposition Bloc owed to Manafort for his political consulting work and how Manafort might be able to obtain payment.⁹³³

After the meeting, Gates and Manafort both stated that they left separately from Kilimnik because they knew the media was tracking Manafort and wanted to avoid media reporting on his connections to Kilimnik.⁹³⁴

c. Post-Resignation Activities

Manafort resigned from the Trump Campaign in mid-August 2016, approximately two weeks after his second meeting with Kilimnik, amidst negative media reporting about his political consulting work for the pro-Russian Party of Regions in Ukraine. Despite his resignation, Manafort continued to offer advice to various Campaign officials through the November election. Manafort told Gates that he still spoke with Kushner, Bannon, and candidate Trump,⁹³⁵ and some of those post-resignation contacts are documented in emails. For example, on October 21, 2016, Manafort sent Kushner an email and attached a strategy memorandum proposing that the Campaign make the case against Clinton "as the failed and corrupt champion of the establishment" and that "Wikileaks provides the Trump campaign the ability to make the case in a very credible way – by using the words of Clinton, its campaign officials and DNC members."⁹³⁶ Later, in a November 5, 2016 email to Kushner entitled "Securing the Victory," Manafort stated that he was "really feeling good about our prospects on Tuesday and focusing on preserving the victory," and that he was concerned the Clinton Campaign would respond to a loss by "mov[ing] immediately to discredit the [Trump] victory and claim voter fraud and cyber-fraud, including the claim that the Russians have hacked into the voting machines and tampered with the results."⁹³⁷

Trump was elected President on November 8, 2016. Manafort told the Office that, in the wake of Trump's victory, he was not interested in an Administration job. Manafort instead preferred to stay on the "outside," and monetize his campaign position to generate business given his familiarity and relationship with Trump and the incoming Administration.⁹³⁸ Manafort appeared to follow that plan, as he traveled to the Middle East, Cuba, South Korea, Japan, and China and was paid to explain what a Trump presidency would entail.⁹³⁹

Manafort's activities in early 2017 included meetings relating to Ukraine and Russia. The

⁹³³ Gates 1/30/18 302, at 2-4; Patten 5/22/18 302, at 7.

⁹³⁴ Gates 1/30/18 302, at 5; Manafort 9/11/18 302, at 5.

⁹³⁵ Gates 2/12/18 302, at 12.

⁹³⁶ NOSC00021517-20 (10/21/16 Email, Manafort to Kushner).

⁹³⁷ NOSC00021573-75 (11/5/16 Email, Manafort to Kushner).

⁹³⁸ Manafort 9/12/18 302, at 1, 4-5; Gates 1/30/18 302, at 4.

⁹³⁹ Manafort 9/12/18 302, at 1.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

first meeting, which took place in Madrid, Spain in January 2017, was with Georgiy Oganov. Oganov, who had previously worked at the Russian Embassy in the United States, was a senior executive at a Deripaska company and was believed to report directly to Deripaska.⁹⁴⁰ Manafort initially denied attending the meeting. When he later acknowledged it, he claimed that the meeting had been arranged by his lawyers and concerned only the Pericles lawsuit.⁹⁴¹ Other evidence, however, provides reason to doubt Manafort's statement that the sole topic of the meeting was the Pericles lawsuit. In particular, text messages to Manafort from a number associated with Kilimnik suggest that Kilimnik and Boyarkin—not Manafort's counsel—had arranged the meeting between Manafort and Oganov.⁹⁴² Kilimnik's message states that the meeting was supposed to be “not about money or Pericles” but instead “about recreating [the] old friendship”—ostensibly between Manafort and Deripaska—“and talking about global politics.”⁹⁴³ Manafort also replied by text that he “need[s] this finished before Jan. 20,”⁹⁴⁴ which appears to be a reference to resolving Pericles before the inauguration.

On January 15, 2017, three days after his return from Madrid, Manafort emailed K.T. McFarland, who was at that time designated to be Deputy National Security Advisor and was formally appointed to that position on January 20, 2017.⁹⁴⁵ Manafort's January 15 email to McFarland stated: “I have some important information I want to share that I picked up on my travels over the last month.”⁹⁴⁶ Manafort told the Office that the email referred to an issue regarding Cuba, not Russia or Ukraine, and Manafort had traveled to Cuba in the past month.⁹⁴⁷ Either way, McFarland—who was advised by Flynn not to respond to the Manafort inquiry—appears not to have responded to Manafort.⁹⁴⁸

Manafort told the Office that around the time of the Presidential Inauguration in January, he met with Kilimnik and Ukrainian oligarch Serhiy Lyovochkin at the Westin Hotel in Alexandria, Virginia.⁹⁴⁹ During this meeting, Kilimnik again discussed the Yanukovych peace plan that he had broached at the August 2 meeting and in a detailed December 8, 2016 message found in Kilimnik's DMP email account.⁹⁵⁰ In that December 8 email, which Manafort

⁹⁴⁰ Kalashnikova 5/17/18 302, at 4; Gary Lee, *Soviet Embassy's Identity Crisis*, Washington Post (Dec. 20, 1991); *Georgy S. Oganov Executive Profile & Biography*, Bloomberg (Mar. 12, 2019).

⁹⁴¹ Manafort 9/11/18 302, at 7.

⁹⁴² Text Message, Manafort & Kilimnik.

⁹⁴³ Text Message, Manafort & Kilimnik; Manafort 9/12/18 302, at 5.

⁹⁴⁴ Text Message, Manafort & Kilimnik.

⁹⁴⁵ 1/15/17 Email, Manafort, McFarland, & Flynn.

⁹⁴⁶ 1/15/17 Email, Manafort, McFarland, & Flynn.

⁹⁴⁷ Manafort 9/11/18 302, at 7.

⁹⁴⁸ 1/15/17 Email, Manafort, McFarland, & Flynn; McFarland 12/22/17 302, at 18-19.

⁹⁴⁹ ~~Grand Jury~~ Manafort 9/11/18 302, at 7; Manafort 9/21/18 302, at 3; 1/19/17 & 1/22/17 Kilimnik CBP Records, Jan. 19 and 22, 2017; 2016-17 Text Messages, Kilimnik & Patten, at 1-2.

⁹⁵⁰ ~~Investigative Technique~~

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

acknowledged having read.⁹⁵¹ Kilimnik wrote, “[a]ll that is required to start the process is a very minor ‘wink’ (or slight push) from DT”—an apparent reference to President-elect Trump—“and a decision to authorize you to be a ‘special representative’ and manage this process.” Kilimnik assured Manafort, with that authority, he “could start the process and within 10 days visit Russia [Yanukovich] guarantees your reception at the very top level,” and that “DT could have peace in Ukraine basically within a few months after inauguration.”⁹⁵²

As noted above, ~~Grand Jury~~ and statements to the Office, Manafort sought to qualify his engagement on and support for the plan. ~~Grand Jury~~

~~53 Grand Jury~~

~~54 Grand Jury~~

~~955 Grand Jury~~

On February 26, 2017, Manafort met Kilimnik in Madrid, where Kilimnik had flown from Moscow.⁹⁵⁶ In his first two interviews with the Office, Manafort denied meeting with Kilimnik on his Madrid trip and then—after being confronted with documentary evidence that Kilimnik was in Madrid at the same time as him—recognized that he met him in Madrid. Manafort said that Kilimnik had updated him on a criminal investigation into so-called “black ledger” payments to Manafort that was being conducted by Ukraine’s National Anti-Corruption Bureau.⁹⁵⁷

~~Grand Jury~~

~~958~~

Manafort remained in contact with Kilimnik throughout 2017 and into the spring of 2018.

⁹⁵¹ Manafort 9/11/18 302, at 6; ~~Grand Jury~~

⁹⁵² **Investigative Technique**

⁹⁵³ ~~Grand Jury~~

⁹⁵⁴ ~~Grand Jury~~

⁹⁵⁵ ~~Grand Jury~~

⁹⁵⁶ 2/21/17 Email, Zatyanaiko to Kilimnik.

⁹⁵⁷ Manafort 9/13/18 302, at 1.

⁹⁵⁸ ~~Grand Jury~~

In resolving whether Manafort breached his cooperation plea agreement by lying to the Office, the district court found that Manafort lied about, among other things, his contacts with Kilimnik regarding the peace plan, including the meeting in Madrid. *Manafort* 2/13/19 Transcript, at 29-31, 40.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Those contacts included matters pertaining to the criminal charges brought by the Office,⁹⁵⁹ and the Ukraine peace plan. In early 2018, Manafort retained his longtime polling firm to craft a draft poll in Ukraine, sent the pollsters a three-page primer on the plan sent by Kilimnik, and worked with Kilimnik to formulate the polling questions.⁹⁶⁰ The primer sent to the pollsters specifically called for the United States and President Trump to support the Autonomous Republic of Donbas with Yanukovych as Prime Minister,⁹⁶¹ and a series of questions in the draft poll asked for opinions on Yanukovych's role in resolving the conflict in Donbas.⁹⁶² (The poll was not solely about Donbas; it also sought participants' views on leaders apart from Yanukovych as they pertained to the 2019 Ukraine presidential election.)

The Office has not uncovered evidence that Manafort brought the Ukraine peace plan to the attention of the Trump Campaign or the Trump Administration. Kilimnik continued his efforts to promote the peace plan to the Executive Branch (e.g., U.S. Department of State) into the summer of 2018.⁹⁶³

B. Post-Election and Transition-Period Contacts

Trump was elected President on November 8, 2016. Beginning immediately after the election, individuals connected to the Russian government started contacting officials on the Trump Campaign and Transition Team through multiple channels—sometimes through Russian Ambassador Kislyak and at other times through individuals who sought reliable contacts through U.S. persons not formally tied to the Campaign or Transition Team. The most senior levels of the Russian government encouraged these efforts. The investigation did not establish that these efforts reflected or constituted coordination between the Trump Campaign and Russia in its election-interference activities.

1. Immediate Post-Election Activity

As soon as news broke that Trump had been elected President, Russian government officials and prominent Russian businessmen began trying to make inroads into the new Administration. They appeared not to have preexisting contacts and struggled to connect with senior officials around the President-Elect. As explained below, those efforts entailed both official contact through the Russian Embassy in the United States and outreaches—sanctioned at high levels of the Russian government—through business rather than political contacts.

⁹⁵⁹ *Manafort* (D.D.C.) Gov't Opp. to Mot. to Modify, at 2; Superseding Indictment ¶¶ 48-51, *United States v. Paul J. Manafort, Jr.*, 1:17-cr-201 (D.D.C. June 8, 2018), Doc. 318.

⁹⁶⁰ 2/12/18 Email, Fabrizio to Manafort & Ward; 2/16/18 Email, Fabrizio to Manafort; 2/19/18 Email, Fabrizio to Ward; 2/21/18 Email, Manafort to Ward & Fabrizio.

⁹⁶¹ 2/21/18 Email, Manafort to Ward & Fabrizio (7:16:49 a.m.) (attachment).

⁹⁶² 3/9/18 Email, Ward to Manafort & Fabrizio (attachment).

⁹⁶³ **Investigative Technique**

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~**a. Outreach from the Russian Government**

At approximately 3 a.m. on election night, Trump Campaign press secretary Hope Hicks received a telephone call on her personal cell phone from a person who sounded foreign but was calling from a number with a DC area code.⁹⁶⁴ Although Hicks had a hard time understanding the person, she could make out the words “Putin call.”⁹⁶⁵ Hicks told the caller to send her an email.⁹⁶⁶

The following morning, on November 9, 2016, Sergey Kuznetsov, an official at the Russian Embassy to the United States, emailed Hicks from his Gmail address with the subject line, “Message from Putin.”⁹⁶⁷ Attached to the email was a message from Putin, in both English and Russian, which Kuznetsov asked Hicks to convey to the President-Elect.⁹⁶⁸ In the message, Putin offered his congratulations to Trump for his electoral victory, stating he “look[ed] forward to working with [Trump] on leading Russian-American relations out of crisis.”⁹⁶⁹

Hicks forwarded the email to Kushner, asking, “Can you look into this? Don’t want to get duped but don’t want to blow off Putin!”⁹⁷⁰ Kushner stated in Congressional testimony that he believed that it would be possible to verify the authenticity of the forwarded email through the Russian Ambassador, whom Kushner had previously met in April 2016.⁹⁷¹ Unable to recall the Russian Ambassador’s name, Kushner emailed Dimitri Simes of CNI, whom he had consulted previously about Russia, *see* Volume I, Section IV.A.4, *supra*, and asked, “What is the name of Russian ambassador?”⁹⁷² Kushner forwarded Simes’s response—which identified Kislyak by name—to Hicks.⁹⁷³ After checking with Kushner to see what he had learned, Hicks conveyed Putin’s letter to transition officials.⁹⁷⁴ Five days later, on November 14, 2016, Trump and Putin spoke by phone in the presence of Transition Team members, including incoming National Security Advisor Michael Flynn.⁹⁷⁵

⁹⁶⁴ Hicks 12/8/17 302, at 3.

⁹⁶⁵ Hicks 12/8/17 302, at 3.

⁹⁶⁶ Hicks 12/8/17 302, at 3.

⁹⁶⁷ NOSC00044381 (11/9/16 Email, Kuznetsov to Hicks (5:27 a.m.)).

⁹⁶⁸ NOSC00044381-82 (11/9/16 Email, Kuznetsov to Hicks (5:27 a.m.)).

⁹⁶⁹ NOSC00044382 (11/9/16 Letter from Putin to President-Elect Trump (Nov. 9, 2016) (translation)).

⁹⁷⁰ NOSC00044381 (11/9/16 Email, Hicks to Kushner (10:26 a.m.)).

⁹⁷¹ Statement of Jared C. Kushner to Congressional Committees, at 4 (Jul. 24, 2017).

⁹⁷² NOSC00000058 (11/9/16 Email, Kushner to Simes (10:28 a.m.)); Statement of Jared Kushner to Congressional Committees, at 4 (Jul. 24, 2017).

⁹⁷³ NOSC00000058 (11/9/16 Email, Kushner to Hicks (11:05:44 a.m.)).

⁹⁷⁴ Hicks 12/8/17 302, at 3-4.

⁹⁷⁵ Flynn 11/16/17 302, at 8-10; *see* Doug G. Ware, *Trump, Russia’s Putin Talk about Syria, Icy Relations in Phone Call*, UPI (Nov. 14, 2016).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~***b. High-Level Encouragement of Contacts through Alternative Channels***

As Russian officials in the United States reached out to the President-Elect and his team, a number of Russian individuals working in the private sector began their own efforts to make contact. Petr Aven, a Russian national who heads Alfa-Bank, Russia's largest commercial bank, described to the Office interactions with Putin during this time period that might account for the flurry of Russian activity.⁹⁷⁶

Aven told the Office that he is one of approximately 50 wealthy Russian businessmen who regularly meet with Putin in the Kremlin; these 50 men are often referred to as "oligarchs."⁹⁷⁷ Aven told the Office that he met on a quarterly basis with Putin, including in the fourth quarter (Q4) of 2016, shortly after the U.S. presidential election.⁹⁷⁸ Aven said that he took these meetings seriously and understood that any suggestions or critiques that Putin made during these meetings were implicit directives, and that there would be consequences for Aven if he did not follow through.⁹⁷⁹ As was typical, the 2016 Q4 meeting with Putin was preceded by a preparatory meeting with Putin's chief of staff, Anton Vaino.⁹⁸⁰

According to Aven, at his Q4 2016 one-on-one meeting with Putin,⁹⁸¹ Putin raised the prospect that the United States would impose additional sanctions on Russian interests, including sanctions against Aven and/or Alfa-Bank.⁹⁸² Putin suggested that Aven needed to take steps to protect himself and Alfa-Bank.⁹⁸³ Aven also testified that Putin spoke of the difficulty faced by the Russian government in getting in touch with the incoming Trump Administration.⁹⁸⁴ According to Aven, Putin indicated that he did not know with whom formally to speak and generally did not know the people around the President-Elect.⁹⁸⁵

⁹⁷⁶ Aven provided information to the Office in an interview and through an attorney proffer, [REDACTED]

Grand Jury [REDACTED]

⁹⁷⁷ Aven 8/2/18 302, at 7.

⁹⁷⁸ Grand Jury [REDACTED]

⁹⁷⁹ Aven 8/2/18 302, at 2-3.

⁹⁸⁰ Grand Jury [REDACTED] and interview with the Office,

Aven referred to the high-ranking Russian government officials using numbers (e.g., Official 1, Official 2). Aven separately confirmed through an attorney proffer that Official 1 was Putin and Official 2 was Putin's chief of staff, Vaino. See Affidavit of Ryan Junck (Aug. 2, 2018) (hard copy on file).

⁹⁸¹ At the time of his Q4 2016 meeting with Putin, Aven was generally aware of the press coverage about Russian interference in the U.S. election. According to Aven, he did not discuss that topic with Putin at any point, and Putin did not mention the rationale behind the threat of new sanctions. Aven 8/2/18 302, at 5-7.

⁹⁸² Grand Jury [REDACTED]

⁹⁸³ Grand Jury [REDACTED]

⁹⁸⁴ Grand Jury [REDACTED]

⁹⁸⁵ Grand Jury [REDACTED]

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Aven ~~Grand Jury~~ told Putin he would take steps to protect himself and the Alfa-Bank shareholders from potential sanctions, and one of those steps would be to try to reach out to the incoming Administration to establish a line of communication.⁹⁸⁶ Aven described Putin responding with skepticism about Aven's prospect for success.⁹⁸⁷ According to Aven, although Putin did not expressly direct him to reach out to the Trump Transition Team, Aven understood that Putin expected him to try to respond to the concerns he had raised.⁹⁸⁸ Aven's efforts are described in Volume I, Section IV.B.5, *infra*.

2. Kirill Dmitriev's Transition-Era Outreach to the Incoming Administration

Aven's description of his interactions with Putin is consistent with the behavior of Kirill Dmitriev, a Russian national who heads Russia's sovereign wealth fund and is closely connected to Putin. Dmitriev undertook efforts to meet members of the incoming Trump Administration in the months after the election. Dmitriev asked a close business associate who worked for the United Arab Emirates (UAE) royal court, George Nader, to introduce him to Trump transition officials, and Nader eventually arranged a meeting in the Seychelles between Dmitriev and Erik Prince, a Trump Campaign supporter and an associate of Steve Bannon.⁹⁸⁹ In addition, the UAE national security advisor introduced Dmitriev to a hedge fund manager and friend of Jared Kushner, Rick Gerson, in late November 2016. In December 2016 and January 2017, Dmitriev and Gerson worked on a proposal for reconciliation between the United States and Russia, which Dmitriev implied he cleared through Putin. Gerson provided that proposal to Kushner before the inauguration, and Kushner later gave copies to Bannon and Secretary of State Rex Tillerson.

a. *Background*

Dmitriev is a Russian national who was appointed CEO of Russia's sovereign wealth fund, the Russian Direct Investment Fund (RDIF), when it was founded in 2011.⁹⁹⁰ Dmitriev reported directly to Putin and frequently referred to Putin as his "boss."⁹⁹¹

RDIF has co-invested in various projects with UAE sovereign wealth funds.⁹⁹² Dmitriev regularly interacted with Nader, a senior advisor to UAE Crown Prince Mohammed bin Zayed

⁹⁸⁶ ~~Grand Jury~~

⁹⁸⁷ ~~Grand Jury~~ Aven 8/2/18 302, at 6.

⁹⁸⁸ Aven 8/2/18 302, at 4-8; ~~Grand Jury~~

⁹⁸⁹ Nader provided information to the Office in multiple interviews, all but one of which were conducted under a proffer agreement. ~~Grand Jury~~. The investigators also interviewed Prince under a proffer agreement. Bannon was interviewed by the Office, ~~Grand Jury~~ under a proffer agreement.

⁹⁹⁰ Kirill Dmitriev Biography, Russian Direct Investment Fund, *available at* https://rdif.ru/Eng_person_dmitriev_kirill/. *See also* Overview, Russian Direct Investment Fund, *available at* https://rdif.ru/Eng_About/.

⁹⁹¹ Gerson 6/15/18 302, at 1. *See also, e.g.,* 12/14/16 Text Message, Dmitriev to Gerson; 1/9/17 Text Message, Dmitriev to Gerson.

⁹⁹² ~~Grand Jury~~

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

(Crown Prince Mohammed), in connection with RDIF's dealings with the UAE.⁹⁹³ Putin wanted Dmitriev to be in charge of both the financial and the political relationship between Russia and the Gulf states, in part because Dmitriev had been educated in the West and spoke English fluently.⁹⁹⁴ Nader considered Dmitriev to be Putin's interlocutor in the Gulf region, and would relay Dmitriev's views directly to Crown Prince Mohammed.⁹⁹⁵

Nader developed contacts with both U.S. presidential campaigns during the 2016 election, and kept Dmitriev abreast of his efforts to do so.⁹⁹⁶ According to Nader, Dmitriev said that his and the government of Russia's preference was for candidate Trump to win, and asked Nader to assist him in meeting members of the Trump Campaign.⁹⁹⁷ [REDACTED]⁹⁹⁸ Nader did not introduce Dmitriev to anyone associated with the Trump Campaign before the election.⁹⁹⁹

[REDACTED]

Erik Prince is a businessman who had relationships with various individuals associated with the Trump Campaign, including Steve Bannon, Donald Trump Jr., and Roger Stone.¹⁰⁰⁵ Prince did not have a formal role in the Campaign, although he offered to host a fundraiser for

⁹⁹³ Nader 1/22/18 302, at 1-2; Nader 1/23/18 302, at 2-3; 5/3/16 Email, Nader to Phares; [REDACTED]

⁹⁹⁴ Nader 1/22/18 302, at 1-2.

⁹⁹⁵ Nader 1/22/18 302, at 3.

⁹⁹⁶ Nader 1/22/18 302, at 3; [REDACTED]

⁹⁹⁷ Nader 1/22/18 302, at 3; [REDACTED]

⁹⁹⁸ [REDACTED]

⁹⁹⁹ Nader 1/22/18 302, at 3.

¹⁰⁰⁰ [REDACTED]

¹⁰⁰¹ [REDACTED]

¹⁰⁰² [REDACTED]

¹⁰⁰³ [REDACTED]

¹⁰⁰⁴ [REDACTED]

¹⁰⁰⁵ Prince 4/4/18 302, at 1-5; Bannon 2/14/18 302, at 21.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Trump and sent unsolicited policy papers on issues such as foreign policy, trade, and Russian election interference to Bannon.¹⁰⁰⁶

After the election, Prince frequently visited transition offices at Trump Tower, primarily to meet with Bannon but on occasion to meet Michael Flynn and others.¹⁰⁰⁷ Prince and Bannon would discuss, *inter alia*, foreign policy issues and Prince's recommendations regarding who should be appointed to fill key national security positions.¹⁰⁰⁸ Although Prince was not formally affiliated with the transition, Nader ~~Grand Jury~~ received assurances ~~Grand Jury~~ that the incoming Administration considered Prince a trusted associate.¹⁰⁰⁹

b. Kirill Dmitriev's Post-Election Contacts With the Incoming Administration

Soon after midnight on election night, Dmitriev messaged ~~Investigative Technique~~ who was traveling to New York to attend the 2016 World Chess Championship. ~~Investigative Technique~~ Dmitry Peskov, the Russian Federation's press secretary, who was also attending the World Chess Championship.¹⁰¹⁰ ~~Investigative Technique~~¹⁰¹¹ ~~Investigative Technique~~

~~Investigative Technique~~¹⁰¹² ~~Investigative Technique~~¹⁰¹³

At approximately 2:40 a.m. on November 9, 2016, news reports stated that candidate Clinton had called President-Elect Trump to concede. At ~~Investigative Technique~~

~~Investigative Technique~~¹⁰¹⁴ ~~Investigative Technique~~ wrote to Dmitriev, "Putin has won."¹⁰¹⁵

¹⁰⁰⁶ Prince 4/4/18 302, at 1, 3-4; Prince 5/3/18 302, at 2; Bannon 2/14/18 302, at 19-20; 10/18/16 Email, Prince to Bannon.

¹⁰⁰⁷ Flynn 11/20/17 302, at 6; Flynn 1/11/18 302, at 5; Flynn 1/24/18 302, at 5-6; Flynn 5/1/18 302, at 11; Prince 4/4/18 302, at 5, 8; Bannon 2/14/18 302, at 20-21; 11/12/16 Email, Prince to Corallo.

¹⁰⁰⁸ Prince 4/4/18 302, at 5; Bannon 2/14/18 302, at 21.

¹⁰⁰⁹ ~~Grand Jury~~

¹⁰¹⁰ ~~Investigative Technique~~ Nader 1/22/18 302, at 5-6; ~~Grand Jury~~

¹⁰¹¹ ~~Investigative Technique~~

¹⁰¹² ~~Investigative Technique~~

¹⁰¹³ ~~Investigative Technique~~

¹⁰¹⁴ ~~Investigative Technique~~

¹⁰¹⁵ ~~Investigative Technique~~

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Later that morning, Dmitriev contacted Nader, who was in New York, to request a meeting with the “key people” in the incoming Administration as soon as possible in light of the “[g]reat results.”¹⁰¹⁶ He asked Nader to convey to the incoming Administration that “we want to start rebuilding the relationship in whatever is a comfortable pace for them. We understand all of the sensitivities and are not in a rush.”¹⁰¹⁷ Dmitriev and Nader had previously discussed Nader introducing him to the contacts Nader had made within the Trump Campaign.¹⁰¹⁸ Dmitriev also told Nader that he would ask Putin for permission to travel to the United States, where he would be able to speak to media outlets about the positive impact of Trump’s election and the need for reconciliation between the United States and Russia.¹⁰¹⁹

Later that day, Dmitriev flew to New York, where Peskov was separately traveling to attend the chess tournament.¹⁰²⁰ Dmitriev invited Nader to the opening of the tournament and noted that, if there was “a chance to see anyone key from Trump camp,” he “would love to start building for the future.”¹⁰²¹ Dmitriev also asked Nader to invite Kushner to the event so that he (Dmitriev) could meet him.¹⁰²² Nader did not pass along Dmitriev’s invitation to anyone connected with the incoming Administration.¹⁰²³ Although one World Chess Federation official recalled hearing from an attendee that President-Elect Trump had stopped by the tournament, the investigation did not establish that Trump or any Campaign or Transition Team official attended the event.¹⁰²⁴ And the President’s written answers denied that he had.¹⁰²⁵

Nader stated that Dmitriev continued to press him to set up a meeting with transition officials, and was particularly focused on Kushner and Trump Jr.¹⁰²⁶ Dmitriev told Nader that Putin would be very grateful to Nader and that a meeting would make history.¹⁰²⁷

~~Grand Jury~~

¹⁰¹⁶ 11/9/16 Text Message, Dmitriev to Nader (9:34 a.m.); Nader 1/22/18 302, at 4.

¹⁰¹⁷ 11/9/16 Text Message, Dmitriev to Nader (11:58 p.m.).

¹⁰¹⁸ Nader 1/22/18 302, at 3.

¹⁰¹⁹ 11/9/16 Text Message, Dmitriev to Nader (10:06 a.m.); 11/9/16 Text Message, Dmitriev to Nader (10:10 a.m.); ~~Grand Jury~~

¹⁰²⁰ 11/9/16 Text Message, Dmitriev to Nader (10:08 a.m.); 11/9/16 Text Message, Dmitriev to Nader (3:40 p.m.); Nader 1/22/18 302, at 5.

¹⁰²¹ 11/9/16 Text Message, Dmitriev to Nader (7:10 p.m.).

¹⁰²² 11/10/16 Text Message, Dmitriev to Nader (5:20 a.m.).

¹⁰²³ Nader 1/22/18 302, at 5-6.

¹⁰²⁴ Marinello 5/31/18 302, at 2-3; Nader 1/22/18 302, at 5-6.

¹⁰²⁵ Written Responses of Donald J. Trump (Nov. 20, 2018), at 17-18 (Response to Question V, Part (a)).

¹⁰²⁶ Nader 1/22/18 302, at 6; ~~Grand Jury~~

¹⁰²⁷ Nader 1/22/18 302, at 6; ~~Grand Jury~~

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

GJ 1028 Grand Jury

1029 According to Nader, Dmitriev was very anxious to connect with the incoming Administration and told Nader that he would try other routes to do so besides Nader himself.¹⁰³⁰ Nader did not ultimately introduce Dmitriev to anyone associated with the incoming Administration during Dmitriev's post-election trip to New York.¹⁰³¹

In early December 2016, Dmitriev again broached the topic of meeting incoming Administration officials with Nader in January or February.¹⁰³² Dmitriev sent Nader a list of publicly available quotes of Dmitriev speaking positively about Donald Trump "in case they [were] helpful."¹⁰³³

c. Erik Prince and Kirill Dmitriev Meet in the Seychelles

i. George Nader and Erik Prince Arrange Seychelles Meeting with Dmitriev

Nader traveled to New York in early January 2017 and had lunchtime and dinner meetings with Erik Prince on January 3, 2017.¹⁰³⁴ Nader and Prince discussed Dmitriev.¹⁰³⁵ Nader informed Prince that the Russians were looking to build a link with the incoming Trump Administration.¹⁰³⁶ Grand Jury he told Prince that Dmitriev had been pushing Nader to introduce him to someone from the incoming Administration Grand Jury relationship with Transition Team officials, that Prince and Dmitriev meet to discuss issues of mutual concern.¹⁰³⁷ Grand Jury Nader suggested, in light of Prince's relationship with Transition Team officials, that Prince and Dmitriev meet to discuss issues of mutual concern.¹⁰³⁸ Grand Jury Prince told Nader that he needed to think further about it and to check with Transition Team officials.¹⁰³⁹

After his dinner with Prince, Nader sent Prince a link to a Wikipedia entry about Dmitriev, and sent Dmitriev a message stating that he had just met "with some key people within the family and inner circle"—a reference to Prince—and that he had spoken at length and positively about

¹⁰²⁸ Grand Jury

¹⁰²⁹ Grand Jury

¹⁰³⁰ Nader 1/22/18 302, at 6.

¹⁰³¹ Nader 1/22/18 302, at 5-7.

¹⁰³² 12/8/16 Text Messages, Dmitriev to Nader (12:10:31 a.m.); Nader 1/22/18 302, at 11.

¹⁰³³ 12/8/16 Text Message, Dmitriev to Nader (12:10:31 a.m.); 12/8/16 Text Message, Dmitriev to Nader (12:10:57 a.m.).

¹⁰³⁴ Prince 4/4/18 302, at 8.

¹⁰³⁵ Prince 5/3/18 302, at 3; Grand Jury

¹⁰³⁶ Grand Jury

¹⁰³⁷ Grand Jury

¹⁰³⁸ Grand Jury

¹⁰³⁹ Grand Jury

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Dmitriev.¹⁰⁴⁰ Nader told Dmitriev that the people he met had asked for Dmitriev's bio, and Dmitriev replied that he would update and send it.¹⁰⁴¹ Nader later received from Dmitriev two files concerning Dmitriev: one was a two-page biography, and the other was a list of Dmitriev's positive quotes about Donald Trump.¹⁰⁴²

The next morning, Nader forwarded the message and attachments Dmitriev had sent him to Prince.¹⁰⁴³ Nader wrote to Prince that these documents were the versions "to be used with some additional details for them" (with "them" referring to members of the incoming Administration).¹⁰⁴⁴ Prince opened the attachments at Trump Tower within an hour of receiving them.¹⁰⁴⁵ Prince stated that, while he was at Trump Tower that day, he spoke with Kellyanne Conway, Wilbur Ross, Steve Mnuchin, and others while waiting to see Bannon.¹⁰⁴⁶ Cell-site location data for Prince's mobile phone indicates that Prince remained at Trump Tower for approximately three hours.¹⁰⁴⁷ Prince said that he could not recall whether, during those three hours, he met with Bannon and discussed Dmitriev with him.¹⁰⁴⁸ Grand Jury [REDACTED]

Prince booked a ticket to the Seychelles on January 7, 2017.¹⁰⁵⁰ The following day, Nader wrote to Dmitriev that he had a "pleasant surprise" for him, namely that he had arranged for Dmitriev to meet "a Special Guest" from "the New Team," referring to Prince.¹⁰⁵¹ Nader asked Dmitriev if he could come to the Seychelles for the meeting on January 12, 2017, and Dmitriev agreed.¹⁰⁵²

The following day, Dmitriev sought assurance from Nader that the Seychelles meeting would be worthwhile.¹⁰⁵³ Grand Jury [REDACTED] Dmitriev was not enthusiastic about the idea of meeting with Prince, and that Nader assured him that Prince wielded influence with the incoming

¹⁰⁴⁰ 1/4/17 Text Message, Nader to Prince; 1/4/17 Text Messages, Nader to Dmitriev (5:24 a.m. – 5:26 a.m.); Nader 1/22/18 302, at 8-9; Grand Jury [REDACTED]

¹⁰⁴¹ 1/4/17 Text Messages, Nader & Dmitriev (7:24:27 a.m.).

¹⁰⁴² 1/4/17 Text Messages, Dmitriev to Nader (7:25-7:29 a.m.)

¹⁰⁴³ 1/4/17 Text Messages, Nader to Prince.

¹⁰⁴⁴ 1/4/17 Text Messages, Nader to Prince; Grand Jury [REDACTED]

¹⁰⁴⁵ Prince 5/3/18 302, at 1-3.

¹⁰⁴⁶ Prince 5/3/18 302, at 2-3.

¹⁰⁴⁷ Cell-site location data for Prince's mobile phone Investigative Technique [REDACTED]

¹⁰⁴⁸ Prince 5/3/18 302, at 3.

¹⁰⁴⁹ Grand Jury [REDACTED]

¹⁰⁵⁰ 1/5/17 Email, Kasbo to Prince.

¹⁰⁵¹ 1/8/17 Text Messages, Nader to Dmitriev (6:05 – 6:10 p.m.).

¹⁰⁵² 1/8/17 Text Messages, Nader & Dmitriev (6:10 – 7:27 p.m.).

¹⁰⁵³ 1/9/17 Text Message, Dmitriev to Nader.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Administration.¹⁰⁵⁴ Nader wrote to Dmitriev, “This guy [Prince] is designated by Steve [Bannon] to meet you! I know him and he is very very well connected and trusted by the New Team. His sister is now a Minister of Education.”¹⁰⁵⁵ According to Nader, Prince had led him to believe that Bannon was aware of Prince’s upcoming meeting with Dmitriev, and Prince acknowledged that it was fair for Nader to think that Prince would pass information on to the Transition Team.¹⁰⁵⁶ Bannon, however, told the Office that Prince did not tell him in advance about his meeting with Dmitriev.¹⁰⁵⁷

ii. The Seychelles Meetings

Dmitriev arrived with his wife in the Seychelles on January 11, 2017, and checked into the Four Seasons Resort where Crown Prince Mohammed and Nader were staying.¹⁰⁵⁸ Prince arrived that same day.¹⁰⁵⁹ Prince and Dmitriev met for the first time that afternoon in Nader’s villa, with Nader present.¹⁰⁶⁰ The initial meeting lasted approximately 30-45 minutes.¹⁰⁶¹

Grand Jury

¹⁰⁶² Prince described the eight years of the Obama Administration in negative terms, and stated that he was looking forward to a new era of cooperation and conflict resolution.¹⁰⁶³ According to Prince, he told Dmitriev that Bannon was effective if not conventional, and that Prince provided policy papers to Bannon.¹⁰⁶⁴

Grand Jury

¹⁰⁶⁵ Grand Jury

¹⁰⁵⁴ Grand Jury

¹⁰⁵⁵ 1/9/17 Text Message, Nader to Dmitriev (2:12:56 p.m.); Nader 1/19/18 302, at 13;

Grand Jury

¹⁰⁵⁶ Nader 1/19/18 302, at 13; Grand Jury Prince 5/3/18 302, at 3.

¹⁰⁵⁷ Bannon 2/14/18 302, at 25-26.

¹⁰⁵⁸ 1/10/17 Text Messages, Dmitriev & Nader (2:05:54 – 3:30:25 p.m.); 1/11/17 Text Messages, Dmitriev & Nader (2:16:16 – 5:17:59 p.m.).

¹⁰⁵⁹ 1/7/17 Email, Kasbo to Prince.

¹⁰⁶⁰ 1/11/17 Text Messages, Nader & Dmitriev (5:18:24 – 5:37:14 p.m.); Grand Jury

¹⁰⁶¹ Prince 5/3/18 302, at 4; Grand Jury

¹⁰⁶² Grand Jury

¹⁰⁶³ Grand Jury

¹⁰⁶⁴ Prince 5/3/18 302, at 4.

¹⁰⁶⁵ Grand Jury

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Grand Jury [REDACTED] 1066 Grand Jury [REDACTED] 1067
Grand Jury [REDACTED] 1068 The
topic of Russian interference in the 2016 election did not come up. 1069

Grand Jury [REDACTED] 1070
Prince added that he would inform Bannon about his meeting with Dmitriev, and that if there was interest in continuing the discussion, Bannon or someone else on the Transition Team would do so. 1071 Grand Jury [REDACTED] 1072

Afterwards, Prince returned to his room, where he learned that a Russian aircraft carrier had sailed to Libya, which led him to call Nader and ask him to set up another meeting with Dmitriev. 1073 According to Nader, Prince called and said he had checked with his associates back home and needed to convey to Dmitriev that Libya was "off the table." 1074 Nader wrote to Dmitriev that Prince had "received an urgent message that he needs to convey to you immediately," and arranged for himself, Dmitriev, and Prince to meet at a restaurant on the Four Seasons property. 1075

At the second meeting, Prince told Dmitriev that the United States could not accept any Russian involvement in Libya because it would make the situation there much worse. 1076 Grand Jury [REDACTED]

1066 Grand Jury [REDACTED]
1067 Grand Jury [REDACTED]
1068 Grand Jury [REDACTED]
1069 Prince 5/3/18 302, at 4-5.
1070 Grand Jury [REDACTED]
1071 Prince 5/3/18 302, at 4; [REDACTED]
1072 Grand Jury [REDACTED]
1073 Prince 4/4/18 302, at 10; Prince 5/3/18 302, at 4; Grand Jury [REDACTED]
1074 Nader 1/22/18 302, at 14; Grand Jury [REDACTED]
1075 Grand Jury [REDACTED] 1/11/17 Text Messages, Dmitriev & Nader (9:13:54 -- 10:24:25 p.m.).
1076 Grand Jury [REDACTED]

Prince, however, denied that and recalled that he was making these remarks to Dmitriev not in an official capacity for the transition but based on his experience as a former naval officer. Prince 5/3/18 302, at 4.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Grand Jury [REDACTED] 1077

After the brief second meeting concluded, Nader and Dmitriev discussed what had transpired.¹⁰⁷⁸ Dmitriev told Nader that he was disappointed in his meetings with Prince for two reasons: first, he believed the Russians needed to be communicating with someone who had more authority within the incoming Administration than Prince had.¹⁰⁷⁹ Second, he had hoped to have a discussion of greater substance, such as outlining a strategic roadmap for both countries to follow.¹⁰⁸⁰ Dmitriev told Nader that Grand Jury [REDACTED] Prince's comments Grand Jury [REDACTED] were insulting Grand Jury [REDACTED].¹⁰⁸¹

Hours after the second meeting, Prince sent two text messages to Bannon from the Seychelles.¹⁰⁸² As described further below, investigators were unable to obtain the content of these or other messages between Prince and Bannon, and the investigation also did not identify evidence of any further communication between Prince and Dmitriev after their meetings in the Seychelles.

iii. Erik Prince's Meeting with Steve Bannon after the Seychelles Trip

After the Seychelles meetings, Prince told Nader that he would inform Bannon about his discussion with Dmitriev and would convey that someone within the Russian power structure was interested in seeking better relations with the incoming Administration.¹⁰⁸³ On January 12, 2017, Prince contacted Bannon's personal assistant to set up a meeting for the following week.¹⁰⁸⁴ Several days later, Prince messaged her again asking about Bannon's schedule.¹⁰⁸⁵

Prince said that he met Bannon at Bannon's home after returning to the United States in mid-January and briefed him about several topics, including his meeting with Dmitriev.¹⁰⁸⁶ Prince told the Office that he explained to Bannon that Dmitriev was the head of a Russian sovereign wealth fund and was interested in improving relations between the United States and Russia.¹⁰⁸⁷ Prince had on his cellphone a screenshot of Dmitriev's Wikipedia page dated January 16, 2017,

¹⁰⁷⁷ Grand Jury [REDACTED]

¹⁰⁷⁸ Nader 1/22/18 302, at 15; Grand Jury [REDACTED]

¹⁰⁷⁹ Nader 1/22/18 302, at 9, 15; Grand Jury [REDACTED]

¹⁰⁸⁰ Nader 1/22/18 302, at 15.

¹⁰⁸¹ Grand Jury [REDACTED] Nader 1/22/18 302, at 15.

¹⁰⁸² Call Records of Erik Prince Grand Jury [REDACTED]

¹⁰⁸³ Prince 4/4/18 302, at 10; Prince 5/3/18 302, at 4; Grand Jury [REDACTED]

¹⁰⁸⁴ 1/12/17 Text Messages, Prince to Preate.

¹⁰⁸⁵ 1/15/17 Text Message, Prince to Preate.

¹⁰⁸⁶ Prince 4/4/18 302, at 11; Prince 5/3/18 302, at 5.

¹⁰⁸⁷ Prince 4/4/18 302, at 11; Prince 5/3/18 302, at 5.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

and Prince told the Office that he likely showed that image to Bannon.¹⁰⁸⁸ Prince also believed he provided Bannon with Dmitriev's contact information.¹⁰⁸⁹ According to Prince, Bannon instructed Prince not to follow up with Dmitriev, and Prince had the impression that the issue was not a priority for Bannon.¹⁰⁹⁰ Prince related that Bannon did not appear angry, just relatively uninterested.¹⁰⁹¹

Bannon, by contrast, told the Office that he never discussed with Prince anything regarding Dmitriev, RDIF, or any meetings with Russian individuals or people associated with Putin.¹⁰⁹² Bannon also stated that had Prince mentioned such a meeting, Bannon would have remembered it, and Bannon would have objected to such a meeting having taken place.¹⁰⁹³

The conflicting accounts provided by Bannon and Prince could not be independently clarified by reviewing their communications, because neither one was able to produce any of the messages they exchanged in the time period surrounding the Seychelles meeting. Prince's phone contained no text messages prior to March 2017, though provider records indicate that he and Bannon exchanged dozens of messages.¹⁰⁹⁴ Prince denied deleting any messages but claimed he did not know why there were no messages on his device before March 2017.¹⁰⁹⁵ Bannon's devices similarly contained no messages in the relevant time period, and Bannon also stated he did not know why messages did not appear on his device.¹⁰⁹⁶ Bannon told the Office that, during both the months before and after the Seychelles meeting, he regularly used his personal Blackberry and personal email for work-related communications (including those with Prince), and he took no steps to preserve these work communications.¹⁰⁹⁷

d. Kirill Dmitriev's Post-Election Contact with Rick Gerson Regarding U.S.-Russia Relations

Dmitriev's contacts during the transition period were not limited to those facilitated by Nader. In approximately late November 2016, the UAE national security advisor introduced Dmitriev to Rick Gerson, a friend of Jared Kushner who runs a hedge fund in New York.¹⁰⁹⁸ Gerson stated he had no formal role in the transition and had no involvement in the Trump

¹⁰⁸⁸ Prince 5/3/18 302, at 5; 1/16/17 Image on Prince Phone (on file with the Office).

¹⁰⁸⁹ Prince 5/3/18 302, at 5.

¹⁰⁹⁰ Prince 5/3/18 302, at 5.

¹⁰⁹¹ Prince 5/3/18 302, at 5.

¹⁰⁹² Bannon 10/26/18 302, at 10-11.

¹⁰⁹³ Bannon 10/26/18 302, at 10-11.

¹⁰⁹⁴ Call Records of Erik Prince Grand Jury

¹⁰⁹⁵ Prince 4/4/18 302, at 6.

¹⁰⁹⁶ Bannon 10/26/18 302, at 11; Bannon 2/14/18 302, at 36.

¹⁰⁹⁷ Bannon 10/26/18 302, at 11.

¹⁰⁹⁸ Gerson 6/5/18 302, at 1, 3; 11/26/16 Text Message, Dmitriev to Gerson; 1/25/17 Text Message, Dmitriev to Nader.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Campaign other than occasional casual discussions about the Campaign with Kushner.¹⁰⁹⁹ After the election, Gerson assisted the transition by arranging meetings for transition officials with former UK prime minister Tony Blair and a UAE delegation led by Crown Prince Mohammed.¹¹⁰⁰

When Dmitriev and Gerson met, they principally discussed potential joint ventures between Gerson's hedge fund and RDIF.¹¹⁰¹ Dmitriev was interested in improved economic cooperation between the United States and Russia and asked Gerson who he should meet with in the incoming Administration who would be helpful towards this goal.¹¹⁰² Gerson replied that he would try to figure out the best way to arrange appropriate introductions, but noted that confidentiality would be required because of the sensitivity of holding such meetings before the new Administration took power, and before Cabinet nominees had been confirmed by the Senate.¹¹⁰³ Gerson said he would ask Kushner and Michael Flynn who the "key person or people" were on the topics of reconciliation with Russia, joint security concerns, and economic matters.¹¹⁰⁴

Dmitriev told Gerson that he had been tasked by Putin to develop and execute a reconciliation plan between the United States and Russia. He noted in a text message to Gerson that if Russia was "approached with respect and willingness to understand our position, we can have Major Breakthroughs quickly."¹¹⁰⁵ Gerson and Dmitriev exchanged ideas in December 2016 about what such a reconciliation plan would include.¹¹⁰⁶ Gerson told the Office that the Transition Team had not asked him to engage in these discussions with Dmitriev, and that he did so on his own initiative and as a private citizen.¹¹⁰⁷

On January 9, 2017, the same day he asked Nader whether meeting Prince would be worthwhile, Dmitriev sent his biography to Gerson and asked him if he could "share it with Jared (or somebody else very senior in the team) – so that they know that we are focused from our side on improving the relationship and my boss asked me to play a key role in that."¹¹⁰⁸ Dmitriev also asked Gerson if he knew Prince, and if Prince was somebody important or worth spending time

¹⁰⁹⁹ Gerson 6/5/18 302, at 1.

¹¹⁰⁰ Gerson 6/5/18 302, at 1-2; Kushner 4/11/18 302, at 21.

¹¹⁰¹ Gerson 6/5/18 302, at 3-4; *see, e.g.*, 12/2/16 Text Messages, Dmitriev & Gerson; 12/14/16 Text Messages, Dmitriev & Gerson; 1/3/17 Text Message, Gerson to Dmitriev; 12/2/16 Email, Tolokonnikov to Gerson.

¹¹⁰² Gerson 6/5/18 302, at 3; 12/14/16 Text Message, Dmitriev to Gerson.

¹¹⁰³ 12/14/16 Text Message, Gerson to Dmitriev.

¹¹⁰⁴ 12/14/16 Text Message, Gerson to Dmitriev.

¹¹⁰⁵ 12/14/16 Text Messages, Dmitriev & Gerson; Gerson 6/15/18 302, at 1.

¹¹⁰⁶ 12/14/16 Text Messages, Dmitriev & Gerson.

¹¹⁰⁷ Gerson 6/15/18 302, at 1.

¹¹⁰⁸ 1/9/17 Text Messages, Dmitriev to Gerson; 1/9/17 Text Message, Dmitriev to Nader.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

with.¹¹⁰⁹ After his trip to the Seychelles, Dmitriev told Gerson that Bannon had asked Prince to meet with Dmitriev and that the two had had a positive meeting.¹¹¹⁰

On January 16, 2017, Dmitriev consolidated the ideas for U.S.-Russia reconciliation that he and Gerson had been discussing into a two-page document that listed five main points: (1) jointly fighting terrorism; (2) jointly engaging in anti-weapons of mass destruction efforts; (3) developing “win-win” economic and investment initiatives; (4) maintaining an honest, open, and continual dialogue regarding issues of disagreement; and (5) ensuring proper communication and trust by “key people” from each country.¹¹¹¹ On January 18, 2017, Gerson gave a copy of the document to Kushner.¹¹¹² Kushner had not heard of Dmitriev at that time.¹¹¹³ Gerson explained that Dmitriev was the head of RDIF, and Gerson may have alluded to Dmitriev’s being well connected.¹¹¹⁴ Kushner placed the document in a file and said he would get it to the right people.¹¹¹⁵ Kushner ultimately gave one copy of the document to Bannon and another to Rex Tillerson; according to Kushner, neither of them followed up with Kushner about it.¹¹¹⁶ On January 19, 2017, Dmitriev sent Nader a copy of the two-page document, telling him that this was “a view from our side that I discussed in my meeting on the islands and with you and with our friends. Please share with them – we believe this is a good foundation to start from.”¹¹¹⁷

Gerson informed Dmitriev that he had given the document to Kushner soon after delivering it.¹¹¹⁸ On January 26, 2017, Dmitriev wrote to Gerson that his “boss”—an apparent reference to Putin—was asking if there had been any feedback on the proposal.¹¹¹⁹ Dmitriev said, “[w]e do not want to rush things and move at a comfortable speed. At the same time, my boss asked me to try to have the key US meetings in the next two weeks if possible.”¹¹²⁰ He informed Gerson that Putin and President Trump would speak by phone that Saturday, and noted that that information was “very confidential.”¹¹²¹

The same day, Dmitriev wrote to Nader that he had seen his “boss” again yesterday who had “emphasized that this is a great priority for us and that we need to build this communication

¹¹⁰⁹ Gerson 6/5/18 302, at 4.

¹¹¹⁰ 1/18/17 Text Messages, Dmitriev & Gerson.

¹¹¹¹ 1/16/17 Text Messages, Dmitriev & Gerson.

¹¹¹² Gerson 6/5/18 302, at 3; Gerson 6/15/18 302, at 2.

¹¹¹³ Gerson 6/5/18 302, at 3.

¹¹¹⁴ Gerson 6/5/18 302, at 3; Gerson 6/15/18 302, at 1-2; Kushner 4/11/18 302, at 22.

¹¹¹⁵ Gerson 6/5/18 302, at 3.

¹¹¹⁶ Kushner 4/11/18 302, at 32.

¹¹¹⁷ 1/19/17 Text Message, Dmitriev to Nader (11:11:56 a.m.).

¹¹¹⁸ 1/18/17 Text Message, Gerson to Dmitriev; Gerson 6/15/18 302, at 2.

¹¹¹⁹ 1/26/17 Text Message, Dmitriev to Gerson.

¹¹²⁰ 1/26/17 Text Message, Dmitriev to Gerson.

¹¹²¹ 1/26/17 Text Message, Dmitriev to Gerson.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

channel to avoid bureaucracy.”¹¹²² On January 28, 2017, Dmitriev texted Nader that he wanted “to see if I can confirm to my boss that your friends may use some of the ideas from the 2 pager I sent you in the telephone call that will happen at 12 EST,”¹¹²³ an apparent reference to the call scheduled between President Trump and Putin. Nader replied, “Definitely paper was so submitted to Team by Rick and me. They took it seriously!”¹¹²⁴ After the call between President Trump and Putin occurred, Dmitriev wrote to Nader that “the call went very well. My boss wants me to continue making some public statements that us [sic] Russia cooperation is good and important.”¹¹²⁵ Gerson also wrote to Dmitriev to say that the call had gone well, and Dmitriev replied that the document they had drafted together “played an important role.”¹¹²⁶

Gerson and Dmitriev appeared to stop communicating with one another in approximately March 2017, when the investment deal they had been working on together showed no signs of progressing.¹¹²⁷

3. Ambassador Kislyak’s Meeting with Jared Kushner and Michael Flynn in Trump Tower Following the Election

On November 16, 2016, Catherine Vargas, an executive assistant to Kushner, received a request for a meeting with Russian Ambassador Sergey Kislyak.¹¹²⁸ That same day, Vargas sent Kushner an email with the subject, “MISSED CALL: Russian Ambassador to the US, Sergey Ivanovich Kislyak”¹¹²⁹ The text of the email read, “RE: setting up a time to meet w/you on 12/1. LMK how to proceed.” Kushner responded in relevant part, “I think I do this one -- confirm with Dimitri [Simes of CNI] that this is the right guy.”¹¹³⁰ After reaching out to a colleague of Simes at CNI, Vargas reported back to Kushner that Kislyak was “the best go-to guy for routine matters in the US,” while Yuri Ushakov, a Russian foreign policy advisor, was the contact for “more direct/substantial matters.”¹¹³¹

Bob Foresman, the UBS investment bank executive who had previously tried to transmit to candidate Trump an invitation to speak at an economic forum in Russia, *see* Volume I, Section IV.A.1.d.ii, *supra*, may have provided similar information to the Transition Team. According to

¹¹²² 1/26/17 Text Message, Dmitriev to Nader (10:04:41 p.m.).

¹¹²³ 1/28/17 Text Message, Dmitriev to Nader (11:05:39 a.m.).

¹¹²⁴ 1/28/17 Text Message, Nader to Dmitriev (11:11:33 a.m.).

¹¹²⁵ 1/29/17 Text Message, Dmitriev to Nader (11:06:35 a.m.).

¹¹²⁶ 1/28/17 Text Message, Gerson to Dmitriev; 1/29/17 Text Message, Dmitriev to Gerson.

¹¹²⁷ Gerson 6/15/18 302, at 4; 3/21/17 Text Message, Gerson to Dmitriev.

¹¹²⁸ *Statement of Jared C. Kushner to Congressional Committees* (“Kushner Stmt.”), at 6 (7/24/17) (written statement by Kushner to the Senate Judiciary Committee).

¹¹²⁹ NOSC00004356 (11/16/16 Email, Vargas to Kushner (6:44 p.m.)).

¹¹³⁰ NOSC00004356 (11/16/16 Email, Kushner to Vargas (9:54 p.m.)).

¹¹³¹ 11/17/16 Email, Brown to Simes (10:41 a.m.); Brown 10/13/17 302, at 4; 11/17/16 Email, Vargas to Kushner (12:31:18).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Foresman, at the end of an early December 2016 meeting with incoming National Security Advisor Michael Flynn and his designated deputy (K.T. McFarland) in New York, Flynn asked Foresman for his thoughts on Kislyak. Foresman had not met Kislyak but told Flynn that, while Kislyak was an important person, Kislyak did not have a direct line to Putin.¹¹³² Foresman subsequently traveled to Moscow, inquired of a source he believed to be close to Putin, and heard back from that source that Ushakov would be the official channel for the incoming U.S. national security advisor.¹¹³³ Foresman acknowledged that Flynn had not asked him to undertake that inquiry in Russia but told the Office that he nonetheless felt obligated to report the information back to Flynn, and that he worked to get a face-to-face meeting with Flynn in January 2017 so that he could do so.¹¹³⁴ Email correspondence suggests that the meeting ultimately went forward,¹¹³⁵ but Flynn has no recollection of it or of the earlier December meeting.¹¹³⁶ (The investigation did not identify evidence of Flynn or Kushner meeting with Ushakov after being given his name.¹¹³⁷)

In the meantime, although he had already formed the impression that Kislyak was not necessarily the right point of contact,¹¹³⁸ Kushner went forward with the meeting that Kislyak had requested on November 16. It took place at Trump Tower on November 30, 2016.¹¹³⁹ At Kushner's invitation, Flynn also attended; Bannon was invited but did not attend.¹¹⁴⁰ During the meeting, which lasted approximately 30 minutes, Kushner expressed a desire on the part of the incoming Administration to start afresh with U.S.-Russian relations.¹¹⁴¹ Kushner also asked Kislyak to identify the best person (whether Kislyak or someone else) with whom to direct future discussions—someone who had contact with Putin and the ability to speak for him.¹¹⁴²

The three men also discussed U.S. policy toward Syria, and Kislyak floated the idea of having Russian generals brief the Transition Team on the topic using a secure communications line.¹¹⁴³ After Flynn explained that there was no secure line in the Transition Team offices,

¹¹³² Foresman 10/17/18 302, at 17.

¹¹³³ Foresman 10/17/18 302, at 17-18.

¹¹³⁴ Foresman 10/17/18 302, at 18.

¹¹³⁵ RMF-SCO-00000015 (1/5/17 Email, Foresman to Atencio & Flaherty); RMF-SCO-00000015 (1/5/17 Email, Flaherty to Foresman & Atencio).

¹¹³⁶ 9/26/18 Attorney Proffer from Covington & Burling LLP (reflected in email on file with the Office).

¹¹³⁷ Vargas 4/4/18 302, at 5.

¹¹³⁸ Kushner 11/1/17 302, at 4.

¹¹³⁹ AKIN_GUMP_BERKOWITZ_0000016-019 (11/29/16 Email, Vargas to Kuznetsov).

¹¹⁴⁰ Flynn 1/11/18 302, at 2; NOS00004240 (Calendar Invite, Vargas to Kushner & Flynn).

¹¹⁴¹ Kushner Stmt. at 6.

¹¹⁴² Kushner Stmt. at 6; Kushner 4/11/18 302, at 18.

¹¹⁴³ Kushner Stmt. at 7; Kushner 4/11/18 302, at 18; Flynn 1/11/18 302, at 2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Kushner asked Kislyak if they could communicate using secure facilities at the Russian Embassy.¹¹⁴⁴ Kislyak quickly rejected that idea.¹¹⁴⁵

4. Jared Kushner's Meeting with Sergey Gorkov

On December 6, 2016, the Russian Embassy reached out to Kushner's assistant to set up a second meeting between Kislyak and Kushner.¹¹⁴⁶ Kushner declined several proposed meeting dates, but Kushner's assistant indicated that Kislyak was very insistent about securing a second meeting.¹¹⁴⁷ Kushner told the Office that he did not want to take another meeting because he had already decided Kislyak was not the right channel for him to communicate with Russia, so he arranged to have one of his assistants, Avi Berkowitz, meet with Kislyak in his stead.¹¹⁴⁸ Although embassy official Sergey Kuznetsov wrote to Berkowitz that Kislyak thought it "important" to "continue the conversation with Mr. Kushner in person,"¹¹⁴⁹ Kislyak nonetheless agreed to meet instead with Berkowitz once it became apparent that Kushner was unlikely to take a meeting.

Berkowitz met with Kislyak on December 12, 2016, at Trump Tower.¹¹⁵⁰ The meeting lasted only a few minutes, during which Kislyak indicated that he wanted Kushner to meet someone who had a direct line to Putin: Sergey Gorkov, the head of the Russian-government-owned bank Vnesheconombank (VEB).

Kushner agreed to meet with Gorkov.¹¹⁵¹ The one-on-one meeting took place the next day, December 13, 2016, at the Colony Capital building in Manhattan, where Kushner had previously scheduled meetings.¹¹⁵² VEB was (and is) the subject of Department of Treasury economic sanctions imposed in response to Russia's annexation of Crimea.¹¹⁵³ Kushner did not, however, recall any discussion during his meeting with Gorkov about the sanctions against VEB or sanctions more generally.¹¹⁵⁴ Kushner stated in an interview that he did not engage in any preparation for

¹¹⁴⁴ Kushner 4/11/18 302, at 18.

¹¹⁴⁵ Kushner 4/11/18 302, at 18.

¹¹⁴⁶ Kushner Stmt. at 7; NOSC00000123 (12/6/16 Email, Vargas to Kushner (12:11:40 p.m.)).

¹¹⁴⁷ Kushner 4/11/18 302, at 19; NOSC00000130 (12/12/16 Email, Kushner to Vargas (10:41 p.m.)).

¹¹⁴⁸ Kushner 4/11/18 302, at 19; Kushner Stmt. at 7; DJTFF_SCO_01442290 (12/6/16 Email, Berkowitz to ██████████).

¹¹⁴⁹ DJTFF_SCO_01442290 (12/7/16 Email, ██████████ to Berkowitz (12:31:39 p.m.)).

¹¹⁵⁰ Berkowitz 1/12/18 302, at 7; AKIN_GUMP_BERKOWITZ_000001-04 (12/12/16 Text Messages, Berkowitz & 202-701-8532).

¹¹⁵¹ Kushner 4/11/18 302, at 19; NOSC00000130-135 (12/12/16 Email, Kushner to Berkowitz).

¹¹⁵² Kushner 4/11/18 302, at 19; NOSC00000130-135 (12/12/16 Email, Kushner to Berkowitz).

¹¹⁵³ *Announcement of Treasury Sanctions on Entities Within the Financial Services and Energy Sectors of Russia, Against Arms or Related Materiel Entities, and those Undermining Ukraine's Sovereignty*, United States Department of the Treasury (Jul. 16, 2014).

¹¹⁵⁴ Kushner 4/11/18 302, at 20.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

the meeting and that no one on the Transition Team even did a Google search for Gorkov's name.¹¹⁵⁵

At the start of the meeting, Gorkov presented Kushner with two gifts: a painting and a bag of soil from the town in Belarus where Kushner's family originated.¹¹⁵⁶

The accounts from Kushner and Gorkov differ as to whether the meeting was diplomatic or business in nature. Kushner told the Office that the meeting was diplomatic, with Gorkov expressing disappointment with U.S.-Russia relations under President Obama and hopes for improved relations with the incoming Administration.¹¹⁵⁷ According to Kushner, although Gorkov told Kushner a little bit about his bank and made some statements about the Russian economy, the two did not discuss Kushner's companies or private business dealings of any kind.¹¹⁵⁸ (At the time of the meeting, Kushner Companies had a debt obligation coming due on the building it owned at 666 Fifth Avenue, and there had been public reporting both about efforts to secure lending on the property and possible conflicts of interest for Kushner arising out of his company's borrowing from foreign lenders.¹¹⁵⁹)

In contrast, in a 2017 public statement, VEB suggested Gorkov met with Kushner in Kushner's capacity as CEO of Kushner Companies for the purpose of discussing business, rather than as part of a diplomatic effort. In particular, VEB characterized Gorkov's meeting with Kushner as part of a series of "roadshow meetings" with "representatives of major US banks and business circles," which included "negotiations" and discussion of the "most promising business lines and sectors."¹¹⁶⁰

Foresman, the investment bank executive mentioned in Volume I, Sections IV.A.1 and IV.B.3, *supra*, told the Office that he met with Gorkov and VEB deputy chairman Nikolay Tsekhomsky in Moscow just before Gorkov left for New York to meet Kushner.¹¹⁶¹ According to Foresman, Gorkov and Tsekhomsky told him that they were traveling to New York to discuss post-election issues with U.S. financial institutions, that their trip was sanctioned by Putin, and that they would be reporting back to Putin upon their return.¹¹⁶²

¹¹⁵⁵ Kushner 4/11/18 302, at 19. Berkowitz, by contrast, stated to the Office that he had googled Gorkov's name and told Kushner that Gorkov appeared to be a banker. Berkowitz 1/12/18 302, at 8.

¹¹⁵⁶ Kushner 4/11/18 302, at 19-20.

¹¹⁵⁷ Kushner Stmt. at 8.

¹¹⁵⁸ Kushner Stmt. at 8.

¹¹⁵⁹ See, e.g., Peter Grant, *Donald Trump Son-in-Law Jared Kushner Could Face His Own Conflict-of-Interest Questions*, Wall Street Journal (Nov. 29, 2016).

¹¹⁶⁰ Patrick Reeve & Matthew Mosk, *Russian Banker Sergey Gorkov Brushes off Questions About Meeting with Jared Kushner*, ABC News (June 1, 2017).

¹¹⁶¹ Foresman 10/17/18 302, at 14-15.

¹¹⁶² Foresman 10/17/18 302, at 15-16.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

The investigation did not resolve the apparent conflict in the accounts of Kushner and Gorkov or determine whether the meeting was diplomatic in nature (as Kushner stated), focused on business (as VEB's public statement indicated), or whether it involved some combination of those matters or other matters. Regardless, the investigation did not identify evidence that Kushner and Gorkov engaged in any substantive follow-up after the meeting.

Rather, a few days after the meeting, Gorkov's assistant texted Kushner's assistant, "Hi, please inform your side that the information about the meeting had a very positive response!"¹¹⁶³ Over the following weeks, the two assistants exchanged a handful of additional cordial texts.¹¹⁶⁴ On February 8, 2017, Gorkov's assistant texted Kushner's assistant (Berkowitz) to try to set up another meeting, and followed up by text at least twice in the days that followed.¹¹⁶⁵ According to Berkowitz, he did not respond to the meeting request in light of the press coverage regarding the Russia investigation, and did not tell Kushner about the meeting request.¹¹⁶⁶

5. Petr Aven's Outreach Efforts to the Transition Team

In December 2016, weeks after the one-on-one meeting with Putin described in Volume I, Section IV.B.1.b, *supra*, Petr Aven attended what he described as a separate "all-hands" oligarch meeting between Putin and Russia's most prominent businessmen.¹¹⁶⁷ As in Aven's one-on-one meeting, a main topic of discussion at the oligarch meeting in December 2016 was the prospect of forthcoming U.S. economic sanctions.¹¹⁶⁸

After the December 2016 all-hands meeting, Aven tried to establish a connection to the Trump team. Aven instructed Richard Burt to make contact with the incoming Trump Administration. Burt was on the board of directors for LetterOne (L1), another company headed by Aven, and had done work for Alfa-Bank.¹¹⁶⁹ Burt had previously served as U.S. ambassador to Germany and Assistant Secretary of State for European and Canadian Affairs, and one of his primary roles with Alfa-Bank and L1 was to facilitate introductions to business contacts in the United States and other Western countries.¹¹⁷⁰

While at a L1 board meeting held in Luxembourg in late December 2016, Aven pulled Burt aside and told him that he had spoken to someone high in the Russian government who expressed

¹¹⁶³ AKIN_GUMP_BERKOWITZ_0000011 (12/19/16 Text Message, Ivanchenko to Berkowitz (9:56 a.m.)).

¹¹⁶⁴ AKIN_GUMP_BERKOWITZ_0000011-15 (12/19/16 – 2/16/17 Text Messages, Ivanchenko & Berkowitz).

¹¹⁶⁵ AKIN_GUMP_BERKOWITZ_0000015 (2/8/17 Text Message, Ivanchenko to Berkowitz (10:41 a.m.)).

¹¹⁶⁶ Berkowitz 3/22/18 302, at 4-5.

¹¹⁶⁷ Aven 8/2/18 302, at 7; Grand Jury

¹¹⁶⁸ Grand Jury

¹¹⁶⁹ Grand Jury Aven 8/2/18 302, at 6.

¹¹⁷⁰ Grand Jury Aven 8/2/18 302, at 6; Burt 2/9/18 302, at 2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

interest in establishing a communications channel between the Kremlin and the Trump Transition Team.¹¹⁷¹ Aven asked for Burt's help in contacting members of the Transition Team.¹¹⁷² Although Burt had been responsible for helping Aven build connections in the past, Burt viewed Aven's request as unusual and outside the normal realm of his dealings with Aven.¹¹⁷³

Burt, who is a member of the board of CNI (discussed at Volume I, Section IV.A.4, *supra*),¹¹⁷⁴ decided to approach CNI president Dimitri Simes for help facilitating Aven's request, recalling that Simes had some relationship with Kushner.¹¹⁷⁵ At the time, Simes was lobbying the Trump Transition Team, on Burt's behalf, to appoint Burt U.S. ambassador to Russia.¹¹⁷⁶

Burt contacted Simes by telephone and asked if he could arrange a meeting with Kushner to discuss setting up a high-level communications channel between Putin and the incoming Administration.¹¹⁷⁷ Simes told the Office that he declined and stated to Burt that setting up such a channel was not a good idea in light of the media attention surrounding Russian influence in the U.S. presidential election.¹¹⁷⁸ According to Simes, he understood that Burt was seeking a secret channel, and Simes did not want CNI to be seen as an intermediary between the Russian government and the incoming Administration.¹¹⁷⁹ Based on what Simes had read in the media, he stated that he already had concerns that Trump's business connections could be exploited by Russia, and Simes said that he did not want CNI to have any involvement or apparent involvement in facilitating any connection.¹¹⁸⁰

In an email dated December 22, 2016, Burt recounted for Aven his conversation with Simes:

Through a trusted third party, I have reached out to the very influential person I mentioned in Luxembourg concerning Project A. There is an interest and an understanding for the need to establish such a channel. But the individual emphasized that at this moment, with so much intense interest in the Congress and the media over the question of cyber-hacking (and who ordered what), Project A was too explosive to discuss. The individual agreed to discuss it again after the New Year. I trust the individual's instincts on this.

¹¹⁷¹ Burt 2/9/18 302, at 2; **Grand Jury**

¹¹⁷² **Grand Jury**

¹¹⁷³ Burt 2/9/18 302, at 4.

¹¹⁷⁴ Burt 2/9/18 302, at 5.

¹¹⁷⁵ Burt 2/9/18 302, at 3.

¹¹⁷⁶ Burt 2/9/18 302, at 3.

¹¹⁷⁷ Burt 2/9/18 302, at 3; Simes 3/27/18 302, at 4.

¹¹⁷⁸ Burt 2/9/18 302, at 3; Simes 3/27/18 302, at 4.

¹¹⁷⁹ Simes 3/27/18 302, at 5.

¹¹⁸⁰ Simes 3/27/18 302, at 5.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

If this is unclear or you would like to discuss, don't hesitate to call.¹¹⁸¹

According to Burt, the "very influential person" referenced in his email was Simes, and the reference to a "trusted third party" was a fabrication, as no such third party existed. "Project A" was a term that Burt created for Aven's effort to help establish a communications channel between Russia and the Trump team, which he used in light of the sensitivities surrounding what Aven was requesting, especially in light of the recent attention to Russia's influence in the U.S. presidential election.¹¹⁸² According to Burt, his report that there was "interest" in a communications channel reflected Simes's views, not necessarily those of the Transition Team, and in any event, Burt acknowledged that he added some "hype" to that sentence to make it sound like there was more interest from the Transition Team than may have actually existed.¹¹⁸³

Aven replied to Burt's email on the same day, saying "Thank you. All clear."¹¹⁸⁴ According to Aven, this statement indicated that he did not want the outreach to continue.¹¹⁸⁵ Burt spoke to Aven some time thereafter about his attempt to make contact with the Trump team, explaining to Aven that the current environment made it impossible. ~~Grand Jury~~
~~Grand Jury~~.¹¹⁸⁶ Burt did not recall discussing Aven's request with Simes again, nor did he recall speaking to anyone else about the request.¹¹⁸⁷

In the first quarter of 2017, Aven met again with Putin and other Russian officials.¹¹⁸⁸ At that meeting, Putin asked about Aven's attempt to build relations with the Trump Administration, and Aven recounted his lack of success.¹¹⁸⁹ ~~Grand Jury~~
~~Grand Jury~~.¹¹⁹⁰ Putin continued to inquire about Aven's efforts to connect to the Trump Administration in several subsequent quarterly meetings.¹¹⁹¹

Aven also told Putin's chief of staff that he had been subpoenaed by the FBI.¹¹⁹² As part of that conversation, he reported that he had been asked by the FBI about whether he had worked to create a back channel between the Russian government and the Trump Administration.¹¹⁹³

¹¹⁸¹ 12/22/16 Email, Burt to Aven (7:23 p.m.).

¹¹⁸² Burt 2/9/18 302, at 3.

¹¹⁸³ Burt 2/9/18 302, at 3-4.

¹¹⁸⁴ 12/22/16 Email, Aven to Burt (4:58:22 p.m.).

¹¹⁸⁵ Aven 8/2/18 302, at 7.

¹¹⁸⁶ ~~Grand Jury~~

¹¹⁸⁷ Burt 2/9/18 302, at 3-4.

¹¹⁸⁸ ~~Grand Jury~~

¹¹⁸⁹ ~~Grand Jury~~ Aven 8/2/18 302, at 7.

¹¹⁹⁰ ~~Grand Jury~~

¹¹⁹¹ ~~Grand Jury~~

¹¹⁹² Aven 8/2/18 302, at 8.

¹¹⁹³ Aven 8/2/18 302, at 8; ~~Grand Jury~~

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

According to Aven, the official showed no emotion in response to this report and did not appear to care.¹¹⁹⁴

6. Carter Page Contact with Deputy Prime Minister Arkady Dvorkovich

In December 2016, more than two months after he was removed from the Trump Campaign, former Campaign foreign policy advisor Carter Page again visited Moscow in an attempt to pursue business opportunities.¹¹⁹⁵ Grand Jury

¹¹⁹⁶ According to Konstantin Kilimnik, Paul Manafort's associate, Page also gave some individuals in Russia the impression that he had maintained his connections to President-Elect Trump. In a December 8, 2016 email intended for Manafort, Kilimnik wrote, "Carter Page is in Moscow today, sending messages he is authorized to talk to Russia on behalf of DT on a range of issues of mutual interest, including Ukraine."¹¹⁹⁷

On December 9, 2016, Page went to dinner with NES employees Shlomo Weber and Andrej Krickovic.¹¹⁹⁸ Weber had contacted Dvorkovich to let him know that Page was in town and to invite him to stop by the dinner if he wished to do so, and Dvorkovich came to the restaurant for a few minutes to meet with Page.¹¹⁹⁹ Dvorkovich congratulated Page on Trump's election and expressed interest in starting a dialogue between the United States and Russia.¹²⁰⁰ Dvorkovich asked Page if he could facilitate connecting Dvorkovich with individuals involved in the transition to begin a discussion of future cooperation.¹²⁰¹ Grand Jury

¹²⁰² Grand Jury

¹²⁰³

¹¹⁹⁴ Aven 8/2/18 302, at 8; Grand Jury

¹¹⁹⁵ Page 3/10/17 302, at 4; Page 3/16/17 302, at 3; Grand Jury Among other meetings, Page contacted Andrej Baranov, head of investor relations at Rosneft, and they discussed the sale of Rosneft and meetings Baranov had attended with Rosneft CEO Igor Sechin. Grand Jury

¹¹⁹⁶ Grand Jury

¹¹⁹⁷ Investigative Technique

¹¹⁹⁸ Page 3/16/17 302, at 3; Page 3/30/17 302, at 8.

¹¹⁹⁹ Weber 7/28/17 302, at 4; Page 3/16/17 302, at 3; Grand Jury

¹²⁰⁰ Page 3/16/17 302, at 3; Grand Jury

¹²⁰¹ Page 3/16/17 302, at 3; Grand Jury

¹²⁰² Grand Jury

¹²⁰³ Grand Jury

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Grand Jury [REDACTED] Dvorkovich separately discussed working together in the future by forming an academic partnership.¹²⁰⁴ Grand Jury [REDACTED]

1205 Grand Jury [REDACTED]

206 [REDACTED]

7. Contacts With and Through Michael T. Flynn

Incoming National Security Advisor Michael Flynn was the Transition Team's primary conduit for communications with the Russian Ambassador and dealt with Russia on two sensitive matters during the transition period: a United Nations Security Council vote and the Russian government's reaction to the United States's imposition of sanctions for Russian interference in the 2016 election.¹²⁰⁷ Despite Kushner's conclusion that Kislyak did not wield influence inside the Russian government, the Transition Team turned to Flynn's relationship with Kislyak on both issues. As to the sanctions, Flynn spoke by phone to K.T. McFarland, his incoming deputy, to prepare for his call to Kislyak; McFarland was with the President-Elect and other senior members of the Transition Team at Mar-a-Lago at the time. Although transition officials at Mar-a-Lago had some concern about possible Russian reactions to the sanctions, the investigation did not identify evidence that the President-Elect asked Flynn to make any request to Kislyak. Flynn asked Kislyak not to escalate the situation in response to U.S. sanctions imposed on December 29, 2016, and Kislyak later reported to Flynn that Russia acceded to that request.

a. *United Nations Vote on Israeli Settlements*

On December 21, 2016, Egypt submitted a resolution to the United Nations Security Council calling on Israel to cease settlement activities in Palestinian territory.¹²⁰⁸ The Security Council, which includes Russia, was scheduled to vote on the resolution the following day.¹²⁰⁹ There was speculation in the media that the Obama Administration would not oppose the resolution.¹²¹⁰

1204 Grand Jury [REDACTED]

1205 Grand Jury [REDACTED]

1206 Grand Jury [REDACTED]

¹²⁰⁷ As discussed further in Volume I, Section V.C.4, *infra*, Flynn pleaded guilty to making false statements to the FBI, in violation of 18 U.S.C. § 1001, about these communications with Ambassador Kislyak. Plea Agreement, *United States v. Michael T. Flynn*, No. 1:17-cr-232 (D.D.C. Dec. 1, 2017), Doc. 3. Flynn's plea agreement required that he cooperate with this Office, and the statements from Flynn in this report reflect his cooperation over the course of multiple debriefings in 2017 and 2018.

¹²⁰⁸ Karen DeYoung, *How the U.S. Came to Abstain on a U.N. Resolution Condemning Israeli Settlements*, Washington Post (Dec. 28, 2016).

¹²⁰⁹ Karen DeYoung, *How the U.S. Came to Abstain on a U.N. Resolution Condemning Israeli Settlements*, Washington Post (Dec. 28, 2016).

¹²¹⁰ Michelle Nichols & Lesley Wroughton, *U.S. Intended to Allow Passage of U.N. Draft Critical of Israel*, Reuters (Dec. 21, 2016).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

According to Flynn, the Transition Team regarded the vote as a significant issue and wanted to support Israel by opposing the resolution.¹²¹¹ On December 22, 2016, multiple members of the Transition Team, as well as President-Elect Trump, communicated with foreign government officials to determine their views on the resolution and to rally support to delay the vote or defeat the resolution.¹²¹² Kushner led the effort for the Transition Team; Flynn was responsible for the Russian government.¹²¹³ Minutes after an early morning phone call with Kushner on December 22, Flynn called Kislyak.¹²¹⁴ According to Flynn, he informed Kislyak about the vote and the Transition Team's opposition to the resolution, and requested that Russia vote against or delay the resolution.¹²¹⁵ Later that day, President-Elect Trump spoke with Egyptian President Abdel Fattah al-Sisi about the vote.¹²¹⁶ Ultimately, Egypt postponed the vote.¹²¹⁷

On December 23, 2016, Malaysia, New Zealand, Senegal, and Venezuela resubmitted the resolution.¹²¹⁸ Throughout the day, members of the Transition Team continued to talk with foreign leaders about the resolution, with Flynn continuing to lead the outreach with the Russian government through Kislyak.¹²¹⁹ When Flynn again spoke with Kislyak, Kislyak informed Flynn that if the resolution came to a vote, Russia would not vote against it.¹²²⁰ The resolution later passed 14-0, with the United States abstaining.¹²²¹

b. U.S. Sanctions Against Russia

Flynn was also the Transition Team member who spoke with the Russian government when the Obama Administration imposed sanctions and other measures against Russia in response to Russia's interference in the 2016 presidential election. On December 28, 2016, then-President Obama signed Executive Order 13757, which took effect at 12:01 a.m. the following day and

¹²¹¹ Flynn 11/16/17 302, at 12; Flynn 11/17/17 302, at 2.

¹²¹² Flynn 11/16/17 302, at 12-14; Flynn 11/17/17 302, at 2.

¹²¹³ Flynn 11/16/17 302, at 12-14; Flynn 11/17/17 302, at 2; Kushner 11/1/17 302, at 3; 12/22/16 Email, Kushner to Flynn; 12/22/16 Email, McFarland to Personal Privacy et al.

¹²¹⁴ Flynn 11/16/17 302, at 13; Call Records of Michael T. Flynn Grand Jury.

¹²¹⁵ Statement of Offense ¶ 3(d), *United States v. Michael T. Flynn*, No. 1:17-cr-232 (D.D.C. Dec. 1, 2017), Doc. 4 ("Flynn Statement of Offense"); Flynn 11/16/17 302, at 12-13.

¹²¹⁶ Flynn 11/17/17 302, at 2; Flynn 11/16/17 302, at 13.

¹²¹⁷ *U.N. Vote on Israeli Settlement Postponed, "Potentially Indefinitely"*, Reuters (Dec. 22, 2016).

¹²¹⁸ Somini Sengupta & Rick Gladstone, *Rebuffing Israel, U.S. Allows Censure Over Settlements*, New York Times (Dec. 23, 2016).

¹²¹⁹ Flynn 11/16/17 302, at 12-14; Kushner 11/1/17 302, at 3; 12/23/16 Email, Flynn to Kushner et al.

¹²²⁰ *Flynn Statement of Offense* ¶ 3(g).

¹²²¹ *Israel's Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms*, 7853rd Meeting (PM), United Nations Security Council (Dec. 23, 2016).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

imposed sanctions on nine Russian individuals and entities.¹²²² On December 29, 2016, the Obama Administration also expelled 35 Russian government officials and closed two Russian government-owned compounds in the United States.¹²²³

During the rollout of the sanctions, President-Elect Trump and multiple Transition Team senior officials, including McFarland, Steve Bannon, and Reince Priebus, were staying at the Mar-a-Lago club in Palm Beach, Florida. Flynn was on vacation in the Dominican Republic,¹²²⁴ but was in daily contact with McFarland.¹²²⁵

The Transition Team and President-Elect Trump were concerned that these sanctions would harm the United States's relationship with Russia.¹²²⁶ Although the details and timing of sanctions were unknown on December 28, 2016, the media began reporting that retaliatory measures from the Obama Administration against Russia were forthcoming.¹²²⁷ When asked about imposing sanctions on Russia for its alleged interference in the 2016 presidential election, President-Elect Trump told the media, "I think we ought to get on with our lives."¹²²⁸

Russia initiated the outreach to the Transition Team. On the evening of December 28, 2016, Kislyak texted Flynn, "can you kindly call me back at your convenience."¹²²⁹ Flynn did not respond to the text message that evening. Someone from the Russian Embassy also called Flynn the next morning, at 10:38 a.m., but they did not talk.¹²³⁰

The sanctions were announced publicly on December 29, 2016.¹²³¹ At 1:53 p.m. that day, McFarland began exchanging emails with multiple Transition Team members and advisors about the impact the sanctions would have on the incoming Administration.¹²³² At 2:07 p.m., a Transition Team member texted Flynn a link to a New York Times article about the sanctions.¹²³³ At 2:29

¹²²² *Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities*, The White House, Office of the Press Secretary (Dec. 29, 2016).

¹²²³ *Statement by the President on Actions in Response to Russian Malicious Cyber Activity and Harassment*, The White House, Office of the Press Secretary (Dec. 29, 2016).

¹²²⁴ Flynn 11/16/17 302, at 14; McFarland 12/22/17 302, at 3-8; Bannon 2/12/18 302, at 5.

¹²²⁵ Flynn 11/17/17 302, at 5; Flynn 1/19/18 302, at 1; McFarland 11/22/17 302, at 3-9.

¹²²⁶ Flynn 11/17/17 302, at 3.

¹²²⁷ Christine Wang, *US to announce new sanctions against Russia in response to election hacking*, CNBC (Dec. 28, 2016).

¹²²⁸ John Wagner, *Trump on alleged election interference by Russia: "Get on with our lives"*, Washington Post (Dec. 29, 2016).

¹²²⁹ SF000006 (12/28/16 Text Message, Kislyak to Flynn).

¹²³⁰ Call Records of Michael T. Flynn Grand Jury

¹²³¹ Flynn 11/17/17 302, at 2-3; McFarland 12/22/17 302, at 4-5.

¹²³² 12/29/16 Email, McFarland to O'Brien et al.; 12/29/16 Email, McFarland to Flynn et al.

¹²³³ SF000001 (12/29/16 Text Message, Flaherty to Flynn).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

p.m., McFarland called Flynn, but they did not talk.¹²³⁴ Shortly thereafter, McFarland and Bannon discussed the sanctions.¹²³⁵ According to McFarland, Bannon remarked that the sanctions would hurt their ability to have good relations with Russia, and that Russian escalation would make things more difficult.¹²³⁶ McFarland believed she told Bannon that Flynn was scheduled to talk to Kislyak later that night.¹²³⁷ McFarland also believed she may have discussed the sanctions with Priebus, and likewise told him that Flynn was scheduled to talk to Kislyak that night.¹²³⁸ At 3:14 p.m., Flynn texted a Transition Team member who was assisting McFarland, "Time for a call???"¹²³⁹ The Transition Team member responded that McFarland was on the phone with Tom Bossert, a Transition Team senior official, to which Flynn responded, "Tit for tat w Russia not good. Russian AMBO reaching out to me today."¹²⁴⁰

Flynn recalled that he chose not to communicate with Kislyak about the sanctions until he had heard from the team at Mar-a-Lago.¹²⁴¹ He first spoke with Michael Ledeen,¹²⁴² a Transition Team member who advised on foreign policy and national security matters, for 20 minutes.¹²⁴³ Flynn then spoke with McFarland for almost 20 minutes to discuss what, if anything, to communicate to Kislyak about the sanctions.¹²⁴⁴ On that call, McFarland and Flynn discussed the sanctions, including their potential impact on the incoming Trump Administration's foreign policy goals.¹²⁴⁵ McFarland and Flynn also discussed that Transition Team members in Mar-a-Lago did not want Russia to escalate the situation.¹²⁴⁶ They both understood that Flynn would relay a message to Kislyak in hopes of making sure the situation would not get out of hand.¹²⁴⁷

¹²³⁴ Call Records of K.T. McFarland ~~Grand Jury~~.

¹²³⁵ McFarland 12/22/17 302, at 5-6.

¹²³⁶ McFarland 12/22/17 302, at 5-6.

¹²³⁷ McFarland 12/22/17 302, at 6.

¹²³⁸ McFarland 12/22/17 302, at 6.

¹²³⁹ SF000001 (12/29/16 Text Message, Flynn to Flaherty).

¹²⁴⁰ SF000001 (12/29/16 Text Message, Flynn to Flaherty).

¹²⁴¹ Flynn 11/20/17 302, at 3.

¹²⁴² Michael Ledeen is married to Barbara Ledeen, the Senate staffer whose 2016 efforts to locate Hillary Clinton's missing emails are described in Volume I, Section III.D.2, *supra*.

¹²⁴³ Flynn 11/17/17 302, at 3; Call Records of Michael Ledeen ~~Grand Jury~~.

¹²⁴⁴ Flynn 11/17/17 302, at 3-4; *Flynn* Statement of Offense ¶ 3(c); Call Records of K.T. McFarland ~~Grand Jury~~; Call Records of Michael T. Flynn ~~Grand Jury~~.

¹²⁴⁵ Flynn 11/17/17 302, at 3-4

¹²⁴⁶ Flynn 11/17/17 302, at 3-4; *Flynn* Statement of Offense ¶ 3(c); McFarland 12/22/17 302, at 6-

7.

¹²⁴⁷ Flynn 11/17/17 302, at 4; McFarland 12/22/17 302, at 6-7.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Immediately after speaking with McFarland, Flynn called and spoke with Kislyak.¹²⁴⁸ Flynn discussed multiple topics with Kislyak, including the sanctions, scheduling a video teleconference between President-Elect Trump and Putin, an upcoming terrorism conference, and Russia's views about the Middle East.¹²⁴⁹ With respect to the sanctions, Flynn requested that Russia not escalate the situation, not get into a "tit for tat," and only respond to the sanctions in a reciprocal manner.¹²⁵⁰

Multiple Transition Team members were aware that Flynn was speaking with Kislyak that day. In addition to her conversations with Bannon and Reince Priebus, at 4:43 p.m., McFarland sent an email to Transition Team members about the sanctions, informing the group that "Gen [F]lynn is talking to russian ambassador this evening."¹²⁵¹ Less than an hour later, McFarland briefed President-Elect Trump, Bannon, Priebus, Sean Spicer, and other Transition Team members were present.¹²⁵² During the briefing, President-Elect Trump asked McFarland if the Russians did "it," meaning the intrusions intended to influence the presidential election.¹²⁵³ McFarland said yes, and President-Elect Trump expressed doubt that it was the Russians.¹²⁵⁴ McFarland also discussed potential Russian responses to the sanctions, and said Russia's response would be an indicator of what the Russians wanted going forward.¹²⁵⁵ President-Elect Trump opined that the sanctions provided him with leverage to use with the Russians.¹²⁵⁶ McFarland recalled that at the end of the meeting, someone may have mentioned to President-Elect Trump that Flynn was speaking to the Russian ambassador that evening.¹²⁵⁷

After the briefing, Flynn and McFarland spoke over the phone.¹²⁵⁸ Flynn reported on the substance of his call with Kislyak, including their discussion of the sanctions.¹²⁵⁹ According to McFarland, Flynn mentioned that the Russian response to the sanctions was not going to be escalatory because they wanted a good relationship with the incoming Administration.¹²⁶⁰ McFarland also gave Flynn a summary of her recent briefing with President-Elect Trump.¹²⁶¹

¹²⁴⁸ Flynn Statement of Offense ¶ 3(d).

¹²⁴⁹ Flynn 11/17/17 302, at 3-4; *Flynn* Statement of Offense ¶ 3(c); 12/30/16 Email, Flynn to McFarland.

¹²⁵⁰ Flynn 11/17/17 302, at 1; *Flynn* Statement of Offense ¶ 3(d).

¹²⁵¹ 12/29/16 Email, McFarland to Flynn et al.

¹²⁵² 12/29/16 Email, Westerhout to Flaherty; McFarland 12/22/17 302, at 7.

¹²⁵³ McFarland 12/22/17 302, at 7.

¹²⁵⁴ McFarland 12/22/17 302, at 7.

¹²⁵⁵ McFarland 12/22/17 302, at 7.

¹²⁵⁶ McFarland 12/22/17 302, at 7.

¹²⁵⁷ McFarland 12/22/17 302, at 7.

¹²⁵⁸ McFarland 12/22/17 302, at 7.

¹²⁵⁹ Flynn 11/17/17 302, at 4; *Flynn* Statement of Offense ¶ 3(e).

¹²⁶⁰ McFarland 12/22/17 302, at 8.

¹²⁶¹ McFarland 12/22/17 302, at 8.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

The next day, December 30, 2016, Russian Foreign Minister Sergey Lavrov remarked that Russia would respond in kind to the sanctions.¹²⁶² Putin superseded that comment two hours later, releasing a statement that Russia would not take retaliatory measures in response to the sanctions at that time.¹²⁶³ Hours later President-Elect Trump tweeted, “Great move on delay (by V. Putin).”¹²⁶⁴ Shortly thereafter, Flynn sent a text message to McFarland summarizing his call with Kislyak from the day before, which she emailed to Kushner, Bannon, Priebus, and other Transition Team members.¹²⁶⁵ The text message and email did not include sanctions as one of the topics discussed with Kislyak.¹²⁶⁶ Flynn told the Office that he did not document his discussion of sanctions because it could be perceived as getting in the way of the Obama Administration’s foreign policy.¹²⁶⁷

On December 31, 2016, Kislyak called Flynn and told him the request had been received at the highest levels and that Russia had chosen not to retaliate to the sanctions in response to the request.¹²⁶⁸ Two hours later, Flynn spoke with McFarland and relayed his conversation with Kislyak.¹²⁶⁹ According to McFarland, Flynn remarked that the Russians wanted a better relationship and that the relationship was back on track.¹²⁷⁰ Flynn also told McFarland that he believed his phone call had made a difference.¹²⁷¹ McFarland recalled congratulating Flynn in response.¹²⁷² Flynn spoke with other Transition Team members that day, but does not recall whether they discussed the sanctions.¹²⁷³ Flynn recalled discussing the sanctions with Bannon the next day and that Bannon appeared to know about Flynn’s conversation with Kislyak.¹²⁷⁴ Bannon,

¹²⁶² *Comment by Foreign Minister Sergey Lavrov on recent US sanctions and the expulsion of Russian diplomats, Moscow, December 20, 2016*, The Ministry of Foreign Affairs of the Russian Federation (Dec. 30, 2016 (5:32 a.m.)).

¹²⁶³ *Statement of the President of the Russian Federation*, Kremlin, Office of the President (Dec. 30, 2016 (7:15 a.m.)).

¹²⁶⁴ @realDonaldTrump 12/30/16 (11:41 a.m.) Tweet.

¹²⁶⁵ 12/30/16 Email, Flynn to McFarland; 12/30/16 Email, McFarland to Kushner et al.

¹²⁶⁶ 12/30/16 Email, McFarland to Kushner et al.

¹²⁶⁷ Flynn 11/17/17 302, at 4.

¹²⁶⁸ Call Records of Michael T. Flynn **Grand Jury**; Flynn 11/17/17 302, at 1; Flynn 1/19/17 302, at 3; Flynn Statement of Offense ¶ 3(g).

¹²⁶⁹ Call Records of Michael T. Flynn **Grand Jury**; Flynn 11/17/17 302, at 5; Flynn 1/19/17 302, at 3; McFarland 12/22/17 302, at 10.

¹²⁷⁰ McFarland 12/22/17 302, at 10.

¹²⁷¹ McFarland 12/22/17 302, at 10.

¹²⁷² McFarland 12/22/17 302, at 10.

¹²⁷³ Flynn 11/17/17 302, at 5-6.

¹²⁷⁴ Flynn 11/21/17 302, at 1; Flynn 11/20/17 302, at 3; Flynn 1/19/17 302, at 5; *Flynn Statement of Offense* ¶ 3(h).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

for his part, recalled meeting with Flynn that day, but said that he did not remember discussing sanctions with him.¹²⁷⁵

Additional information about Flynn's sanctions-related discussions with Kislyak, and the handling of those discussions by the Transition Team and the Trump Administration, is provided in Volume II of this report.

* * *

In sum, the investigation established multiple links between Trump Campaign officials and individuals tied to the Russian government. Those links included Russian offers of assistance to the Campaign. In some instances, the Campaign was receptive to the offer, while in other instances the Campaign officials shied away. Ultimately, the investigation did not establish that the Campaign coordinated or conspired with the Russian government in its election-interference activities.

¹²⁷⁵ Bannon 2/12/18 302, at 9.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

V. PROSECUTION AND DECLINATION DECISIONS

The Appointment Order authorized the Special Counsel’s Office “to prosecute federal crimes arising from [its] investigation” of the matters assigned to it. In deciding whether to exercise this prosecutorial authority, the Office has been guided by the Principles of Federal Prosecution set forth in the Justice (formerly U.S. Attorney’s) Manual. In particular, the Office has evaluated whether the conduct of the individuals considered for prosecution constituted a federal offense and whether admissible evidence would probably be sufficient to obtain and sustain a conviction for such an offense. Justice Manual § 9-27.220 (2018). Where the answer to those questions was yes, the Office further considered whether the prosecution would serve a substantial federal interest, the individuals were subject to effective prosecution in another jurisdiction, and there existed an adequate non-criminal alternative to prosecution. *Id.*

As explained below, those considerations led the Office to seek charges against two sets of Russian nationals for their roles in perpetrating the active-measures social media campaign and computer-intrusion operations. **Harm to Ongoing Matter**

The Office similarly determined that the contacts between Campaign officials and Russia-linked individuals either did not involve the commission of a federal crime or, in the case of campaign-finance offenses, that our evidence was not sufficient to obtain and sustain a criminal conviction. At the same time, the Office concluded that the Principles of Federal Prosecution supported charging certain individuals connected to the Campaign with making false statements or otherwise obstructing this investigation or parallel congressional investigations.

A. Russian “Active Measures” Social Media Campaign

On February 16, 2018, a federal grand jury in the District of Columbia returned an indictment charging 13 Russian nationals and three Russian entities—including the Internet Research Agency (IRA) and Concord Management and Consulting LLC (Concord)—with violating U.S. criminal laws in order to interfere with U.S. elections and political processes.¹²⁷⁶ The indictment charges all of the defendants with conspiracy to defraud the United States (Count One), three defendants with conspiracy to commit wire fraud and bank fraud (Count Two), and five defendants with aggravated identity theft (Counts Three through Eight). *Internet Research Agency* Indictment. Concord, which is one of the entities charged in the Count One conspiracy, entered an appearance through U.S. counsel and moved to dismiss the charge on multiple grounds. In orders and memorandum opinions issued on August 13 and November 15, 2018, the district court denied Concord’s motions to dismiss. *United States v. Concord Management & Consulting LLC*, 347 F. Supp. 3d 38 (D.D.C. 2018). *United States v. Concord Management & Consulting LLC*, 317 F. Supp. 3d 598 (D.D.C. 2018). As of this writing, the prosecution of Concord remains ongoing before the U.S. District Court for the District of Columbia. The other defendants remain at large.

¹²⁷⁶ A more detailed explanation of the charging decision in this case is set forth in a separate memorandum provided to the Acting Attorney General before the indictment.

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Although members of the IRA had contact with individuals affiliated with the Trump Campaign, the indictment does not charge any Trump Campaign official or any other U.S. person with participating in the conspiracy. That is because the investigation did not identify evidence that any U.S. person who coordinated or communicated with the IRA knew that he or she was speaking with Russian nationals engaged in the criminal conspiracy. The Office therefore determined that such persons did not have the knowledge or criminal purpose required to charge them in the conspiracy to defraud the United States (Count One) or in the separate count alleging a wire- and bank-fraud conspiracy involving the IRA and two individual Russian nationals (Count Two).

The Office did, however, charge one U.S. national for his role in supplying false or stolen bank account numbers that allowed the IRA conspirators to access U.S. online payment systems by circumventing those systems' security features. On February 12, 2018, Richard Pinedo pleaded guilty, pursuant to a single-count information, to identity fraud, in violation of 18 U.S.C. § 1028(a)(7) and (b)(1)(D). Plea Agreement, *United States v. Richard Pinedo*, No. 1:18-cr-24 (D.D.C. Feb. 12, 2018), Doc. 10. The investigation did not establish that Pinedo was aware of the identity of the IRA members who purchased bank account numbers from him. Pinedo's sales of account numbers enabled the IRA members to anonymously access a financial network through which they transacted with U.S. persons and companies. See Gov't Sent. Mem. at 3, *United States v. Richard Pinedo*, No. 1:18-cr-24 (D.D.C. Sept. 26, 2018), Doc. 24. On October 10, 2018, Pinedo was sentenced to six months of imprisonment, to be followed by six months of home confinement, and was ordered to complete 100 hours of community service.

B. Russian Hacking and Dumping Operations

1. Section 1030 Computer-Intrusion Conspiracy

a. Background

On July 13, 2018, a federal grand jury in the District of Columbia returned an indictment charging Russian military intelligence officers from the GRU with conspiring to hack into various U.S. computers used by the Clinton Campaign, DNC, DCCC, and other U.S. persons, in violation of 18 U.S.C. §§ 1030 and 371 (Count One); committing identity theft and conspiring to commit money laundering in furtherance of that hacking conspiracy, in violation of 18 U.S.C. §§ 1028A and 1956(h) (Counts Two through Ten); and a separate conspiracy to hack into the computers of U.S. persons and entities responsible for the administration of the 2016 U.S. election, in violation of 18 U.S.C. §§ 1030 and 371 (Count Eleven). *Netyksho* Indictment.¹²⁷⁷ As of this writing, all 12 defendants remain at large.

The *Netyksho* indictment alleges that the defendants conspired with one another and with others to hack into the computers of U.S. persons and entities involved in the 2016 U.S. presidential election, steal documents from those computers, and stage releases of the stolen documents to interfere in the election. *Netyksho* Indictment ¶ 2. The indictment also describes how, in staging

¹²⁷⁷ The Office provided a more detailed explanation of the charging decision in this case in meetings with the Office of the Acting Attorney General before the indictment.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

the releases, the defendants used the Guccifer 2.0 persona to disseminate documents through WikiLeaks. On July 22, 2016, WikiLeaks released over 20,000 emails and other documents that the hacking conspirators had stolen from the DNC. *Netyksho* Indictment ¶ 48. In addition, on October 7, 2016, WikiLeaks began releasing emails that some conspirators had stolen from Clinton Campaign chairman John Podesta after a successful spearphishing operation. *Netyksho* Indictment ¶ 49.

Harm to Ongoing Matter

Harm to Ongoing Matter

Grand Jury

b. Charging Decision As to **Harm to Ongoing Matter**

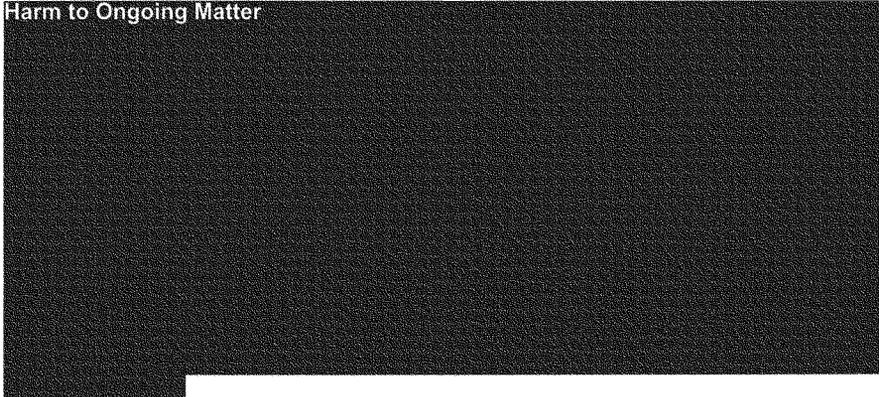
Harm to Ongoing Matter

278 Harm to Ongoing Matter

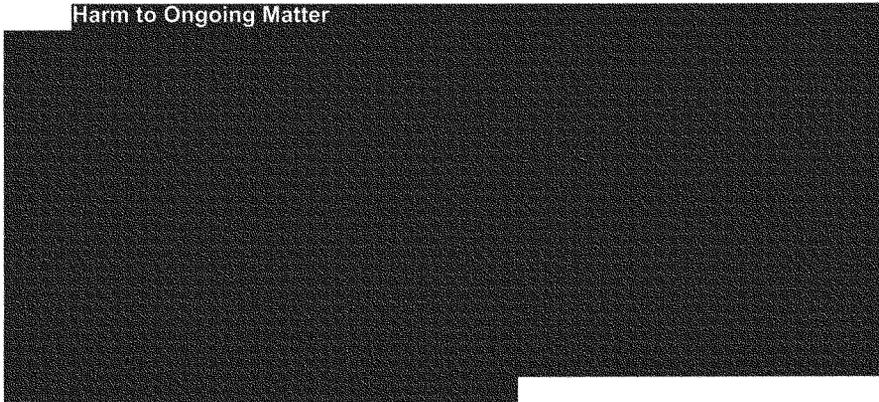
¹²⁷⁸ The Office also considered, but ruled out, charges on the theory that the post-hacking sharing and dissemination of emails could constitute trafficking in or receipt of stolen property under the National Stolen Property Act (NSPA), 18 U.S.C. §§ 2314 and 2315. The statutes comprising the NSPA cover “goods, wares, or merchandise,” and lower courts have largely understood that phrase to be limited to tangible items since the Supreme Court’s decision in *Dowling v. United States*, 473 U.S. 207 (1985). See *United States v. Yijia Zhang*, 995 F. Supp. 2d 340, 344-48 (E.D. Pa. 2014) (collecting cases). One of those post-*Dowling* decisions—*United States v. Brown*, 925 F.2d 1301 (10th Cir. 1991)—specifically held that the NSPA does not reach “a computer program in source code form,” even though that code was stored in tangible items (*i.e.*, a hard disk and in a three-ring notebook). *Id.* at 1302-03. Congress, in turn, cited the *Brown* opinion in explaining the need for amendments to 18 U.S.C. § 1030(a)(2) that “would ensure that the theft of intangible information by the unauthorized use of a computer is prohibited in the same way theft of physical items [is] protected.” S. Rep. 104-357, at 7 (1996). That sequence of events would make it difficult to argue that hacked emails in electronic form, which are the relevant stolen items here, constitute “goods, wares, or merchandise” within the meaning of the NSPA.

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

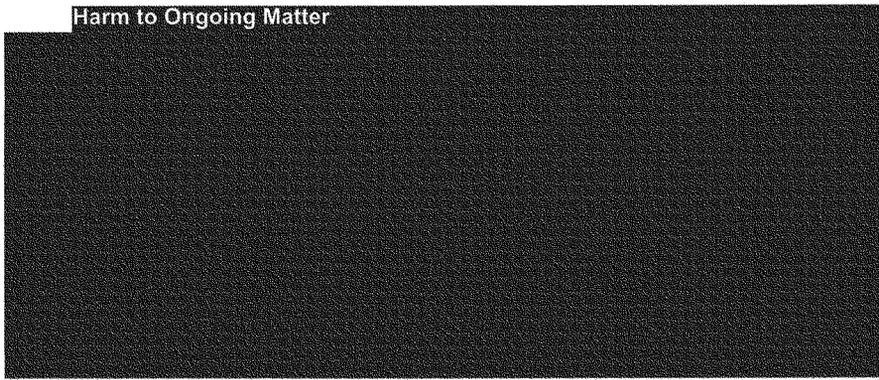
Harm to Ongoing Matter



Harm to Ongoing Matter



Harm to Ongoing Matter



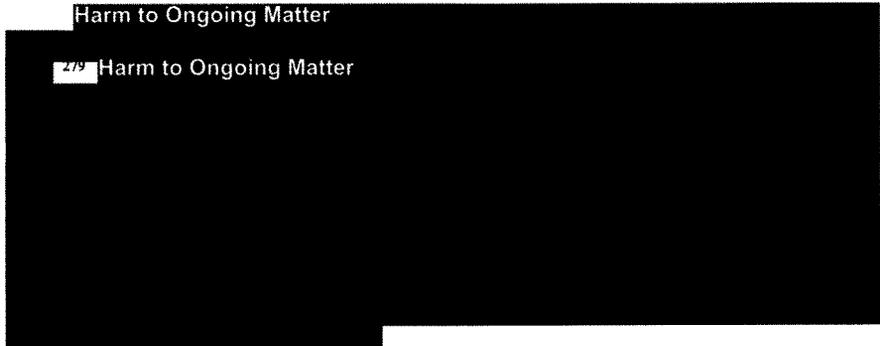
U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

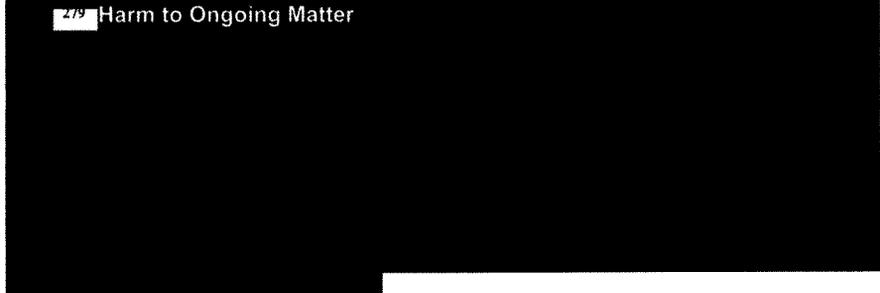
Harm to Ongoing Matter



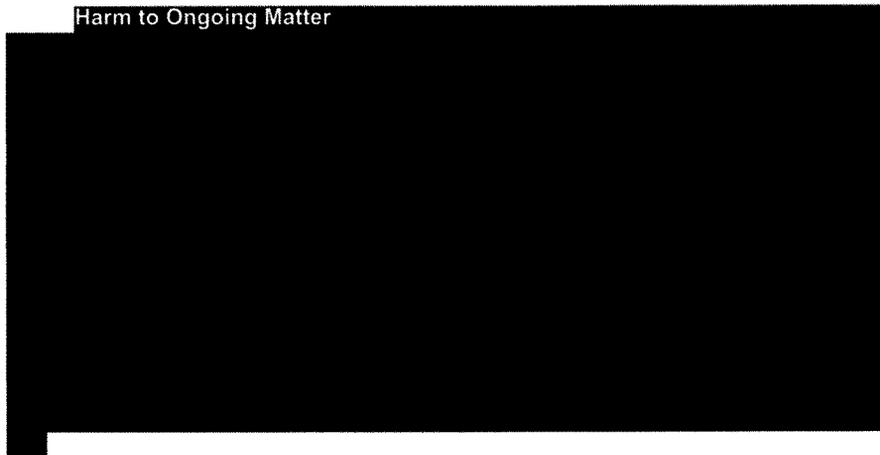
Harm to Ongoing Matter



²¹⁹ Harm to Ongoing Matter



Harm to Ongoing Matter



Harm to Ongoing Matter



¹²⁷⁹ Harm to Ongoing Matter



U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Harm to Ongoing Matter

[REDACTED]

2. Potential Section 1030 Violation By [REDACTED]

Personal Privacy
[REDACTED]

Personal Privacy
[REDACTED]

See United States v. Willis, 476 F.3d 1121, 1125 n.1 (10th Cir. 2007) (explaining that the 1986 amendments to Section 1030 reflect Congress's desire to reach "intentional acts of unauthorized access—rather than mistaken, inadvertent, or careless ones") (quoting S. Rep. 99-432, at 5 (1986)). In addition, the computer [REDACTED] likely qualifies as a "protected" one under the statute, which reaches "effectively all computers with Internet access." *United States v. Nosal*, 676 F.3d 854, 859 (9th Cir. 2012) (en banc). [REDACTED]

Applying the Principles of Federal Prosecution, however, the Office determined that prosecution of this potential violation was not warranted. Those Principles instruct prosecutors to consider, among other things, the nature and seriousness of the offense, the person's culpability in connection with the offense, and the probable sentence to be imposed if the prosecution is successful. Justice Manual § 9-27.230. [REDACTED]

[REDACTED]

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~~~Personal Privacy~~

C. Russian Government Outreach and Contacts

As explained in Section IV above, the Office's investigation uncovered evidence of numerous links (*i.e.*, contacts) between Trump Campaign officials and individuals having or claiming to have ties to the Russian government. The Office evaluated the contacts under several sets of federal laws, including conspiracy laws and statutes governing foreign agents who operate in the United States. After considering the available evidence, the Office did not pursue charges under these statutes against any of the individuals discussed in Section IV above—with the exception of FARA charges against Paul Manafort and Richard Gates based on their activities on behalf of Ukraine.

One of the interactions between the Trump Campaign and Russian-affiliated individuals—the June 9, 2016 meeting between high-ranking campaign officials and Russians promising derogatory information on Hillary Clinton—implicates an additional body of law: campaign-finance statutes. Schemes involving the solicitation or receipt of assistance from foreign sources raise difficult statutory and constitutional questions. As explained below, the Office evaluated those questions in connection with the June 9 meeting ~~Investigative Technique~~. The Office ultimately concluded that, even if the principal legal questions were resolved favorably to the government, a prosecution would encounter difficulties proving that Campaign officials or individuals connected to the Campaign willfully violated the law.

Finally, although the evidence of contacts between Campaign officials and Russia-affiliated individuals may not have been sufficient to establish or sustain criminal charges, several U.S. persons connected to the Campaign made false statements about those contacts and took other steps to obstruct the Office's investigation and those of Congress. This Office has therefore charged some of those individuals with making false statements and obstructing justice.

1. Potential Coordination: Conspiracy and Collusion

As an initial matter, this Office evaluated potentially criminal conduct that involved the collective action of multiple individuals not under the rubric of "collusion," but through the lens of conspiracy law. In so doing, the Office recognized that the word "collud[e]" appears in the Acting Attorney General's August 2, 2017 memorandum; it has frequently been invoked in public reporting; and it is sometimes referenced in antitrust law, *see, e.g., Brooke Group v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993). But collusion is not a specific offense or theory of liability found in the U.S. Code; nor is it a term of art in federal criminal law. To the contrary, even as defined in legal dictionaries, collusion is largely synonymous with conspiracy as that crime is set forth in the general federal conspiracy statute, 18 U.S.C. § 371. *See Black's Law Dictionary* 321 (10th ed. 2014) (collusion is "[a]n agreement to defraud another or to do or obtain something forbidden by law"); 1 Alexander Burrill, *A Law Dictionary and Glossary* 311 (1871) ("An agreement between two or more persons to defraud another by the forms of law, or to employ such forms as means of accomplishing some unlawful object."); 1 *Bouvier's Law Dictionary* 352

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

(1897) (“An agreement between two or more persons to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law.”).

For that reason, this Office’s focus in resolving the question of joint criminal liability was on conspiracy as defined in federal law, not the commonly discussed term “collusion.” The Office considered in particular whether contacts between Trump Campaign officials and Russia-linked individuals could trigger liability for the crime of conspiracy—either under statutes that have their own conspiracy language (e.g., 18 U.S.C. §§ 1349, 1951(a)), or under the general conspiracy statute (18 U.S.C. § 371). The investigation did not establish that the contacts described in Volume I, Section IV, *supra*, amounted to an agreement to commit any substantive violation of federal criminal law—including foreign-influence and campaign-finance laws, both of which are discussed further below. The Office therefore did not charge any individual associated with the Trump Campaign with conspiracy to commit a federal offense arising from Russia contacts, either under a specific statute or under Section 371’s offenses clause.

The Office also did not charge any campaign official or associate with a conspiracy under Section 371’s defraud clause. That clause criminalizes participating in an agreement to obstruct a lawful function of the U.S. government or its agencies through deceitful or dishonest means. See *Dennis v. United States*, 384 U.S. 855, 861 (1966); *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924); see also *United States v. Concord Mgmt. & Consulting LLC*, 347 F. Supp. 3d 38, 46 (D.D.C. 2018). The investigation did not establish any agreement among Campaign officials—or between such officials and Russia-linked individuals—to interfere with or obstruct a lawful function of a government agency during the campaign or transition period. And, as discussed in Volume I, Section V.A, *supra*, the investigation did not identify evidence that any Campaign official or associate knowingly and intentionally participated in the conspiracy to defraud that the Office charged, namely, the active-measures conspiracy described in Volume I, Section II, *supra*. Accordingly, the Office did not charge any Campaign associate or other U.S. person with conspiracy to defraud the United States based on the Russia-related contacts described in Section IV above.

2. Potential Coordination: Foreign Agent Statutes (FARA and 18 U.S.C. § 951)

The Office next assessed the potential liability of Campaign-affiliated individuals under federal statutes regulating actions on behalf of, or work done for, a foreign government.

a. *Governing Law*

Under 18 U.S.C. § 951, it is generally illegal to act in the United States as an agent of a foreign government without providing notice to the Attorney General. Although the defendant must act on behalf of a foreign government (as opposed to other kinds of foreign entities), the acts need not involve espionage; rather, acts of any type suffice for liability. See *United States v. Duran*, 596 F.3d 1283, 1293-94 (11th Cir. 2010); *United States v. Latchin*, 554 F.3d 709, 715 (7th Cir. 2009); *United States v. Dumeisi*, 424 F.3d 566, 581 (7th Cir. 2005). An “agent of a foreign government” is an “individual” who “agrees to operate” in the United States “subject to the direction or control of a foreign government or official.” 18 U.S.C. § 951(d).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

The crime defined by Section 951 is complete upon knowingly acting in the United States as an unregistered foreign-government agent. 18 U.S.C. § 951(a). The statute does not require willfulness, and knowledge of the notification requirement is not an element of the offense. *United States v. Campa*, 529 F.3d 980, 998-99 (11th Cir. 2008); *Duran*, 596 F.3d at 1291-94; *Dumeisi*, 424 F.3d at 581.

The Foreign Agents Registration Act (FARA) generally makes it illegal to act as an agent of a foreign principal by engaging in certain (largely political) activities in the United States without registering with the Attorney General. 22 U.S.C. §§ 611-621. The triggering agency relationship must be with a foreign principal or “a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal.” 22 U.S.C. § 611(c)(1). That includes a foreign government or political party and various foreign individuals and entities. 22 U.S.C. § 611(b). A covered relationship exists if a person “acts as an agent, representative, employee, or servant” or “in any other capacity at the order, request, or under the [foreign principal’s] direction or control.” 22 U.S.C. § 611(c)(1). It is sufficient if the person “agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal.” 22 U.S.C. § 611(c)(2).

The triggering activity is that the agent “directly or through any other person” in the United States (1) engages in “political activities for or in the interests of [the] foreign principal,” which includes attempts to influence federal officials or the public; (2) acts as “public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal”; (3) “solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal”; or (4) “represents the interests of such foreign principal” before any federal agency or official. 22 U.S.C. § 611(c)(1).

It is a crime to engage in a “[w]illful violation of any provision of the Act or any regulation thereunder.” 22 U.S.C. § 618(a)(1). It is also a crime willfully to make false statements or omissions of material facts in FARA registration statements or supplements. 22 U.S.C. § 618(a)(2). Most violations have a maximum penalty of five years of imprisonment and a \$10,000 fine. 22 U.S.C. § 618.

b. Application

The investigation uncovered extensive evidence that Paul Manafort’s and Richard Gates’s pre-campaign work for the government of Ukraine violated FARA. Manafort and Gates were charged for that conduct and admitted to it when they pleaded guilty to superseding criminal informations in the District of Columbia prosecution.¹²⁸⁰ The evidence underlying those charges is not addressed in this report because it was discussed in public court documents and in a separate

¹²⁸⁰ *Gates Superseding Criminal Information; Waiver of Indictment, United States v. Richard W. Gates III*, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 203; Waiver of Trial by Jury, *United States v. Richard W. Gates III*, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 204; *Gates Plea Agreement; Statement of Offense, United States v. Richard W. Gates III*, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 206; Plea Agreement, *United States v. Paul J. Manafort, Jr.*, 1:17-cr-201 (D.D.C. Sept. 14, 2018), Doc. 422; Statement of Offense, *United States v. Paul J. Manafort, Jr.*, 1:17-cr-201 (D.D.C. Sept. 14, 2018), Doc. 423.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

prosecution memorandum submitted to the Acting Attorney General before the original indictment in that case.

In addition, the investigation produced evidence of FARA violations involving Michael Flynn. Those potential violations, however, concerned a country other than Russia (*i.e.*, Turkey) and were resolved when Flynn admitted to the underlying facts in the Statement of Offense that accompanied his guilty plea to a false-statements charge. Statement of Offense, *United States v. Michael T. Flynn*, No. 1:17-cr-232 (D.D.C. Dec. 1, 2017), Doc. 4 (“*Flynn Statement of Offense*”).¹²⁸¹

The investigation did not, however, yield evidence sufficient to sustain any charge that any individual affiliated with the Trump Campaign acted as an agent of a foreign principal within the meaning of FARA or, in terms of Section 951, subject to the direction or control of the government of Russia, or any official thereof. In particular, the Office did not find evidence likely to prove beyond a reasonable doubt that Campaign officials such as Paul Manafort, George Papadopoulos, and Carter Page acted as agents of the Russian government—or at its direction, control, or request—during the relevant time period.¹²⁸²

As a result, the Office did not charge [REDACTED] any other Trump Campaign official with violating FARA or Section 951, or attempting or conspiring to do so, based on contacts with the Russian government or a Russian principal.

Finally, the Office investigated whether one of the above campaign advisors—George Papadopoulos—acted as an agent of, or at the direction and control of, the government of Israel. While the investigation revealed significant ties between Papadopoulos and Israel (and search warrants were obtained in part on that basis), the Office ultimately determined that the evidence was not sufficient to obtain and sustain a conviction under FARA or Section 951.

3. Campaign Finance

Several areas of the Office’s investigation involved efforts or offers by foreign nationals to provide negative information about candidate Clinton to the Trump Campaign or to distribute that information to the public, to the anticipated benefit of the Campaign. As explained below, the Office considered whether two of those efforts in particular—the June 9, 2016 meeting at Trump

¹²⁸¹ Harm to Ongoing Matter

¹²⁸² On four occasions, the Foreign Intelligence Surveillance Court (FISC) issued warrants based on a finding of probable cause to believe that Page was an agent of a foreign power. 50 U.S.C. §§ 1801(b), 1805(a)(2)(A). The FISC’s probable-cause finding was based on a different (and lower) standard than the one governing the Office’s decision whether to bring charges against Page, which is whether admissible evidence would likely be sufficient to prove beyond a reasonable doubt that Page acted as an agent of the Russian Federation during the period at issue. *Cf. United States v. Cardoza*, 713 F.3d 656, 660 (D.C. Cir. 2013) (explaining that probable cause requires only “a fair probability,” and not “certainty, or proof beyond a reasonable doubt, or proof by a preponderance of the evidence”).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Tower **Harm to Ongoing Matter**—constituted prosecutable violations of the campaign-finance laws. The Office determined that the evidence was not sufficient to charge either incident as a criminal violation.

a. Overview Of Governing Law

“[T]he United States has a compelling interest . . . in limiting the participation of foreign citizens in activities of democratic self-government, and in thereby preventing foreign influence over the U.S. political process.” *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (Kavanaugh, J., for three-judge court), *aff’d*, 565 U.S. 1104 (2012). To that end, federal campaign-finance law broadly prohibits foreign nationals from making contributions, donations, expenditures, or other disbursements in connection with federal, state, or local candidate elections, and prohibits anyone from soliciting, accepting, or receiving such contributions or donations. As relevant here, foreign nationals may not make—and no one may “solicit, accept, or receive” from them—“a contribution or donation of money or other thing of value” or “an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election.” 52 U.S.C. § 30121(a)(1)(A), (a)(2).¹²⁸³ The term “contribution,” which is used throughout the campaign-finance law, “includes” “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i). It excludes, among other things, “the value of [volunteer] services.” 52 U.S.C. § 30101(8)(B)(i).

Foreign nationals are also barred from making “an expenditure, independent expenditure, or disbursement for an electioneering communication.” 52 U.S.C. § 30121(a)(1)(C). The term “expenditure” “includes” “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i). It excludes, among other things, news stories and non-partisan get-out-the-vote activities. 52 U.S.C. § 30101(9)(B)(i)-(ii). An “independent expenditure” is an expenditure “expressly advocating the election or defeat of a clearly identified candidate” and made independently of the campaign. 52 U.S.C. § 30101(17). An “electioneering communication” is a broadcast communication that “refers to a clearly identified candidate for Federal office” and is made within specified time periods and targeted at the relevant electorate. 52 U.S.C. § 30104(f)(3).

The statute defines “foreign national” by reference to FARA and the Immigration and Nationality Act, with minor modification. 52 U.S.C. § 30121(b) (cross-referencing 22 U.S.C. § 611(b)(1)-(3) and 8 U.S.C. § 1101(a)(20), (22)). That definition yields five, sometimes-overlapping categories of foreign nationals, which include all of the individuals and entities relevant for present purposes—namely, foreign governments and political parties, individuals

¹²⁸³ Campaign-finance law also places financial limits on contributions, 52 U.S.C. § 30116(a), and prohibits contributions from corporations, banks, and labor unions, 52 U.S.C. § 30118(a); *see Citizens United v. FEC*, 558 U.S. 310, 320 (2010). Because the conduct that the Office investigated involved possible electoral activity by foreign nationals, the foreign-contributions ban is the most readily applicable provision.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

outside of the U.S. who are not legal permanent residents, and certain non-U.S. entities located outside of the U.S.

A “knowing[] and willful[]” violation involving an aggregate of \$25,000 or more in a calendar year is a felony. 52 U.S.C. § 30109(d)(1)(A)(i); see *Bluman*, 800 F. Supp. 2d at 292 (noting that a willful violation will require some “proof of the defendant’s knowledge of the law”); *United States v. Danielczyk*, 917 F. Supp. 2d 573, 577 (E.D. Va. 2013) (applying willfulness standard drawn from *Bryan v. United States*, 524 U.S. 184, 191-92 (1998)); see also *Wagner v. FEC*, 793 F.3d 1, 19 n.23 (D.C. Cir. 2015) (en banc) (same). A “knowing[] and willful[]” violation involving an aggregate of \$2,000 or more in a calendar year, but less than \$25,000, is a misdemeanor. 52 U.S.C. § 30109(d)(1)(A)(ii).

b. Application to June 9 Trump Tower Meeting

The Office considered whether to charge Trump Campaign officials with crimes in connection with the June 9 meeting described in Volume I, Section IV.A.5, *supra*. The Office concluded that, in light of the government’s substantial burden of proof on issues of intent (“knowing” and “willful”), and the difficulty of establishing the value of the offered information, criminal charges would not meet the Justice Manual standard that “the admissible evidence will probably be sufficient to obtain and sustain a conviction.” Justice Manual § 9-27.220.

In brief, the key facts are that, on June 3, 2016, Robert Goldstone emailed Donald Trump Jr., to pass along from Emin and Aras Agalarov an “offer” from Russia’s “Crown prosecutor” to “the Trump campaign” of “official documents and information that would incriminate Hillary and her dealings with Russia and would be very useful to [Trump Jr.’s] father.” The email described this as “very high level and sensitive information” that is “part of Russia and its government’s support to Mr. Trump—helped along by Aras and Emin.” Trump Jr. responded: “if it’s what you say I love it especially later in the summer.” Trump Jr. and Emin Agalarov had follow-up conversations and, within days, scheduled a meeting with Russian representatives that was attended by Trump Jr., Manafort, and Kushner. The communications setting up the meeting and the attendance by high-level Campaign representatives support an inference that the Campaign anticipated receiving derogatory documents and information from official Russian sources that could assist candidate Trump’s electoral prospects.

This series of events could implicate the federal election-law ban on contributions and donations by foreign nationals, 52 U.S.C. § 30121(a)(1)(A). Specifically, Goldstone passed along an offer purportedly from a Russian government official to provide “official documents and information” to the Trump Campaign for the purposes of influencing the presidential election. Trump Jr. appears to have accepted that offer and to have arranged a meeting to receive those materials. Documentary evidence in the form of email chains supports the inference that Kushner and Manafort were aware of that purpose and attended the June 9 meeting anticipating the receipt of helpful information to the Campaign from Russian sources.

The Office considered whether this evidence would establish a conspiracy to violate the foreign contributions ban, in violation of 18 U.S.C. § 371; the solicitation of an illegal foreign-source contribution; or the acceptance or receipt of “an express or implied promise to make a

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

[foreign-source] contribution,” both in violation of 52 U.S.C. § 30121(a)(1)(A), (a)(2). There are reasonable arguments that the offered information would constitute a “thing of value” within the meaning of these provisions, but the Office determined that the government would not be likely to obtain and sustain a conviction for two other reasons: first, the Office did not obtain admissible evidence likely to meet the government’s burden to prove beyond a reasonable doubt that these individuals acted “willfully,” *i.e.*, with general knowledge of the illegality of their conduct; and, second, the government would likely encounter difficulty in proving beyond a reasonable doubt that the value of the promised information exceeded the threshold for a criminal violation, *see* 52 U.S.C. § 30109(d)(1)(A)(i).

i. Thing-of-Value Element

A threshold legal question is whether providing to a campaign “documents and information” of the type involved here would constitute a prohibited campaign contribution. The foreign contribution ban is not limited to contributions of money. It expressly prohibits “a contribution or donation of money or *other thing of value.*” 52 U.S.C. § 30121(a)(1)(A), (a)(2) (emphasis added). And the term “contribution” is defined throughout the campaign-finance laws to “include[.]” “any gift, subscription, loan, advance, or deposit of money or *anything of value.*” 52 U.S.C. § 30101(8)(A)(i) (emphasis added).

The phrases “thing of value” and “anything of value” are broad and inclusive enough to encompass at least some forms of valuable information. Throughout the United States Code, these phrases serve as “term[s] of art” that are construed “broad[ly].” *United States v. Nilsen*, 967 F.2d 539, 542 (11th Cir. 1992) (per curiam) (“thing of value” includes “both tangibles and intangibles”); *see also, e.g.*, 18 U.S.C. §§ 201(b)(1), 666(a)(2) (bribery statutes); *id.* § 641 (theft of government property). For example, the term “thing of value” encompasses law enforcement reports that would reveal the identity of informants, *United States v. Girard*, 601 F.2d 69, 71 (2d Cir. 1979); classified materials, *United States v. Fowler*, 932 F.2d 306, 310 (4th Cir. 1991); confidential information about a competitive bid, *United States v. Matzkin*, 14 F.3d 1014, 1020 (4th Cir. 1994); secret grand jury information, *United States v. Jeter*, 775 F.2d 670, 680 (6th Cir. 1985); and information about a witness’s whereabouts, *United States v. Sheker*, 618 F.2d 607, 609 (9th Cir. 1980) (per curiam). And in the public corruption context, “‘thing of value’ is defined broadly to include the value which the defendant subjectively attaches to the items received.” *United States v. Renzi*, 769 F.3d 731, 744 (9th Cir. 2014) (internal quotation marks omitted).

Federal Election Commission (FEC) regulations recognize the value to a campaign of at least some forms of information, stating that the term “anything of value” includes “the provision of any goods or services without charge,” such as “membership lists” and “mailing lists.” 11 C.F.R. § 100.52(d)(1). The FEC has concluded that the phrase includes a state-by-state list of activists. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 475 F.3d 337, 338 (D.C. Cir. 2007) (describing the FEC’s findings). Likewise, polling data provided to a campaign constitutes a “contribution.” FEC Advisory Opinion 1990-12 (Strub), 1990 WL 153454 (citing 11 C.F.R. § 106.4(b)). And in the specific context of the foreign-contributions ban, the FEC has concluded that “election materials used in previous Canadian campaigns,” including “flyers, advertisements, door hangers, tri-folds, signs, and other printed material,” constitute “anything of

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

value,” even though “the value of these materials may be nominal or difficult to ascertain.” FEC Advisory Opinion 2007-22 (Hurysz), 2007 WL 5172375, at *5.

These authorities would support the view that candidate-related opposition research given to a campaign for the purpose of influencing an election could constitute a contribution to which the foreign-source ban could apply. A campaign can be assisted not only by the provision of funds, but also by the provision of derogatory information about an opponent. Political campaigns frequently conduct and pay for opposition research. A foreign entity that engaged in such research and provided resulting information to a campaign could exert a greater effect on an election, and a greater tendency to ingratiate the donor to the candidate, than a gift of money or tangible things of value. At the same time, no judicial decision has treated the voluntary provision of uncompensated opposition research or similar information as a thing of value that could amount to a contribution under campaign-finance law. Such an interpretation could have implications beyond the foreign-source ban, *see* 52 U.S.C. § 30116(a) (imposing monetary limits on campaign contributions), and raise First Amendment questions. Those questions could be especially difficult where the information consisted simply of the recounting of historically accurate facts. It is uncertain how courts would resolve those issues.

ii. Willfulness

Even assuming that the promised “documents and information that would incriminate Hillary” constitute a “thing of value” under campaign-finance law, the government would encounter other challenges in seeking to obtain and sustain a conviction. Most significantly, the government has not obtained admissible evidence that is likely to establish the scienter requirement beyond a reasonable doubt. To prove that a defendant acted “knowingly and willfully,” the government would have to show that the defendant had general knowledge that his conduct was unlawful. U.S. Department of Justice, *Federal Prosecution of Election Offenses* 123 (8th ed. Dec. 2017) (“*Election Offenses*”); *see Bluman*, 800 F. Supp. 2d at 292 (noting that a willful violation requires “proof of the defendant’s knowledge of the law”); *Danielczyk*, 917 F. Supp. 2d at 577 (“knowledge of general unlawfulness”). “This standard creates an elevated scienter element requiring, at the very least, that application of the law to the facts in question be fairly clear. When there is substantial doubt concerning whether the law applies to the facts of a particular matter, the offender is more likely to have an intent defense.” *Election Offenses* 123.

On the facts here, the government would unlikely be able to prove beyond a reasonable doubt that the June 9 meeting participants had general knowledge that their conduct was unlawful. The investigation has not developed evidence that the participants in the meeting were familiar with the foreign-contribution ban or the application of federal law to the relevant factual context. The government does not have strong evidence of surreptitious behavior or efforts at concealment at the time of the June 9 meeting. While the government has evidence of later efforts to prevent disclosure of the nature of the June 9 meeting that could circumstantially provide support for a showing of scienter, *see* Volume II, Section II.G, *infra*, that concealment occurred more than a year later, involved individuals who did not attend the June 9 meeting, and may reflect an intention to avoid political consequences rather than any prior knowledge of illegality. Additionally, in light of the unresolved legal questions about whether giving “documents and information” of the sort offered here constitutes a campaign contribution, Trump Jr. could mount a factual defense that he

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

did not believe his response to the offer and the June 9 meeting itself violated the law. Given his less direct involvement in arranging the June 9 meeting, Kushner could likely mount a similar defense. And, while Manafort is experienced with political campaigns, the Office has not developed evidence showing that he had relevant knowledge of these legal issues.

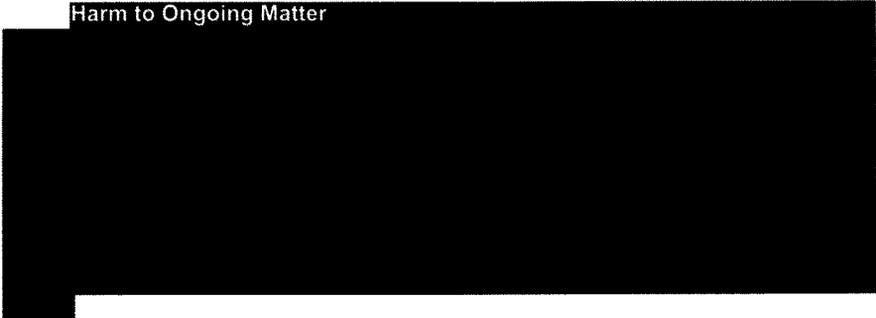
iii. Difficulties in Valuing Promised Information

The Office would also encounter difficulty proving beyond a reasonable doubt that the value of the promised documents and information exceeds the \$2,000 threshold for a criminal violation, as well as the \$25,000 threshold for felony punishment. *See* 52 U.S.C. § 30109(d)(1). The type of evidence commonly used to establish the value of non-monetary contributions—such as pricing the contribution on a commercial market or determining the upstream acquisition cost or the cost of distribution—would likely be unavailable or ineffective in this factual setting. Although damaging opposition research is surely valuable to a campaign, it appears that the information ultimately delivered in the meeting was not valuable. And while value in a conspiracy may well be measured by what the participants expected to receive at the time of the agreement, *see, e.g., United States v. Tombrello*, 666 F.2d 485, 489 (11th Cir. 1982), Goldstone’s description of the offered material here was quite general. His suggestion of the information’s value—*i.e.*, that it would “incriminate Hillary” and “would be very useful to [Trump Jr.’s] father”—was non-specific and may have been understood as being of uncertain worth or reliability, given Goldstone’s lack of direct access to the original source. The uncertainty over what would be delivered could be reflected in Trump Jr.’s response (“*if it’s what you say I love it*”) (emphasis added).

Accordingly, taking into account the high burden to establish a culpable mental state in a campaign-finance prosecution and the difficulty in establishing the required valuation, the Office decided not to pursue criminal campaign-finance charges against Trump Jr. or other campaign officials for the events culminating in the June 9 meeting.

c. Application to Harm to Ongoing Matter

Harm to Ongoing Matter



Harm to Ongoing Matter



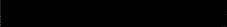
U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Harm to Ongoing Matter



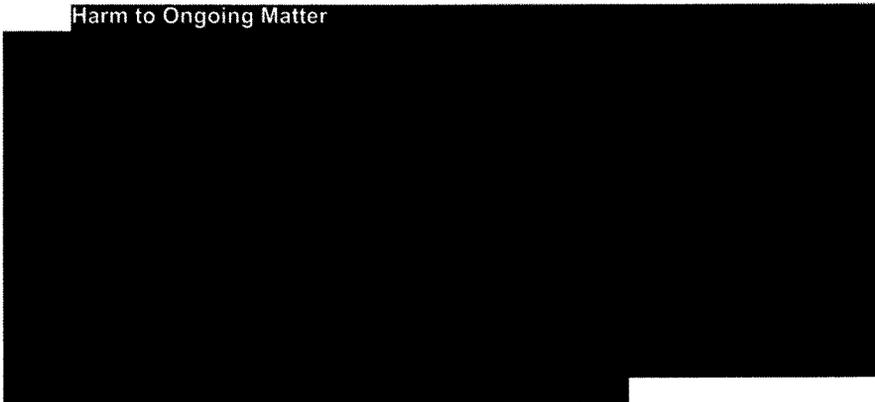
i. Questions Over Whether Harm to Ongoing Matter



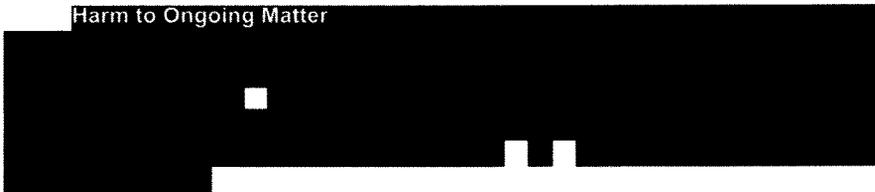
Harm to Ongoing Matter



Harm to Ongoing Matter



Harm to Ongoing Matter



U.S. Department of Justice

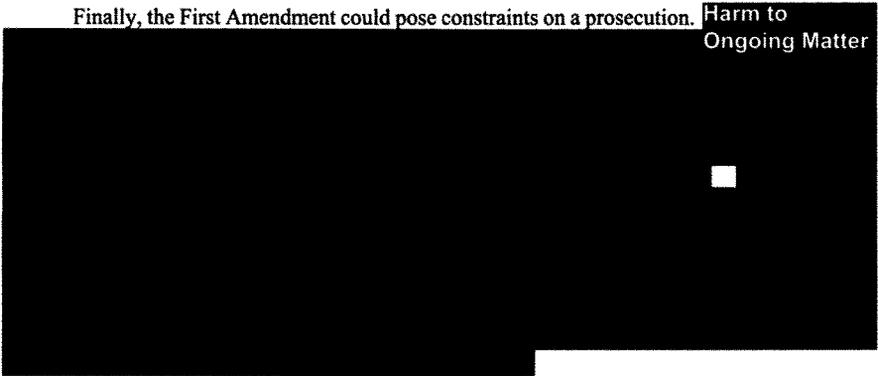
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

ii. Willfulness

As discussed, to establish a criminal campaign-finance violation, the government must prove that the defendant acted “knowingly and willfully.” 52 U.S.C. § 30109(d)(1)(A)(i). That standard requires proof that the defendant knew generally that his conduct was unlawful. *Election Offenses* 123. Given the uncertainties noted above, the “willfulness” requirement would pose a substantial barrier to prosecution.

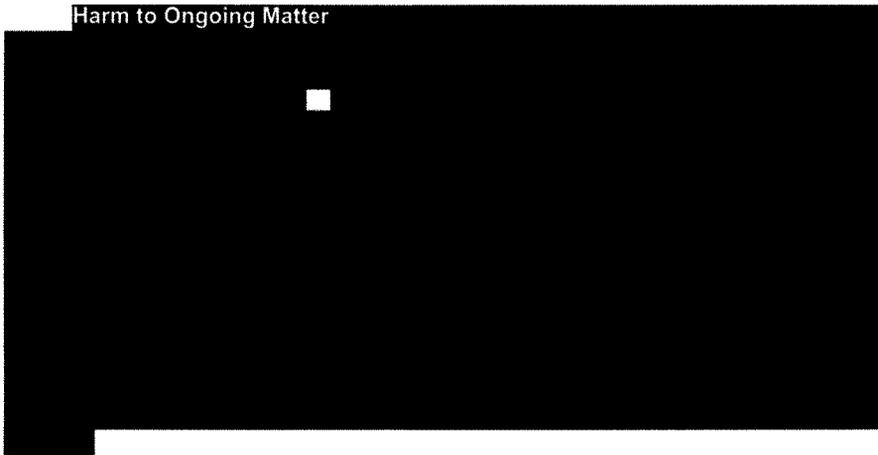
iii. Constitutional Considerations

Finally, the First Amendment could pose constraints on a prosecution. Harm to Ongoing Matter



iv. Analysis as to HOM

Harm to Ongoing Matter



U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~Harm to Ongoing Matter
Harm to Ongoing Matter


4. False Statements and Obstruction of the Investigation

The Office determined that certain individuals associated with the Campaign lied to investigators about Campaign contacts with Russia and have taken other actions to interfere with the investigation. As explained below, the Office therefore charged some U.S. persons connected to the Campaign with false statements and obstruction offenses.

a. Overview Of Governing Law

False Statements. The principal federal statute criminalizing false statements to government investigators is 18 U.S.C. § 1001. As relevant here, under Section 1001(a)(2), it is a crime to knowingly and willfully “make[] any materially false, fictitious, or fraudulent statement or representation” “in any matter within the jurisdiction of the executive . . . branch of the Government.” An FBI investigation is a matter within the Executive Branch’s jurisdiction. *United States v. Rodgers*, 466 U.S. 475, 479 (1984). The statute also applies to a subset of legislative branch actions—*viz.*, administrative matters and “investigation[s] or review[s]” conducted by a congressional committee or subcommittee. 18 U.S.C. § 1001(c)(1) and (2); *see United States v. Pickett*, 353 F.3d 62, 66 (D.C. Cir. 2004).

Whether the statement was made to law enforcement or congressional investigators, the government must prove beyond a reasonable doubt the same basic non-jurisdictional elements: the statement was false, fictitious, or fraudulent; the defendant knew both that it was false and that it was unlawful to make a false statement; and the false statement was material. *See, e.g., United States v. Smith*, 831 F.3d 1207, 1222 n.27 (9th Cir. 2017) (listing elements); *see also* Ninth Circuit Pattern Instruction 8.73 & cmt. (explaining that the Section 1001 jury instruction was modified in light of the Department of Justice’s position that the phrase “knowingly and willfully” in the statute requires the defendant’s knowledge that his or her conduct was unlawful). In the D.C. Circuit, the government must prove that the statement was actually false; a statement that is misleading but “literally true” does not satisfy Section 1001(a)(2). *See United States v. Milton*, 8 F.3d 39, 45

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

(D.C. Cir. 1993); *United States v. Dale*, 991 F.2d 819, 832-33 & n.22 (D.C. Cir. 1993). For that false statement to qualify as “material,” it must have a natural tendency to influence, or be capable of influencing, a discrete decision or any other function of the agency to which it is addressed. See *United States v. Gaudin*, 515 U.S. 506, 509 (1995); *United States v. Moore*, 612 F.3d 698, 701 (D.C. Cir. 2010).

Perjury. Under the federal perjury statutes, it is a crime for a witness testifying under oath before a grand jury to knowingly make any false material declaration. See 18 U.S.C. § 1623. The government must prove four elements beyond a reasonable doubt to obtain a conviction under Section 1623(a): the defendant testified under oath before a federal grand jury; the defendant’s testimony was false in one or more respects; the false testimony concerned matters that were material to the grand jury investigation; and the false testimony was knowingly given. *United States v. Bridges*, 717 F.2d 1444, 1449 n.30 (D.C. Cir. 1983). The general perjury statute, 18 U.S.C. § 1621, also applies to grand jury testimony and has similar elements, except that it requires that the witness have acted willfully and that the government satisfy “strict common-law requirements for establishing falsity.” See *Dunn v. United States*, 442 U.S. 100, 106 & n.6 (1979) (explaining “the two-witness rule” and the corroboration that it demands).

Obstruction of Justice. Three basic elements are common to the obstruction statutes pertinent to this Office’s charging decisions: an obstructive act; some form of nexus between the obstructive act and an official proceeding; and criminal (*i.e.*, corrupt) intent. A detailed discussion of those elements, and the law governing obstruction of justice more generally, is included in Volume II of the report.

b. Application to Certain Individuals

i. George Papadopoulos

Investigators approached Papadopoulos for an interview based on his role as a foreign policy advisor to the Trump Campaign and his suggestion to a foreign government representative that Russia had indicated that it could assist the Campaign through the anonymous release of information damaging to candidate Clinton. On January 27, 2017, Papadopoulos agreed to be interviewed by FBI agents, who informed him that the interview was part of the investigation into potential Russian government interference in the 2016 presidential election.

During the interview, Papadopoulos lied about the timing, extent, and nature of his communications with Joseph Mifsud, Olga Polonskaya, and Ivan Timofeev. With respect to timing, Papadopoulos acknowledged that he had met Mifsud and that Mifsud told him the Russians had “dirt” on Clinton in the form of “thousands of emails.” But Papadopoulos stated multiple times that those communications occurred before he joined the Trump Campaign and that it was a “very strange coincidence” to be told of the “dirt” before he started working for the Campaign. This account was false. Papadopoulos met Mifsud for the first time on approximately March 14, 2016, after Papadopoulos had already learned he would be a foreign policy advisor for the Campaign. Mifsud showed interest in Papadopoulos only after learning of his role on the Campaign. And Mifsud told Papadopoulos about the Russians possessing “dirt” on candidate Clinton in late April 2016, more than a month after Papadopoulos had joined the Campaign and

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

been publicly announced by candidate Trump. Statement of Offense ¶¶ 25-26, *United States v. George Papadopoulos*, No. 1:17-cr-182 (D.D.C. Oct. 5, 2017), Doc. 19 (“*Papadopoulos Statement of Offense*”).

Papadopoulos also made false statements in an effort to minimize the extent and importance of his communications with Mifsud. For example, Papadopoulos stated that “[Mifsud]’s a nothing,” that he thought Mifsud was “just a guy talk[ing] up connections or something,” and that he believed Mifsud was “BS’ing to be completely honest with you.” In fact, however, Papadopoulos understood Mifsud to have substantial connections to high-level Russian government officials and that Mifsud spoke with some of those officials in Moscow before telling Papadopoulos about the “dirt.” Papadopoulos also engaged in extensive communications over a period of months with Mifsud about foreign policy issues for the Campaign, including efforts to arrange a “history making” meeting between the Campaign and Russian government officials. In addition, Papadopoulos failed to inform investigators that Mifsud had introduced him to Timofeev, the Russian national who Papadopoulos understood to be connected to the Russian Ministry of Foreign Affairs, despite being asked if he had met with Russian nationals or “[a]nyone with a Russian accent” during the campaign. *Papadopoulos Statement of Offense* ¶¶ 27-29.

Papadopoulos also falsely claimed that he met Polonskaya before he joined the Campaign, and falsely told the FBI that he had “no” relationship at all with her. He stated that the extent of their communications was her sending emails—“Just, ‘Hi, how are you?’ That’s it.” In truth, however, Papadopoulos met Polonskaya on March 24, 2016, after he had joined the Campaign; he believed that she had connections to high-level Russian government officials and could help him arrange a potential foreign policy trip to Russia. During the campaign he emailed and spoke with her over Skype on numerous occasions about the potential foreign policy trip to Russia. *Papadopoulos Statement of Offense* ¶¶ 30-31.

Papadopoulos’s false statements in January 2017 impeded the FBI’s investigation into Russian interference in the 2016 presidential election. Most immediately, those statements hindered investigators’ ability to effectively question Mifsud when he was interviewed in the lobby of a Washington, D.C. hotel on February 10, 2017. See Gov’t Sent. Mem. at 6, *United States v. George Papadopoulos*, No. 1:17-cr-182 (D.D.C. Aug. 18, 2017), Doc. 44. During that interview, Mifsud admitted to knowing Papadopoulos and to having introduced him to Polonskaya and Timofeev. But Mifsud denied that he had advance knowledge that Russia was in possession of emails damaging to candidate Clinton, stating that he and Papadopoulos had discussed cybersecurity and hacking as a larger issue and that Papadopoulos must have misunderstood their conversation. Mifsud also falsely stated that he had not seen Papadopoulos since the meeting at which Mifsud introduced him to Polonskaya, even though emails, text messages, and other information show that Mifsud met with Papadopoulos on at least two other occasions—April 12 and April 26, 2016. In addition, Mifsud omitted that he had drafted (or edited) the follow-up message that Polonskaya sent to Papadopoulos following the initial meeting and that, as reflected in the language of that email chain (“Baby, thank you!”), Mifsud may have been involved in a personal relationship with Polonskaya at the time. The false information and omissions in Papadopoulos’s January 2017 interview undermined investigators’ ability to challenge Mifsud when he made these inaccurate statements.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Given the seriousness of the lies and omissions and their effect on the FBI's investigation, the Office charged Papadopoulos with making false statements to the FBI, in violation of 18 U.S.C. § 1001. Information, *United States v. George Papadopoulos*, No. 1:17-cr-182 (D.D.C. Oct. 3, 2017), Doc. 8. On October 7, 2017, Papadopoulos pleaded guilty to that charge pursuant to a plea agreement. On September 7, 2018, he was sentenced to 14 days of imprisonment, a \$9,500 fine, and 200 hours of community service.

ii. [REDACTED]

Grand Jury [REDACTED]

Grand Jury [REDACTED]

iii. *Michael Flynn*

Michael Flynn agreed to be interviewed by the FBI on January 24, 2017, four days after he had officially assumed his duties as National Security Advisor to the President. During the interview, Flynn made several false statements pertaining to his communications with the Russian ambassador.

First, Flynn made two false statements about his conversations with Russian Ambassador Kislyak in late December 2016, at a time when the United States had imposed sanctions on Russia for interfering with the 2016 presidential election and Russia was considering its response. *See Flynn Statement of Offense*. Flynn told the agents that he did not ask Kislyak to refrain from escalating the situation in response to the United States's imposition of sanctions. That statement was false. On December 29, 2016, Flynn called Kislyak to request Russian restraint. Flynn made the call immediately after speaking to a senior Transition Team official (K.T. McFarland) about what to communicate to Kislyak. Flynn then spoke with McFarland again after the Kislyak call to report on the substance of that conversation. Flynn also falsely told the FBI that he did not remember a follow-up conversation in which Kislyak stated that Russia had chosen to moderate its response to the U.S. sanctions as a result of Flynn's request. On December 31, 2016, Flynn in fact had such a conversation with Kislyak, and he again spoke with McFarland within hours of the call to relay the substance of his conversation with Kislyak. *See Flynn Statement of Offense* ¶ 3.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Second, Flynn made false statements about calls he had previously made to representatives of Russia and other countries regarding a resolution submitted by Egypt to the United Nations Security Council on December 21, 2016. Specifically, Flynn stated that he only asked the countries' positions on how they would vote on the resolution and that he did not request that any of the countries take any particular action on the resolution. That statement was false. On December 22, 2016, Flynn called Kislyak, informed him of the incoming Trump Administration's opposition to the resolution, and requested that Russia vote against or delay the resolution. Flynn also falsely stated that Kislyak never described Russia's response to his December 22 request regarding the resolution. Kislyak in fact told Flynn in a conversation on December 23, 2016, that Russia would not vote against the resolution if it came to a vote. *See Flynn* Statement of Offense ¶ 4.

Flynn made these false statements to the FBI at a time when he was serving as National Security Advisor and when the FBI had an open investigation into Russian interference in the 2016 presidential election, including the nature of any links between the Trump Campaign and Russia. Flynn's false statements and omissions impeded and otherwise had a material impact on that ongoing investigation. *Flynn* Statement of Offense ¶¶ 1-2. They also came shortly before Flynn made separate submissions to the Department of Justice, pursuant to FARA, that also contained materially false statements and omissions. *Id.* ¶ 5. Based on the totality of that conduct, the Office decided to charge Flynn with making false statements to the FBI, in violation of 18 U.S.C. § 1001(a). On December 1, 2017, and pursuant to a plea agreement, Flynn pleaded guilty to that charge and also admitted his false statements to the Department in his FARA filing. *See id.*; Plea Agreement, *United States v. Michael T. Flynn*, No. 1:17-cr-232 (D.D.C. Dec. 1, 2017), Doc. 3. Flynn is awaiting sentencing.

iv. Michael Cohen

Michael Cohen was the executive vice president and special counsel to the Trump Organization when Trump was president of the Trump Organization. Information ¶ 1, *United States v. Cohen*, No. 1:18-cr-850 (S.D.N.Y. Nov. 29, 2018), Doc. 2 ("*Cohen* Information"). From the fall of 2015 through approximately June 2016, Cohen was involved in a project to build a Trump-branded tower and adjoining development in Moscow. The project was known as Trump Tower Moscow.

In 2017, Cohen was called to testify before the House Permanent Select Committee on Intelligence (HPSCI) and the Senate Select Committee on Intelligence (SSCI), both of which were investigating Russian interference in the 2016 presidential election and possible links between Russia and the presidential campaigns. In late August 2017, in advance of his testimony, Cohen caused a two-page statement to be sent to SSCI and HPSCI addressing Trump Tower Moscow. *Cohen* Information ¶¶ 2-3. The letter contained three representations relevant here. First, Cohen stated that the Trump Moscow project had ended in January 2016 and that he had briefed candidate Trump on the project only three times before making the unilateral decision to terminate it. Second, Cohen represented that he never agreed to travel to Russia in connection with the project and never considered asking Trump to travel for the project. Third, Cohen stated that he did not recall any Russian government contact about the project, including any response to an email that

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

he had sent to a Russian government email account. *Cohen* Information ¶ 4. Cohen later asked that his two-page statement be incorporated into his testimony's transcript before SSCI, and he ultimately gave testimony to SSCI that was consistent with that statement. *Cohen* Information ¶ 5.

Each of the foregoing representations in Cohen's two-page statement was false and misleading. Consideration of the project had extended through approximately June 2016 and included more than three progress reports from Cohen to Trump. Cohen had discussed with Felix Sater his own travel to Russia as part of the project, and he had inquired about the possibility of Trump traveling there—both with the candidate himself and with senior campaign official Corey Lewandowski. Cohen did recall that he had received a response to the email that he sent to Russian government spokesman Dmitry Peskov—in particular, that he received an email reply and had a follow-up phone conversation with an English-speaking assistant to Peskov in mid-January 2016. *Cohen* Information ¶ 7. Cohen knew the statements in the letter to be false at the time, and admitted that he made them in an effort (1) to minimize the links between the project and Trump (who by this time was President), and (2) to give the false impression that the project had ended before the first vote in the Republican Party primary process, in the hopes of limiting the ongoing Russia investigations. *Id.*

Given the nature of the false statements and the fact that he repeated them during his initial interview with the Office, we charged Cohen with violating Section 1001. On November 29, 2018, Cohen pleaded guilty pursuant to a plea agreement to a single-count information charging him with making false statements in a matter within the jurisdiction of the legislative branch, in violation of 18 U.S.C. § 1001(a)(2) and (c). *Cohen* Information. The case was transferred to the district judge presiding over the separate prosecution of Cohen pursued by the Southern District of New York (after a referral from our Office). On December 7, 2018, this Office submitted a letter to that judge recommending that Cohen's cooperation with our investigation be taken into account in sentencing Cohen on both the false-statements charge and the offenses in the Southern District prosecution. On December 12, 2018, the judge sentenced Cohen to two months of imprisonment on the false-statements count, to run concurrently with a 36-month sentence imposed on the other counts.

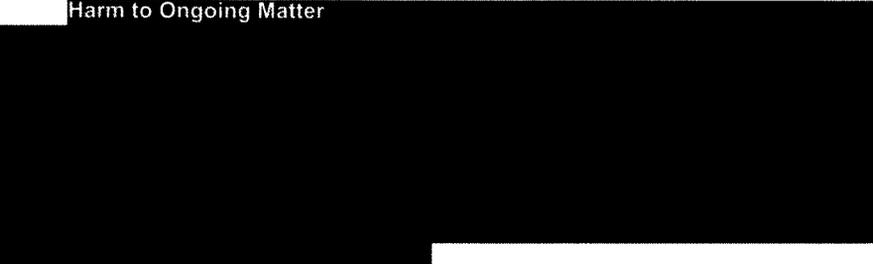
v. **HOM****Harm to Ongoing Matter**


U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Harm to Ongoing Matter



Harm to Ongoing Matter



Harm to Ongoing Matter



vi. Jeff Sessions

As set forth in Volume I, Section IV.A.6, *supra*, the investigation established that, while a U.S. Senator and a Trump Campaign advisor, former Attorney General Jeff Sessions interacted with Russian Ambassador Kislyak during the week of the Republican National Convention in July 2016 and again at a meeting in Sessions's Senate office in September 2016. The investigation also established that Sessions and Kislyak both attended a reception held before candidate Trump's

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

foreign policy speech at the Mayflower Hotel in Washington, D.C., in April 2016, and that it is possible that they met briefly at that reception.

The Office considered whether, in light of these interactions, Sessions committed perjury before, or made false statements to, Congress in connection with his confirmation as Attorney General. In January 2017 testimony during his confirmation hearing, Sessions stated in response to a question about Trump Campaign communications with the Russian government that he had “been called a surrogate at a time or two in that campaign and I didn’t have – did not have communications with the Russians.” In written responses submitted on January 17, 2017, Sessions answered “[n]o” to a question asking whether he had “been in contact with anyone connected to any part of the Russian government about the 2016 election, either before or after election day.” And, in a March 2017 supplement to his testimony, Sessions identified two of the campaign-period contacts with Ambassador Kislyak noted above, which had been reported in the media following the January 2017 confirmation hearing. Sessions stated in the supplemental response that he did “not recall any discussions with the Russian Ambassador, or any other representatives of the Russian government, regarding the political campaign on these occasions or any other occasion.”

Although the investigation established that Sessions interacted with Kislyak on the occasions described above and that Kislyak mentioned the presidential campaign on at least one occasion, the evidence is not sufficient to prove that Sessions gave knowingly false answers to Russia-related questions in light of the wording and context of those questions. With respect to Sessions’s statements that he did “not recall any discussions with the Russian Ambassador . . . regarding the political campaign” and he had not been in contact with any Russian official “about the 2016 election,” the evidence concerning the nature of Sessions’s interactions with Kislyak makes it plausible that Sessions did not recall discussing the campaign with Kislyak at the time of his statements. Similarly, while Sessions stated in his January 2017 oral testimony that he “did not have communications with Russians,” he did so in response to a question that had linked such communications to an alleged “continuing exchange of information” between the Trump Campaign and Russian government intermediaries. Sessions later explained to the Senate and to the Office that he understood the question as narrowly calling for disclosure of interactions with Russians that involved the exchange of campaign information, as distinguished from more routine contacts with Russian nationals. Given the context in which the question was asked, that understanding is plausible.

Accordingly, the Office concluded that the evidence was insufficient to prove that Sessions was willfully untruthful in his answers and thus insufficient to obtain or sustain a conviction for perjury or false statements. Consistent with the Principles of Federal Prosecution, the Office therefore determined not to pursue charges against Sessions and informed his counsel of that decision in March 2018.

vii. Others Interviewed During the Investigation

The Office considered whether, during the course of the investigation, other individuals interviewed either omitted material information or provided information determined to be false. Applying the Principles of Federal Prosecution, the Office did not seek criminal charges against any individuals other than those listed above. In some instances, that decision was due to

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

evidentiary hurdles to proving falsity. In others, the Office determined that the witness ultimately provided truthful information and that considerations of culpability, deterrence, and resource-preservation weighed against prosecution. See Justice Manual §§ 9-27.220, 9-27.230.

Personal Privacy
[Redacted]

PP [Redacted]

Personal Privacy
Grand Jury
Personal Privacy
Grand Jury
Personal Privacy
[Redacted]

PP [Redacted]

Grand Jury
Personal Privacy
[Redacted]

PP [Redacted]

Personal Privacy
[Redacted]

19407

206

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Report On The Investigation Into Russian Interference In The 2016 Presidential Election

Volume II of II

Special Counsel Robert S. Mueller, III

Submitted Pursuant to 28 C.F.R. § 600.8(c)

Washington, D.C.

March 2019

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~**TABLE OF CONTENTS – VOLUME II**

INTRODUCTION TO VOLUME II.....	1
EXECUTIVE SUMMARY TO VOLUME II.....	3
I. BACKGROUND LEGAL AND EVIDENTIARY PRINCIPLES.....	9
A. Legal Framework of Obstruction of Justice.....	9
B. Investigative and Evidentiary Considerations.....	12
II. FACTUAL RESULTS OF THE OBSTRUCTION INVESTIGATION.....	15
A. The Campaign’s Response to Reports About Russian Support for Trump.....	15
1. Press Reports Allege Links Between the Trump Campaign and Russia.....	16
2. The Trump Campaign Reacts to WikiLeaks’s Release of Hacked Emails.....	17
3. The Trump Campaign Reacts to Allegations That Russia was Seeking to Aid Candidate Trump.....	18
4. After the Election, Trump Continues to Deny Any Contacts or Connections with Russia or That Russia Aided his Election.....	21
B. The President’s Conduct Concerning the Investigation of Michael Flynn.....	24
1. Incoming National Security Advisor Flynn Discusses Sanctions on Russia with Russian Ambassador Sergey Kislyak.....	24
2. President-Elect Trump is Briefed on the Intelligence Community’s Assessment of Russian Interference in the Election and Congress Opens Election-Interference Investigations.....	27
3. Flynn Makes False Statements About his Communications with Kislyak to Incoming Administration Officials, the Media, and the FBI.....	29
4. DOJ Officials Notify the White House of Their Concerns About Flynn.....	31
5. McGahn has a Follow-Up Meeting About Flynn with Yates; President Trump has Dinner with FBI Director Comey.....	32
6. Flynn’s Resignation.....	36
7. The President Discusses Flynn with FBI Director Comey.....	38
8. The Media Raises Questions About the President’s Delay in Terminating Flynn.....	41
9. The President Attempts to Have K.T. McFarland Create a Witness Statement Denying that he Directed Flynn’s Discussions with Kislyak.....	42
C. The President’s Reaction to Public Confirmation of the FBI’s Russia Investigation.....	48
1. Attorney General Sessions Recuses From the Russia Investigation.....	48

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

2. FBI Director Comey Publicly Confirms the Existence of the Russia Investigation in Testimony Before HPSCI	52
3. The President Asks Intelligence Community Leaders to Make Public Statements that he had No Connection to Russia	55
4. The President Asks Comey to “Lift the Cloud” Created by the Russia Investigation.....	57
D. Events Leading Up To and Surrounding the Termination of FBI Director Comey	62
1. Comey Testifies Before the Senate Judiciary Committee and Declines to Answer Questions About Whether the President is Under Investigation	62
2. The President Makes the Decision to Terminate Comey.....	64
E. The President’s Efforts to Remove the Special Counsel.....	77
1. The Appointment of the Special Counsel and the President’s Reaction	78
2. The President Asserts that the Special Counsel has Conflicts of Interest.....	80
3. The Press Reports that the President is Being Investigated for Obstruction of Justice and the President Directs the White House Counsel to Have the Special Counsel Removed	84
F. The President’s Efforts to Curtail the Special Counsel Investigation.....	90
1. The President Asks Corey Lewandowski to Deliver a Message to Sessions to Curtail the Special Counsel Investigation.....	90
2. The President Follows Up with Lewandowski	92
3. The President Publicly Criticizes Sessions in a New York Times Interview	93
4. The President Orders Priebus to Demand Sessions’s Resignation	94
G. The President’s Efforts to Prevent Disclosure of Emails About the June 9, 2016 Meeting Between Russians and Senior Campaign Officials.....	98
1. The President Learns About the Existence of Emails Concerning the June 9, 2016 Trump Tower Meeting.....	98
2. The President Directs Communications Staff Not to Publicly Disclose Information About the June 9 Meeting.....	100
3. The President Directs Trump Jr.’s Response to Press Inquiries About the June 9 Meeting.....	101
4. The Media Reports on the June 9, 2016 Meeting	103
H. The President’s Further Efforts to Have the Attorney General Take Over the Investigation.....	107
1. The President Again Seeks to Have Sessions Reverse his Recusal	107
2. Additional Efforts to Have Sessions Unrecuse or Direct Investigations Covered by his Recusal.....	109

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

I. The President Orders McGahn to Deny that the President Tried to Fire the Special Counsel.....	113
1. The Press Reports that the President Tried to Fire the Special Counsel.....	113
2. The President Seeks to Have McGahn Dispute the Press Reports	114
J. The President’s Conduct Towards Flynn, Manafort, HOM	120
1. Conduct Directed at Michael Flynn.....	120
2. Conduct Directed at Paul Manafort	122
3. Harm to Ongoing Matter	128
K. The President’s Conduct Involving Michael Cohen	134
1. Candidate Trump’s Awareness of and Involvement in the Trump Tower Moscow Project	134
2. Cohen Determines to Adhere to a “Party Line” Distancing Candidate Trump From Russia	138
3. Cohen Submits False Statements to Congress Minimizing the Trump Tower Moscow Project in Accordance with the Party Line	139
4. The President Sends Messages of Support to Cohen.....	144
5. The President’s Conduct After Cohen Began Cooperating with the Government.....	148
L. Overarching Factual Issues	156
III. LEGAL DEFENSES TO THE APPLICATION OF OBSTRUCTION-OF-JUSTICE STATUTES TO THE PRESIDENT.....	159
A. Statutory Defenses to the Application of Obstruction-Of-Justice Provisions to the Conduct Under Investigation	160
1. The Text of Section 1512(c)(2) Prohibits a Broad Range of Obstructive Acts.....	160
2. Judicial Decisions Support a Broad Reading of Section 1512(c)(2)	162
3. The Legislative History of Section 1512(c)(2) Does Not Justify Narrowing Its Text.....	164
4. General Principles of Statutory Construction Do Not Suggest That Section 1512(c)(2) is Inapplicable to the Conduct in this Investigation.....	165
5. Other Obstruction Statutes Might Apply to the Conduct in this Investigation.....	167
B. Constitutional Defenses to Applying Obstruction-Of-Justice Statutes to Presidential Conduct	168
1. The Requirement of a Clear Statement to Apply Statutes to Presidential Conduct Does Not Limit the Obstruction Statutes	169

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

2. Separation-of-Powers Principles Support the Conclusion that Congress May Validly Prohibit Corrupt Obstructive Acts Carried Out Through the President’s Official Powers.....	171
a. The Supreme Court’s Separation-of-Powers Balancing Test Applies In This Context.....	172
b. The Effect of Obstruction-of-Justice Statutes on the President’s Capacity to Perform His Article II Responsibilities is Limited	173
c. Congress Has Power to Protect Congressional, Grand Jury, and Judicial Proceedings Against Corrupt Acts from Any Source	176
3. Ascertaining Whether the President Violated the Obstruction Statutes Would Not Chill his Performance of his Article II Duties	178
IV. CONCLUSION.....	182

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

INTRODUCTION TO VOLUME II

This report is submitted to the Attorney General pursuant to 28 C.F.R. § 600.8(c), which states that, “[a]t the conclusion of the Special Counsel’s work, he . . . shall provide the Attorney General a confidential report explaining the prosecution or declination decisions [the Special Counsel] reached.”

Beginning in 2017, the President of the United States took a variety of actions towards the ongoing FBI investigation into Russia’s interference in the 2016 presidential election and related matters that raised questions about whether he had obstructed justice. The Order appointing the Special Counsel gave this Office jurisdiction to investigate matters that arose directly from the FBI’s Russia investigation, including whether the President had obstructed justice in connection with Russia-related investigations. The Special Counsel’s jurisdiction also covered potentially obstructive acts related to the Special Counsel’s investigation itself. This Volume of our report summarizes our obstruction-of-justice investigation of the President.

We first describe the considerations that guided our obstruction-of-justice investigation, and then provide an overview of this Volume:

First, a traditional prosecution or declination decision entails a binary determination to initiate or decline a prosecution, but we determined not to make a traditional prosecutorial judgment. The Office of Legal Counsel (OLC) has issued an opinion finding that “the indictment or criminal prosecution of a sitting President would impermissibly undermine the capacity of the executive branch to perform its constitutionally assigned functions” in violation of “the constitutional separation of powers.”¹ Given the role of the Special Counsel as an attorney in the Department of Justice and the framework of the Special Counsel regulations, *see* 28 U.S.C. § 515; 28 C.F.R. § 600.7(a), this Office accepted OLC’s legal conclusion for the purpose of exercising prosecutorial jurisdiction. And apart from OLC’s constitutional view, we recognized that a federal criminal accusation against a sitting President would place burdens on the President’s capacity to govern and potentially preempt constitutional processes for addressing presidential misconduct.²

Second, while the OLC opinion concludes that a sitting President may not be prosecuted, it recognizes that a criminal investigation during the President’s term is permissible.³ The OLC opinion also recognizes that a President does not have immunity after he leaves office.⁴ And if individuals other than the President committed an obstruction offense, they may be prosecuted at this time. Given those considerations, the facts known to us, and the strong public interest in

¹ *A Sitting President’s Amenability to Indictment and Criminal Prosecution*, 24 Op. O.L.C. 222, 222, 260 (2000) (OLC Op.).

² *See* U.S. CONST. Art. I § 2, cl. 5; § 3, cl. 6; *cf.* OLC Op. at 257-258 (discussing relationship between impeachment and criminal prosecution of a sitting President).

³ OLC Op. at 257 n.36 (“A grand jury could continue to gather evidence throughout the period of immunity”).

⁴ OLC Op. at 255 (“Recognizing an immunity from prosecution for a sitting President would not preclude such prosecution once the President’s term is over or he is otherwise removed from office by resignation or impeachment”).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

safeguarding the integrity of the criminal justice system, we conducted a thorough factual investigation in order to preserve the evidence when memories were fresh and documentary materials were available.

Third, we considered whether to evaluate the conduct we investigated under the Justice Manual standards governing prosecution and declination decisions, but we determined not to apply an approach that could potentially result in a judgment that the President committed crimes. The threshold step under the Justice Manual standards is to assess whether a person's conduct "constitutes a federal offense." U.S. Dep't of Justice, Justice Manual § 9-27.220 (2018) (Justice Manual). Fairness concerns counseled against potentially reaching that judgment when no charges can be brought. The ordinary means for an individual to respond to an accusation is through a speedy and public trial, with all the procedural protections that surround a criminal case. An individual who believes he was wrongly accused can use that process to seek to clear his name. In contrast, a prosecutor's judgment that crimes were committed, but that no charges will be brought, affords no such adversarial opportunity for public name-clearing before an impartial adjudicator.⁵

The concerns about the fairness of such a determination would be heightened in the case of a sitting President, where a federal prosecutor's accusation of a crime, even in an internal report, could carry consequences that extend beyond the realm of criminal justice. OLC noted similar concerns about sealed indictments. Even if an indictment were sealed during the President's term, OLC reasoned, "it would be very difficult to preserve [an indictment's] secrecy," and if an indictment became public, "[t]he stigma and opprobrium" could imperil the President's ability to govern.⁶ Although a prosecutor's internal report would not represent a formal public accusation akin to an indictment, the possibility of the report's public disclosure and the absence of a neutral adjudicatory forum to review its findings counseled against potentially determining "that the person's conduct constitutes a federal offense." Justice Manual § 9-27.220.

Fourth, if we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and the applicable legal standards, however, we are unable to reach that judgment. The evidence we obtained about the President's actions and intent presents difficult issues that prevent us from conclusively determining that no criminal conduct occurred. Accordingly, while this report does not conclude that the President committed a crime, it also does not exonerate him.

* * *

This report on our investigation consists of four parts. Section I provides an overview of obstruction-of-justice principles and summarizes certain investigatory and evidentiary considerations. Section II sets forth the factual results of our obstruction investigation and analyzes the evidence. Section III addresses statutory and constitutional defenses. Section IV states our conclusion.

⁵ For that reason, criticisms have been lodged against the practice of naming unindicted co-conspirators in an indictment. See *United States v. Briggs*, 514 F.2d 794, 802 (5th Cir. 1975) ("The courts have struck down with strong language efforts by grand juries to accuse persons of crime while affording them no forum in which to vindicate themselves."); see also Justice Manual § 9-11.130.

⁶ OLC Op. at 259 & n.38 (citation omitted).

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

EXECUTIVE SUMMARY TO VOLUME II

Our obstruction-of-justice inquiry focused on a series of actions by the President that related to the Russian-interference investigations, including the President's conduct towards the law enforcement officials overseeing the investigations and the witnesses to relevant events.

FACTUAL RESULTS OF THE OBSTRUCTION INVESTIGATION

The key issues and events we examined include the following:

The Campaign's response to reports about Russian support for Trump. During the 2016 presidential campaign, questions arose about the Russian government's apparent support for candidate Trump. After WikiLeaks released politically damaging Democratic Party emails that were reported to have been hacked by Russia, Trump publicly expressed skepticism that Russia was responsible for the hacks at the same time that he and other Campaign officials privately sought information **Harm to Ongoing Matter** about any further planned WikiLeaks releases. Trump also denied having any business in or connections to Russia, even though as late as June 2016 the Trump Organization had been pursuing a licensing deal for a skyscraper to be built in Russia called Trump Tower Moscow. After the election, the President expressed concerns to advisors that reports of Russia's election interference might lead the public to question the legitimacy of his election.

Conduct involving FBI Director Comey and Michael Flynn. In mid-January 2017, incoming National Security Advisor Michael Flynn falsely denied to the Vice President, other administration officials, and FBI agents that he had talked to Russian Ambassador Sergey Kislyak about Russia's response to U.S. sanctions on Russia for its election interference. On January 27, the day after the President was told that Flynn had lied to the Vice President and had made similar statements to the FBI, the President invited FBI Director Comey to a private dinner at the White House and told Comey that he needed loyalty. On February 14, the day after the President requested Flynn's resignation, the President told an outside advisor, "Now that we fired Flynn, the Russia thing is over." The advisor disagreed and said the investigations would continue.

Later that afternoon, the President cleared the Oval Office to have a one-on-one meeting with Comey. Referring to the FBI's investigation of Flynn, the President said, "I hope you can see your way clear to letting this go, to letting Flynn go. He is a good guy. I hope you can let this go." Shortly after requesting Flynn's resignation and speaking privately to Comey, the President sought to have Deputy National Security Advisor K.T. McFarland draft an internal letter stating that the President had not directed Flynn to discuss sanctions with Kislyak. McFarland declined because she did not know whether that was true, and a White House Counsel's Office attorney thought that the request would look like a quid pro quo for an ambassadorship she had been offered.

The President's reaction to the continuing Russia investigation. In February 2017, Attorney General Jeff Sessions began to assess whether he had to recuse himself from campaign-related investigations because of his role in the Trump Campaign. In early March, the President told White House Counsel Donald McGahn to stop Sessions from recusing. And after Sessions announced his recusal on March 2, the President expressed anger at the decision and told advisors that he should have an Attorney General who would protect him. That weekend, the President took Sessions aside at an event and urged him to "unrecuse." Later in March, Comey publicly

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

disclosed at a congressional hearing that the FBI was investigating “the Russian government’s efforts to interfere in the 2016 presidential election,” including any links or coordination between the Russian government and the Trump Campaign. In the following days, the President reached out to the Director of National Intelligence and the leaders of the Central Intelligence Agency (CIA) and the National Security Agency (NSA) to ask them what they could do to publicly dispel the suggestion that the President had any connection to the Russian election-interference effort. The President also twice called Comey directly, notwithstanding guidance from McGahn to avoid direct contacts with the Department of Justice. Comey had previously assured the President that the FBI was not investigating him personally, and the President asked Comey to “lift the cloud” of the Russia investigation by saying that publicly.

The President’s termination of Comey. On May 3, 2017, Comey testified in a congressional hearing, but declined to answer questions about whether the President was personally under investigation. Within days, the President decided to terminate Comey. The President insisted that the termination letter, which was written for public release, state that Comey had informed the President that he was not under investigation. The day of the firing, the White House maintained that Comey’s termination resulted from independent recommendations from the Attorney General and Deputy Attorney General that Comey should be discharged for mishandling the Hillary Clinton email investigation. But the President had decided to fire Comey before hearing from the Department of Justice. The day after firing Comey, the President told Russian officials that he had “faced great pressure because of Russia,” which had been “taken off” by Comey’s firing. The next day, the President acknowledged in a television interview that he was going to fire Comey regardless of the Department of Justice’s recommendation and that when he “decided to just do it,” he was thinking that “this thing with Trump and Russia is a made-up story.” In response to a question about whether he was angry with Comey about the Russia investigation, the President said, “As far as I’m concerned, I want that thing to be absolutely done properly,” adding that firing Comey “might even lengthen out the investigation.”

The appointment of a Special Counsel and efforts to remove him. On May 17, 2017, the Acting Attorney General for the Russia investigation appointed a Special Counsel to conduct the investigation and related matters. The President reacted to news that a Special Counsel had been appointed by telling advisors that it was “the end of his presidency” and demanding that Sessions resign. Sessions submitted his resignation, but the President ultimately did not accept it. The President told aides that the Special Counsel had conflicts of interest and suggested that the Special Counsel therefore could not serve. The President’s advisors told him the asserted conflicts were meritless and had already been considered by the Department of Justice.

On June 14, 2017, the media reported that the Special Counsel’s Office was investigating whether the President had obstructed justice. Press reports called this “a major turning point” in the investigation: while Comey had told the President he was not under investigation, following Comey’s firing, the President now was under investigation. The President reacted to this news with a series of tweets criticizing the Department of Justice and the Special Counsel’s investigation. On June 17, 2017, the President called McGahn at home and directed him to call the Acting Attorney General and say that the Special Counsel had conflicts of interest and must be removed. McGahn did not carry out the direction, however, deciding that he would resign rather than trigger what he regarded as a potential Saturday Night Massacre.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Efforts to curtail the Special Counsel's investigation. Two days after directing McGahn to have the Special Counsel removed, the President made another attempt to affect the course of the Russia investigation. On June 19, 2017, the President met one-on-one in the Oval Office with his former campaign manager Corey Lewandowski, a trusted advisor outside the government, and dictated a message for Lewandowski to deliver to Sessions. The message said that Sessions should publicly announce that, notwithstanding his recusal from the Russia investigation, the investigation was “very unfair” to the President, the President had done nothing wrong, and Sessions planned to meet with the Special Counsel and “let [him] move forward with investigating election meddling for future elections.” Lewandowski said he understood what the President wanted Sessions to do.

One month later, in another private meeting with Lewandowski on July 19, 2017, the President asked about the status of his message for Sessions to limit the Special Counsel investigation to future election interference. Lewandowski told the President that the message would be delivered soon. Hours after that meeting, the President publicly criticized Sessions in an interview with the New York Times, and then issued a series of tweets making it clear that Sessions's job was in jeopardy. Lewandowski did not want to deliver the President's message personally, so he asked senior White House official Rick Dearborn to deliver it to Sessions. Dearborn was uncomfortable with the task and did not follow through.

Efforts to prevent public disclosure of evidence. In the summer of 2017, the President learned that media outlets were asking questions about the June 9, 2016 meeting at Trump Tower between senior campaign officials, including Donald Trump Jr., and a Russian lawyer who was said to be offering damaging information about Hillary Clinton as “part of Russia and its government's support for Mr. Trump.” On several occasions, the President directed aides not to publicly disclose the emails setting up the June 9 meeting, suggesting that the emails would not leak and that the number of lawyers with access to them should be limited. Before the emails became public, the President edited a press statement for Trump Jr. by deleting a line that acknowledged that the meeting was with “an individual who [Trump Jr.] was told might have information helpful to the campaign” and instead said only that the meeting was about adoptions of Russian children. When the press asked questions about the President's involvement in Trump Jr.'s statement, the President's personal lawyer repeatedly denied the President had played any role.

Further efforts to have the Attorney General take control of the investigation. In early summer 2017, the President called Sessions at home and again asked him to reverse his recusal from the Russia investigation. Sessions did not reverse his recusal. In October 2017, the President met privately with Sessions in the Oval Office and asked him to “take [a] look” at investigating Clinton. In December 2017, shortly after Flynn pleaded guilty pursuant to a cooperation agreement, the President met with Sessions in the Oval Office and suggested, according to notes taken by a senior advisor, that if Sessions unrecused and took back supervision of the Russia investigation, he would be a “hero.” The President told Sessions, “I'm not going to do anything or direct you to do anything. I just want to be treated fairly.” In response, Sessions volunteered that he had never seen anything “improper” on the campaign and told the President there was a “whole new leadership team” in place. He did not unrecuse.

Efforts to have McGahn deny that the President had ordered him to have the Special Counsel removed. In early 2018, the press reported that the President had directed McGahn to

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

have the Special Counsel removed in June 2017 and that McGahn had threatened to resign rather than carry out the order. The President reacted to the news stories by directing White House officials to tell McGahn to dispute the story and create a record stating he had not been ordered to have the Special Counsel removed. McGahn told those officials that the media reports were accurate in stating that the President had directed McGahn to have the Special Counsel removed. The President then met with McGahn in the Oval Office and again pressured him to deny the reports. In the same meeting, the President also asked McGahn why he had told the Special Counsel about the President's effort to remove the Special Counsel and why McGahn took notes of his conversations with the President. McGahn refused to back away from what he remembered happening and perceived the President to be testing his mettle.

Conduct towards Flynn, Manafort, **HOM**. After Flynn withdrew from a joint defense agreement with the President and began cooperating with the government, the President's personal counsel left a message for Flynn's attorneys reminding them of the President's warm feelings towards Flynn, which he said "still remains," and asking for a "heads up" if Flynn knew "information that implicates the President." When Flynn's counsel reiterated that Flynn could no longer share information pursuant to a joint defense agreement, the President's personal counsel said he would make sure that the President knew that Flynn's actions reflected "hostility" towards the President. During Manafort's prosecution and when the jury in his criminal trial was deliberating, the President praised Manafort in public, said that Manafort was being treated unfairly, and declined to rule out a pardon. After Manafort was convicted, the President called Manafort "a brave man" for refusing to "break" and said that "flipping" "almost ought to be outlawed." **Harm to Ongoing Matter**

Conduct involving Michael Cohen. The President's conduct towards Michael Cohen, a former Trump Organization executive, changed from praise for Cohen when he falsely minimized the President's involvement in the Trump Tower Moscow project, to castigation of Cohen when he became a cooperating witness. From September 2015 to June 2016, Cohen had pursued the Trump Tower Moscow project on behalf of the Trump Organization and had briefed candidate Trump on the project numerous times, including discussing whether Trump should travel to Russia to advance the deal. In 2017, Cohen provided false testimony to Congress about the project, including stating that he had only briefed Trump on the project three times and never discussed travel to Russia with him, in an effort to adhere to a "party line" that Cohen said was developed to minimize the President's connections to Russia. While preparing for his congressional testimony, Cohen had extensive discussions with the President's personal counsel, who, according to Cohen, said that Cohen should "stay on message" and not contradict the President. After the FBI searched Cohen's home and office in April 2018, the President publicly asserted that Cohen would not "flip," contacted him directly to tell him to "stay strong," and privately passed messages of support to him. Cohen also discussed pardons with the President's personal counsel and believed that if he stayed on message he would be taken care of. But after Cohen began cooperating with the government in the summer of 2018, the President publicly criticized him, called him a "rat," and suggested that his family members had committed crimes.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Overarching factual issues. We did not make a traditional prosecution decision about these facts, but the evidence we obtained supports several general statements about the President's conduct.

Several features of the conduct we investigated distinguish it from typical obstruction-of-justice cases. First, the investigation concerned the President, and some of his actions, such as firing the FBI director, involved facially lawful acts within his Article II authority, which raises constitutional issues discussed below. At the same time, the President's position as the head of the Executive Branch provided him with unique and powerful means of influencing official proceedings, subordinate officers, and potential witnesses—all of which is relevant to a potential obstruction-of-justice analysis. Second, unlike cases in which a subject engages in obstruction of justice to cover up a crime, the evidence we obtained did not establish that the President was involved in an underlying crime related to Russian election interference. Although the obstruction statutes do not require proof of such a crime, the absence of that evidence affects the analysis of the President's intent and requires consideration of other possible motives for his conduct. Third, many of the President's acts directed at witnesses, including discouragement of cooperation with the government and suggestions of possible future pardons, took place in public view. That circumstance is unusual, but no principle of law excludes public acts from the reach of the obstruction laws. If the likely effect of public acts is to influence witnesses or alter their testimony, the harm to the justice system's integrity is the same.

Although the series of events we investigated involved discrete acts, the overall pattern of the President's conduct towards the investigations can shed light on the nature of the President's acts and the inferences that can be drawn about his intent. In particular, the actions we investigated can be divided into two phases, reflecting a possible shift in the President's motives. The first phase covered the period from the President's first interactions with Comey through the President's firing of Comey. During that time, the President had been repeatedly told he was not personally under investigation. Soon after the firing of Comey and the appointment of the Special Counsel, however, the President became aware that his own conduct was being investigated in an obstruction-of-justice inquiry. At that point, the President engaged in a second phase of conduct, involving public attacks on the investigation, non-public efforts to control it, and efforts in both public and private to encourage witnesses not to cooperate with the investigation. Judgments about the nature of the President's motives during each phase would be informed by the totality of the evidence.

STATUTORY AND CONSTITUTIONAL DEFENSES

The President's counsel raised statutory and constitutional defenses to a possible obstruction-of-justice analysis of the conduct we investigated. We concluded that none of those legal defenses provided a basis for declining to investigate the facts.

Statutory defenses. Consistent with precedent and the Department of Justice's general approach to interpreting obstruction statutes, we concluded that several statutes could apply here. See 18 U.S.C. §§ 1503, 1505, 1512(b)(3), 1512(c)(2). Section 1512(c)(2) is an omnibus obstruction-of-justice provision that covers a range of obstructive acts directed at pending or contemplated official proceedings. No principle of statutory construction justifies narrowing the provision to cover only conduct that impairs the integrity or availability of evidence. Sections 1503 and 1505 also offer broad protection against obstructive acts directed at pending grand jury,

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

judicial, administrative, and congressional proceedings, and they are supplemented by a provision in Section 1512(b) aimed specifically at conduct intended to prevent or hinder the communication to law enforcement of information related to a federal crime.

Constitutional defenses. As for constitutional defenses arising from the President's status as the head of the Executive Branch, we recognized that the Department of Justice and the courts have not definitively resolved these issues. We therefore examined those issues through the framework established by Supreme Court precedent governing separation-of-powers issues. The Department of Justice and the President's personal counsel have recognized that the President is subject to statutes that prohibit obstruction of justice by bribing a witness or suborning perjury because that conduct does not implicate his constitutional authority. With respect to whether the President can be found to have obstructed justice by exercising his powers under Article II of the Constitution, we concluded that Congress has authority to prohibit a President's corrupt use of his authority in order to protect the integrity of the administration of justice.

Under applicable Supreme Court precedent, the Constitution does not categorically and permanently immunize a President for obstructing justice through the use of his Article II powers. The separation-of-powers doctrine authorizes Congress to protect official proceedings, including those of courts and grand juries, from corrupt, obstructive acts regardless of their source. We also concluded that any inroad on presidential authority that would occur from prohibiting corrupt acts does not undermine the President's ability to fulfill his constitutional mission. The term "corruptly" sets a demanding standard. It requires a concrete showing that a person acted with an intent to obtain an improper advantage for himself or someone else, inconsistent with official duty and the rights of others. A preclusion of "corrupt" official action does not diminish the President's ability to exercise Article II powers. For example, the proper supervision of criminal law does not demand freedom for the President to act with a corrupt intention of shielding himself from criminal punishment, avoiding financial liability, or preventing personal embarrassment. To the contrary, a statute that prohibits official action undertaken for such corrupt purposes furthers, rather than hinders, the impartial and evenhanded administration of the law. It also aligns with the President's constitutional duty to faithfully execute the laws. Finally, we concluded that in the rare case in which a criminal investigation of the President's conduct is justified, inquiries to determine whether the President acted for a corrupt motive should not impermissibly chill his performance of his constitutionally assigned duties. The conclusion that Congress may apply the obstruction laws to the President's corrupt exercise of the powers of office accords with our constitutional system of checks and balances and the principle that no person is above the law.

CONCLUSION

Because we determined not to make a traditional prosecutorial judgment, we did not draw ultimate conclusions about the President's conduct. The evidence we obtained about the President's actions and intent presents difficult issues that would need to be resolved if we were making a traditional prosecutorial judgment. At the same time, if we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and the applicable legal standards, we are unable to reach that judgment. Accordingly, while this report does not conclude that the President committed a crime, it also does not exonerate him.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

I. BACKGROUND LEGAL AND EVIDENTIARY PRINCIPLES

A. Legal Framework of Obstruction of Justice

The May 17, 2017 Appointment Order and the Special Counsel regulations provide this Office with jurisdiction to investigate “federal crimes committed in the course of, and with intent to interfere with, the Special Counsel’s investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.” 28 C.F.R. § 600.4(a). Because of that description of our jurisdiction, we sought evidence for our obstruction-of-justice investigation with the elements of obstruction offenses in mind. Our evidentiary analysis is similarly focused on the elements of such offenses, although we do not draw conclusions on the ultimate questions that govern a prosecutorial decision under the Principles of Federal Prosecution. *See* Justice Manual § 9-27.000 *et seq.* (2018).

Here, we summarize the law interpreting the elements of potentially relevant obstruction statutes in an ordinary case. This discussion does not address the unique constitutional issues that arise in an inquiry into official acts by the President. Those issues are discussed in a later section of this report addressing constitutional defenses that the President’s counsel have raised. *See* Volume II, Section III.B, *infra*.

Three basic elements are common to most of the relevant obstruction statutes: (1) an obstructive act; (2) a nexus between the obstructive act and an official proceeding; and (3) a corrupt intent. *See, e.g.*, 18 U.S.C. §§ 1503, 1505, 1512(c)(2). We describe those elements as they have been interpreted by the courts. We then discuss a more specific statute aimed at witness tampering, *see* 18 U.S.C. § 1512(b), and describe the requirements for attempted offenses and endeavors to obstruct justice, *see* 18 U.S.C. §§ 1503, 1512(c)(2).

Obstructive act. Obstruction-of-justice law “reaches all corrupt conduct capable of producing an effect that prevents justice from being duly administered, regardless of the means employed.” *United States v. Silverman*, 745 F.2d 1386, 1393 (11th Cir. 1984) (interpreting 18 U.S.C. § 1503). An “effort to influence” a proceeding can qualify as an endeavor to obstruct justice even if the effort was “subtle or circuitous” and “however cleverly or with whatever cloaking of purpose” it was made. *United States v. Roe*, 529 F.2d 629, 632 (4th Cir. 1975); *see also United States v. Quattrone*, 441 F.3d 153, 173 (2d Cir. 2006). The verbs “‘obstruct or impede’ are broad” and “can refer to anything that blocks, makes difficult, or hinders.” *Marinello v. United States*, 138 S. Ct. 1101, 1106 (2018) (internal brackets and quotation marks omitted).

An improper motive can render an actor’s conduct criminal even when the conduct would otherwise be lawful and within the actor’s authority. *See United States v. Cueto*, 151 F.3d 620, 631 (7th Cir. 1998) (affirming obstruction conviction of a criminal defense attorney for “litigation-related conduct”); *United States v. Cintolo*, 818 F.2d 980, 992 (1st Cir. 1987) (“any act by any party—whether lawful or unlawful on its face—may abridge § 1503 if performed with a corrupt motive”).

Nexus to a pending or contemplated official proceeding. Obstruction-of-justice law generally requires a nexus, or connection, to an official proceeding. In Section 1503, the nexus must be to pending “judicial or grand jury proceedings.” *United States v. Aguilar*, 515 U.S. 593,

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

599 (1995). In Section 1505, the nexus can include a connection to a “pending” federal agency proceeding or a congressional inquiry or investigation. Under both statutes, the government must demonstrate “a relationship in time, causation, or logic” between the obstructive act and the proceeding or inquiry to be obstructed. *Id.* at 599; *see also Arthur Andersen LLP v. United States*, 544 U.S. 696, 707-708 (2005). Section 1512(c) prohibits obstructive efforts aimed at official proceedings including judicial or grand jury proceedings. 18 U.S.C. § 1515(a)(1)(A). “For purposes of” Section 1512, “an official proceeding need not be pending or about to be instituted at the time of the offense.” 18 U.S.C. § 1512(f)(1). Although a proceeding need not already be in progress to trigger liability under Section 1512(c), a nexus to a contemplated proceeding still must be shown. *United States v. Young*, 916 F.3d 368, 386 (4th Cir. 2019); *United States v. Petruk*, 781 F.3d 438, 445 (8th Cir. 2015); *United States v. Phillips*, 583 F.3d 1261, 1264 (10th Cir. 2009); *United States v. Reich*, 479 F.3d 179, 186 (2d Cir. 2007). The nexus requirement narrows the scope of obstruction statutes to ensure that individuals have “fair warning” of what the law proscribes. *Aguilar*, 515 U.S. at 600 (internal quotation marks omitted).

The nexus showing has subjective and objective components. As an objective matter, a defendant must act “in a manner that is *likely* to obstruct justice,” such that the statute “excludes defendants who have an evil purpose but use means that would only unnaturally and improbably be successful.” *Aguilar*, 515 U.S. at 601-602 (emphasis added; internal quotation marks omitted). “[T]he endeavor must have the natural and probable effect of interfering with the due administration of justice.” *Id.* at 599 (citation and internal quotation marks omitted). As a subjective matter, the actor must have “contemplated a particular, foreseeable proceeding.” *Petruk*, 781 F.3d at 445-446. A defendant need not directly impede the proceeding. Rather, a nexus exists if “discretionary actions of a third person would be required to obstruct the judicial proceeding if it was foreseeable to the defendant that the third party would act on the [defendant’s] communication in such a way as to obstruct the judicial proceeding.” *United States v. Martinez*, 862 F.3d 223, 238 (2d Cir. 2017) (brackets, ellipses, and internal quotation marks omitted).

Corruptly. The word “corruptly” provides the intent element for obstruction of justice and means acting “knowingly and dishonestly” or “with an improper motive.” *United States v. Richardson*, 676 F.3d 491, 508 (5th Cir. 2012); *United States v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013) (to act corruptly means to “act[] with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct” the relevant proceeding) (some quotation marks omitted); *see* 18 U.S.C. § 1515(b) (“As used in section 1505, the term ‘corruptly’ means acting with an improper purpose, personally or by influencing another.”); *see also Arthur Andersen*, 544 U.S. at 705-706 (interpreting “corruptly” to mean “wrongful, immoral, depraved, or evil” and holding that acting “knowingly . . . corruptly” in 18 U.S.C. § 1512(b) requires “consciousness of wrongdoing”). The requisite showing is made when a person acted with an intent to obtain an “improper advantage for [him]self or someone else, inconsistent with official duty and the rights of others.” *BALLENTINE’S LAW DICTIONARY* 276 (3d ed. 1969); *see United States v. Pasha*, 797 F.3d 1122, 1132 (D.C. Cir. 2015); *Aguilar*, 515 U.S. at 616 (Scalia, J., concurring in part and dissenting in part) (characterizing this definition as the “longstanding and well-accepted meaning” of “corruptly”).

Witness tampering. A more specific provision in Section 1512 prohibits tampering with a witness. *See* 18 U.S.C. § 1512(b)(1), (3) (making it a crime to “knowingly use[] intimidation . . . or corruptly persuade[] another person,” or “engage[] in misleading conduct towards another

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

person,” with the intent to “influence, delay, or prevent the testimony of any person in an official proceeding” or to “hinder, delay, or prevent the communication to a law enforcement officer . . . of information relating to the commission or possible commission of a Federal offense”). To establish corrupt persuasion, it is sufficient that the defendant asked a potential witness to lie to investigators in contemplation of a likely federal investigation into his conduct. *United States v. Edlind*, 887 F.3d 166, 174 (4th Cir. 2018); *United States v. Sparks*, 791 F.3d 1188, 1191-1192 (10th Cir. 2015); *United States v. Byrne*, 435 F.3d 16, 23-26 (1st Cir. 2006); *United States v. LaShay*, 417 F.3d 715, 718-719 (7th Cir. 2005); *United States v. Burns*, 298 F.3d 523, 539-540 (6th Cir. 2002); *United States v. Pennington*, 168 F.3d 1060, 1066 (8th Cir. 1999). The “persuasion” need not be coercive, intimidating, or explicit; it is sufficient to “urge,” “induce,” “ask[],” “argu[e],” “giv[e] reasons,” *Sparks*, 791 F.3d at 1192, or “coach[] or remind[] witnesses by planting misleading facts,” *Edlind*, 887 F.3d at 174. Corrupt persuasion is shown “where a defendant tells a potential witness a false story as if the story were true, intending that the witness believe the story and testify to it.” *United States v. Rodolitz*, 786 F.2d 77, 82 (2d Cir. 1986); *see United States v. Gabriel*, 125 F.3d 89, 102 (2d Cir. 1997). It also covers urging a witness to recall a fact that the witness did not know, even if the fact was actually true. *See LaShay*, 417 F.3d at 719. Corrupt persuasion also can be shown in certain circumstances when a person, with an improper motive, urges a witness not to cooperate with law enforcement. *See United States v. Shotts*, 145 F.3d 1289, 1301 (11th Cir. 1998) (telling Secretary “not to [say] anything [to the FBI] and [she] would not be bothered”).

When the charge is acting with the intent to hinder, delay, or prevent the communication of information to law enforcement under Section 1512(b)(3), the “nexus” to a proceeding inquiry articulated in *Aguilar*—that an individual have “knowledge that his actions are likely to affect the judicial proceeding,” 515 U.S. at 599—does not apply because the obstructive act is aimed at the communication of information to investigators, not at impeding an official proceeding.

Acting “knowingly . . . corruptly” requires proof that the individual was “conscious of wrongdoing.” *Arthur Andersen*, 544 U.S. at 705-706 (declining to explore “[t]he outer limits of this element” but indicating that an instruction was infirm where it permitted conviction even if the defendant “honestly and sincerely believed that [the] conduct was lawful”). It is an affirmative defense that “the conduct consisted solely of lawful conduct and that the defendant’s sole intention was to encourage, induce, or cause the other person to testify truthfully.” 18 U.S.C. § 1512(e).

Attempts and endeavors. Section 1512(c)(2) covers both substantive obstruction offenses and attempts to obstruct justice. Under general principles of attempt law, a person is guilty of an attempt when he has the intent to commit a substantive offense and takes an overt act that constitutes a substantial step towards that goal. *See United States v. Resendiz-Ponce*, 549 U.S. 102, 106-107 (2007). “[T]he act [must be] substantial, in that it was strongly corroborative of the defendant’s criminal purpose.” *United States v. Pratt*, 351 F.3d 131, 135 (4th Cir. 2003). While “mere abstract talk” does not suffice, any “concrete and specific” acts that corroborate the defendant’s intent can constitute a “substantial step.” *United States v. Irving*, 665 F.3d 1184, 1198-1205 (10th Cir. 2011). Thus, “soliciting an innocent agent to engage in conduct constituting an element of the crime” may qualify as a substantial step. Model Penal Code § 5.01(2)(g); *see United States v. Lucas*, 499 F.3d 769, 781 (8th Cir. 2007).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

The omnibus clause of 18 U.S.C. § 1503 prohibits an “endeavor” to obstruct justice, which sweeps more broadly than Section 1512’s attempt provision. See *United States v. Sampson*, 898 F.3d 287, 302 (2d Cir. 2018); *United States v. Leisure*, 844 F.2d 1347, 1366-1367 (8th Cir. 1988) (collecting cases). “It is well established that a[n] [obstruction-of-justice] offense is complete when one corruptly endeavors to obstruct or impede the due administration of justice; the prosecution need not prove that the due administration of justice was actually obstructed or impeded.” *United States v. Davis*, 854 F.3d 1276, 1292 (11th Cir. 2017) (internal quotation marks omitted).

B. Investigative and Evidentiary Considerations

After the appointment of the Special Counsel, this Office obtained evidence about the following events relating to potential issues of obstruction of justice involving the President:

- (a) The President’s January 27, 2017 dinner with former FBI Director James Comey in which the President reportedly asked for Comey’s loyalty, one day after the White House had been briefed by the Department of Justice on contacts between former National Security Advisor Michael Flynn and the Russian Ambassador;
- (b) The President’s February 14, 2017 meeting with Comey in which the President reportedly asked Comey not to pursue an investigation of Flynn;
- (c) The President’s private requests to Comey to make public the fact that the President was not the subject of an FBI investigation and to lift what the President regarded as a cloud;
- (d) The President’s outreach to the Director of National Intelligence and the Directors of the National Security Agency and the Central Intelligence Agency about the FBI’s Russia investigation;
- (e) The President’s stated rationales for terminating Comey on May 9, 2017, including statements that could reasonably be understood as acknowledging that the FBI’s Russia investigation was a factor in Comey’s termination; and
- (f) The President’s reported involvement in issuing a statement about the June 9, 2016 Trump Tower meeting between Russians and senior Trump Campaign officials that said the meeting was about adoption and omitted that the Russians had offered to provide the Trump Campaign with derogatory information about Hillary Clinton.

Taking into account that information and our analysis of applicable statutory and constitutional principles (discussed below in Volume II, Section III, *infra*), we determined that there was a sufficient factual and legal basis to further investigate potential obstruction-of-justice issues involving the President.

Many of the core issues in an obstruction-of-justice investigation turn on an individual’s actions and intent. We therefore requested that the White House provide us with documentary evidence in its possession on the relevant events. We also sought and obtained the White House’s concurrence in our conducting interviews of White House personnel who had relevant information. And we interviewed other witnesses who had pertinent knowledge, obtained documents on a

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

voluntary basis when possible, and used legal process where appropriate. These investigative steps allowed us to gather a substantial amount of evidence.

We also sought a voluntary interview with the President. After more than a year of discussion, the President declined to be interviewed. Grand Jury

[REDACTED] During the course of our discussions, the President did agree to answer written questions on certain Russia-related topics, and he provided us with answers. He did not similarly agree to provide written answers to questions on obstruction topics or questions on events during the transition. Ultimately, while we believed that we had the authority and legal justification to issue a grand jury subpoena to obtain the President's testimony, we chose not to do so. We made that decision in view of the substantial delay that such an investigative step would likely produce at a late stage in our investigation. We also assessed that based on the significant body of evidence we had already obtained of the President's actions and his public and private statements describing or explaining those actions, we had sufficient evidence to understand relevant events and to make certain assessments without the President's testimony. The Office's decision-making process on this issue is described in more detail in Appendix C, *infra*, in a note that precedes the President's written responses.

In assessing the evidence we obtained, we relied on common principles that apply in any investigation. The issue of criminal intent is often inferred from circumstantial evidence. *See, e.g., United States v. Croteau*, 819 F.3d 1293, 1305 (11th Cir. 2016) (“[G]uilty knowledge can rarely be established by direct evidence. . . . Therefore, mens rea elements such as knowledge or intent may be proved by circumstantial evidence.”) (internal quotation marks omitted); *United States v. Robinson*, 702 F.3d 22, 36 (2d Cir. 2012) (“The government’s case rested on circumstantial evidence, but the *mens rea* elements of knowledge and intent can often be proved through circumstantial evidence and the reasonable inferences drawn therefrom.”) (internal quotation marks omitted). The principle that intent can be inferred from circumstantial evidence is a necessity in criminal cases, given the right of a subject to assert his privilege against compelled self-incrimination under the Fifth Amendment and therefore decline to testify. Accordingly, determinations on intent are frequently reached without the opportunity to interview an investigatory subject.

Obstruction-of-justice cases are consistent with this rule. *See, e.g., Edlind*, 887 F.3d at 174, 176 (relying on “significant circumstantial evidence that [the defendant] was conscious of her wrongdoing” in an obstruction case; “[b]ecause evidence of intent will almost always be circumstantial, a defendant may be found culpable where the reasonable and foreseeable consequences of her acts are the obstruction of justice”) (internal quotation marks, ellipses, and punctuation omitted); *Quattrone*, 441 F.3d at 173-174. Circumstantial evidence that illuminates intent may include a pattern of potentially obstructive acts. Fed. R. Evid. 404(b) (“Evidence of a crime, wrong, or other act . . . may be admissible . . . [to] prov[e] motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.”); *see, e.g., United States v. Frankhauser*, 80 F.3d 641, 648-650 (1st Cir. 1996); *United States v. Arnold*, 773 F.2d 823, 832-834 (7th Cir. 1985); *Cintolo*, 818 F.2d at 1000.

Credibility judgments may also be made based on objective facts and circumstantial evidence. Standard jury instructions highlight a variety of factors that are often relevant in

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

assessing credibility. These include whether a witness had a reason not to tell the truth; whether the witness had a good memory; whether the witness had the opportunity to observe the events about which he testified; whether the witness's testimony was corroborated by other witnesses; and whether anything the witness said or wrote previously contradicts his testimony. *See, e.g., First Circuit Pattern Jury Instructions* § 1.06 (2018); *Fifth Circuit Pattern Jury Instructions (Criminal Cases)* § 1.08 (2012); *Seventh Circuit Pattern Jury Instruction* § 3.01 (2012).

In addition to those general factors, we took into account more specific factors in assessing the credibility of conflicting accounts of the facts. For example, contemporaneous written notes can provide strong corroborating evidence. *See United States v. Nobles*, 422 U.S. 225, 232 (1975) (the fact that a “statement appeared in the contemporaneously recorded report . . . would tend strongly to corroborate the investigator’s version of the interview”). Similarly, a witness’s recitation of his account before he had any motive to fabricate also supports the witness’s credibility. *See Tome v. United States*, 513 U.S. 150, 158 (1995) (“A consistent statement that predates the motive is a square rebuttal of the charge that the testimony was contrived as a consequence of that motive.”). Finally, a witness’s false description of an encounter can imply consciousness of wrongdoing. *See Al-Adahi v. Obama*, 613 F.3d 1102, 1107 (D.C. Cir. 2010) (noting the “well-settled principle that false exculpatory statements are evidence—often strong evidence—of guilt”). We applied those settled legal principles in evaluating the factual results of our investigation.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

II. FACTUAL RESULTS OF THE OBSTRUCTION INVESTIGATION

This section of the report details the evidence we obtained. We first provide an overview of how Russia became an issue in the 2016 presidential campaign, and how candidate Trump responded. We then turn to the key events that we investigated: the President's conduct concerning the FBI investigation of Michael Flynn; the President's reaction to public confirmation of the FBI's Russia investigation; events leading up to and surrounding the termination of FBI Director Comey; efforts to terminate the Special Counsel; efforts to curtail the scope of the Special Counsel's investigation; efforts to prevent disclosure of information about the June 9, 2016 Trump Tower meeting between Russians and senior campaign officials; efforts to have the Attorney General unrecuse; and conduct towards McGahn, Cohen, and other witnesses.

We summarize the evidence we found and then analyze it by reference to the three statutory obstruction-of-justice elements: obstructive act, nexus to a proceeding, and intent. We focus on elements because, by regulation, the Special Counsel has "jurisdiction . . . to investigate . . . federal crimes committed in the course of, and with intent to interfere with, the Special Counsel's investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses." 28 C.F.R. § 600.4(a). Consistent with our jurisdiction to investigate federal obstruction crimes, we gathered evidence that is relevant to the elements of those crimes and analyzed them within an elements framework—while refraining from reaching ultimate conclusions about whether crimes were committed, for the reasons explained above. This section also does not address legal and constitutional defenses raised by counsel for the President; those defenses are analyzed in Volume II, Section III, *infra*.

A. The Campaign's Response to Reports About Russian Support for Trump

During the 2016 campaign, the media raised questions about a possible connection between the Trump Campaign and Russia.⁷ The questions intensified after WikiLeaks released politically damaging Democratic Party emails that were reported to have been hacked by Russia. Trump responded to questions about possible connections to Russia by denying any business involvement in Russia—even though the Trump Organization had pursued a business project in Russia as late as June 2016. Trump also expressed skepticism that Russia had hacked the emails at the same time as he and other Campaign advisors privately sought information **HOM** about any further planned WikiLeaks releases. After the election, when questions persisted about possible links between Russia and the Trump Campaign, the President-Elect continued to deny any connections to Russia and privately expressed concerns that reports of Russian election interference might lead the public to question the legitimacy of his election.⁸

⁷ This section summarizes and cites various news stories not for the truth of the information contained in the stories, but rather to place candidate Trump's response to those stories in context. Volume I of this report analyzes the underlying facts of several relevant events that were reported on by the media during the campaign.

⁸ As discussed in Volume I, while the investigation identified numerous links between individuals with ties to the Russian government and individuals associated with the Trump Campaign, the evidence was not sufficient to charge that any member of the Trump Campaign conspired or coordinated with representatives of the Russian government to interfere in the 2016 election.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

I. Press Reports Allege Links Between the Trump Campaign and Russia

On June 16, 2015, Donald J. Trump declared his intent to seek nomination as the Republican candidate for President.⁹ By early 2016, he distinguished himself among Republican candidates by speaking of closer ties with Russia,¹⁰ saying he would get along well with Russian President Vladimir Putin,¹¹ questioning whether the NATO alliance was obsolete,¹² and praising Putin as a “strong leader.”¹³ The press reported that Russian political analysts and commentators perceived Trump as favorable to Russia.¹⁴

Beginning in February 2016 and continuing through the summer, the media reported that several Trump campaign advisors appeared to have ties to Russia. For example, the press reported that campaign advisor Michael Flynn was seated next to Vladimir Putin at an RT gala in Moscow in December 2015 and that Flynn had appeared regularly on RT as an analyst.¹⁵ The press also reported that foreign policy advisor Carter Page had ties to a Russian state-run gas company,¹⁶ and that campaign chairman Paul Manafort had done work for the “Russian-backed former Ukrainian president Viktor Yanukovich.”¹⁷ In addition, the press raised questions during the Republican

⁹ @realDonaldTrump 6/16/15 (11:57 a.m. ET) Tweet.

¹⁰ See, e.g., Meet the Press Interview with Donald J. Trump, NBC (Dec. 20, 2015) (Trump: “I think it would be a positive thing if Russia and the United States actually got along”); *Presidential Candidate Donald Trump News Conference, Hanahan, South Carolina*, C-SPAN (Feb. 15, 2016) (“You want to make a good deal for the country, you want to deal with Russia.”).

¹¹ See, e.g., *Anderson Cooper 360 Degrees*, CNN (July 8, 2015) (“I think I get along with [Putin] fine.”); Andrew Rafferty, *Trump Says He Would “Get Along Very Well” With Putin*, NBC (July 30, 2015) (quoting Trump as saying, “I think I would get along very well with Vladimir Putin.”).

¹² See, e.g., @realDonaldTrump Tweet 3/24/16 (7:47 a.m. ET); @realDonaldTrump Tweet 3/24/16 (7:59 a.m. ET).

¹³ See, e.g., Meet the Press Interview with Donald J. Trump, NBC (Dec. 20, 2015) (“[Putin] is a strong leader. What am I gonna say, he’s a weak leader? He’s making mincemeat out of our President.”); *Donald Trump Campaign Rally in Vandalia, Ohio*, C-SPAN (Mar. 12, 2016) (“I said [Putin] was a strong leader, which he is. I mean, he might be bad, he might be good. But he’s a strong leader.”).

¹⁴ See, e.g., Andrew Osborn, *From Russia with love: why the Kremlin backs Trump*, Reuters (Mar. 24, 2016); Robert Zubrin, *Trump: The Kremlin’s Candidate*, National Review (Apr. 4, 2016).

¹⁵ See, e.g., Mark Hosenball & Steve Holland, *Trump being advised by ex-U.S. Lieutenant General who favors closer Russia ties*, Reuters (Feb. 26, 2016); Tom Hamburger et al., *Inside Trump’s financial ties to Russia and his unusual flattery of Vladimir Putin*, Washington Post (June 17, 2016). Certain matters pertaining to Flynn are described in Volume I, Section IV.B.7, *supra*.

¹⁶ See, e.g., Zachary Mider, *Trump’s New Russia Advisor Has Deep Ties to Kremlin’s Gazprom*, Bloomberg (Mar. 30, 2016); Julia Ioffe, *Who is Carter Page?*, Politico (Sep. 23, 2016). Certain matters pertaining to Page are described in Volume I, Section IV.A.3, *supra*.

¹⁷ Tracy Wilkinson, *In a shift, Republican platform doesn’t call for arming Ukraine against Russia, spurring outrage*, Los Angeles Times (July 21, 2016); Josh Rogin, *Trump campaign guts GOP’s anti-Russia stance on Ukraine*, Washington Post (July 18, 2016).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

National Convention about the Trump Campaign's involvement in changing the Republican platform's stance on giving "weapons to Ukraine to fight Russian and rebel forces."¹⁸

2. The Trump Campaign Reacts to WikiLeaks's Release of Hacked Emails

On June 14, 2016, a cybersecurity firm that had conducted in-house analysis for the Democratic National Committee (DNC) posted an announcement that Russian government hackers had infiltrated the DNC's computer and obtained access to documents.¹⁹

On July 22, 2016, the day before the Democratic National Convention, WikiLeaks posted thousands of hacked DNC documents revealing sensitive internal deliberations.²⁰ Soon thereafter, Hillary Clinton's campaign manager publicly contended that Russia had hacked the DNC emails and arranged their release in order to help candidate Trump.²¹ On July 26, 2016, the New York Times reported that U.S. "intelligence agencies ha[d] told the White House they now have 'high confidence' that the Russian government was behind the theft of emails and documents from the Democratic National Committee."²²

Within the Trump Campaign, aides reacted with enthusiasm to reports of the hacks.²³ [REDACTED] Harm to Ongoing Matter discussed with Campaign officials that WikiLeaks would release the hacked material.²⁴ Some witnesses said that Trump himself discussed the possibility of upcoming releases [REDACTED] HOM [REDACTED]. Michael Cohen, then-executive vice president of the Trump Organization and special counsel to Trump, recalled hearing [REDACTED] Harm to Ongoing Matter [REDACTED].²⁵ Cohen recalled that Trump responded, "oh good, alright,"

¹⁸ Josh Rogin, *Trump campaign guts GOP's anti-Russia stance on Ukraine*, Washington Post, Opinions (July 18, 2016). The Republican Platform events are described in Volume I, Section IV.A.6, *supra*.

¹⁹ *Bears in the Midst: Intrusion into the Democratic National Committee*, CrowdStrike (June 15, 2016) (post originally appearing on June 14, 2016, according to records of the timing provided by CrowdStrike); Ellen Nakashima, *Russian government hackers penetrated DNC, stole opposition research on Trump*, Washington Post (June 14, 2016).

²⁰ Tom Hamburger and Karen Tumulty, *WikiLeaks releases thousands of documents about Clinton and internal deliberations*, Washington Post (July 22, 2016).

²¹ Amber Phillips, *Clinton campaign manager: Russians leaked Democrats' emails to help Donald Trump*, Washington Post (July 24, 2016).

²² David E. Sanger and Eric Schmitt, *Spy Agency Consensus Grows That Russia Hacked D.N.C.*, New York Times (July 26, 2016).

²³ Gates 4/10/18 302, at 5; Newman 8/23/18 302, at 1.

²⁴ Gates 4/11/18 302, at 2-3 (SM-2180998); Gates 10/25/18 302, at 2; *see also* Volume I, Section III.D.1, *supra*.

²⁵ Cohen 8/7/18 302, at 8; *see also* Volume I, Section III.D.1, *supra*. According to Cohen, after WikiLeaks's subsequent release of stolen DNC emails on July 22, 2016, Trump said to Cohen words to the effect of, [REDACTED] HOM [REDACTED] Cohen 9/18/18 302, at 10. Cohen's role in the candidate's and later

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

and Harm to Ongoing Matter .²⁶ Manafort said that shortly after WikiLeaks's July 22, 2016 release of hacked documents, he spoke to Trump Harm to Ongoing Matter ; Manafort recalled that Trump responded that Manafort should HOM keep Trump updated.²⁷ Deputy campaign manager Rick Gates said that Manafort was getting pressure about HOM information and that Manafort instructed Gates HOM status updates on upcoming releases.²⁸ Around the same time, Gates was with Trump on a trip to an airport HOM , and shortly after the call ended, Trump told Gates that more releases of damaging information would be coming.²⁹ Harm to Ongoing Matter were discussed within the Campaign,³⁰ and in the summer of 2016, the Campaign was planning a communications strategy based on the possible release of Clinton emails by WikiLeaks.³¹

3. The Trump Campaign Reacts to Allegations That Russia was Seeking to Aid Candidate Trump

In the days that followed WikiLeaks's July 22, 2016 release of hacked DNC emails, the Trump Campaign publicly rejected suggestions that Russia was seeking to aid candidate Trump. On July 26, 2016, Trump tweeted that it was "[c]razy" to suggest that Russia was "dealing with Trump"³² and that "[f]or the record," he had "ZERO investments in Russia."³³

In a press conference the next day, July 27, 2016, Trump characterized "this whole thing with Russia" as "a total deflection" and stated that it was "farfetched" and "ridiculous."³⁴ Trump said that the assertion that Russia had hacked the emails was unproven, but stated that it would give him "no pause" if Russia had Clinton's emails.³⁵ Trump added, "Russia, if you're listening, I hope you're able to find the 30,000 emails that are missing. I think you will probably be rewarded

President's activities, and his own criminal conduct, is described in Volume II, Section II.K, *infra*, and in Volume I, Section IV.A.1, *supra*.

²⁶ Cohen 8/7/18 302, at 8.

²⁷ . As explained in footnote 197 of Volume I, Section III.D.1.b, *supra*, this Office has included Manafort's account of these events because it aligns with those of other witnesses and is corroborated to that extent.

²⁸ Gates 10/25/18 302, at 4.

²⁹ Gates 10/25/18 302, at 4.

³⁰ Bannon 1/18/19 302, at 3.

³¹ Gates 4/11/18 302, at 1-2 (SM-2180998); Gates 10/25/18 302, at 2 (messaging strategy was being formed in June/July timeframe based on claims by Assange on June 12, 2016, Harm to Ongoing Matter).

³² @realDonaldTrump 7/26/16 (6:47 p.m. ET) Tweet.

³³ @realDonaldTrump 7/26/16 (6:50 p.m. ET) Tweet.

³⁴ Donald Trump News Conference, Doral, Florida, C-SPAN (July 27, 2016).

³⁵ Donald Trump News Conference, Doral, Florida, C-SPAN (July 27, 2016).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

mightily by our press.”³⁶ Trump also said that “there’s nothing that I can think of that I’d rather do than have Russia friendly as opposed to the way they are right now,” and in response to a question about whether he would recognize Crimea as Russian territory and consider lifting sanctions, Trump replied, “We’ll be looking at that. Yeah, we’ll be looking.”³⁷

During the press conference, Trump repeated “I have nothing to do with Russia” five times.³⁸ He stated that “the closest [he] came to Russia” was that Russians may have purchased a home or condos from him.³⁹ He said that after he held the Miss Universe pageant in Moscow in 2013 he had been interested in working with Russian companies that “wanted to put a lot of money into developments in Russia” but “it never worked out.”⁴⁰ He explained, “[f]rankly, I didn’t want to do it for a couple of different reasons. But we had a major developer . . . that wanted to develop property in Moscow and other places. But we decided not to do it.”⁴¹ The Trump Organization, however, had been pursuing a building project in Moscow—the Trump Tower Moscow project—from approximately September 2015 through June 2016, and the candidate was regularly updated on developments, including possible trips by Michael Cohen to Moscow to promote the deal and by Trump himself to finalize it.⁴²

Cohen recalled speaking with Trump after the press conference about Trump’s denial of any business dealings in Russia, which Cohen regarded as untrue.⁴³ Trump told Cohen that Trump Tower Moscow was not a deal yet and said, “Why mention it if it is not a deal?”⁴⁴ According to Cohen, at around this time, in response to Trump’s disavowal of connections to Russia, campaign

³⁶ *Donald Trump News Conference, Doral, Florida, C-SPAN* (July 27, 2016). Within five hours of Trump’s remark, a Russian intelligence service began targeting email accounts associated with Hillary Clinton for possible hacks. See Volume I, Section III, *supra*. In written answers submitted in this investigation, the President stated that he made the “Russia, if you’re listening” statement “in jest and sarcastically, as was apparent to any objective observer.” Written Responses of Donald J. Trump (Nov. 20, 2018), at 13 (Response to Question II, Part (d)).

³⁷ *Donald Trump News Conference, Doral, Florida, C-SPAN* (July 27, 2016). In his written answers submitted in this investigation, the President said that his statement that “we’ll be looking” at Crimea and sanctions “did not communicate any position.” Written Responses of Donald J. Trump (Nov. 20, 2018), at 17 (Response to Question IV, Part (g)).

³⁸ *Donald Trump News Conference, Doral, Florida, C-SPAN* (July 27, 2016).

³⁹ *Donald Trump News Conference, Doral, Florida, C-SPAN* (July 27, 2016).

⁴⁰ *Donald Trump News Conference, Doral, Florida, C-SPAN* (July 27, 2016).

⁴¹ *Donald Trump News Conference, Doral, Florida, C-SPAN* (July 27, 2016).

⁴² The Trump Tower Moscow project and Trump’s involvement in it is discussed in detail in Volume I, Section IV.A.1, *supra*, and Volume II, Section II.K, *infra*.

⁴³ Cohen 9/18/18 302, at 4.

⁴⁴ Cohen 9/18/18 302, at 4-5.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

advisors had developed a “party line” that Trump had no business with Russia and no connections to Russia.⁴⁵

In addition to denying any connections with Russia, the Trump Campaign reacted to reports of Russian election interference in aid of the Campaign by seeking to distance itself from Russian contacts. For example, in August 2016, foreign policy advisor J.D. Gordon declined an invitation to Russian Ambassador Sergey Kislyak’s residence because the timing was “not optimal” in view of media reports about Russian interference.⁴⁶ On August 19, 2016, Manafort was asked to resign amid media coverage scrutinizing his ties to a pro-Russian political party in Ukraine and links to Russian business.⁴⁷ And when the media published stories about Page’s connections to Russia in September 2016, Trump Campaign officials terminated Page’s association with the Campaign and told the press that he had played “no role” in the Campaign.⁴⁸

On October 7, 2016, WikiLeaks released the first set of emails stolen by a Russian intelligence agency from Clinton Campaign chairman John Podesta.⁴⁹ The same day, the federal government announced that “the Russian Government directed the recent compromises of e-mails from US persons and institutions, including from US political organizations.”⁵⁰ The government statement directly linked Russian hacking to the releases on WikiLeaks, with the goal of interfering with the presidential election, and concluded “that only Russia’s senior-most officials could have authorized these activities” based on their “scope and sensitivity.”⁵¹

On October 11, 2016, Podesta stated publicly that the FBI was investigating Russia’s hacking and said that candidate Trump might have known in advance that the hacked emails were going to be released.⁵² Vice Presidential Candidate Mike Pence was asked whether the Trump

⁴⁵ Cohen 11/20/18 302, at 1; Cohen 9/18/18 302, at 3-5. The formation of the “party line” is described in greater detail in Volume II, Section II.K, *infra*.

⁴⁶ DJTFP00004953 (8/8/16 Email, Gordon to Pchelyakov) (stating that “[t]hese days are not optimal for us, as we are busily knocking down a stream of false media stories”). The invitation and Gordon’s response are discussed in Volume I, Section IV.A.7.a, *supra*.

⁴⁷ See, e.g., Amber Phillips, *Paul Manafort’s complicated ties to Ukraine, explained*, Washington Post (Aug. 19, 2016) (“There were also a wave of fresh headlines dealing with investigations into [Manafort’s] ties to a pro-Russian political party in Ukraine.”); Tom Winter & Ken Dilanian, *Donald Trump Aide Paul Manafort Scrutinized for Russian Business Ties*, NBC (Aug. 18, 2016). Relevant events involving Manafort are discussed in Volume I, Section IV.A.8, *supra*.

⁴⁸ Michael Isikoff, *U.S. intel officials probe ties between Trump adviser and Kremlin*, Yahoo News (Sep. 23, 2016); see, e.g., 9/25/16 Email, Hicks to Conway & Bannon; 9/23/16 Email, J. Miller to Bannon & S. Miller; Page 3/16/17 302, at 2.

⁴⁹ @WikiLeaks 10/7/16 (4:32 p.m. ET) Tweet.

⁵⁰ Joint Statement from the Department Of Homeland Security and Office of the Director of National Intelligence on Election Security, DHS (Oct. 7, 2016).

⁵¹ Joint Statement from the Department Of Homeland Security and Office of the Director of National Intelligence on Election Security, DHS (Oct. 7, 2016).

⁵² John Wagner & Anne Gearan, *Clinton campaign chairman ties email hack to Russians, suggests Trump had early warning*, Washington Post (Oct. 11, 2016).

U.S. Department of Justice

Attorney Work Product // ~~May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Campaign was “in cahoots” with WikiLeaks in releasing damaging Clinton-related information and responded, “Nothing could be further from the truth.”⁵³

4. After the Election, Trump Continues to Deny Any Contacts or Connections with Russia or That Russia Aided his Election

On November 8, 2016, Trump was elected President. Two days later, Russian officials told the press that the Russian government had maintained contacts with Trump’s “immediate entourage” during the campaign.⁵⁴ In response, Hope Hicks, who had been the Trump Campaign spokesperson, said, “We are not aware of any campaign representatives that were in touch with any foreign entities before yesterday, when Mr. Trump spoke with many world leaders.”⁵⁵ Hicks gave an additional statement denying any contacts between the Campaign and Russia: “It never happened. There was no communication between the campaign and any foreign entity during the campaign.”⁵⁶

On December 10, 2016, the press reported that U.S. intelligence agencies had “concluded that Russia interfered in last month’s presidential election to boost Donald Trump’s bid for the White House.”⁵⁷ Reacting to the story the next day, President-Elect Trump stated, “I think it’s ridiculous. I think it’s just another excuse.”⁵⁸ He continued that no one really knew who was responsible for the hacking, suggesting that the intelligence community had “no idea if it’s Russia or China or somebody. It could be somebody sitting in a bed some place.”⁵⁹ The President-Elect

⁵³ Louis Nelson, *Pence denies Trump camp in cahoots with WikiLeaks*, Politico (Oct. 14, 2016).

⁵⁴ Ivan Nechepurenko, *Russian Officials Were in Contact With Trump Allies, Diplomat Says*, New York Times (Nov. 10, 2016) (quoting Russian Deputy Foreign Minister Sergey Ryabkov saying, “[t]here were contacts” and “I cannot say that all, but a number of them maintained contacts with Russian representatives”); Jim Heintz & Matthew Lee, *Russia eyes better ties with Trump; says contacts underway*, Associated Press (Nov. 11, 2016) (quoting Ryabkov saying, “I don’t say that all of them, but a whole array of them supported contacts with Russian representatives”).

⁵⁵ Ivan Nechepurenko, *Russian Officials Were in Contact With Trump Allies, Diplomat Says*, New York Times (Nov. 11, 2016) (quoting Hicks).

⁵⁶ Jim Heintz & Matthew Lee, *Russia eyes better ties with Trump; says contacts underway*, Associated Press (Nov. 10, 2016) (quoting Hicks). Hicks recalled that after she made that statement, she spoke with Campaign advisors Kellyanne Conway, Stephen Miller, Jason Miller, and probably Kushner and Bannon to ensure it was accurate, and there was no hesitation or pushback from any of them. Hicks 12/8/17 302, at 4.

⁵⁷ Damien Gayle, *CIA concludes Russia interfered to help Trump win election, say reports*, Guardian (Dec. 10, 2016).

⁵⁸ *Chris Wallace Hosts “Fox News Sunday,” Interview with President-Elect Donald Trump*, CQ Newsmaker Transcripts (Dec. 11, 2016).

⁵⁹ *Chris Wallace Hosts “Fox News Sunday,” Interview with President-Elect Donald Trump*, CQ Newsmaker Transcripts (Dec. 11, 2016).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

also said that Democrats were “putting [] out” the story of Russian interference “because they suffered one of the greatest defeats in the history of politics.”⁶⁰

On December 18, 2016, Podesta told the press that the election was “distorted by the Russian intervention” and questioned whether Trump Campaign officials had been “in touch with the Russians.”⁶¹ The same day, incoming Chief of Staff Reince Priebus appeared on Fox News Sunday and declined to say whether the President-Elect accepted the intelligence community’s determination that Russia intervened in the election.⁶² When asked about any contact or coordination between the Campaign and Russia, Priebus said, “Even this question is insane. Of course we didn’t interface with the Russians.”⁶³ Priebus added that “this whole thing is a spin job” and said, “the real question is, why the Democrats . . . are doing everything they can to delegitimize the outcome of the election?”⁶⁴

On December 29, 2016, the Obama Administration announced that in response to Russian cyber operations aimed at the U.S. election, it was imposing sanctions and other measures on several Russian individuals and entities.⁶⁵ When first asked about the sanctions, President-Elect Trump said, “I think we ought to get on with our lives.”⁶⁶ He then put out a statement that said “It’s time for our country to move on to bigger and better things,” but indicated that he would meet with intelligence community leaders the following week for a briefing on Russian interference.⁶⁷ The briefing occurred on January 6, 2017.⁶⁸ Following the briefing, the intelligence community released the public version of its assessment, which concluded with high confidence that Russia had intervened in the election through a variety of means with the goal of harming Clinton’s

⁶⁰ *Chris Wallace Hosts “Fox News Sunday,” Interview with President-Elect Donald Trump*, CQ Newsmaker Transcripts (Dec. 11, 2016).

⁶¹ David Morgan, *Clinton campaign: It’s an ‘open question’ if Trump team colluded with Russia*, Reuters Business Insider (Dec. 18, 2016).

⁶² *Chris Wallace Hosts “Fox News Sunday,” Interview with Incoming White House Chief of Staff Reince Priebus*, Fox News (Dec. 18, 2016).

⁶³ *Chris Wallace Hosts “Fox News Sunday,” Interview with Incoming White House Chief of Staff Reince Priebus*, Fox News (Dec. 18, 2016).

⁶⁴ *Chris Wallace Hosts “Fox News Sunday,” Interview with Incoming White House Chief of Staff Reince Priebus*, Fox News (Dec. 18, 2016).

⁶⁵ *Statement by the President on Actions in Response to Russian Malicious Cyber Activity and Harassment*, White House (Dec. 29, 2016); see also Missy Ryan et al., *Obama administration announces measures to punish Russia for 2016 election interference*, Washington Post (Dec. 29, 2016).

⁶⁶ John Wagner, *Trump on alleged election interference by Russia: ‘Get on with our lives,’* Washington Post (Dec. 29, 2016).

⁶⁷ Missy Ryan et al., *Obama administration announces measures to punish Russia for 2016 election interference*, Washington Post (Dec. 29, 2016).

⁶⁸ *Comey 11/15/17 302*, at 3.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

electability.⁶⁹ The assessment further concluded with high confidence that Putin and the Russian government had developed a clear preference for Trump.⁷⁰

Several days later, BuzzFeed published unverified allegations compiled by former British intelligence officer Christopher Steele during the campaign about candidate Trump's Russia connections under the headline "These Reports Allege Trump Has Deep Ties To Russia."⁷¹ In a press conference the next day, the President-Elect called the release "an absolute disgrace" and said, "I have no dealings with Russia. I have no deals that could happen in Russia, because we've stayed away. . . . So I have no deals, I have no loans and I have no dealings. We could make deals in Russia very easily if we wanted to, I just don't want to because I think that would be a conflict."⁷²

Several advisors recalled that the President-Elect viewed stories about his Russian connections, the Russia investigations, and the intelligence community assessment of Russian interference as a threat to the legitimacy of his electoral victory.⁷³ Hicks, for example, said that the President-Elect viewed the intelligence community assessment as his "Achilles heel" because, even if Russia had no impact on the election, people would think Russia helped him win, taking away from what he had accomplished.⁷⁴ Sean Spicer, the first White House communications director, recalled that the President thought the Russia story was developed to undermine the legitimacy of his election.⁷⁵ Gates said the President viewed the Russia investigation as an attack on the legitimacy of his win.⁷⁶ And Priebus recalled that when the intelligence assessment came out, the President-Elect was concerned people would question the legitimacy of his win.⁷⁷

⁶⁹ Office of the Director of National Intelligence, *Russia's Influence Campaign Targeting the 2016 US Presidential Election*, at 1 (Jan. 6, 2017).

⁷⁰ Office of the Director of National Intelligence, *Russia's Influence Campaign Targeting the 2016 US Presidential Election*, at 1 (Jan. 6, 2017).

⁷¹ Ken Bensinger et al., *These Reports Allege Trump Has Deep Ties To Russia*, BuzzFeed (Jan. 10, 2017).

⁷² *Donald Trump's News Conference: Full Transcript and Video*, New York Times (Jan. 11, 2017), available at <https://www.nytimes.com/2017/01/11/us/politics/trump-press-conference-transcript.html>.

⁷³ Priebus 10/13/17 302, at 7; Hicks 3/13/18 302, at 18; Spicer 10/16/17 302, at 6; Bannon 2/14/18 302, at 2; Gates 4/18/18 302, at 3; see Pompeo 6/28/17 302, at 2 (the President believed that the purpose of the Russia investigation was to delegitimize his presidency).

⁷⁴ Hicks 3/13/18 302, at 18.

⁷⁵ Spicer 10/17/17 302, at 6.

⁷⁶ Gates 4/18/18 302, at 3.

⁷⁷ Priebus 10/13/17 302, at 7.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~**B. The President's Conduct Concerning the Investigation of Michael Flynn***Overview*

During the presidential transition, incoming National Security Advisor Michael Flynn had two phone calls with the Russian Ambassador to the United States about the Russian response to U.S. sanctions imposed because of Russia's election interference. After the press reported on Flynn's contacts with the Russian Ambassador, Flynn lied to incoming Administration officials by saying he had not discussed sanctions on the calls. The officials publicly repeated those lies in press interviews. The FBI, which previously was investigating Flynn for other matters, interviewed him about the calls in the first week after the inauguration, and Flynn told similar lies to the FBI. On January 26, 2017, Department of Justice (DOJ) officials notified the White House that Flynn and the Russian Ambassador had discussed sanctions and that Flynn had been interviewed by the FBI. The next night, the President had a private dinner with FBI Director James Comey in which he asked for Comey's loyalty. On February 13, 2017, the President asked Flynn to resign. The following day, the President had a one-on-one conversation with Comey in which he said, "I hope you can see your way clear to letting this go, to letting Flynn go."

Evidence

1. Incoming National Security Advisor Flynn Discusses Sanctions on Russia with Russian Ambassador Sergey Kislyak

Shortly after the election, President-Elect Trump announced he would appoint Michael Flynn as his National Security Advisor.⁷⁸ For the next two months, Flynn played an active role on the Presidential Transition Team (PTT) coordinating policy positions and communicating with foreign government officials, including Russian Ambassador to the United States Sergey Kislyak.⁷⁹

On December 29, 2016, as noted in Volume II, Section II.A.4, *supra*, the Obama Administration announced that it was imposing sanctions and other measures on several Russian individuals and entities.⁸⁰ That day, multiple members of the PTT exchanged emails about the sanctions and the impact they would have on the incoming Administration, and Flynn informed members of the PTT that he would be speaking to the Russian Ambassador later in the day.⁸¹

⁷⁸ Flynn 11/16/17 302, at 7; *President-Elect Donald J. Trump Selects U.S. Senator Jeff Sessions for Attorney General, Lt. Gen. Michael Flynn as Assistant to the President for National Security Affairs and U.S. Rep. Mike Pompeo as Director of the Central Intelligence Agency*, President-Elect Donald J. Trump Press Release (Nov. 18, 2016); *see also, e.g.*, Bryan Bender, *Trump names Mike Flynn national security adviser*, Politico, (Nov. 17, 2016).

⁷⁹ Flynn 11/16/17 302, at 8-14; Priebus 10/13/17 302, at 3-5.

⁸⁰ *Statement by the President on Actions in Response to Russian Malicious Cyber Activity and Harassment*, The White House, Office of the Press Secretary (Dec. 29, 2016).

⁸¹ 12/29/16 Email, O'Brien to McFarland et al.; 12/29/16 Email, Bossert to Flynn et al.; 12/29/16 Email, McFarland to Flynn et al.; SF000001 (12/29/16 Text Message, Flynn to Flaherty) ("Tit for tat w Russia not good. Russian AMBO reaching out to me today."); Flynn 1/19/18 302, at 2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Flynn, who was in the Dominican Republic at the time, and K.T. McFarland, who was slated to become the Deputy National Security Advisor and was at the Mar-a-Lago resort in Florida with the President-Elect and other senior staff, talked by phone about what, if anything, Flynn should communicate to Kislyak about the sanctions.⁸² McFarland had spoken with incoming Administration officials about the sanctions and Russia's possible responses and thought she had mentioned in those conversations that Flynn was scheduled to speak with Kislyak.⁸³ Based on those conversations, McFarland informed Flynn that incoming Administration officials at Mar-a-Lago did not want Russia to escalate the situation.⁸⁴ At 4:43 p.m. that afternoon, McFarland sent an email to several officials about the sanctions and informed the group that "Gen [F]lynn is talking to russian ambassador this evening."⁸⁵

Approximately one hour later, McFarland met with the President-Elect and senior officials and briefed them on the sanctions and Russia's possible responses.⁸⁶ Incoming Chief of Staff Reince Priebus recalled that McFarland may have mentioned at the meeting that the sanctions situation could be "cooled down" and not escalated.⁸⁷ McFarland recalled that at the end of the meeting, someone may have mentioned to the President-Elect that Flynn was speaking to the Russian Ambassador that evening.⁸⁸ McFarland did not recall any response by the President-Elect.⁸⁹ Priebus recalled that the President-Elect viewed the sanctions as an attempt by the Obama Administration to embarrass him by delegitimizing his election.⁹⁰

Immediately after discussing the sanctions with McFarland on December 29, 2016, Flynn called Kislyak and requested that Russia respond to the sanctions only in a reciprocal manner, without escalating the situation.⁹¹ After the call, Flynn briefed McFarland on its substance.⁹² Flynn told McFarland that the Russian response to the sanctions was not going to be escalatory because Russia wanted a good relationship with the Trump Administration.⁹³ On December 30, 2016, Russian President Vladimir Putin announced that Russia would not take retaliatory measures

⁸² Statement of Offense at 2-3, *United States v. Michael T. Flynn*, 1:17-cr-232 (D.D.C. Dec. 1, 2017), Doc. 4 (*Flynn* Statement of Offense); Flynn 11/17/17 302, at 3-4; Flynn 11/20/17 302, at 3; McFarland 12/22/17 302, at 6-7.

⁸³ McFarland 12/22/17 302, at 4-7 (recalling discussions about this issue with Bannon and Priebus).

⁸⁴ *Flynn* Statement of Offense, at 3; Flynn 11/17/17 302, at 3-4; McFarland 12/22/17 302, at 6-7.

⁸⁵ 12/29/16 Email, McFarland to Flynn et al.

⁸⁶ McFarland 12/22/17 302, at 7.

⁸⁷ Priebus 1/18/18 302, at 3.

⁸⁸ McFarland 12/22/17 302, at 7. Priebus thought it was possible that McFarland had mentioned Flynn's scheduled call with Kislyak at this meeting, although he was not certain. Priebus 1/18/18 302, at 3.

⁸⁹ McFarland 12/22/17 302, at 7.

⁹⁰ Priebus 1/18/18 302, at 3.

⁹¹ *Flynn* Statement of Offense, at 3; Flynn 11/17/17 302, at 3-4.

⁹² *Flynn* Statement of Offense, at 3; McFarland 12/22/17 302, at 7-8; Flynn 11/17/17 302, at 4.

⁹³ McFarland 12/22/17 302, at 8.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

in response to the sanctions at that time and would instead “plan . . . further steps to restore Russian-US relations based on the policies of the Trump Administration.”⁹⁴ Following that announcement, the President-Elect tweeted, “Great move on delay (by V. Putin) - I always knew he was very smart!”⁹⁵

On December 31, 2016, Kislyak called Flynn and told him that Flynn’s request had been received at the highest levels and Russia had chosen not to retaliate in response to the request.⁹⁶ Later that day, Flynn told McFarland about this follow-up conversation with Kislyak and Russia’s decision not to escalate the sanctions situation based on Flynn’s request.⁹⁷ McFarland recalled that Flynn thought his phone call had made a difference.⁹⁸ Flynn spoke with other incoming Administration officials that day, but does not recall whether they discussed the sanctions.⁹⁹

Flynn recalled discussing the sanctions issue with incoming Administration official Stephen Bannon the next day.¹⁰⁰ Flynn said that Bannon appeared to know about Flynn’s conversations with Kislyak, and he and Bannon agreed that they had “stopped the train on Russia’s response” to the sanctions.¹⁰¹ On January 3, 2017, Flynn saw the President-Elect in person and thought they discussed the Russian reaction to the sanctions, but Flynn did not have a specific recollection of telling the President-Elect about the substance of his calls with Kislyak.¹⁰²

Members of the intelligence community were surprised by Russia’s decision not to retaliate in response to the sanctions.¹⁰³ When analyzing Russia’s response, they became aware of Flynn’s discussion of sanctions with Kislyak.¹⁰⁴ Previously, the FBI had opened an investigation of Flynn based on his relationship with the Russian government.¹⁰⁵ Flynn’s contacts with Kislyak became a key component of that investigation.¹⁰⁶

⁹⁴ *Statement by the President of Russia*, President of Russia (Dec. 30, 2016) 12/30/16.

⁹⁵ @realDonaldTrump 12/30/16 (2:41 p.m. ET) Tweet.

⁹⁶ Flynn 1/19/18 302, at 3; *Flynn Statement of Offense*, at 3.

⁹⁷ Flynn 1/19/18 302, at 3; Flynn 11/17/17 302, at 6; McFarland 12/22/17 302, at 10; *Flynn Statement of Offense*, at 3.

⁹⁸ McFarland 12/22/17 302, at 10; *see* Flynn 1/19/18 302, at 4.

⁹⁹ Flynn 11/17/17 302, at 5-6.

¹⁰⁰ Flynn 1/19/18 302, at 4-5. Bannon recalled meeting with Flynn that day, but said he did not remember discussing sanctions with him. Bannon 2/12/18 302, at 9.

¹⁰¹ Flynn 11/21/17 302, at 1; Flynn 1/19/18 302, at 5.

¹⁰² Flynn 1/19/18 302, at 6; Flynn 11/17/17 302, at 6.

¹⁰³ McCord 7/17/17 302, at 2.

¹⁰⁴ McCord 7/17/17 302, at 2.

¹⁰⁵ McCord 7/17/17 302, at 2-3; Comey 11/15/17 302, at 5.

¹⁰⁶ McCord 7/17/17 302, at 2-3.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

2. President-Elect Trump is Briefed on the Intelligence Community's Assessment of Russian Interference in the Election and Congress Opens Election-Interference Investigations

On January 6, 2017, as noted in Volume II, Section II.A.4, *supra*, intelligence officials briefed President-Elect Trump and the incoming Administration on the intelligence community's assessment that Russia had interfered in the 2016 presidential election.¹⁰⁷ When the briefing concluded, Comey spoke with the President-Elect privately to brief him on unverified, personally sensitive allegations compiled by Steele.¹⁰⁸ According to a memorandum Comey drafted immediately after their private discussion, the President-Elect began the meeting by telling Comey he had conducted himself honorably over the prior year and had a great reputation.¹⁰⁹ The President-Elect stated that he thought highly of Comey, looked forward to working with him, and hoped that he planned to stay on as FBI director.¹¹⁰ Comey responded that he intended to continue serving in that role.¹¹¹ Comey then briefed the President-Elect on the sensitive material in the Steele reporting.¹¹² Comey recalled that the President-Elect seemed defensive, so Comey decided

¹⁰⁷ *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 1-2).

¹⁰⁸ Comey 11/15/17 302, at 3; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 1-2).

¹⁰⁹ Comey 1/7/17 Memorandum, at 1. Comey began drafting the memorandum summarizing the meeting immediately after it occurred. Comey 11/15/17 302, at 4. He finished the memorandum that evening and finalized it the following morning. Comey 11/15/17 302, at 4.

¹¹⁰ Comey 1/7/17 Memorandum, at 1; Comey 11/15/17 302, at 3. Comey identified several other occasions in January 2017 when the President reiterated that he hoped Comey would stay on as FBI director. On January 11, President-Elect Trump called Comey to discuss the Steele reports and stated that he thought Comey was doing great and the President-Elect hoped he would remain in his position as FBI director. Comey 11/15/17 302, at 4; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (testimony of James B. Comey, former Director of the FBI), CQ Cong. Transcripts, at 90. (“[D]uring that call, he asked me again, ‘Hope you’re going to stay, you’re doing a great job.’ And I told him that I intended to.”). On January 22, at a White House reception honoring law enforcement, the President greeted Comey and said he looked forward to working with him. *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (testimony of James B. Comey, former Director of the FBI), CQ Cong. Transcripts, at 22. And as discussed in greater detail in Volume II, Section II.D, *infra*, on January 27, the President invited Comey to dinner at the White House and said he was glad Comey wanted to stay on as FBI Director.

¹¹¹ Comey 1/7/17 Memorandum, at 1; Comey 11/15/17 302, at 3.

¹¹² Comey 1/7/17 Memorandum, at 1-2; Comey 11/15/17 302, at 3. Comey's briefing included the Steele reporting's unverified allegation that the Russians had compromising tapes of the President involving conduct when he was a private citizen during a 2013 trip to Moscow for the Miss Universe Pageant. During the 2016 presidential campaign, a similar claim may have reached candidate Trump. On October 30, 2016, Michael Cohen received a text from Russian businessman Giorgi Rtskhaladze that said, “Stopped flow of tapes from Russia but not sure if there's anything else. Just so you know . . .” 10/30/16 Text Message, Rtskhaladze to Cohen. Rtskhaladze said “tapes” referred to compromising tapes of Trump rumored to be held by persons associated with the Russian real estate conglomerate Crocus Group, which had helped host

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

to assure him that the FBI was not investigating him personally.¹¹³ Comey recalled he did not want the President-Elect to think of the conversation as a “J. Edgar Hoover move.”¹¹⁴

On January 10, 2017, the media reported that Comey had briefed the President-Elect on the Steele reporting,¹¹⁵ and BuzzFeed News published information compiled by Steele online, stating that the information included “specific, unverified, and potentially unverifiable allegations of contact between Trump aides and Russian operatives.”¹¹⁶ The next day, the President-Elect expressed concern to intelligence community leaders about the fact that the information had leaked and asked whether they could make public statements refuting the allegations in the Steele reports.¹¹⁷

In the following weeks, three Congressional committees opened investigations to examine Russia’s interference in the election and whether the Trump Campaign had colluded with Russia.¹¹⁸ On January 13, 2017, the Senate Select Committee on Intelligence (SSCI) announced that it would conduct a bipartisan inquiry into Russian interference in the election, including any “links between Russia and individuals associated with political campaigns.”¹¹⁹ On January 25, 2017, the House Permanent Select Committee on Intelligence (HPSCI) announced that it had been conducting an investigation into Russian election interference and possible coordination with the political campaigns.¹²⁰ And on February 2, 2017, the Senate Judiciary Committee announced that it too would investigate Russian efforts to intervene in the election.¹²¹

the 2013 Miss Universe Pageant in Russia. Rtskhiladze 4/4/18 302, at 12. Cohen said he spoke to Trump about the issue after receiving the texts from Rtskhiladze. Cohen 9/12/18 302, at 13. Rtskhiladze said he was told the tapes were fake, but he did not communicate that to Cohen. Rtskhiladze 5/10/18 302, at 7.

¹¹³ Comey 11/15/17 302, at 3-4; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 2).

¹¹⁴ Comey 11/15/17 302, at 3.

¹¹⁵ See, e.g., Evan Perez et al., *Intel chiefs presented Trump with claims of Russian efforts to compromise him*, CNN (Jan. 10, 2017; updated Jan. 12, 2017).

¹¹⁶ Ken Bensinger et al., *These Reports Allege Trump Has Deep Ties To Russia*, BuzzFeed News (Jan. 10, 2017).

¹¹⁷ See 1/11/17 Email, Clapper to Comey (“He asked if I could put out a statement. He would prefer of course that I say the documents are bogus, which, of course, I can’t do.”); 1/12/17 Email, Comey to Clapper (“He called me at 5 yesterday and we had a very similar conversation.”); Comey 11/15/17 302, at 4-5.

¹¹⁸ See *2016 Presidential Election Investigation Fast Facts*, CNN (first published Oct. 12, 2017; updated Mar. 1, 2019) (summarizing starting dates of Russia-related investigations).

¹¹⁹ *Joint Statement on Committee Inquiry into Russian Intelligence Activities*, SSCI (Jan. 13, 2017).

¹²⁰ *Joint Statement on Progress of Bipartisan HPSCI Inquiry into Russian Active Measures*, HPSCI (Jan. 25, 2017).

¹²¹ *Joint Statement from Senators Graham and Whitehouse on Investigation into Russian Influence on Democratic Nations’ Elections* (Feb. 2, 2017).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

3. Flynn Makes False Statements About his Communications with Kislyak to Incoming Administration Officials, the Media, and the FBI

On January 12, 2017, a Washington Post columnist reported that Flynn and Kislyak communicated on the day the Obama Administration announced the Russia sanctions.¹²² The column questioned whether Flynn had said something to “undercut the U.S. sanctions” and whether Flynn’s communications had violated the letter or spirit of the Logan Act.¹²³

President-Elect Trump called Priebus after the story was published and expressed anger about it.¹²⁴ Priebus recalled that the President-Elect asked, “What the hell is this all about?”¹²⁵ Priebus called Flynn and told him that the President-Elect was angry about the reporting on Flynn’s conversations with Kislyak.¹²⁶ Flynn recalled that he felt a lot of pressure because Priebus had spoken to the “boss” and said Flynn needed to “kill the story.”¹²⁷ Flynn directed McFarland to call the Washington Post columnist and inform him that no discussion of sanctions had occurred.¹²⁸ McFarland recalled that Flynn said words to the effect of, “I want to kill the story.”¹²⁹ McFarland made the call as Flynn had requested although she knew she was providing false information, and the Washington Post updated the column to reflect that a “Trump official” had denied that Flynn and Kislyak discussed sanctions.¹³⁰

When Priebus and other incoming Administration officials questioned Flynn internally about the Washington Post column, Flynn maintained that he had not discussed sanctions with Kislyak.¹³¹ Flynn repeated that claim to Vice President-Elect Michael Pence and to incoming press secretary Sean Spicer.¹³² In subsequent media interviews in mid-January, Pence, Priebus, and

¹²² David Ignatius, *Why did Obama dawdle on Russia’s hacking?*, Washington Post (Jan. 12, 2017).

¹²³ David Ignatius, *Why did Obama dawdle on Russia’s hacking?*, Washington Post (Jan. 12, 2017). The Logan Act makes it a crime for “[a]ny citizen of the United States, wherever he may be” to “without authority of the United States, directly or indirectly commence[] or carr[y] on any correspondence or intercourse with any foreign government or any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States.” 18 U.S.C. § 953.

¹²⁴ Priebus 1/18/18 302, at 6.

¹²⁵ Priebus 1/18/18 302, at 6.

¹²⁶ Priebus 1/18/18 302, at 6.

¹²⁷ Flynn 11/21/17 302, at 1; Flynn 11/20/17 302, at 6.

¹²⁸ McFarland 12/22/17 302, at 12-13.

¹²⁹ McFarland 12/22/17 302, at 12.

¹³⁰ McFarland 12/22/17 302, at 12-13; McFarland 8/29/17 302, at 8; *see* David Ignatius, *Why did Obama dawdle on Russia’s hacking?*, Washington Post (Jan. 12, 2017).

¹³¹ Flynn 11/17/17 302, at 1, 8; Flynn 1/19/18 302, at 7; Priebus 10/13/17 302, at 7-8; S. Miller 8/31/17 302, at 8-11.

¹³² Flynn 11/17/17 302, at 1, 8; Flynn 1/19/18 302, at 7; S. Miller 8/31/17 302, at 10-11.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Spicer denied that Flynn and Kislyak had discussed sanctions, basing those denials on their conversations with Flynn.¹³³

The public statements of incoming Administration officials denying that Flynn and Kislyak had discussed sanctions alarmed senior DOJ officials, who were aware that the statements were not true.¹³⁴ Those officials were concerned that Flynn had lied to his colleagues—who in turn had unwittingly misled the American public—creating a compromise situation for Flynn because the Department of Justice assessed that the Russian government could prove Flynn lied.¹³⁵ The FBI investigative team also believed that Flynn’s calls with Kislyak and subsequent denials about discussing sanctions raised potential Logan Act issues and were relevant to the FBI’s broader Russia investigation.¹³⁶

On January 20, 2017, President Trump was inaugurated and Flynn was sworn in as National Security Advisor. On January 23, 2017, Spicer delivered his first press briefing and stated that he had spoken with Flynn the night before, who confirmed that the calls with Kislyak were about topics unrelated to sanctions.¹³⁷ Spicer’s statements added to the Department of Justice’s concerns that Russia had leverage over Flynn based on his lies and could use that derogatory information to compromise him.¹³⁸

On January 24, 2017, Flynn agreed to be interviewed by agents from the FBI.¹³⁹ During the interview, which took place at the White House, Flynn falsely stated that he did not ask Kislyak to refrain from escalating the situation in response to the sanctions on Russia imposed by the Obama Administration.¹⁴⁰ Flynn also falsely stated that he did not remember a follow-up conversation in which Kislyak stated that Russia had chosen to moderate its response to those sanctions as a result of Flynn’s request.¹⁴¹

¹³³ *Face the Nation Interview with Vice President-Elect Pence*, CBS (Jan. 15, 2017); Julie Hirschfield Davis et al., *Trump National Security Advisor Called Russian Envoy Day Before Sanctions Were Imposed*, Washington Post (Jan. 13, 2017); *Meet the Press Interview with Reince Priebus*, NBC (Jan. 15, 2017).

¹³⁴ Yates 8/15/17 302, at 2-3; McCord 7/17/17 302, at 3-4; McCabe 8/17/17 302, at 5 (DOJ officials were “really freaked out about it”).

¹³⁵ Yates 8/15/17 302, at 3; McCord 7/17/17 302, at 4.

¹³⁶ McCord 7/17/17 302, at 4; McCabe 8/17/17 302, at 5-6.

¹³⁷ Sean Spicer, *White House Daily Briefing*, C-SPAN (Jan. 23, 2017).

¹³⁸ Yates 8/15/17 302, at 4; Axelrod 7/20/17 302, at 5.

¹³⁹ *Flynn Statement of Offense*, at 2.

¹⁴⁰ *Flynn Statement of Offense*, at 2.

¹⁴¹ *Flynn Statement of Offense*, at 2. On December 1, 2017, Flynn admitted to making these false statements and pleaded guilty to violating 18 U.S.C. § 1001, which makes it a crime to knowingly and willfully “make[] any materially false, fictitious, or fraudulent statement or representation” to federal law enforcement officials. See Volume I, Section IV.A.7, *supra*.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~4. DOJ Officials Notify the White House of Their Concerns About Flynn

On January 26, 2017, Acting Attorney General Sally Yates contacted White House Counsel Donald McGahn and informed him that she needed to discuss a sensitive matter with him in person.¹⁴² Later that day, Yates and Mary McCord, a senior national security official at the Department of Justice, met at the White House with McGahn and White House Counsel's Office attorney James Burnham.¹⁴³ Yates said that the public statements made by the Vice President denying that Flynn and Kislyak discussed sanctions were not true and put Flynn in a potentially compromised position because the Russians would know he had lied.¹⁴⁴ Yates disclosed that Flynn had been interviewed by the FBI.¹⁴⁵ She declined to answer a specific question about how Flynn had performed during that interview,¹⁴⁶ but she indicated that Flynn's statements to the FBI were similar to the statements he had made to Pence and Spicer denying that he had discussed sanctions.¹⁴⁷ McGahn came away from the meeting with the impression that the FBI had not pinned Flynn down in lies,¹⁴⁸ but he asked John Eisenberg, who served as legal advisor to the National Security Council, to examine potential legal issues raised by Flynn's FBI interview and his contacts with Kislyak.¹⁴⁹

That afternoon, McGahn notified the President that Yates had come to the White House to discuss concerns about Flynn.¹⁵⁰ McGahn described what Yates had told him, and the President asked him to repeat it, so he did.¹⁵¹ McGahn recalled that when he described the FBI interview of Flynn, he said that Flynn did not disclose having discussed sanctions with Kislyak, but that there may not have been a clear violation of 18 U.S.C. § 1001.¹⁵² The President asked about Section 1001, and McGahn explained the law to him, and also explained the Logan Act.¹⁵³ The President

¹⁴² Yates 8/15/17 302, at 6.

¹⁴³ Yates 8/15/17 302, at 6; McCord 7/17/17 302, at 6; SCR015_000198 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President).

¹⁴⁴ Yates 8/15/17 302, at 6-8; McCord 7/17/17 302, at 6-7; Burnham 11/3/17 302, at 4; SCR015_000198 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President).

¹⁴⁵ McGahn 11/30/17 302, at 5; Yates 8/15/17 302, at 7; McCord 7/17/17 302, at 7; Burnham 11/3/17 302, at 4.

¹⁴⁶ Yates 8/15/17 302, at 7; McCord 7/17/17 302, at 7.

¹⁴⁷ SCR015_000198 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); Burnham 11/3/17 302, at 4.

¹⁴⁸ McGahn 11/30/17 302, at 5.

¹⁴⁹ SCR015_000198 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); McGahn 11/30/17 302, at 6, 8.

¹⁵⁰ McGahn 11/30/17 302, at 6; SCR015_000278 (White House Counsel's Office Memorandum re: "Flynn Tick Tock") (on January 26, "McGahn IMMEDIATELY advises POTUS"); SCR015_000198 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President).

¹⁵¹ McGahn 11/30/17 302, at 6.

¹⁵² McGahn 11/30/17 302, at 7.

¹⁵³ McGahn 11/30/17 302, at 7.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

instructed McGahn to work with Priebus and Bannon to look into the matter further and directed that they not discuss it with any other officials.¹⁵⁴ Priebus recalled that the President was angry with Flynn in light of what Yates had told the White House and said, “not again, this guy, this stuff.”¹⁵⁵

That evening, the President dined with several senior advisors and asked the group what they thought about FBI Director Comey.¹⁵⁶ According to Director of National Intelligence Dan Coats, who was at the dinner, no one openly advocated terminating Comey but the consensus on him was not positive.¹⁵⁷ Coats told the group that he thought Comey was a good director.¹⁵⁸ Coats encouraged the President to meet Comey face-to-face and spend time with him before making a decision about whether to retain him.¹⁵⁹

5. McGahn has a Follow-Up Meeting About Flynn with Yates; President Trump has Dinner with FBI Director Comey

The next day, January 27, 2017, McGahn and Eisenberg discussed the results of Eisenberg’s initial legal research into Flynn’s conduct, and specifically whether Flynn may have violated the Espionage Act, the Logan Act, or 18 U.S.C. § 1001.¹⁶⁰ Based on his preliminary research, Eisenberg informed McGahn that there was a possibility that Flynn had violated 18 U.S.C. § 1001 and the Logan Act.¹⁶¹ Eisenberg noted that the United States had never successfully prosecuted an individual under the Logan Act and that Flynn could have possible defenses, and

¹⁵⁴ McGahn 11/30/17 302, at 7; SCR015_000198-99 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President).

¹⁵⁵ Priebus 10/13/17 302, at 8. Several witnesses said that the President was unhappy with Flynn for other reasons at this time. Bannon said that Flynn’s standing with the President was not good by December 2016. Bannon 2/12/18 302, at 12. The President-Elect had concerns because President Obama had warned him about Flynn shortly after the election. Bannon 2/12/18 302, at 4-5; Hicks 12/8/17 302, at 7 (President Obama’s comment sat with President-Elect Trump more than Hicks expected). Priebus said that the President had become unhappy with Flynn even before the story of his calls with Kislyak broke and had become so upset with Flynn that he would not look at him during intelligence briefings. Priebus 1/18/18 302, at 8. Hicks said that the President thought Flynn had bad judgment and was angered by tweets sent by Flynn and his son, and she described Flynn as “being on thin ice” by early February 2017. Hicks 12/8/17 302, at 7, 10.

¹⁵⁶ Coats 6/14/17 302, at 2.

¹⁵⁷ Coats 6/14/17 302, at 2.

¹⁵⁸ Coats 6/14/17 302, at 2.

¹⁵⁹ Coats 6/14/17 302, at 2.

¹⁶⁰ SCR015_000199 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); McGahn 11/30/17 302, at 8.

¹⁶¹ SCR015_000199 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); Eisenberg 11/29/17 302, at 9.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

told McGahn that he believed it was unlikely that a prosecutor would pursue a Logan Act charge under the circumstances.¹⁶²

That same morning, McGahn asked Yates to return to the White House to discuss Flynn again.¹⁶³ In that second meeting, McGahn expressed doubts that the Department of Justice would bring a Logan Act prosecution against Flynn, but stated that the White House did not want to take action that would interfere with an ongoing FBI investigation of Flynn.¹⁶⁴ Yates responded that Department of Justice had notified the White House so that it could take action in response to the information provided.¹⁶⁵ McGahn ended the meeting by asking Yates for access to the underlying information the Department of Justice possessed pertaining to Flynn's discussions with Kislyak.¹⁶⁶

Also on January 27, the President called FBI Director Comey and invited him to dinner that evening.¹⁶⁷ Priebus recalled that before the dinner, he told the President something like, "don't talk about Russia, whatever you do," and the President promised he would not talk about Russia at the dinner.¹⁶⁸ McGahn had previously advised the President that he should not communicate directly with the Department of Justice to avoid the perception or reality of political interference in law enforcement.¹⁶⁹ When Bannon learned about the President's planned dinner with Comey, he suggested that he or Priebus also attend, but the President stated that he wanted to dine with Comey alone.¹⁷⁰ Comey said that when he arrived for the dinner that evening, he was surprised and concerned to see that no one else had been invited.¹⁷¹

¹⁶² SCR015_000199 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); Eisenberg 11/29/17 302, at 9.

¹⁶³ SCR015_000199 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); McGahn 11/30/17 302, at 8; Yates 8/15/17 302, at 8.

¹⁶⁴ Yates 8/15/17 302, at 9; McGahn 11/30/17 302, at 8.

¹⁶⁵ Yates 8/15/17 302, at 9; Burnham 11/3/17 302, at 5; *see* SCR015_000199 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President) ("Yates was unwilling to confirm or deny that there was an ongoing investigation but did indicate that the Department of Justice would not object to the White House taking action against Flynn.").

¹⁶⁶ Yates 9/15/17 302, at 9; Burnham 11/3/17 302, at 5. In accordance with McGahn's request, the Department of Justice made the underlying information available and Eisenberg viewed the information in early February. Eisenberg 11/29/17 302, at 5; FBI 2/7/17 Electronic Communication, at 1 (documenting 2/2/17 meeting with Eisenberg).

¹⁶⁷ Comey 11/15/17 302, at 6; SCR012b_000001 (President's Daily Diary, 1/27/17); *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 2-3).

¹⁶⁸ Priebus 10/13/17 302, at 17.

¹⁶⁹ *See* McGahn 11/30/17 302, at 9; Dhillon 11/21/17 302, at 2; Bannon 2/12/18 302, at 17.

¹⁷⁰ Bannon 2/12/18 302, at 17.

¹⁷¹ *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 3); *see* Comey 11/15/17 302, at 6.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Comey provided an account of the dinner in a contemporaneous memo, an interview with this Office, and congressional testimony. According to Comey's account of the dinner, the President repeatedly brought up Comey's future, asking whether he wanted to stay on as FBI director.¹⁷² Because the President had previously said he wanted Comey to stay on as FBI director, Comey interpreted the President's comments as an effort to create a patronage relationship by having Comey ask for his job.¹⁷³ The President also brought up the Steele reporting that Comey had raised in the January 6, 2017 briefing and stated that he was thinking about ordering the FBI to investigate the allegations to prove they were false.¹⁷⁴ Comey responded that the President should think carefully about issuing such an order because it could create a narrative that the FBI was investigating him personally, which was incorrect.¹⁷⁵ Later in the dinner, the President brought up Flynn and said, "the guy has serious judgment issues."¹⁷⁶ Comey did not comment on Flynn and the President did not acknowledge any FBI interest in or contact with Flynn.¹⁷⁷

According to Comey's account, at one point during the dinner the President stated, "I need loyalty, I expect loyalty."¹⁷⁸ Comey did not respond and the conversation moved on to other topics, but the President returned to the subject of Comey's job at the end of the dinner and repeated, "I need loyalty."¹⁷⁹ Comey responded, "You will always get honesty from me."¹⁸⁰ The

¹⁷² Comey 11/15/17 302, at 7; Comey 1/28/17 Memorandum, at 1, 3; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 3).

¹⁷³ Comey 11/15/17 302, at 7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 3).

¹⁷⁴ Comey 1/28/17 Memorandum, at 3; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

¹⁷⁵ Comey 1/28/17 Memorandum, at 3; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

¹⁷⁶ Comey 1/28/17 Memorandum, at 4; Comey 11/15/17 302, at 7.

¹⁷⁷ Comey 1/28/17 Memorandum, at 4; Comey 11/15/17 302, at 7.

¹⁷⁸ Comey 1/28/18 Memorandum, at 2; Comey 11/15/17 302, at 7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 3).

¹⁷⁹ Comey 1/28/17 Memorandum, at 3; Comey 11/15/17 302, at 7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 3-4).

¹⁸⁰ Comey 1/28/17 Memorandum, at 3; Comey 11/15/17 302, at 7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

President said, “That’s what I want, honest loyalty.”¹⁸¹ Comey said, “You will get that from me.”¹⁸²

After Comey’s account of the dinner became public, the President and his advisors disputed that he had asked for Comey’s loyalty.¹⁸³ The President also indicated that he had not invited Comey to dinner, telling a reporter that he thought Comey had “asked for the dinner” because “he wanted to stay on.”¹⁸⁴ But substantial evidence corroborates Comey’s account of the dinner invitation and the request for loyalty. The President’s Daily Diary confirms that the President “extend[ed] a dinner invitation” to Comey on January 27.¹⁸⁵ With respect to the substance of the dinner conversation, Comey documented the President’s request for loyalty in a memorandum he began drafting the night of the dinner;¹⁸⁶ senior FBI officials recall that Comey told them about the loyalty request shortly after the dinner occurred;¹⁸⁷ and Comey described the request while

¹⁸¹ Comey 1/28/17 Memorandum, at 3; Comey 11/15/17 302, at 7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

¹⁸² Comey 1/28/17 Memorandum, at 3; Comey 11/15/17 302, at 7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

¹⁸³ See, e.g., Michael S. Schmidt, *In a Private Dinner, Trump Demanded Loyalty. Comey Demurred.*, New York Times (May 11, 2017) (quoting Sarah Sanders as saying, “[The President] would never even suggest the expectation of personal loyalty”); Ali Vitali, *Trump Never Asked for Comey’s Loyalty, President’s Personal Lawyer Says*, NBC (June 8, 2017) (quoting the President’s personal counsel as saying, “The president also never told Mr. Comey, ‘I need loyalty, I expect loyalty,’ in form or substance.”); Remarks by President Trump in Press Conference, White House (June 9, 2017) (“I hardly know the man. I’m not going to say ‘I want you to pledge allegiance.’ Who would do that? Who would ask a man to pledge allegiance under oath?”). In a private conversation with Spicer, the President stated that he had never asked for Comey’s loyalty, but added that if he had asked for loyalty, “Who cares?” Spicer 10/16/17 302, at 4. The President also told McGahn that he never said what Comey said he had. McGahn 12/12/17 302, at 17.

¹⁸⁴ *Interview of Donald J. Trump*, NBC (May 11, 2017).

¹⁸⁵ SCR012b_000001 (President’s Daily Diary, 1/27/17) (reflecting that the President called Comey in the morning on January 27 and “[t]he purpose of the call was to extend a dinner invitation”). In addition, two witnesses corroborate Comey’s account that the President reached out to schedule the dinner, without Comey having asked for it. Priebus 10/13/17 302, at 17 (the President asked to schedule the January 27 dinner because he did not know much about Comey and intended to ask him whether he wanted to stay on as FBI Director); Rybicki 11/21/18 302, at 3 (recalling that Comey told him about the President’s dinner invitation on the day of the dinner).

¹⁸⁶ Comey 11/15/17 302, at 8; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

¹⁸⁷ McCabe 8/17/17 302, at 9-10; Rybicki 11/21/18 302, at 3. After leaving the White House, Comey called Deputy Director of the FBI Andrew McCabe, summarized what he and the President had discussed, including the President’s request for loyalty, and expressed shock over the President’s request. McCabe 8/17/17 302, at 9. Comey also convened a meeting with his senior leadership team to discuss what the President had asked of him during the dinner and whether he had handled the request for loyalty properly. McCabe 8/17/17 302, at 10; Rybicki 11/21/18 302, at 3. In addition, Comey distributed his

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

under oath in congressional proceedings and in a subsequent interview with investigators subject to penalties for lying under 18 U.S.C. § 1001. Comey's memory of the details of the dinner, including that the President requested loyalty, has remained consistent throughout.¹⁸⁸

6. Flynn's Resignation

On February 2, 2017, Eisenberg reviewed the underlying information relating to Flynn's calls with Kislyak.¹⁸⁹ Eisenberg recalled that he prepared a memorandum about criminal statutes that could apply to Flynn's conduct, but he did not believe the White House had enough information to make a definitive recommendation to the President.¹⁹⁰ Eisenberg and McGahn discussed that Eisenberg's review of the underlying information confirmed his preliminary conclusion that Flynn was unlikely to be prosecuted for violating the Logan Act.¹⁹¹ Because White House officials were uncertain what Flynn had told the FBI, however, they could not assess his exposure to prosecution for violating 18 U.S.C. § 1001.¹⁹²

The week of February 6, Flynn had a one-on-one conversation with the President in the Oval Office about the negative media coverage of his contacts with Kislyak.¹⁹³ Flynn recalled that the President was upset and asked him for information on the conversations.¹⁹⁴ Flynn listed the specific dates on which he remembered speaking with Kislyak, but the President corrected one of the dates he listed.¹⁹⁵ The President asked Flynn what he and Kislyak discussed and Flynn responded that he might have talked about sanctions.¹⁹⁶

memorandum documenting the dinner to his senior leadership team, and McCabe confirmed that the memorandum captured what Comey said on the telephone call immediately following the dinner. McCabe 8/17/17 302, at 9-10.

¹⁸⁸ There also is evidence that corroborates other aspects of the memoranda Comey wrote documenting his interactions with the President. For example, Comey recalled, and his memoranda reflect, that he told the President in his January 6, 2017 meeting, and on phone calls on March 30 and April 11, 2017, that the FBI was not investigating the President personally. On May 8, 2017, during White House discussions about firing Comey, the President told Rosenstein and others that Comey had told him three times that he was not under investigation, including once in person and twice on the phone. Gauhar-000058 (Gauhar 5/16/17 Notes).

¹⁸⁹ Eisenberg 11/29/17 302, at 5; FBI 2/7/17 Electronic Communication, at 1 (documenting 2/2/17 meeting with Eisenberg).

¹⁹⁰ Eisenberg 11/29/17 302, at 6.

¹⁹¹ Eisenberg 11/29/17 302, at 9; SCR015_000200 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President).

¹⁹² Eisenberg 11/29/17 302, at 9.

¹⁹³ Flynn 11/21/17 302, at 2.

¹⁹⁴ Flynn 11/21/17 302, at 2.

¹⁹⁵ Flynn 11/21/17 302, at 2.

¹⁹⁶ Flynn 11/21/17 302, at 2-3.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

On February 9, 2017, the Washington Post reported that Flynn discussed sanctions with Kislyak the month before the President took office.¹⁹⁷ After the publication of that story, Vice President Pence learned of the Department of Justice's notification to the White House about the content of Flynn's calls.¹⁹⁸ He and other advisors then sought access to and reviewed the underlying information about Flynn's contacts with Kislyak.¹⁹⁹ FBI Deputy Director Andrew McCabe, who provided the White House officials access to the information and was present when they reviewed it, recalled the officials asking him whether Flynn's conduct violated the Logan Act.²⁰⁰ McCabe responded that he did not know, but the FBI was investigating the matter because it was a possibility.²⁰¹ Based on the evidence of Flynn's contacts with Kislyak, McGahn and Priebus concluded that Flynn could not have forgotten the details of the discussions of sanctions and had instead been lying about what he discussed with Kislyak.²⁰² Flynn had also told White House officials that the FBI had told him that the FBI was closing out its investigation of him,²⁰³ but Eisenberg did not believe him.²⁰⁴ After reviewing the materials and speaking with Flynn, McGahn and Priebus concluded that Flynn should be terminated and recommended that course of action to the President.²⁰⁵

That weekend, Flynn accompanied the President to Mar-a-Lago.²⁰⁶ Flynn recalled that on February 12, 2017, on the return flight to D.C. on Air Force One, the President asked him whether he had lied to the Vice President.²⁰⁷ Flynn responded that he may have forgotten details of his calls, but he did not think he lied.²⁰⁸ The President responded, "Okay. That's fine. I got it."²⁰⁹

¹⁹⁷ Greg Miller et al., *National security adviser Flynn discussed sanctions with Russian ambassador, despite denials, officials say*, Washington Post (Feb. 9, 2017).

¹⁹⁸ SCR015_000202 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); McGahn 11/30/17 302, at 12.

¹⁹⁹ SCR015_000202 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); McCabe 8/17/17 302, at 11-13; Priebus 10/13/17 302, at 10; McGahn 11/30/17 302, at 12.

²⁰⁰ McCabe 8/17/17 302, at 13.

²⁰¹ McCabe 8/17/17 302, at 13.

²⁰² McGahn 11/30/17 302, at 12; Priebus 1/18/18 302, at 8; Priebus 10/13/17 302, at 10; SCR015_000202 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President).

²⁰³ McGahn 11/30/17 302, at 11; Eisenberg 11/29/17 302, at 9; Priebus 10/13/17 302, at 11.

²⁰⁴ Eisenberg 11/29/17 302, at 9.

²⁰⁵ SCR015_000202 (2/15/17 Draft Memorandum to file from the Office of the Counsel to the President); Priebus 10/13/17 302, at 10; McGahn 11/30/17 302, at 12.

²⁰⁶ Flynn 11/17/17 302, at 8.

²⁰⁷ Flynn 1/19/18 302, at 9; Flynn 11/17/17 302, at 8.

²⁰⁸ Flynn 11/17/17 302, at 8; Flynn 1/19/18 302, at 9.

²⁰⁹ Flynn 1/19/18 302, at 9.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

On February 13, 2017, Priebus told Flynn he had to resign.²¹⁰ Flynn said he wanted to say goodbye to the President, so Priebus brought him to the Oval Office.²¹¹ Priebus recalled that the President hugged Flynn, shook his hand, and said, “We’ll give you a good recommendation. You’re a good guy. We’ll take care of you.”²¹²

Talking points on the resignation prepared by the White House Counsel’s Office and distributed to the White House communications team stated that McGahn had advised the President that Flynn was unlikely to be prosecuted, and the President had determined that the issue with Flynn was one of trust.²¹³ Spicer told the press the next day that Flynn was forced to resign “not based on a legal issue, but based on a trust issue, [where] a level of trust between the President and General Flynn had eroded to the point where [the President] felt he had to make a change.”²¹⁴

7. The President Discusses Flynn with FBI Director Comey

On February 14, 2017, the day after Flynn’s resignation, the President had lunch at the White House with New Jersey Governor Chris Christie.²¹⁵ According to Christie, at one point during the lunch the President said, “Now that we fired Flynn, the Russia thing is over.”²¹⁶ Christie laughed and responded, “No way.”²¹⁷ He said, “this Russia thing is far from over” and “[w]e’ll be here on Valentine’s Day 2018 talking about this.”²¹⁸ The President said, “[w]hat do you mean? Flynn met with the Russians. That was the problem. I fired Flynn. It’s over.”²¹⁹ Christie recalled responding that based on his experience both as a prosecutor and as someone who had been investigated, firing Flynn would not end the investigation.²²⁰ Christie said there was no way to make an investigation shorter, but a lot of ways to make it longer.²²¹ The President asked Christie what he meant, and Christie told the President not to talk about the investigation even if he was

²¹⁰ Priebus 1/18/18 302, at 9.

²¹¹ Priebus 1/18/18 302, at 9; Flynn 11/17/17 302, at 10.

²¹² Priebus 1/18/18 302, at 9; Flynn 11/17/17 302, at 10.

²¹³ SCR004_00600 (2/16/17 Email, Burnham to Donaldson).

²¹⁴ Sean Spicer, *White House Daily Briefing*, C-SPAN (Feb. 14, 2017). After Flynn pleaded guilty to violating 18 U.S.C. § 1001 in December 2017, the President tweeted, “I had to fire General Flynn because he lied to the Vice President and the FBI.” @realDonaldTrump 12/2/17 (12:14 p.m. ET) Tweet. The next day, the President’s personal counsel told the press that he had drafted the tweet. Maegan Vazquez et al., *Trump’s lawyer says he was behind President’s tweet about firing Flynn*, CNN (Dec. 3, 2017).

²¹⁵ Christie 2/13/19 302, at 2-3; SCR012b_000022 (President’s Daily Diary, 2/14/17).

²¹⁶ Christie 2/13/19 302, at 3.

²¹⁷ Christie 2/13/19 302, at 3.

²¹⁸ Christie 2/13/19 302, at 3. Christie said he thought when the President said “the Russia thing” he was referring to not just the investigations but also press coverage about Russia. Christie thought the more important thing was that there was an investigation. Christie 2/13/19 302, at 4.

²¹⁹ Christie 2/13/19 302, at 3.

²²⁰ Christie 2/13/19 302, at 3.

²²¹ Christie 2/13/19 302, at 3.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

frustrated at times.²²² Christie also told the President that he would never be able to get rid of Flynn, “like gum on the bottom of your shoe.”²²³

Towards the end of the lunch, the President brought up Comey and asked if Christie was still friendly with him.²²⁴ Christie said he was.²²⁵ The President told Christie to call Comey and tell him that the President “really like[s] him. Tell him he’s part of the team.”²²⁶ At the end of the lunch, the President repeated his request that Christie reach out to Comey.²²⁷ Christie had no intention of complying with the President’s request that he contact Comey.²²⁸ He thought the President’s request was “nonsensical” and Christie did not want to put Comey in the position of having to receive such a phone call.²²⁹ Christie thought it would have been uncomfortable to pass on that message.²³⁰

At 4 p.m. that afternoon, the President met with Comey, Sessions, and other officials for a homeland security briefing.²³¹ At the end of the briefing, the President dismissed the other attendees and stated that he wanted to speak to Comey alone.²³² Sessions and senior advisor to the President Jared Kushner remained in the Oval Office as other participants left, but the President

²²² Christie 2/13/19 302, at 3-4.

²²³ Christie 2/13/19 302, at 3. Christie also recalled that during the lunch, Flynn called Kushner, who was at the lunch, and complained about what Spicer had said about Flynn in his press briefing that day. Kushner told Flynn words to the effect of, “You know the President respects you. The President cares about you. I’ll get the President to send out a positive tweet about you later.” Kushner looked at the President when he mentioned the tweet, and the President nodded his assent. Christie 2/13/19 302, at 3. Flynn recalled getting upset at Spicer’s comments in the press conference and calling Kushner to say he did not appreciate the comments. Flynn 1/19/18 302, at 9.

²²⁴ Christie 2/13/19 302, at 4.

²²⁵ Christie 2/13/19 302, at 4.

²²⁶ Christie 2/13/19 302, at 4-5.

²²⁷ Christie 2/13/19 302, at 5.

²²⁸ Christie 2/13/19 302, at 5.

²²⁹ Christie 2/13/19 302, at 5.

²³⁰ Christie 2/13/19 302, at 5.

²³¹ SCR012b_000022 (President’s Daily Diary, 2/14/17); Comey 11/15/17 302, at 9.

²³² Comey 11/15/17 302, at 10; 2/14/17 Comey Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4); Priebus 10/13/17 302, at 18 (confirming that everyone was shooed out “like Comey said” in his June testimony).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

excused them, repeating that he wanted to speak only with Comey.²³³ At some point after others had left the Oval Office, Priebus opened the door, but the President sent him away.²³⁴

According to Comey's account of the meeting, once they were alone, the President began the conversation by saying, "I want to talk about Mike Flynn."²³⁵ The President stated that Flynn had not done anything wrong in speaking with the Russians, but had to be terminated because he had misled the Vice President.²³⁶ The conversation turned to the topic of leaks of classified information, but the President returned to Flynn, saying "he is a good guy and has been through a lot."²³⁷ The President stated, "I hope you can see your way clear to letting this go, to letting Flynn go. He is a good guy. I hope you can let this go."²³⁸ Comey agreed that Flynn "is a good guy," but did not commit to ending the investigation of Flynn.²³⁹ Comey testified under oath that he took the President's statement "as a direction" because of the President's position and the circumstances of the one-on-one meeting.²⁴⁰

²³³ Comey 11/15/17 302, at 10; Comey 2/14/17 Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4). Sessions recalled that the President asked to speak to Comey alone and that Sessions was one of the last to leave the room; he described Comey's testimony about the events leading up to the private meeting with the President as "pretty accurate." Sessions 1/17/18 302, at 6. Kushner had no recollection of whether the President asked Comey to stay behind. Kushner 4/11/18 302, at 24.

²³⁴ Comey 2/14/17 Memorandum, at 2; Priebus 10/13/17 302, at 18.

²³⁵ Comey 11/15/17 302, at 10; Comey 2/14/17 Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 4).

²³⁶ Comey 2/14/17 Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 5).

²³⁷ Comey 11/15/17 302, at 10; Comey 2/14/17 Memorandum, at 2; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 5).

²³⁸ *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 5); Comey 2/14/17 Memorandum, at 2. Comey said he was highly confident that the words in quotations in his Memorandum documenting this meeting were the exact words used by the President. He said he knew from the outset of the meeting that he was about to have a conversation of consequence, and he remembered the words used by the President and wrote them down soon after the meeting. Comey 11/15/17 302, at 10-11.

²³⁹ Comey 11/15/17 302, at 10; Comey 2/14/17 Memorandum, at 2.

²⁴⁰ *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (CQ Cong. Transcripts, at 31) (testimony of James B. Comey, former Director of the FBI). Comey further stated, "I mean, this is the president of the United States, with me alone, saying, 'I hope' this. I took it as, this is what he wants me to do." *Id.*; see also Comey 11/15/17 302, at 10 (Comey took the statement as an order to shut down the Flynn investigation).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Shortly after meeting with the President, Comey began drafting a memorandum documenting their conversation.²⁴¹ Comey also met with his senior leadership team to discuss the President's request, and they agreed not to inform FBI officials working on the Flynn case of the President's statements so the officials would not be influenced by the request.²⁴² Comey also asked for a meeting with Sessions and requested that Sessions not leave Comey alone with the President again.²⁴³

8. The Media Raises Questions About the President's Delay in Terminating Flynn

After Flynn was forced to resign, the press raised questions about why the President waited more than two weeks after the DOJ notification to remove Flynn and whether the President had known about Flynn's contacts with Kislyak before the DOJ notification.²⁴⁴ The press also continued to raise questions about connections between Russia and the President's campaign.²⁴⁵ On February 15, 2017, the President told reporters, "General Flynn is a wonderful man. I think he's been treated very, very unfairly by the media."²⁴⁶ On February 16, 2017, the President held

²⁴¹ Comey 11/15/17 302, at 11; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the record of James B. Comey, former Director of the FBI, at 5).

²⁴² Comey 11/15/17 302, at 11; Rybicki 6/9/17 302, at 4; Rybicki 6/22/17 302, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the record of James B. Comey, former Director of the FBI, at 5-6).

²⁴³ Comey 11/15/17 302, at 11; Rybicki 6/9/17 302, at 4-5; Rybicki 6/22/17 302, at 1-2; Sessions 1/17/18 302, at 6 (confirming that later in the week following Comey's one-on-one meeting with the President in the Oval Office, Comey told the Attorney General that he did not want to be alone with the President); Hunt 2/1/18 302, at 6 (within days of the February 14 Oval Office meeting, Comey told Sessions he did not think it was appropriate for the FBI Director to meet alone with the President); Rybicki 11/21/18 302, at 4 (Rybicki helped to schedule the meeting with Sessions because Comey wanted to talk about his concerns about meeting with the President alone); *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the record of James B. Comey, former Director of the FBI, at 6).

²⁴⁴ See, e.g., Sean Spicer, *White House Daily Briefing*, C-SPAN (Feb. 14, 2017) (questions from the press included, "if [the President] was notified 17 days ago that Flynn had misled the Vice President, other officials here, and that he was a potential threat to blackmail by the Russians, why would he be kept on for almost three weeks?" and "Did the President instruct [Flynn] to talk about sanctions with the [Russian ambassador]?"). Priebus recalled that the President initially equivocated on whether to fire Flynn because it would generate negative press to lose his National Security Advisor so early in his term. Priebus 1/18/18 302, at 8.

²⁴⁵ E.g., Sean Sullivan et al., *Senators from both parties pledge to deepen probe of Russia and the 2016 election*, Washington Post (Feb. 14, 2017); Aaron Blake, *5 times Donald Trump's team denied contact with Russia*, Washington Post (Feb. 15, 2017); Oren Dorell, *Donald Trump's ties to Russia go back 30 years*, USA Today (Feb. 15, 2017); Pamela Brown et al., *Trump aides were in constant touch with senior Russian officials during campaign*, CNN (Feb. 15, 2017); Austin Wright, *Comey briefs senators amid furor over Trump-Russia ties*, Politico (Feb. 17, 2017); Megan Twohey & Scott Shane, *A Back-Channel Plan for Ukraine and Russia, Courtesy of Trump Associates*, New York Times (Feb. 19, 2017).

²⁴⁶ Remarks by President Trump and Prime Minister Netanyahu of Israel in Joint Press Conference, White House (Feb. 15, 2017).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

a press conference and said that he removed Flynn because Flynn “didn’t tell the Vice President of the United States the facts, and then he didn’t remember. And that just wasn’t acceptable to me.”²⁴⁷ The President said he did not direct Flynn to discuss sanctions with Kislyak, but “it certainly would have been okay with me if he did. I would have directed him to do it if I thought he wasn’t doing it. I didn’t direct him, but I would have directed him because that’s his job.”²⁴⁸ In listing the reasons for terminating Flynn, the President did not say that Flynn had lied to him.²⁴⁹ The President also denied having any connection to Russia, stating, “I have nothing to do with Russia. I told you, I have no deals there. I have no anything.”²⁵⁰ The President also said he “had nothing to do with” WikiLeaks’s publication of information hacked from the Clinton campaign.²⁵¹

9. The President Attempts to Have K.T. McFarland Create a Witness Statement Denying that he Directed Flynn’s Discussions with Kislyak

On February 22, 2017, Priebus and Bannon told McFarland that the President wanted her to resign as Deputy National Security Advisor, but they suggested to her that the Administration could make her the ambassador to Singapore.²⁵² The next day, the President asked Priebus to have McFarland draft an internal email that would confirm that the President did not direct Flynn to call the Russian Ambassador about sanctions.²⁵³ Priebus said he told the President he would only direct McFarland to write such a letter if she were comfortable with it.²⁵⁴ Priebus called McFarland into his office to convey the President’s request that she memorialize in writing that the President did not direct Flynn to talk to Kislyak.²⁵⁵ McFarland told Priebus she did not know whether the President had directed Flynn to talk to Kislyak about sanctions, and she declined to say yes or no

²⁴⁷ Remarks by President Trump in Press Conference, White House (Feb. 16, 2017).

²⁴⁸ Remarks by President Trump in Press Conference, White House (Feb. 16, 2017). The President also said that Flynn’s conduct “wasn’t wrong – what he did in terms of the information he saw.” The President said that Flynn was just “doing the job,” and “if anything, he did something right.”

²⁴⁹ Remarks by President Trump in Press Conference, White House (Feb. 16, 2017); Priebus 1/18/18 302, at 9.

²⁵⁰ Remarks by President Trump in Press Conference, White House (Feb. 16, 2017).

²⁵¹ Remarks by President Trump in Press Conference, White House (Feb. 16, 2017).

²⁵² KTMF_00000047 (McFarland 2/26/17 Memorandum for the Record); McFarland 12/22/17 302, at 16-17.

²⁵³ See Priebus 1/18/18 302, at 11; see also KTMF_00000048 (McFarland 2/26/17 Memorandum for the Record); McFarland 12/22/17 302, at 17.

²⁵⁴ Priebus 1/18/18 302, at 11.

²⁵⁵ KTMF_00000048 (McFarland 2/26/17 Memorandum for the Record); McFarland 12/22/17 302, at 17.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

to the request.²⁵⁶ Priebus understood that McFarland was not comfortable with the President's request, and he recommended that she talk to attorneys in the White House Counsel's Office.²⁵⁷

McFarland then reached out to Eisenberg.²⁵⁸ McFarland told him that she had been fired from her job as Deputy National Security Advisor and offered the ambassadorship in Singapore but that the President and Priebus wanted a letter from her denying that the President directed Flynn to discuss sanctions with Kislyak.²⁵⁹ Eisenberg advised McFarland not to write the requested letter.²⁶⁰ As documented by McFarland in a contemporaneous "Memorandum for the Record" that she wrote because she was concerned by the President's request: "Eisenberg . . . thought the requested email and letter would be a bad idea – from my side because the email would be awkward. Why would I be emailing Priebus to make a statement for the record? But it would also be a bad idea for the President because it looked as if my ambassadorial appointment was in some way a quid pro quo."²⁶¹ Later that evening, Priebus stopped by McFarland's office and told her not to write the email and to forget he even mentioned it.²⁶²

Around the same time, the President asked Priebus to reach out to Flynn and let him know that the President still cared about him.²⁶³ Priebus called Flynn and said that he was checking in and that Flynn was an American hero.²⁶⁴ Priebus thought the President did not want Flynn saying bad things about him.²⁶⁵

On March 31, 2017, following news that Flynn had offered to testify before the FBI and congressional investigators in exchange for immunity, the President tweeted, "Mike Flynn should ask for immunity in that this is a witch hunt (excuse for big election loss), by media & Dems, of

²⁵⁶ KTMF_00000047 (McFarland 2/26/17 Memorandum for the Record) ("I said I did not know whether he did or didn't, but was in Maralago the week between Christmas and New Year's (while Flynn was on vacation in Carribean) and I was not aware of any Flynn-Trump, or Trump-Russian phone calls"); McFarland 12/22/17 302, at 17.

²⁵⁷ Priebus 1/18/18 302, at 11.

²⁵⁸ McFarland 12/22/17 302, at 17.

²⁵⁹ McFarland 12/22/17 302, at 17.

²⁶⁰ KTMF_00000048 (McFarland 2/26/17 Memorandum for the Record); McFarland 12/22/17 302, at 17.

²⁶¹ KTMF_00000048 (McFarland 2/26/17 Memorandum for the Record); *see* McFarland 12/22/17 302, at 17.

²⁶² McFarland 12/22/17 302, at 17; KTMF_00000048 (McFarland 2/26/17 Memorandum for the Record).

²⁶³ Priebus 1/18/18 302, at 9.

²⁶⁴ Priebus 1/18/18 302, at 9; Flynn 1/19/18 302, at 9.

²⁶⁵ Priebus 1/18/18 302, at 9-10.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

historic proportion!²⁶⁶ In late March or early April, the President asked McFarland to pass a message to Flynn telling him the President felt bad for him and that he should stay strong.²⁶⁷

Analysis

In analyzing the President's conduct related to the Flynn investigation, the following evidence is relevant to the elements of obstruction of justice:

a. **Obstructive act.** According to Comey's account of his February 14, 2017 meeting in the Oval Office, the President told him, "I hope you can see your way clear to letting this go, to letting Flynn go. . . . I hope you can let this go." In analyzing whether these statements constitute an obstructive act, a threshold question is whether Comey's account of the interaction is accurate, and, if so, whether the President's statements had the tendency to impede the administration of justice by shutting down an inquiry that could result in a grand jury investigation and a criminal charge.

After Comey's account of the President's request to "let[] Flynn go" became public, the President publicly disputed several aspects of the story. The President told the New York Times that he did not "shoo other people out of the room" when he talked to Comey and that he did not remember having a one-on-one conversation with Comey.²⁶⁸ The President also publicly denied that he had asked Comey to "let[] Flynn go" or otherwise communicated that Comey should drop the investigation of Flynn.²⁶⁹ In private, the President denied aspects of Comey's account to White House advisors, but acknowledged to Priebus that he brought Flynn up in the meeting with Comey and stated that Flynn was a good guy.²⁷⁰ Despite those denials, substantial evidence corroborates Comey's account.

²⁶⁶ @realDonaldTrump 3/31/17 (7:04 a.m. ET) Tweet; see Shane Harris at al., *Mike Flynn Offers to Testify in Exchange for Immunity*, Wall Street Journal (Mar. 30, 2017).

²⁶⁷ McFarland 12/22/17 302, at 18.

²⁶⁸ *Excerpts From The Times's Interview With Trump*, New York Times (July 19, 2017). Hicks recalled that the President told her he had never asked Comey to stay behind in his office. Hicks 12/8/17 302, at 12.

²⁶⁹ In a statement on May 16, 2017, the White House said: "While the President has repeatedly expressed his view that General Flynn is a decent man who served and protected our country, the President has never asked Mr. Comey or anyone else to end any investigation, including any investigation involving General Flynn. . . . This is not a truthful or accurate portrayal of the conversation between the President and Mr. Comey." See Michael S. Schmidt, *Comey Memorandum Says Trump Asked Him to End Flynn Investigation*, New York Times (May 16, 2017) (quoting White House statement); @realDonaldTrump 12/3/17 (6:15 a.m. ET) Tweet ("I never asked Comey to stop investigating Flynn. Just more Fake News covering another Comey lie!").

²⁷⁰ Priebus recalled that the President acknowledged telling Comey that Flynn was a good guy and he hoped "everything worked out for him." Priebus 10/13/17 302, at 19. McGahn recalled that the President denied saying to Comey that he hoped Comey would let Flynn go, but added that he was "allowed to hope." The President told McGahn he did not think he had crossed any lines. McGahn 12/14/17 302, at 8.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

First, Comey wrote a detailed memorandum of his encounter with the President on the same day it occurred. Comey also told senior FBI officials about the meeting with the President that day, and their recollections of what Comey told them at the time are consistent with Comey's account.²⁷¹

Second, Comey provided testimony about the President's request that he "let[] Flynn go" under oath in congressional proceedings and in interviews with federal investigators subject to penalties for lying under 18 U.S.C. § 1001. Comey's recollections of the encounter have remained consistent over time.

Third, the objective, corroborated circumstances of how the one-on-one meeting came to occur support Comey's description of the event. Comey recalled that the President cleared the room to speak with Comey alone after a homeland security briefing in the Oval Office, that Kushner and Sessions lingered and had to be shooed out by the President, and that Priebus briefly opened the door during the meeting, prompting the President to wave him away. While the President has publicly denied those details, other Administration officials who were present have confirmed Comey's account of how he ended up in a one-on-one meeting with the President.²⁷² And the President acknowledged to Priebus and McGahn that he in fact spoke to Comey about Flynn in their one-on-one meeting.

Fourth, the President's decision to clear the room and, in particular, to exclude the Attorney General from the meeting signals that the President wanted to be alone with Comey, which is consistent with the delivery of a message of the type that Comey recalls, rather than a more innocuous conversation that could have occurred in the presence of the Attorney General.

Finally, Comey's reaction to the President's statements is consistent with the President having asked him to "let[] Flynn go." Comey met with the FBI leadership team, which agreed to keep the President's statements closely held and not to inform the team working on the Flynn investigation so that they would not be influenced by the President's request. Comey also promptly met with the Attorney General to ask him not to be left alone with the President again, an account verified by Sessions, FBI Chief of Staff James Rybicki, and Jody Hunt, who was then the Attorney General's chief of staff.

A second question is whether the President's statements, which were not phrased as a direct order to Comey, could impede or interfere with the FBI's investigation of Flynn. While the President said he "hope[d]" Comey could "let[] Flynn go," rather than affirmatively directing him to do so, the circumstances of the conversation show that the President was asking Comey to close the FBI's investigation into Flynn. First, the President arranged the meeting with Comey so that they would be alone and purposely excluded the Attorney General, which suggests that the President meant to make a request to Comey that he did not want anyone else to hear. Second, because the President is the head of the Executive Branch, when he says that he "hopes" a subordinate will do something, it is reasonable to expect that the subordinate will do what the President wants. Indeed, the President repeated a version of "let this go" three times, and Comey

²⁷¹ Rybicki 11/21/18 302, at 4; McCabe 8/17/17 302, at 13-14.

²⁷² See Priebus 10/13/17 302, at 18; Sessions 1/17/18 302, at 6.

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

testified that he understood the President's statements as a directive, which is corroborated by the way Comey reacted at the time.

b. Nexus to a proceeding. To establish a nexus to a proceeding, it would be necessary to show that the President could reasonably foresee and actually contemplated that the investigation of Flynn was likely to lead to a grand jury investigation or prosecution.

At the time of the President's one-on-one meeting with Comey, no grand jury subpoenas had been issued as part of the FBI's investigation into Flynn. But Flynn's lies to the FBI violated federal criminal law, [REDACTED], and resulted in Flynn's prosecution for violating 18 U.S.C. § 1001. By the time the President spoke to Comey about Flynn, DOJ officials had informed McGahn, who informed the President, that Flynn's statements to senior White House officials about his contacts with Kislyak were not true and that Flynn had told the same version of events to the FBI. McGahn also informed the President that Flynn's conduct could violate 18 U.S.C. § 1001. After the Vice President and senior White House officials reviewed the underlying information about Flynn's calls on February 10, 2017, they believed that Flynn could not have forgotten his conversations with Kislyak and concluded that he had been lying. In addition, the President's instruction to the FBI Director to "let[] Flynn go" suggests his awareness that Flynn could face criminal exposure for his conduct and was at risk of prosecution.

c. Intent. As part of our investigation, we examined whether the President had a personal stake in the outcome of an investigation into Flynn—for example, whether the President was aware of Flynn's communications with Kislyak close in time to when they occurred, such that the President knew that Flynn had lied to senior White House officials and that those lies had been passed on to the public. Some evidence suggests that the President knew about the existence and content of Flynn's calls when they occurred, but the evidence is inconclusive and could not be relied upon to establish the President's knowledge. In advance of Flynn's initial call with Kislyak, the President attended a meeting where the sanctions were discussed and an advisor may have mentioned that Flynn was scheduled to talk to Kislyak. Flynn told McFarland about the substance of his calls with Kislyak and said they may have made a difference in Russia's response, and Flynn recalled talking to Bannon in early January 2017 about how they had successfully "stopped the train on Russia's response" to the sanctions. It would have been reasonable for Flynn to have wanted the President to know of his communications with Kislyak because Kislyak told Flynn his request had been received at the highest levels in Russia and that Russia had chosen not to retaliate in response to the request, and the President was pleased by the Russian response, calling it a "[g]reat move." And the President never said publicly or internally that Flynn had lied to him about the calls with Kislyak.

But McFarland did not recall providing the President-Elect with Flynn's read-out of his calls with Kislyak, and Flynn does not have a specific recollection of telling the President-Elect directly about the calls. Bannon also said he did not recall hearing about the calls from Flynn. And in February 2017, the President asked Flynn what was discussed on the calls and whether he had lied to the Vice President, suggesting that he did not already know. Our investigation accordingly did not produce evidence that established that the President knew about Flynn's discussions of sanctions before the Department of Justice notified the White House of those discussions in late January 2017. The evidence also does not establish that Flynn otherwise

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

possessed information damaging to the President that would give the President a personal incentive to end the FBI's inquiry into Flynn's conduct.

Evidence does establish that the President connected the Flynn investigation to the FBI's broader Russia investigation and that he believed, as he told Christie, that terminating Flynn would end "the whole Russia thing." Flynn's firing occurred at a time when the media and Congress were raising questions about Russia's interference in the election and whether members of the President's campaign had colluded with Russia. Multiple witnesses recalled that the President viewed the Russia investigations as a challenge to the legitimacy of his election. The President paid careful attention to negative coverage of Flynn and reacted with annoyance and anger when the story broke disclosing that Flynn had discussed sanctions with Kislyak. Just hours before meeting one-on-one with Comey, the President told Christie that firing Flynn would put an end to the Russia inquiries. And after Christie pushed back, telling the President that firing Flynn would not end the Russia investigation, the President asked Christie to reach out to Comey and convey that the President liked him and he was part of "the team." That afternoon, the President cleared the room and asked Comey to "let[] Flynn go."

We also sought evidence relevant to assessing whether the President's direction to Comey was motivated by sympathy towards Flynn. In public statements the President repeatedly described Flynn as a good person who had been harmed by the Russia investigation, and the President directed advisors to reach out to Flynn to tell him the President "care[d]" about him and felt bad for him. At the same time, multiple senior advisors, including Bannon, Priebus, and Hicks, said that the President had become unhappy with Flynn well before Flynn was forced to resign and that the President was frequently irritated with Flynn. Priebus said he believed the President's initial reluctance to fire Flynn stemmed not from personal regard, but from concern about the negative press that would be generated by firing the National Security Advisor so early in the Administration. And Priebus indicated that the President's post-firing expressions of support for Flynn were motivated by the President's desire to keep Flynn from saying negative things about him.

The way in which the President communicated the request to Comey also is relevant to understanding the President's intent. When the President first learned about the FBI investigation into Flynn, he told McGahn, Bannon, and Priebus not to discuss the matter with anyone else in the White House. The next day, the President invited Comey for a one-on-one dinner against the advice of an aide who recommended that other White House officials also attend. At the dinner, the President asked Comey for "loyalty" and, at a different point in the conversation, mentioned that Flynn had judgment issues. When the President met with Comey the day after Flynn's termination—shortly after being told by Christie that firing Flynn would not end the Russia investigation—the President cleared the room, even excluding the Attorney General, so that he could again speak to Comey alone. The President's decision to meet one-on-one with Comey contravened the advice of the White House Counsel that the President should not communicate directly with the Department of Justice to avoid any appearance of interfering in law enforcement activities. And the President later denied that he cleared the room and asked Comey to "let[] Flynn go"—a denial that would have been unnecessary if he believed his request was a proper exercise of prosecutorial discretion.

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Finally, the President's effort to have McFarland write an internal email denying that the President had directed Flynn to discuss sanctions with Kislyak highlights the President's concern about being associated with Flynn's conduct. The evidence does not establish that the President was trying to have McFarland lie. The President's request, however, was sufficiently irregular that McFarland—who did not know the full extent of Flynn's communications with the President and thus could not make the representation the President wanted—felt the need to draft an internal memorandum documenting the President's request, and Eisenberg was concerned that the request would look like a quid pro quo in exchange for an ambassadorship.

C. The President's Reaction to Public Confirmation of the FBI's Russia Investigation

Overview

In early March 2017, the President learned that Sessions was considering recusing from the Russia investigation and tried to prevent the recusal. After Sessions announced his recusal on March 2, the President expressed anger at Sessions for the decision and then privately asked Sessions to "unrecuse." On March 20, 2017, Comey publicly disclosed the existence of the FBI's Russia investigation. In the days that followed, the President contacted Comey and other intelligence agency leaders and asked them to push back publicly on the suggestion that the President had any connection to the Russian election-interference effort in order to "lift the cloud" of the ongoing investigation.

Evidence

1. Attorney General Sessions Recuses From the Russia Investigation

In late February 2017, the Department of Justice began an internal analysis of whether Sessions should recuse from the Russia investigation based on his role in the 2016 Trump Campaign.²⁷³ On March 1, 2017, the press reported that, in his January confirmation hearing to become Attorney General, Senator Sessions had not disclosed two meetings he had with Russian Ambassador Kislyak before the presidential election, leading to congressional calls for Sessions to recuse or for a special counsel to investigate Russia's interference in the presidential election.²⁷⁴

Also on March 1, the President called Comey and said he wanted to check in and see how Comey was doing.²⁷⁵ According to an email Comey sent to his chief of staff after the call, the President "talked about Sessions a bit," said that he had heard Comey was "doing great," and said that he hoped Comey would come by to say hello when he was at the White House.²⁷⁶ Comey

²⁷³ Sessions 1/17/18 302, at 1; Hunt 2/1/18 302, at 3.

²⁷⁴ *E.g.*, Adam Entous et al., *Sessions met with Russian envoy twice last year, encounters he later did not disclose*, Washington Post (Mar. 1, 2017).

²⁷⁵ 3/1/17 Email, Comey to Rybicki; SCR012b_000030 (President's Daily Diary, 3/1/17, reflecting call with Comey at 11:55 am.)

²⁷⁶ 3/1/17 Email, Comey to Rybicki; *see Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (CQ Cong. Transcripts, at 86) (testimony

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

interpreted the call as an effort by the President to “pull [him] in,” but he did not perceive the call as an attempt by the President to find out what Comey was doing with the Flynn investigation.²⁷⁷

The next morning, the President called McGahn and urged him to contact Sessions to tell him not to recuse himself from the Russia investigation.²⁷⁸ McGahn understood the President to be concerned that a recusal would make Sessions look guilty for omitting details in his confirmation hearing; leave the President unprotected from an investigation that could hobble the presidency and derail his policy objectives; and detract from favorable press coverage of a Presidential Address to Congress the President had delivered earlier in the week.²⁷⁹ McGahn reached out to Sessions and reported that the President was not happy about the possibility of recusal.²⁸⁰ Sessions replied that he intended to follow the rules on recusal.²⁸¹ McGahn reported back to the President about the call with Sessions, and the President reiterated that he did not want Sessions to recuse.²⁸² Throughout the day, McGahn continued trying on behalf of the President to avert Sessions’s recusal by speaking to Sessions’s personal counsel, Sessions’s chief of staff, and Senate Majority Leader Mitch McConnell, and by contacting Sessions himself two more times.²⁸³ Sessions recalled that other White House advisors also called him that day to argue against his recusal.²⁸⁴

That afternoon, Sessions announced his decision to recuse “from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.”²⁸⁵ Sessions believed the decision to recuse was not a close call, given the applicable

of James B. Comey, former Director of the FBI) (“[H]e called me one day. . . . [H]e just called to check in and tell me I was doing an awesome job, and wanted to see how I was doing.”).

²⁷⁷ Comey 11/15/17 302, at 17-18.

²⁷⁸ McGahn 11/30/17 302, at 16.

²⁷⁹ McGahn 11/30/17 302, at 16-17; *see* SC_AD_00123 (Donaldson 3/2/17 Notes) (“Just in the middle of another Russia Fiasco.”).

²⁸⁰ Sessions 1/17/18 302, at 3.

²⁸¹ McGahn 11/30/17 302, at 17.

²⁸² McGahn 11/30/17 302, at 17.

²⁸³ McGahn 11/30/17 302, at 18-19; Sessions 1/17/18 302, at 3; Hunt 2/1/18 302, at 4; Donaldson 11/6/17 302, at 8-10; *see* Hunt-000017; SC_AD_00121 (Donaldson 3/2/17 Notes).

²⁸⁴ Sessions 1/17/18 302, at 3.

²⁸⁵ Attorney General Sessions Statement on Recusal, Department of Justice Press Release (Mar. 2, 2017) (“During the course of the last several weeks, I have met with the relevant senior career Department officials to discuss whether I should recuse myself from any matters arising from the campaigns for President of the United States. Having concluded those meetings today, I have decided to recuse myself from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.”). At the time of Sessions’s recusal, Dana Boente, then the Acting Deputy Attorney General and U.S. Attorney for the Eastern District of Virginia, became the Acting Attorney General for campaign-related matters pursuant to an executive order specifying the order of succession at the Department of Justice. *Id.* (“Consistent with the succession order for the Department of Justice, . . . Dana Boente shall act as and perform the functions of the Attorney General with respect to any matters from

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

language in the Code of Federal Regulations (CFR), which Sessions considered to be clear and decisive.²⁸⁶ Sessions thought that any argument that the CFR did not apply to him was “very thin.”²⁸⁷ Sessions got the impression, based on calls he received from White House officials, that the President was very upset with him and did not think he had done his duty as Attorney General.²⁸⁸

Shortly after Sessions announced his recusal, the White House Counsel’s Office directed that Sessions should not be contacted about the matter.²⁸⁹ Internal White House Counsel’s Office notes from March 2, 2017, state “No contact w/Sessions” and “No comms / Serious concerns about obstruction.”²⁹⁰

On March 3, the day after Sessions’s recusal, McGahn was called into the Oval Office.²⁹¹ Other advisors were there, including Priebus and Bannon.²⁹² The President opened the conversation by saying, “I don’t have a lawyer.”²⁹³ The President expressed anger at McGahn about the recusal and brought up Roy Cohn, stating that he wished Cohn was his attorney.²⁹⁴ McGahn interpreted this comment as directed at him, suggesting that Cohn would fight for the

which I have recused myself to the extent they exist.”); *see* Exec. Order No. 13775, 82 Fed. Reg. 10697 (Feb. 14, 2017).

²⁸⁶ Sessions 1/17/18 302, at 1-2. 28 C.F.R. § 45.2 provides that “no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with . . . [a]ny person or organization substantially involved in the conduct that is the subject of the investigation or prosecution,” and defines “political relationship” as “a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof.”

²⁸⁷ Sessions 1/17/18 302, at 2.

²⁸⁸ Sessions 1/17/18 302, at 3.

²⁸⁹ Donaldson 11/6/17 302, at 11; SC_AD_00123 (Donaldson 3/2/17 Notes). It is not clear whether the President was aware of the White House Counsel’s Office direction not to contact Sessions about his recusal.

²⁹⁰ SC_AD_00123 (Donaldson 3/2/17 Notes). McGahn said he believed the note “No comms / Serious concerns about obstruction” may have referred to concerns McGahn had about the press team saying “crazy things” and trying to spin Sessions’s recusal in a way that would raise concerns about obstruction. McGahn 11/30/17 302, at 19. Donaldson recalled that “No comms” referred to the order that no one should contact Sessions. Donaldson 11/6/17 302, at 11.

²⁹¹ McGahn 12/12/17 302, at 2.

²⁹² McGahn 12/12/17 302, at 2.

²⁹³ McGahn 12/12/17 302, at 2.

²⁹⁴ McGahn 12/12/17 302, at 2. Cohn had previously served as a lawyer for the President during his career as a private businessman. Priebus recalled that when the President talked about Cohn, he said Cohn would win cases for him that had no chance, and that Cohn had done incredible things for him. Priebus 4/3/18 302, at 5. Bannon recalled the President describing Cohn as a winner and a fixer, someone who got things done. Bannon 2/14/18 302, at 6.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

President whereas McGahn would not.²⁹⁵ The President wanted McGahn to talk to Sessions about the recusal, but McGahn told the President that DOJ ethics officials had weighed in on Sessions's decision to recuse.²⁹⁶ The President then brought up former Attorneys General Robert Kennedy and Eric Holder and said that they had protected their presidents.²⁹⁷ The President also pushed back on the DOJ contacts policy, and said words to the effect of, "You're telling me that Bobby and Jack didn't talk about investigations? Or Obama didn't tell Eric Holder who to investigate?"²⁹⁸ Bannon recalled that the President was as mad as Bannon had ever seen him and that he screamed at McGahn about how weak Sessions was.²⁹⁹ Bannon recalled telling the President that Sessions's recusal was not a surprise and that before the inauguration they had discussed that Sessions would have to recuse from campaign-related investigations because of his work on the Trump Campaign.³⁰⁰

That weekend, Sessions and McGahn flew to Mar-a-Lago to meet with the President.³⁰¹ Sessions recalled that the President pulled him aside to speak to him alone and suggested that Sessions should "unrecuse" from the Russia investigation.³⁰² The President contrasted Sessions with Attorneys General Holder and Kennedy, who had developed a strategy to help their presidents where Sessions had not.³⁰³ Sessions said he had the impression that the President feared that the investigation could spin out of control and disrupt his ability to govern, which Sessions could have helped avert if he were still overseeing it.³⁰⁴

On March 5, 2017, the White House Counsel's Office was informed that the FBI was asking for transition-period records relating to Flynn—indicating that the FBI was still actively investigating him.³⁰⁵ On March 6, the President told advisors he wanted to call the Acting Attorney

²⁹⁵ McGahn 12/12/17 302, at 2.

²⁹⁶ McGahn 12/12/17 302, at 2.

²⁹⁷ McGahn 12/12/17 302, at 3. Bannon said the President saw Robert Kennedy and Eric Holder as Attorneys General who protected the presidents they served. The President thought Holder always stood up for President Obama and even took a contempt charge for him, and Robert Kennedy always had his brother's back. Bannon 2/14/18 302, at 5. Priebus recalled that the President said he had been told his entire life he needed to have a great lawyer, a "bulldog," and added that Holder had been willing to take a contempt-of-Congress charge for President Obama. Priebus 4/3/18 302, at 5.

²⁹⁸ McGahn 12/12/17 302, at 3.

²⁹⁹ Bannon 2/14/18 302, at 5.

³⁰⁰ Bannon 2/14/18 302, at 5.

³⁰¹ Sessions 1/17/18 302, at 3; Hunt 2/1/18 302, at 5; McGahn 12/12/17 302, at 3.

³⁰² Sessions 1/17/18 302, at 3-4.

³⁰³ Sessions 1/17/18 302, at 3-4.

³⁰⁴ Sessions 1/17/18 302, at 3-4. Hicks recalled that after Sessions recused, the President was angry and scolded Sessions in her presence, but she could not remember exactly when that conversation occurred. Hicks 12/8/17 302, at 13.

³⁰⁵ SC_AD_000137 (Donaldson 3/5/17 Notes); see Donaldson 11/6/17 302, at 13.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

General to find out whether the White House or the President was being investigated, although it is not clear whether the President knew at that time of the FBI's recent request concerning Flynn.³⁰⁶

2. FBI Director Comey Publicly Confirms the Existence of the Russia Investigation in Testimony Before HPSCI

On March 9, 2017, Comey briefed the "Gang of Eight" congressional leaders about the FBI's investigation of Russian interference, including an identification of the principal U.S. subjects of the investigation.³⁰⁷ Although it is unclear whether the President knew of that briefing at the time, notes taken by Annie Donaldson, then McGahn's chief of staff, on March 12, 2017, state, "POTUS in panic/chaos . . . Need binders to put in front of POTUS. (1) All things related to Russia."³⁰⁸ The week after Comey's briefing, the White House Counsel's Office was in contact with SSCI Chairman Senator Richard Burr about the Russia investigations and appears to have received information about the status of the FBI investigation.³⁰⁹

On March 20, 2017, Comey was scheduled to testify before HPSCI.³¹⁰ In advance of Comey's testimony, congressional officials made clear that they wanted Comey to provide information about the ongoing FBI investigation.³¹¹ Dana Boente, who at that time was the Acting Attorney General for the Russia investigation, authorized Comey to confirm the existence of the Russia investigation and agreed that Comey should decline to comment on whether any particular individuals, including the President, were being investigated.³¹²

³⁰⁶ Donaldson 11/6/17 302, at 14; see SC_AD_000168 (Donaldson 3/6/17 Notes) ("POTUS wants to call Dana [then the Acting Attorney General for campaign-related investigations] / Is investigation / No / We know something on Flynn / GSA got contacted by FBI / There's something hot").

³⁰⁷ Comey 11/15/17 302, at 13-14; SNS-Classified-0000140-44 (3/8/17 Email, Gauhar to Page et al.).

³⁰⁸ SC_AD_00188 (Donaldson 3/12/18 Notes). Donaldson said she was not part of the conversation that led to these notes, and must have been told about it from others. Donaldson 11/6/17 302, at 13.

³⁰⁹ Donaldson 11/6/17 302, at 14-15. On March 16, 2017, the White House Counsel's Office was briefed by Senator Burr on the existence of "4-5 targets." Donaldson 11/6/17 302, at 15. The "targets" were identified in notes taken by Donaldson as "Flynn (FBI was in—wrapping up)—>DOJ looking for phone records"; "Comey—>Manafort (Ukr + Russia, not campaign)"; **FROM [REDACTED]** "Carter Page (\$ game)"; and "Greek Guy" (potentially referring to George Papadopoulos, later charged with violating 18 U.S.C. § 1001 for lying to the FBI). SC_AD_00198 (Donaldson 3/16/17 Notes). Donaldson and McGahn both said they believed these were targets of SSCI. Donaldson 11/6/17 302, at 15; McGahn 12/12/17 302, at 4. But SSCI does not formally investigate individuals as "targets"; the notes on their face reference the FBI, the Department of Justice, and Comey; and the notes track the background materials prepared by the FBI for Comey's briefing to the Gang of 8 on March 9. See SNS-Classified-0000140-44 (3/8/17 Email, Gauhar to Page et al.); see also Donaldson 11/6/17 302, at 15 (Donaldson could not rule out that Burr had told McGahn those individuals were the FBI's targets).

³¹⁰ *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017).

³¹¹ Comey 11/15/17 302, at 16; McCabe 8/17/17, at 15; McGahn 12/14/17 302, at 1.

³¹² Boente 1/31/18 302, at 5; Comey 11/15/17 302, at 16-17.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

In his opening remarks at the HPSCI hearing, which were drafted in consultation with the Department of Justice, Comey stated that he had “been authorized by the Department of Justice to confirm that the FBI, as part of [its] counterintelligence mission, is investigating the Russian government’s efforts to interfere in the 2016 presidential election and that includes investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia’s efforts. As with any counterintelligence investigation, this will also include an assessment of whether any crimes were committed.”³¹³ Comey added that he would not comment further on what the FBI was “doing and whose conduct [it] [was] examining” because the investigation was ongoing and classified—but he observed that he had “taken the extraordinary step in consultation with the Department of Justice of briefing this Congress’s leaders . . . in a classified setting in detail about the investigation.”³¹⁴ Comey was specifically asked whether President Trump was “under investigation during the campaign” or “under investigation now.”³¹⁵ Comey declined to answer, stating, “Please don’t over interpret what I’ve said as—as the chair and ranking know, we have briefed him in great detail on the subjects of the investigation and what we’re doing, but I’m not gonna answer about anybody in this forum.”³¹⁶ Comey was also asked whether the FBI was investigating the information contained in the Steele reporting, and he declined to answer.³¹⁷

According to McGahn and Donaldson, the President had expressed frustration with Comey before his March 20 testimony, and the testimony made matters worse.³¹⁸ The President had previously criticized Comey for too frequently making headlines and for not attending intelligence briefings at the White House, and the President suspected Comey of leaking certain information to the media.³¹⁹ McGahn said the President thought Comey was acting like “his own branch of government.”³²⁰

³¹³ *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017) (CQ Cong. Transcripts, at 11) (testimony by FBI Director James B. Comey); Comey 11/15/17 302, at 17; Boente 1/31/18 302, at 5 (confirming that the Department of Justice authorized Comey’s remarks).

³¹⁴ *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017) (CQ Cong. Transcripts, at 11) (testimony by FBI Director James B. Comey).

³¹⁵ *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017) (CQ Cong. Transcripts, at 130) (question by Rep. Swalwell).

³¹⁶ *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017) (CQ Cong. Transcripts, at 130) (testimony by FBI Director James B. Comey).

³¹⁷ *Hearing on Russian Election Tampering Before the House Permanent Select Intelligence Committee*, 115th Cong. (Mar. 20, 2017) (CQ Cong. Transcripts, at 143) (testimony by FBI Director James B. Comey).

³¹⁸ Donaldson 11/6/17 302, at 21; McGahn 12/12/17 302, at 7.

³¹⁹ Donaldson 11/6/17 302, at 21; McGahn 12/12/17 302, at 6-9.

³²⁰ McGahn 12/12/17 302, at 7.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Press reports following Comey's March 20 testimony suggested that the FBI was investigating the President, contrary to what Comey had told the President at the end of the January 6, 2017 intelligence assessment briefing.³²¹ McGahn, Donaldson, and senior advisor Stephen Miller recalled that the President was upset with Comey's testimony and the press coverage that followed because of the suggestion that the President was under investigation.³²² Notes from the White House Counsel's Office dated March 21, 2017, indicate that the President was "beside himself" over Comey's testimony.³²³ The President called McGahn repeatedly that day to ask him to intervene with the Department of Justice, and, according to the notes, the President was "getting hotter and hotter, get rid?"³²⁴ Officials in the White House Counsel's Office became so concerned that the President would fire Comey that they began drafting a memorandum that examined whether the President needed cause to terminate the FBI director.³²⁵

At the President's urging, McGahn contacted Boente several times on March 21, 2017, to seek Boente's assistance in having Comey or the Department of Justice correct the misperception that the President was under investigation.³²⁶ Boente did not specifically recall the conversations, although he did remember one conversation with McGahn around this time where McGahn asked if there was a way to speed up or end the Russia investigation as quickly as possible.³²⁷ Boente said McGahn told him the President was under a cloud and it made it hard for him to govern.³²⁸ Boente recalled telling McGahn that there was no good way to shorten the investigation and attempting to do so could erode confidence in the investigation's conclusions.³²⁹ Boente said McGahn agreed and dropped the issue.³³⁰ The President also sought to speak with Boente directly, but McGahn told the President that Boente did not want to talk to the President about the request

³²¹ E.g., Matt Apuzzo et al., *F.B.I. Is Investigating Trump's Russia Ties, Comey Confirms*, New York Times (Mar. 20, 2017); Andy Greenberg, *The FBI Has Been Investigating Trump's Russia Ties Since July*, Wired (Mar. 20, 2017); Julie Borger & Spencer Ackerman, *Trump-Russia collusion is being investigated by FBI, Comey confirms*, Guardian (Mar. 20, 2017); see Comey 1/6/17 Memorandum, at 2.

³²² Donaldson 11/6/17 302, at 16-17; S. Miller 10/31/17 302, at 4; McGahn 12/12/17 302, at 5-7.

³²³ SC_AD_00213 (Donaldson 3/21/17 Notes). The notes from that day also indicate that the President referred to the "Comey bombshell" which "made [him] look like a fool." SC_AD_00206 (Donaldson 3/21/17 Notes).

³²⁴ SC_AD_00210 (Donaldson 3/21/17 Notes).

³²⁵ SCR016_000002-05 (White House Counsel's Office Memorandum). White House Counsel's Office attorney Uttam Dhillon did not recall a triggering event causing the White House Counsel's Office to begin this research. Dhillon 11/21/17 302, at 5. Metadata from the document, which was provided by the White House, establishes that it was created on March 21, 2017.

³²⁶ Donaldson 11/6/17 302, at 16-21; McGahn 12/12/17 302, at 5-7.

³²⁷ Boente 1/31/18 302, at 5.

³²⁸ Boente 1/31/18 302, at 5.

³²⁹ Boente 1/31/18 302, at 5.

³³⁰ Boente 1/31/18 302, at 5.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

to intervene with Comey.³³¹ McGahn recalled Boente telling him in calls that day that he did not think it was sustainable for Comey to stay on as FBI director for the next four years, which McGahn said he conveyed to the President.³³² Boente did not recall discussing with McGahn or anyone else the idea that Comey should not continue as FBI director.³³³

3. The President Asks Intelligence Community Leaders to Make Public Statements that he had No Connection to Russia

In the weeks following Comey's March 20, 2017 testimony, the President repeatedly asked intelligence community officials to push back publicly on any suggestion that the President had a connection to the Russian election-interference effort.

On March 22, 2017, the President asked Director of National Intelligence Daniel Coats and CIA Director Michael Pompeo to stay behind in the Oval Office after a Presidential Daily Briefing.³³⁴ According to Coats, the President asked them whether they could say publicly that no link existed between him and Russia.³³⁵ Coats responded that the Office of the Director of National Intelligence (ODNI) has nothing to do with investigations and it was not his role to make a public statement on the Russia investigation.³³⁶ Pompeo had no recollection of being asked to stay behind after the March 22 briefing, but he recalled that the President regularly urged officials to get the word out that he had not done anything wrong related to Russia.³³⁷

Coats told this Office that the President never asked him to speak to Comey about the FBI investigation.³³⁸ Some ODNI staffers, however, had a different recollection of how Coats described the meeting immediately after it occurred. According to senior ODNI official Michael Dempsey, Coats said after the meeting that the President had brought up the Russia investigation and asked him to contact Comey to see if there was a way to get past the investigation, get it over with, end it, or words to that effect.³³⁹ Dempsey said that Coats described the President's comments as falling "somewhere between musing about hating the investigation" and wanting Coats to "do something to stop it."³⁴⁰ Dempsey said Coats made it clear that he would not get involved with an ongoing FBI investigation.³⁴¹ Edward Gistaro, another ODNI official, recalled

³³¹ SC_AD_00210 (Donaldson 3/21/17 Notes); McGahn 12/12/17 302, at 7; Donaldson 11/6/17 302, at 19.

³³² McGahn 12/12/17 302, at 7; Burnham 11/03/17 302, at 11.

³³³ Boente 1/31/18 302, at 3.

³³⁴ Coats 6/14/17 302, at 3; Culver 6/14/17 302, at 2.

³³⁵ Coats 6/14/17 302, at 3.

³³⁶ Coats 6/14/17 302, at 3.

³³⁷ Pompeo 6/28/17 302, at 1-3.

³³⁸ Coats 6/14/17 302, at 3.

³³⁹ Dempsey 6/14/17 302, at 2.

³⁴⁰ Dempsey 6/14/17 302, at 2-3.

³⁴¹ Dempsey 6/14/17 302, at 3.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

that right after Coats's meeting with the President, on the walk from the Oval Office back to the Eisenhower Executive Office Building, Coats said that the President had kept him behind to ask him what he could do to "help with the investigation."³⁴² Another ODNI staffer who had been waiting for Coats outside the Oval Office talked to Gistaro a few minutes later and recalled Gistaro reporting that Coats was upset because the President had asked him to contact Comey to convince him there was nothing to the Russia investigation.³⁴³

On Saturday, March 25, 2017, three days after the meeting in the Oval Office, the President called Coats and again complained about the Russia investigations, saying words to the effect of, "I can't do anything with Russia, there's things I'd like to do with Russia, with trade, with ISIS, they're all over me with this."³⁴⁴ Coats told the President that the investigations were going to go on and the best thing to do was to let them run their course.³⁴⁵ Coats later testified in a congressional hearing that he had "never felt pressure to intervene or interfere in any way and shape—with shaping intelligence in a political way, or in relationship . . . to an ongoing investigation."³⁴⁶

On March 26, 2017, the day after the President called Coats, the President called NSA Director Admiral Michael Rogers.³⁴⁷ The President expressed frustration with the Russia investigation, saying that it made relations with the Russians difficult.³⁴⁸ The President told Rogers "the thing with the Russians [wa]s messing up" his ability to get things done with Russia.³⁴⁹ The President also said that the news stories linking him with Russia were not true and asked Rogers if he could do anything to refute the stories.³⁵⁰ Deputy Director of the NSA Richard Ledgett, who was present for the call, said it was the most unusual thing he had experienced in 40 years of government service.³⁵¹ After the call concluded, Ledgett prepared a memorandum that he and Rogers both signed documenting the content of the conversation and the President's request, and they placed the memorandum in a safe.³⁵² But Rogers did not perceive the President's request to be an order, and the President did not ask Rogers to push back on the Russia

³⁴² Gistaro 6/14/17 302, at 2.

³⁴³ Culver 6/14/17 302, at 2-3.

³⁴⁴ Coats 6/14/17 302, at 4.

³⁴⁵ Coats 6/14/17 302, at 4; Dempsey 6/14/17 302, at 3 (Coats relayed that the President had asked several times what Coats could do to help "get [the investigation] done," and Coats had repeatedly told the President that fastest way to "get it done" was to let it run its course).

³⁴⁶ *Hearing on Foreign Intelligence Surveillance Act Before the Senate Select Intelligence Committee*, 115th Cong. (June 7, 2017) (CQ Cong. Transcripts, at 25) (testimony by Daniel Coats, Director of National Intelligence).

³⁴⁷ Rogers 6/12/17 302, at 3-4.

³⁴⁸ Rogers 6/12/17 302, at 4.

³⁴⁹ Ledgett 6/13/17 302, at 1-2; *see* Rogers 6/12/17 302, at 4.

³⁵⁰ Rogers 6/12/17 302, at 4-5; Ledgett 6/13/17 302, at 2.

³⁵¹ Ledgett 6/13/17 302, at 2.

³⁵² Ledgett 6/13/17 302, at 2-3; Rogers 6/12/17 302, at 4.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

investigation itself.³⁵³ Rogers later testified in a congressional hearing that as NSA Director he had “never been directed to do anything [he] believe[d] to be illegal, immoral, unethical or inappropriate” and did “not recall ever feeling pressured to do so.”³⁵⁴

In addition to the specific comments made to Coats, Pompeo, and Rogers, the President spoke on other occasions in the presence of intelligence community officials about the Russia investigation and stated that it interfered with his ability to conduct foreign relations.³⁵⁵ On at least two occasions, the President began Presidential Daily Briefings by stating that there was no collusion with Russia and he hoped a press statement to that effect could be issued.³⁵⁶ Pompeo recalled that the President vented about the investigation on multiple occasions, complaining that there was no evidence against him and that nobody would publicly defend him.³⁵⁷ Rogers recalled a private conversation with the President in which he “vent[ed]” about the investigation, said he had done nothing wrong, and said something like the “Russia thing has got to go away.”³⁵⁸ Coats recalled the President bringing up the Russia investigation several times, and Coats said he finally told the President that Coats’s job was to provide intelligence and not get involved in investigations.³⁵⁹

4. The President Asks Comey to “Lift the Cloud” Created by the Russia Investigation

On the morning of March 30, 2017, the President reached out to Comey directly about the Russia investigation.³⁶⁰ According to Comey’s contemporaneous record of the conversation, the President said “he was trying to run the country and the cloud of this Russia business was making

³⁵³ Rogers 6/12/17 302, at 5; Ledgett 6/13/17 302, at 2.

³⁵⁴ *Hearing on Foreign Intelligence Surveillance Act Before the Senate Select Intelligence Committee*, 115th Cong. (June 7, 2017) (CQ Cong. Transcripts, at 20) (testimony by Admiral Michael Rogers, Director of the National Security Agency).

³⁵⁵ Gistaro 6/14/17 302, at 1, 3; Pompeo 6/28/17 302, at 2-3.

³⁵⁶ Gistaro 6/14/17 302, at 1.

³⁵⁷ Pompeo 6/28/17 302, at 2.

³⁵⁸ Rogers 6/12/17 302, at 6.

³⁵⁹ Coats 6/14/17 302, at 3-4.

³⁶⁰ SCR012b_000044 (President’s Daily Diary, 3/30/17, reflecting call to Comey from 8:14 - 8:24 a.m.); Comey 3/30/17 Memorandum, at 1 (“The President called me on my CMS phone at 8:13 am today . . . The call lasted 11 minutes (about 10 minutes when he was connected).”; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 6).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

that difficult.”³⁶¹ The President asked Comey what could be done to “lift the cloud.”³⁶² Comey explained “that we were running it down as quickly as possible and that there would be great benefit, if we didn’t find anything, to our Good Housekeeping seal of approval, but we had to do our work.”³⁶³ Comey also told the President that congressional leaders were aware that the FBI was not investigating the President personally.³⁶⁴ The President said several times, “We need to get that fact out.”³⁶⁵ The President commented that if there was “some satellite” (which Comey took to mean an associate of the President’s or the campaign) that did something, “it would be good to find that out” but that he himself had not done anything wrong and he hoped Comey “would find a way to get out that we weren’t investigating him.”³⁶⁶ After the call ended, Comey called Boente and told him about the conversation, asked for guidance on how to respond, and said he was uncomfortable with direct contact from the President about the investigation.³⁶⁷

On the morning of April 11, 2017, the President called Comey again.³⁶⁸ According to Comey’s contemporaneous record of the conversation, the President said he was “following up to see if [Comey] did what [the President] had asked last time—getting out that he personally is not under investigation.”³⁶⁹ Comey responded that he had passed the request to Boente but not heard back, and he informed the President that the traditional channel for such a request would be to

³⁶¹ Comey 3/30/17 Memorandum, at 1. Comey subsequently testified before Congress about this conversation and described it to our Office; his recollections were consistent with his memorandum. *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 6); Comey 11/15/17 302, at 18.

³⁶² Comey 3/30/17 Memorandum, at 1; Comey 11/15/17 302, at 18.

³⁶³ Comey 3/30/17 Memorandum, at 1; Comey 11/15/17 302, at 18.

³⁶⁴ Comey 3/30/17 Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 6).

³⁶⁵ Comey 3/30/17 Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 6).

³⁶⁶ Comey 3/30/17 Memorandum, at 1; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 6-7).

³⁶⁷ Comey 3/30/17 Memorandum, at 2; Boente 1/31/18 302, at 6-7; *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 7).

³⁶⁸ SCR012b_000053 (President’s Daily Diary, 4/11/17, reflecting call to Comey from 8:27 – 8:31 a.m.); Comey 4/11/17 Memorandum, at 1 (“I returned the president’s call this morning at 8:26 am EDT. We spoke for about four minutes.”).

³⁶⁹ Comey 4/11/17 Memorandum, at 1. Comey subsequently testified before Congress about this conversation and his recollections were consistent with his memo. *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 7).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

have the White House Counsel contact DOJ leadership.³⁷⁰ The President said he would take that step.³⁷¹ The President then added, “Because I have been very loyal to you, very loyal, we had that thing, you know.”³⁷² In a televised interview that was taped early that afternoon, the President was asked if it was too late for him to ask Comey to step down; the President responded, “No, it’s not too late, but you know, I have confidence in him. We’ll see what happens. You know, it’s going to be interesting.”³⁷³ After the interview, Hicks told the President she thought the President’s comment about Comey should be removed from the broadcast of the interview, but the President wanted to keep it in, which Hicks thought was unusual.³⁷⁴

Later that day, the President told senior advisors, including McGahn and Priebus, that he had reached out to Comey twice in recent weeks.³⁷⁵ The President acknowledged that McGahn would not approve of the outreach to Comey because McGahn had previously cautioned the President that he should not talk to Comey directly to prevent any perception that the White House was interfering with investigations.³⁷⁶ The President told McGahn that Comey had indicated the FBI could make a public statement that the President was not under investigation if the Department of Justice approved that action.³⁷⁷ After speaking with the President, McGahn followed up with Boente to relay the President’s understanding that the FBI could make a public announcement if the Department of Justice cleared it.³⁷⁸ McGahn recalled that Boente said Comey had told him there was nothing obstructive about the calls from the President, but they made Comey uncomfortable.³⁷⁹ According to McGahn, Boente responded that he did not want to issue a statement about the President not being under investigation because of the potential political ramifications and did not want to order Comey to do it because that action could prompt the

³⁷⁰ Comey 4/11/17 Memorandum, at 1.

³⁷¹ Comey 4/11/17 Memorandum, at 1.

³⁷² Comey 4/11/17 Memorandum, at 1. In a footnote to this statement in his memorandum, Comey wrote, “His use of these words did not fit with the flow of the call, which at that point had moved away from any request of me, but I have recorded it here as it happened.”

³⁷³ Maria Bartiromo, *Interview with President Trump*, Fox Business Network (Apr. 12, 2017); SCR012b_000054 (President’s Daily Diary, 4/11/17, reflecting Bartiromo interview from 12:30 - 12:55 p.m.).

³⁷⁴ Hicks 12/8/17 302, at 13.

³⁷⁵ Priebus 10/13/17 302, at 23; McGahn 12/12/17 302, at 9.

³⁷⁶ Priebus 10/13/17 302, at 23; McGahn 12/12/17 302, at 9; *see* McGahn 11/30/17 302, at 9; Dhillon 11/21/17 302, at 2 (stating that White House Counsel attorneys had advised the President not to contact the FBI Director directly because it could create a perception he was interfering with investigations). Later in April, the President told other attorneys in the White House Counsel’s Office that he had called Comey even though he knew they had advised against direct contact. Dhillon 11/21/17 302, at 2 (recalling that the President said, “I know you told me not to, but I called Comey anyway.”).

³⁷⁷ McGahn 12/12/17 302, at 9.

³⁷⁸ McGahn 12/12/17 302, at 9.

³⁷⁹ McGahn 12/12/17 302, at 9; *see* Boente 1/31/18 302, at 6 (recalling that Comey told him after the March 30, 2017 call that it was not obstructive).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

appointment of a Special Counsel.³⁸⁰ Boente did not recall that aspect of his conversation with McGahn, but did recall telling McGahn that the direct outreaches from the President to Comey were a problem.³⁸¹ Boente recalled that McGahn agreed and said he would do what he could to address that issue.³⁸²

Analysis

In analyzing the President's reaction to Sessions's recusal and the requests he made to Coats, Pompeo, Rogers, and Comey, the following evidence is relevant to the elements of obstruction of justice:

a. Obstructive act. The evidence shows that, after Comey's March 20, 2017 testimony, the President repeatedly reached out to intelligence agency leaders to discuss the FBI's investigation. But witnesses had different recollections of the precise content of those outreaches. Some ODNI officials recalled that Coats told them immediately after the March 22 Oval Office meeting that the President asked Coats to intervene with Comey and "stop" the investigation. But the first-hand witnesses to the encounter remember the conversation differently. Pompeo had no memory of the specific meeting, but generally recalled the President urging officials to get the word out that the President had not done anything wrong related to Russia. Coats recalled that the President asked that Coats state publicly that no link existed between the President and Russia, but did not ask him to speak with Comey or to help end the investigation. The other outreaches by the President during this period were similar in nature. The President asked Rogers if he could do anything to refute the stories linking the President to Russia, and the President asked Comey to make a public statement that would "lift the cloud" of the ongoing investigation by making clear that the President was not personally under investigation. These requests, while significant enough that Rogers thought it important to document the encounter in a written memorandum, were not interpreted by the officials who received them as directives to improperly interfere with the investigation.

b. Nexus to a proceeding. At the time of the President's outreaches to leaders of the intelligence agencies in late March and early April 2017, the FBI's Russia investigation did not yet involve grand jury proceedings. The outreaches, however, came after and were in response to Comey's March 20, 2017 announcement that the FBI, as a part of its counterintelligence mission, was conducting an investigation into Russian interference in the 2016 presidential election. Comey testified that the investigation included any links or coordination with Trump campaign officials and would "include an assessment of whether any crimes were committed."

c. Intent. As described above, the evidence does not establish that the President asked or directed intelligence agency leaders to stop or interfere with the FBI's Russia investigation—and the President affirmatively told Comey that if "some satellite" was involved in Russian election interference "it would be good to find that out." But the President's intent in trying to prevent Sessions's recusal, and in reaching out to Coats, Pompeo, Rogers, and Comey following

³⁸⁰ McGahn 12/12/17 302, at 9-10.

³⁸¹ Boente 1/31/18 302, at 7; McGahn 12/12/17 302, at 9.

³⁸² Boente 1/31/18 302, at 7.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Comey's public announcement of the FBI's Russia investigation, is nevertheless relevant to understanding what motivated the President's other actions towards the investigation.

The evidence shows that the President was focused on the Russia investigation's implications for his presidency—and, specifically, on dispelling any suggestion that he was under investigation or had links to Russia. In early March, the President attempted to prevent Sessions's recusal, even after being told that Sessions was following DOJ conflict-of-interest rules. After Sessions recused, the White House Counsel's Office tried to cut off further contact with Sessions about the matter, although it is not clear whether that direction was conveyed to the President. The President continued to raise the issue of Sessions's recusal and, when he had the opportunity, he pulled Sessions aside and urged him to unrecuse. The President also told advisors that he wanted an Attorney General who would protect him, the way he perceived Robert Kennedy and Eric Holder to have protected their presidents. The President made statements about being able to direct the course of criminal investigations, saying words to the effect of, "You're telling me that Bobby and Jack didn't talk about investigations? Or Obama didn't tell Eric Holder who to investigate?"

After Comey publicly confirmed the existence of the FBI's Russia investigation on March 20, 2017, the President was "beside himself" and expressed anger that Comey did not issue a statement correcting any misperception that the President himself was under investigation. The President sought to speak with Acting Attorney General Boente directly and told McGahn to contact Boente to request that Comey make a clarifying statement. The President then asked other intelligence community leaders to make public statements to refute the suggestion that the President had links to Russia, but the leaders told him they could not publicly comment on the investigation. On March 30 and April 11, against the advice of White House advisors who had informed him that any direct contact with the FBI could be perceived as improper interference in an ongoing investigation, the President made personal outreaches to Comey asking him to "lift the cloud" of the Russia investigation by making public the fact that the President was not personally under investigation.

Evidence indicates that the President was angered by both the existence of the Russia investigation and the public reporting that he was under investigation, which he knew was not true based on Comey's representations. The President complained to advisors that if people thought Russia helped him with the election, it would detract from what he had accomplished.

Other evidence indicates that the President was concerned about the impact of the Russia investigation on his ability to govern. The President complained that the perception that he was under investigation was hurting his ability to conduct foreign relations, particularly with Russia. The President told Coats he "can't do anything with Russia," he told Rogers that "the thing with the Russians" was interfering with his ability to conduct foreign affairs, and he told Comey that "he was trying to run the country and the cloud of this Russia business was making that difficult."

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

D. Events Leading Up To and Surrounding the Termination of FBI Director Comey

Overview

Comey was scheduled to testify before Congress on May 3, 2017. Leading up to that testimony, the President continued to tell advisors that he wanted Comey to make public that the President was not under investigation. At the hearing, Comey declined to answer questions about the scope or subjects of the Russia investigation and did not state publicly that the President was not under investigation. Two days later, on May 5, 2017, the President told close aides he was going to fire Comey, and on May 9, he did so, using his official termination letter to make public that Comey had on three occasions informed the President that he was not under investigation. The President decided to fire Comey before receiving advice or a recommendation from the Department of Justice, but he approved an initial public account of the termination that attributed it to a recommendation from the Department of Justice based on Comey's handling of the Clinton email investigation. After Deputy Attorney General Rod Rosenstein resisted attributing the firing to his recommendation, the President acknowledged that he intended to fire Comey regardless of the DOJ recommendation and was thinking of the Russia investigation when he made the decision. The President also told the Russian Foreign Minister, "I just fired the head of the F.B.I. He was crazy, a real nut job. I faced great pressure because of Russia. That's taken off. . . . I'm not under investigation."

Evidence

1. Comey Testifies Before the Senate Judiciary Committee and Declines to Answer Questions About Whether the President is Under Investigation

On May 3, 2017, Comey was scheduled to testify at an FBI oversight hearing before the Senate Judiciary Committee.³⁸³ McGahn recalled that in the week leading up to the hearing, the President said that it would be the last straw if Comey did not take the opportunity to set the record straight by publicly announcing that the President was not under investigation.³⁸⁴ The President had previously told McGahn that the perception that the President was under investigation was hurting his ability to carry out his presidential duties and deal with foreign leaders.³⁸⁵ At the hearing, Comey declined to answer questions about the status of the Russia investigation, stating "[t]he Department of Justice ha[d] authorized [him] to confirm that [the Russia investigation] exists," but that he was "not going to say another word about it" until the investigation was completed.³⁸⁶ Comey also declined to answer questions about whether investigators had "ruled

³⁸³ *Hearing on Oversight of the FBI before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017).

³⁸⁴ McGahn 12/12/17 302, at 10-11.

³⁸⁵ McGahn 12/12/17 302, at 7, 10-11 (McGahn believed that two foreign leaders had expressed sympathy to the President for being under investigation); SC_AD_00265 (Donaldson 4/11/17 Notes) ("P Called Comey – Day we told him not to? 'You are not under investigation' NK/China/Sapping Credibility").

³⁸⁶ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (CQ Cong. Transcripts, at 70) (May 3, 2017) (testimony by FBI Director James Comey). Comey repeated this point

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

out anyone in the Trump campaign as potentially a target of th[e] criminal investigation,” including whether the FBI had “ruled out the president of the United States.”³⁸⁷

Comey was also asked at the hearing about his decision to announce 11 days before the presidential election that the FBI was reopening the Clinton email investigation.³⁸⁸ Comey stated that it made him “mildly nauseous to think that we might have had some impact on the election,” but added that “even in hindsight” he “would make the same decision.”³⁸⁹ He later repeated that he had no regrets about how he had handled the email investigation and believed he had “done the right thing at each turn.”³⁹⁰

In the afternoon following Comey’s testimony, the President met with McGahn, Sessions, and Sessions’s Chief of Staff Jody Hunt.³⁹¹ At that meeting, the President asked McGahn how Comey had done in his testimony and McGahn relayed that Comey had declined to answer questions about whether the President was under investigation.³⁹² The President became very upset and directed his anger at Sessions.³⁹³ According to notes written by Hunt, the President said, “This is terrible Jeff. It’s all because you recused. AG is supposed to be most important appointment. Kennedy appointed his brother. Obama appointed Holder. I appointed you and you recused yourself. You left me on an island. I can’t do anything.”³⁹⁴ The President said that the recusal was unfair and that it was interfering with his ability to govern and undermining his authority with foreign leaders.³⁹⁵ Sessions responded that he had had no choice but to recuse, and it was a mandatory rather than discretionary decision.³⁹⁶ Hunt recalled that Sessions also stated at

several times during his testimony. *See id.* at 26 (explaining that he was “not going to say another peep about [the investigation] until we’re done”); *id.* at 90 (stating that he would not provide any updates about the status of investigation “before the matter is concluded”).

³⁸⁷ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017) (CQ Cong. Transcripts, at 87-88) (questions by Sen. Blumenthal and testimony by FBI Director James B. Comey).

³⁸⁸ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017) (CQ Cong. Transcripts, at 15) (question by Sen. Feinstein).

³⁸⁹ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017) (CQ Cong. Transcripts, at 17) (testimony by FBI Director James B. Comey).

³⁹⁰ *Hearing on FBI Oversight Before the Senate Judiciary Committee*, 115th Cong. (May 3, 2017) (CQ Cong. Transcripts, at 92) (testimony by FBI Director James B. Comey).

³⁹¹ Sessions 1/17/18 302, at 8; Hunt 2/1/18 302, at 8.

³⁹² Sessions 1/17/18 302, at 8; Hunt-000021 (Hunt 5/3/17 Notes); McGahn 3/8/18 302, at 6.

³⁹³ Sessions 1/17/18 302, at 8-9.

³⁹⁴ Hunt-000021 (Hunt 5/3/17 Notes). Hunt said that he wrote down notes describing this meeting and others with the President after the events occurred. Hunt 2/1/17 302, at 2.

³⁹⁵ Hunt-000021-22 (Hunt 5/3/17 Notes) (“I have foreign leaders saying they are sorry I am being investigated.”); Sessions 1/17/18 302, at 8 (Sessions recalled that a Chinese leader had said to the President that he was sorry the President was under investigation, which the President interpreted as undermining his authority); Hunt 2/1/18 302, at 8.

³⁹⁶ Sessions 1/17/18 302, at 8; Hunt-000022 (Hunt 5/3/17 Notes).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

some point during the conversation that a new start at the FBI would be appropriate and the President should consider replacing Comey as FBI director.³⁹⁷ According to Sessions, when the meeting concluded, it was clear that the President was unhappy with Comey, but Sessions did not think the President had made the decision to terminate Comey.³⁹⁸

Bannon recalled that the President brought Comey up with him at least eight times on May 3 and May 4, 2017.³⁹⁹ According to Bannon, the President said the same thing each time: “He told me three times I’m not under investigation. He’s a showboater. He’s a grandstander. I don’t know any Russians. There was no collusion.”⁴⁰⁰ Bannon told the President that he could not fire Comey because “that ship had sailed.”⁴⁰¹ Bannon also told the President that firing Comey was not going to stop the investigation, cautioning him that he could fire the FBI director but could not fire the FBI.⁴⁰²

2. The President Makes the Decision to Terminate Comey

The weekend following Comey’s May 3, 2017 testimony, the President traveled to his resort in Bedminster, New Jersey.⁴⁰³ At a dinner on Friday, May 5, attended by the President and various advisors and family members, including Jared Kushner and senior advisor Stephen Miller, the President stated that he wanted to remove Comey and had ideas for a letter that would be used to make the announcement.⁴⁰⁴ The President dictated arguments and specific language for the letter, and Miller took notes.⁴⁰⁵ As reflected in the notes, the President told Miller that the letter should start, “While I greatly appreciate you informing me that I am not under investigation concerning what I have often stated is a fabricated story on a Trump-Russia relationship – pertaining to the 2016 presidential election, please be informed that I, and I believe the American public – including Ds and Rs – have lost faith in you as Director of the FBI.”⁴⁰⁶ Following the dinner, Miller prepared a termination letter based on those notes and research he conducted to support the President’s arguments.⁴⁰⁷ Over the weekend, the President provided several rounds of

³⁹⁷ Hunt-000022 (Hunt 5/3/17 Notes).

³⁹⁸ Sessions 1/17/18 302, at 9.

³⁹⁹ Bannon 2/12/18 302, at 20.

⁴⁰⁰ Bannon 2/12/18 302, at 20.

⁴⁰¹ Bannon 2/12/18 302, at 20.

⁴⁰² Bannon 2/12/18 302, at 20-21; *see* Priebus 10/13/17 302, at 28.

⁴⁰³ S. Miller 10/31/17 302, at 4-5; SCR025_000019 (President’s Daily Diary, 5/4/17).

⁴⁰⁴ S. Miller 10/31/17 302, at 5.

⁴⁰⁵ S. Miller 10/31/17 302, at 5-6.

⁴⁰⁶ S. Miller 5/5/17 Notes, at 1; *see* S. Miller 10/31/17 302, at 8.

⁴⁰⁷ S. Miller 10/31/17 302, at 6.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

edits on the draft letter.⁴⁰⁸ Miller said the President was adamant that he not tell anyone at the White House what they were preparing because the President was worried about leaks.⁴⁰⁹

In his discussions with Miller, the President made clear that he wanted the letter to open with a reference to him not being under investigation.⁴¹⁰ Miller said he believed that fact was important to the President to show that Comey was not being terminated based on any such investigation.⁴¹¹ According to Miller, the President wanted to establish as a factual matter that Comey had been under a “review period” and did not have assurance from the President that he would be permitted to keep his job.⁴¹²

The final version of the termination letter prepared by Miller and the President began in a way that closely tracked what the President had dictated to Miller at the May 5 dinner: “Dear Director Comey, While I greatly appreciate your informing me, on three separate occasions, that I am not under investigation concerning the fabricated and politically-motivated allegations of a Trump-Russia relationship with respect to the 2016 Presidential Election, please be informed that I, along with members of both political parties and, most importantly, the American Public, have lost faith in you as the Director of the FBI and you are hereby terminated.”⁴¹³ The four-page letter went on to critique Comey’s judgment and conduct, including his May 3 testimony before the Senate Judiciary Committee, his handling of the Clinton email investigation, and his failure to hold leakers accountable.⁴¹⁴ The letter stated that Comey had “asked [the President] at dinner shortly after inauguration to let [Comey] stay on in the Director’s role, and [the President] said that [he] would consider it,” but the President had “concluded that [he] ha[d] no alternative but to find new leadership for the Bureau – a leader that restores confidence and trust.”⁴¹⁵

In the morning of Monday, May 8, 2017, the President met in the Oval Office with senior advisors, including McGahn, Priebus, and Miller, and informed them he had decided to terminate Comey.⁴¹⁶ The President read aloud the first paragraphs of the termination letter he wrote with

⁴⁰⁸ S. Miller 10/31/17 302, at 6-8.

⁴⁰⁹ S. Miller 10/31/17 302, at 7: Miller said he did not want Priebus to be blindsided, so on Sunday night he called Priebus to tell him that the President had been thinking about the “Comey situation” and there would be an important discussion on Monday. S. Miller 10/31/17 302, at 7.

⁴¹⁰ S. Miller 10/31/17 302, at 8.

⁴¹¹ S. Miller 10/31/17 302, at 8.

⁴¹² S. Miller 10/31/17 302, at 10.

⁴¹³ SCR013c_000003-06 (Draft Termination Letter to FBI Director Comey).

⁴¹⁴ SCR013c_000003-06 (Draft Termination Letter to FBI Director Comey). Kushner said that the termination letter reflected the reasons the President wanted to fire Comey and was the truest representation of what the President had said during the May 5 dinner. Kushner 4/11/18 302, at 25.

⁴¹⁵ SCR013c_000003 (Draft Termination Letter to FBI Director Comey).

⁴¹⁶ McGahn 12/12/17 302, at 11; Priebus 10/13/17 302, at 24; S. Miller 10/31/17 302, at 11; Dhillon 11/21/17 302, at 6; Eisenberg 11/29/17 302, at 13.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Miller and conveyed that the decision had been made and was not up for discussion.⁴¹⁷ The President told the group that Miller had researched the issue and determined the President had the authority to terminate Comey without cause.⁴¹⁸ In an effort to slow down the decision-making process, McGahn told the President that DOJ leadership was currently discussing Comey's status and suggested that White House Counsel's Office attorneys should talk with Sessions and Rod Rosenstein, who had recently been confirmed as the Deputy Attorney General.⁴¹⁹ McGahn said that previously scheduled meetings with Sessions and Rosenstein that day would be an opportunity to find out what they thought about firing Comey.⁴²⁰

At noon, Sessions, Rosenstein, and Hunt met with McGahn and White House Counsel's Office attorney Uttam Dhillon at the White House.⁴²¹ McGahn said that the President had decided to fire Comey and asked for Sessions's and Rosenstein's views.⁴²² Sessions and Rosenstein criticized Comey and did not raise concerns about replacing him.⁴²³ McGahn and Dhillon said the fact that neither Sessions nor Rosenstein objected to replacing Comey gave them peace of mind that the President's decision to fire Comey was not an attempt to obstruct justice.⁴²⁴ An Oval Office meeting was scheduled later that day so that Sessions and Rosenstein could discuss the issue with the President.⁴²⁵

At around 5 p.m., the President and several White House officials met with Sessions and Rosenstein to discuss Comey.⁴²⁶ The President told the group that he had watched Comey's May

⁴¹⁷ S. Miller 10/31/17 302, at 11 (observing that the President started the meeting by saying, "I'm going to read you a letter. Don't talk me out of this. I've made my decision."); Dhillon 11/21/17 302, at 6 (the President announced in an irreversible way that he was firing Comey); Eisenberg 11/29/17 302, at 13 (the President did not leave whether or not to fire Comey up for discussion); Priebus 10/13/17 302, at 25; McGahn 12/12/17 302, at 11-12.

⁴¹⁸ Dhillon 302 11/21/17, at 6; Eisenberg 11/29/17 302, at 13; McGahn 12/12/17 302, at 11.

⁴¹⁹ McGahn 12/12/17 302, at 12, 13; S. Miller 10/31/17 302, at 11; Dhillon 11/21/17 302, at 7. Because of the Attorney General's recusal, Rosenstein became the Acting Attorney General for the Russia investigation upon his confirmation as Deputy Attorney General. *See* 28 U.S.C. § 508(a) ("In case of a vacancy in the office of Attorney General, or of his absence or disability, the Deputy Attorney General may exercise all the duties of that office").

⁴²⁰ McGahn 12/12/17 302, at 12.

⁴²¹ Dhillon 11/21/17 302, at 7; McGahn 12/12/17 302, at 13; Gauhar-000056 (Gauhar 5/16/17 Notes); *see* Gauhar-000056-72 (2/11/19 Memorandum to File attaching Gauhar handwritten notes) ("Ms. Gauhar determined that she likely recorded all these notes during one or more meetings on Tuesday, May 16, 2017.").

⁴²² McGahn 12/12/17 302, at 13; *see* Gauhar-000056 (Gauhar 5/16/17 Notes).

⁴²³ Dhillon 11/21/17 302, at 7-9; Sessions 1/17/18 302, at 9; McGahn 12/12/17 302, at 13.

⁴²⁴ McGahn 12/12/17 302, at 13; Dhillon 11/21/17 302, at 9.

⁴²⁵ Hunt-000026 (Hunt 5/8/17 Notes); *see* Gauhar-000057 (Gauhar 5/16/17 Notes).

⁴²⁶ Rosenstein 5/23/17 302, at 2; McGahn 12/12/17 302, at 14; *see* Gauhar-000057 (Gauhar 5/16/17 Notes).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

3 testimony over the weekend and thought that something was “not right” with Comey.⁴²⁷ The President said that Comey should be removed and asked Sessions and Rosenstein for their views.⁴²⁸ Hunt, who was in the room, recalled that Sessions responded that he had previously recommended that Comey be replaced.⁴²⁹ McGahn and Dhillon said Rosenstein described his concerns about Comey’s handling of the Clinton email investigation.⁴³⁰

The President then distributed copies of the termination letter he had drafted with Miller, and the discussion turned to the mechanics of how to fire Comey and whether the President’s letter should be used.⁴³¹ McGahn and Dhillon urged the President to permit Comey to resign, but the President was adamant that he be fired.⁴³² The group discussed the possibility that Rosenstein and Sessions could provide a recommendation in writing that Comey should be removed.⁴³³ The President agreed and told Rosenstein to draft a memorandum, but said he wanted to receive it first thing the next morning.⁴³⁴ Hunt’s notes reflect that the President told Rosenstein to include in his recommendation the fact that Comey had refused to confirm that the President was not personally under investigation.⁴³⁵ According to notes taken by a senior DOJ official of Rosenstein’s description of his meeting with the President, the President said, “Put the Russia stuff in the memo.”⁴³⁶ Rosenstein responded that the Russia investigation was not the basis of his recommendation, so he did not think Russia should be mentioned.⁴³⁷ The President told Rosenstein he would appreciate it if Rosenstein put it in his letter anyway.⁴³⁸ When Rosenstein

⁴²⁷ Hunt-000026-27 (Hunt 5/8/17 Notes).

⁴²⁸ Sessions 1/17/18 302, at 10; *see* Gauhar-000058 (Gauhar 5/16/17 Notes) (“POTUS to AG: What is your rec?”).

⁴²⁹ Hunt-000027 (Hunt 5/8/17 Notes).

⁴³⁰ McGahn 12/12/17 302, at 14; Dhillon 11/21/17 302, at 7.

⁴³¹ Hunt-000028 (Hunt 5/8/17 Notes).

⁴³² McGahn 12/12/17 302, at 13.

⁴³³ Hunt-000028-29 (Hunt 5/8/17 Notes).

⁴³⁴ McCabe 9/26/17 302, at 13; Rosenstein 5/23/17 302, at 2; *see* Gauhar-000059 (Gauhar 5/16/17 Notes) (“POTUS tells DAG to write a memo”).

⁴³⁵ Hunt-000028-29 (Hunt 5/8/17 Notes) (“POTUS asked if Rod’s recommendation would include the fact that although Comey talks about the investigation he refuses to say that the President is not under investigation. . . . So it would be good if your recommendation would make mention of the fact that Comey refuses to say public[ly] what he said privately 3 times.”).

⁴³⁶ Gauhar-000059 (Gauhar 5/16/17 Notes).

⁴³⁷ Sessions 1/17/18 302 at 10; McCabe 9/26/17 302, at 13; *see* Gauhar-000059 (Gauhar 5/16/17 Notes).

⁴³⁸ Gauhar-000059 (Gauhar 5/16/17 Notes); McCabe 5/16/17 Memorandum 1; McCabe 9/26/17 302, at 13.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

left the meeting, he knew that Comey would be terminated, and he told DOJ colleagues that his own reasons for replacing Comey were “not [the President’s] reasons.”⁴³⁹

On May 9, Hunt delivered to the White House a letter from Sessions recommending Comey’s removal and a memorandum from Rosenstein, addressed to the Attorney General, titled “Restoring Public Confidence in the FBI.”⁴⁴⁰ McGahn recalled that the President liked the DOJ letters and agreed that they should provide the foundation for a new cover letter from the President accepting the recommendation to terminate Comey.⁴⁴¹ Notes taken by Donaldson on May 9 reflected the view of the White House Counsel’s Office that the President’s original termination letter should “[n]ot [see the] light of day” and that it would be better to offer “[n]o other rationales” for the firing than what was in Rosenstein’s and Sessions’s memoranda.⁴⁴² The President asked Miller to draft a new termination letter and directed Miller to say in the letter that Comey had informed the President three times that he was not under investigation.⁴⁴³ McGahn, Priebus, and Dhillon objected to including that language, but the President insisted that it be included.⁴⁴⁴ McGahn, Priebus, and others perceived that language to be the most important part of the letter to

⁴³⁹ Rosenstein 5/23/17 302, at 2; Gauhar-000059 (Gauhar 5/16/17 Notes) (“DAG reasons not their reasons [POTUS]”); Gauhar-000060 (Gauhar 5/16/17 Notes) (“1st draft had a recommendation. Took it out b/c knew decision had already been made.”).

⁴⁴⁰ Rosenstein 5/23/17 302, at 4; McGahn 12/12/17 302, at 15; 5/9/17 Letter, Sessions to President Trump (“Based on my evaluation, and for the reasons expressed by the Deputy Attorney General in the attached memorandum, I have concluded that a fresh start is needed at the leadership of the FBI.”); 5/9/17 Memorandum, Rosenstein to Sessions (concluding with, “The way the Director handled the conclusion of the email investigation was wrong. As a result, the FBI is unlikely to regain public and congressional trust until it has a Director who understands the gravity of the mistakes and pledges never to repeat them. Having refused to admit his errors, the Director cannot be expected to implement the necessary corrective actions.”).

⁴⁴¹ S. Miller 10/31/17 302, at 12; McGahn 12/12/17 302, at 15; Hunt-000031 (Hunt 5/9/17 Notes).

⁴⁴² SC_AD_00342 (Donaldson 5/9/17 Notes). Donaldson also wrote “[i]s this the beginning of the end?” because she was worried that the decision to terminate Comey and the manner in which it was carried out would be the end of the presidency. Donaldson 11/6/17 302, at 25.

⁴⁴³ S. Miller 10/31/17 302, at 12; McGahn 12/12/17 302, at 15; Hunt-000032 (Hunt 5/9/17 Notes).

⁴⁴⁴ McGahn 12/12/17 302, at 15; S. Miller 10/31/17 302, at 12; Dhillon 11/21/17 302, at 8, 10; Priebus 10/13/17 302, at 27; Hunt 2/1/18 302, at 14-15; Hunt-000032 (Hunt 5/9/17 Notes).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

the President.⁴⁴⁵ Dhillon made a final pitch to the President that Comey should be permitted to resign, but the President refused.⁴⁴⁶

Around the time the President's letter was finalized, Priebus summoned Spicer and the press team to the Oval Office, where they were told that Comey had been terminated for the reasons stated in the letters by Rosenstein and Sessions.⁴⁴⁷ To announce Comey's termination, the White House released a statement, which Priebus thought had been dictated by the President.⁴⁴⁸ In full, the statement read: "Today, President Donald J. Trump informed FBI Director James Comey that he has been terminated and removed from office. President Trump acted based on the clear recommendations of both Deputy Attorney General Rod Rosenstein and Attorney General Jeff Sessions."⁴⁴⁹

That evening, FBI Deputy Director Andrew McCabe was summoned to meet with the President at the White House.⁴⁵⁰ The President told McCabe that he had fired Comey because of the decisions Comey had made in the Clinton email investigation and for many other reasons.⁴⁵¹ The President asked McCabe if he was aware that Comey had told the President three times that he was not under investigation.⁴⁵² The President also asked McCabe whether many people in the FBI disliked Comey and whether McCabe was part of the "resistance" that had disagreed with Comey's decisions in the Clinton investigation.⁴⁵³ McCabe told the President that he knew Comey had told the President he was not under investigation, that most people in the FBI felt positively about Comey, and that McCabe worked "very closely" with Comey and was part of all the decisions that had been made in the Clinton investigation.⁴⁵⁴

⁴⁴⁵ Dhillon 11/21/17 302, at 10; Eisenberg 11/29/17 302, at 15 (providing the view that the President's desire to include the language about not being under investigation was the "driving animus of the whole thing"); Burnham 11/3/17 302, at 16 (Burnham knew the only line the President cared about was the line that said Comey advised the President on three separate occasions that the President was not under investigation). According to Hunt's notes, the reference to Comey's statement would indicate that "notwithstanding" Comey's having informed the President that he was not under investigation, the President was terminating Comey. Hunt-000032 (Hunt 5/9/17 Notes). McGahn said he believed the President wanted the language included so that people would not think that the President had terminated Comey because the President was under investigation. McGahn 12/12/17 302, at 15.

⁴⁴⁶ McGahn 12/12/17 302, at 15; Donaldson 11/6/17 302, at 25; *see* SC_AD_00342 (Donaldson 5/9/17 Notes) ("Resign vs. Removal. – POTUS/removal.").

⁴⁴⁷ Spicer 10/16/17 302, at 9; McGahn 12/12/17 302, at 16.

⁴⁴⁸ Priebus 10/13/17 302, at 28.

⁴⁴⁹ *Statement of the Press Secretary*, The White House, Office of the Press Secretary (May 9, 2017).

⁴⁵⁰ McCabe 9/26/17 302, at 4; SCR025_000044 (President's Daily Diary, 5/9/17); McCabe 5/10/17 Memorandum, at 1.

⁴⁵¹ McCabe 9/26/17 302, at 5; McCabe 5/10/17 Memorandum, at 1.

⁴⁵² McCabe 9/26/17 302, at 5; McCabe 5/10/17 Memorandum, at 1-2.

⁴⁵³ McCabe 9/26/17 302, at 5; McCabe 5/10/17 Memorandum, at 1-2.

⁴⁵⁴ McCabe 9/26/17 302, at 5; McCabe 5/10/17 Memorandum, at 1-2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Later that evening, the President told his communications team he was unhappy with the press coverage of Comey's termination and ordered them to go out and defend him.⁴⁵⁵ The President also called Chris Christie and, according to Christie, said he was getting "killed" in the press over Comey's termination.⁴⁵⁶ The President asked what he should do.⁴⁵⁷ Christie asked, "Did you fire [Comey] because of what Rod wrote in the memo?" and the President responded, "Yes."⁴⁵⁸ Christie said that the President should "get Rod out there" and have him defend the decision.⁴⁵⁹ The President told Christie that this was a "good idea" and said he was going to call Rosenstein right away.⁴⁶⁰

That night, the White House Press Office called the Department of Justice and said the White House wanted to put out a statement saying that it was Rosenstein's idea to fire Comey.⁴⁶¹ Rosenstein told other DOJ officials that he would not participate in putting out a "false story."⁴⁶² The President then called Rosenstein directly and said he was watching Fox News, that the coverage had been great, and that he wanted Rosenstein to do a press conference.⁴⁶³ Rosenstein responded that this was not a good idea because if the press asked him, he would tell the truth that Comey's firing was not his idea.⁴⁶⁴ Sessions also informed the White House Counsel's Office that evening that Rosenstein was upset that his memorandum was being portrayed as the reason for Comey's termination.⁴⁶⁵

In an unplanned press conference late in the evening of May 9, 2017, Spicer told reporters, "It was all [Rosenstein]. No one from the White House. It was a DOJ decision."⁴⁶⁶ That evening and the next morning, White House officials and spokespeople continued to maintain that the

⁴⁵⁵ Spicer 10/16/17 302, at 11; Hicks 12/8/17, at 18; Sanders 7/3/18 302, at 2.

⁴⁵⁶ Christie 2/13/19 302, at 6.

⁴⁵⁷ Christie 2/13/19 302, at 6.

⁴⁵⁸ Christie 2/13/19 302, at 6.

⁴⁵⁹ Christie 2/13/19 302, at 6.

⁴⁶⁰ Christie 2/13/19 302, at 6.

⁴⁶¹ Gauhar-000071 (Gauhar 5/16/17 Notes); Page Memorandum, at 3 (recording events of 5/16/17); McCabe 9/26/17 302, at 14.

⁴⁶² Rosenstein 5/23/17 302, at 4-5; Gauhar-000059 (Gauhar 5/16/17 Notes).

⁴⁶³ Rosenstein 5/23/17 302, at 4-5; Gauhar-000071 (Gauhar 5/16/17 Notes).

⁴⁶⁴ Gauhar-000071 (Gauhar 5/16/17 Notes). DOJ notes from the week of Comey's firing indicate that Priebus was "screaming" at the DOJ public affairs office trying to get Rosenstein to do a press conference, and the DOJ public affairs office told Priebus that Rosenstein had told the President he was not doing it. Gauhar-000071-72 (Gauhar 5/16/17 Notes).

⁴⁶⁵ McGahn 12/12/17 302, at 16-17; Donaldson 11/6/17 302, at 26-27; Dhillon 11/21/17 302, at 11.

⁴⁶⁶ Jenna Johnson, *After Trump fired Comey, White House staff scrambled to explain why*, Washington Post (May 10, 2017) (quoting Spicer).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

President's decision to terminate Comey was driven by the recommendations the President received from Rosenstein and Sessions.⁴⁶⁷

In the morning on May 10, 2017, President Trump met with Russian Foreign Minister Sergey Lavrov and Russian Ambassador Sergey Kislyak in the Oval Office.⁴⁶⁸ The media subsequently reported that during the May 10 meeting the President brought up his decision the prior day to terminate Comey, telling Lavrov and Kislyak: "I just fired the head of the F.B.I. He was crazy, a real nut job. I faced great pressure because of Russia. That's taken off. . . . I'm not under investigation."⁴⁶⁹ The President never denied making those statements, and the White House did not dispute the account, instead issuing a statement that said: "By grandstanding and politicizing the investigation into Russia's actions, James Comey created unnecessary pressure on our ability to engage and negotiate with Russia. The investigation would have always continued, and obviously, the termination of Comey would not have ended it. Once again, the real story is that our national security has been undermined by the leaking of private and highly classified information."⁴⁷⁰ Hicks said that when she told the President about the reports on his meeting with Lavrov, he did not look concerned and said of Comey, "he *is* crazy."⁴⁷¹ When McGahn asked the President about his comments to Lavrov, the President said it was good that Comey was fired because that took the pressure off by making it clear that he was not under investigation so he could get more work done.⁴⁷²

That same morning, on May 10, 2017, the President called McCabe.⁴⁷³ According to a memorandum McCabe wrote following the call, the President asked McCabe to come over to the White House to discuss whether the President should visit FBI headquarters and make a speech to

⁴⁶⁷ See, e.g., Sarah Sanders, *White House Daily Briefing*, C-SPAN (May 10, 2017); SCR013_001088 (5/10/17 Email, Hemming to Cheung et al.) (internal White House email describing comments on the Comey termination by Vice President Pence).

⁴⁶⁸ SCR08_000353 (5/9/17 White House Document, "Working Visit with Foreign Minister Sergey Lavrov of Russia"); SCR08_001274 (5/10/17 Email, Ciaramella to Kelly et al.). The meeting had been planned on May 2, 2017, during a telephone call between the President and Russian President Vladimir Putin, and the meeting date was confirmed on May 5, 2017, the same day the President dictated ideas for the Comey termination letter to Stephen Miller. SCR08_001274 (5/10/17 Email, Ciaramella to Kelly et al.).

⁴⁶⁹ Matt Apuzzo et al., *Trump Told Russians That Firing "Nut Job" Comey Eased Pressure From Investigation*, *New York Times* (May 19, 2017).

⁴⁷⁰ SCR08_002117 (5/19/17 Email, Walters to Farhi (CBS News)); see Spicer 10/16/17 302, at 13 (noting he would have been told to "clean it up" if the reporting on the meeting with the Russian Foreign Minister was inaccurate, but he was never told to correct the reporting); Hicks 12/8/17 302, at 19 (recalling that the President never denied making the statements attributed to him in the Lavrov meeting and that the President had said similar things about Comey in an off-the-record meeting with reporters on May 18, 2017, calling Comey a "nut job" and "crazy").

⁴⁷¹ Hicks 12/8/17 302, at 19.

⁴⁷² McGahn 12/12/17 302, at 18.

⁴⁷³ SCR025_000046 (President's Daily Diary, 5/10/17); McCabe 5/10/17 Memorandum, at 1.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

employees.⁴⁷⁴ The President said he had received “hundreds” of messages from FBI employees indicating their support for terminating Comey.⁴⁷⁵ The President also told McCabe that Comey should not have been permitted to travel back to Washington, D.C. on the FBI’s airplane after he had been terminated and that he did not want Comey “in the building again,” even to collect his belongings.⁴⁷⁶ When McCabe met with the President that afternoon, the President, without prompting, told McCabe that people in the FBI loved the President, estimated that at least 80% of the FBI had voted for him, and asked McCabe who he had voted for in the 2016 presidential election.⁴⁷⁷

In the afternoon of May 10, 2017, deputy press secretary Sarah Sanders spoke to the President about his decision to fire Comey and then spoke to reporters in a televised press conference.⁴⁷⁸ Sanders told reporters that the President, the Department of Justice, and bipartisan members of Congress had lost confidence in Comey, “[a]nd most importantly, the rank and file of the FBI had lost confidence in their director. Accordingly, the President accepted the recommendation of his Deputy Attorney General to remove James Comey from his position.”⁴⁷⁹ In response to questions from reporters, Sanders said that Rosenstein decided “on his own” to review Comey’s performance and that Rosenstein decided “on his own” to come to the President on Monday, May 8 to express his concerns about Comey. When a reporter indicated that the “vast majority” of FBI agents supported Comey, Sanders said, “Look, we’ve heard from countless members of the FBI that say very different things.”⁴⁸⁰ Following the press conference, Sanders spoke to the President, who told her she did a good job and did not point out any inaccuracies in her comments.⁴⁸¹ Sanders told this Office that her reference to hearing from “countless members of the FBI” was a “slip of the tongue.”⁴⁸² She also recalled that her statement in a separate press interview that rank-and-file FBI agents had lost confidence in Comey was a comment she made “in the heat of the moment” that was not founded on anything.⁴⁸³

Also on May 10, 2017, Sessions and Rosenstein each spoke to McGahn and expressed concern that the White House was creating a narrative that Rosenstein had initiated the decision to

⁴⁷⁴ McCabe 5/10/17 Memorandum, at 1.

⁴⁷⁵ McCabe 5/10/17 Memorandum, at 1.

⁴⁷⁶ McCabe 5/10/17 Memorandum, at 1; Rybicki 6/13/17 302, at 2. Comey had been visiting the FBI’s Los Angeles office when he found out he had been terminated. Comey 11/15/17 302, at 22.

⁴⁷⁷ McCabe 5/10/17 Memorandum, at 1-2. McCabe’s memorandum documenting his meeting with the President is consistent with notes taken by the White House Counsel’s Office. See SC_AD_00347 (Donaldson 5/10/17 Notes).

⁴⁷⁸ Sanders 7/3/18 302, at 4; Sarah Sanders, *White House Daily Briefing*, C-SPAN (May 10, 2017).

⁴⁷⁹ Sarah Sanders, *White House Daily Briefing*, C-SPAN (May 10, 2017); Sanders 7/3/18 302, at 4.

⁴⁸⁰ Sarah Sanders, *White House Daily Briefing*, C-SPAN (May 10, 2017).

⁴⁸¹ Sanders 7/3/18 302, at 4.

⁴⁸² Sanders 7/3/18 302, at 4.

⁴⁸³ Sanders 7/3/18 302, at 3.

U.S. DEPARTMENT OF JUSTICE

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

fire Comey.⁴⁸⁴ The White House Counsel's Office agreed that it was factually wrong to say that the Department of Justice had initiated Comey's termination,⁴⁸⁵ and McGahn asked attorneys in the White House Counsel's Office to work with the press office to correct the narrative.⁴⁸⁶

The next day, on May 11, 2017, the President participated in an interview with Lester Holt. The President told White House Counsel's Office attorneys in advance of the interview that the communications team could not get the story right, so he was going on Lester Holt to say what really happened.⁴⁸⁷ During the interview, the President stated that he had made the decision to fire Comey before the President met with Rosenstein and Sessions. The President told Holt, "I was going to fire regardless of recommendation . . . [Rosenstein] made a recommendation. But regardless of recommendation, I was going to fire Comey knowing there was no good time to do it."⁴⁸⁸ The President continued, "And in fact, when I decided to just do it, I said to myself—I said, you know, this Russia thing with Trump and Russia is a made-up story. It's an excuse by the Democrats for having lost an election that they should've won."⁴⁸⁹

In response to a question about whether he was angry with Comey about the Russia investigation, the President said, "As far as I'm concerned, I want that thing to be absolutely done properly."⁴⁹⁰ The President added that he realized his termination of Comey "probably maybe will confuse people" with the result that it "might even lengthen out the investigation," but he "ha[d] to do the right thing for the American people" and Comey was "the wrong man for that position."⁴⁹¹ The President described Comey as "a showboat" and "a grandstander," said that "[t]he FBI has been in turmoil," and said he wanted "to have a really competent, capable director."⁴⁹² The President affirmed that he expected the new FBI director to continue the Russia investigation.⁴⁹³

On the evening of May 11, 2017, following the Lester Holt interview, the President tweeted, "Russia must be laughing up their sleeves watching as the U.S. tears itself apart over a Democrat EXCUSE for losing the election."⁴⁹⁴ The same day, the media reported that the President had demanded that Comey pledge his loyalty to the President in a private dinner shortly

⁴⁸⁴ McGahn 12/12/17 302, at 16-17; Donaldson 11/6/17 302, at 26; see Dhillon 11/21/17 302, at 11.

⁴⁸⁵ Donaldson 11/6/17 302, at 27.

⁴⁸⁶ McGahn 12/12/17 302, at 17.

⁴⁸⁷ Dhillon 11/21/17 302, at 11.

⁴⁸⁸ *Interview with President Donald Trump*, NBC (May 11, 2017) Transcript, at 2.

⁴⁸⁹ *Interview with President Donald Trump*, NBC (May 11, 2017) Transcript, at 2.

⁴⁹⁰ *Interview with President Donald Trump*, NBC (May 11, 2017) Transcript, at 3.

⁴⁹¹ *Interview with President Donald Trump*, NBC (May 11, 2017) Transcript, at 3.

⁴⁹² *Interview with President Donald Trump*, NBC (May 11, 2017) Transcript, at 1, 5.

⁴⁹³ *Interview with President Donald Trump*, NBC (May 11, 2017) Transcript, at 7.

⁴⁹⁴ @realDonaldTrump 5/11/17 (4:34 p.m. ET) Tweet.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

after being sworn in.⁴⁹⁵ Late in the morning of May 12, 2017, the President tweeted, “Again, the story that there was collusion between the Russians & Trump campaign was fabricated by Dems as an excuse for losing the election.”⁴⁹⁶ The President also tweeted, “James Comey better hope that there are no ‘tapes’ of our conversations before he starts leaking to the press!” and “When James Clapper himself, and virtually everyone else with knowledge of the witch hunt, says there is no collusion, when does it end?”⁴⁹⁷

Analysis

In analyzing the President’s decision to fire Comey, the following evidence is relevant to the elements of obstruction of justice:

a. **Obstructive act.** The act of firing Comey removed the individual overseeing the FBI’s Russia investigation. The President knew that Comey was personally involved in the investigation based on Comey’s briefing of the Gang of Eight, Comey’s March 20, 2017 public testimony about the investigation, and the President’s one-on-one conversations with Comey.

Firing Comey would qualify as an obstructive act if it had the natural and probable effect of interfering with or impeding the investigation—for example, if the termination would have the effect of delaying or disrupting the investigation or providing the President with the opportunity to appoint a director who would take a different approach to the investigation that the President perceived as more protective of his personal interests. Relevant circumstances bearing on that issue include whether the President’s actions had the potential to discourage a successor director or other law enforcement officials in their conduct of the Russia investigation. The President fired Comey abruptly without offering him an opportunity to resign, banned him from the FBI building, and criticized him publicly, calling him a “showboat” and claiming that the FBI was “in turmoil” under his leadership. And the President followed the termination with public statements that were highly critical of the investigation; for example, three days after firing Comey, the President referred to the investigation as a “witch hunt” and asked, “when does it end?” Those actions had the potential to affect a successor director’s conduct of the investigation.

The anticipated effect of removing the FBI director, however, would not necessarily be to prevent or impede the FBI from continuing its investigation. As a general matter, FBI investigations run under the operational direction of FBI personnel levels below the FBI director. Bannon made a similar point when he told the President that he could fire the FBI director, but could not fire the FBI. The White House issued a press statement the day after Comey was fired that said, “The investigation would have always continued, and obviously, the termination of Comey would not have ended it.” In addition, in his May 11 interview with Lester Holt, the President stated that he understood when he made the decision to fire Comey that the action might prolong the investigation. And the President chose McCabe to serve as interim director, even

⁴⁹⁵ Michael S. Schmidt, *In a Private Dinner, Trump Demanded Loyalty. Comey Demurred.*, New York Times (May 11, 2017).

⁴⁹⁶ @realDonaldTrump 5/12/17 (7:51 a.m. ET) Tweet.

⁴⁹⁷ @realDonaldTrump 5/12/17 (8:26 a.m. ET) Tweet; @realDonaldTrump 5/12/17 (8:54 a.m. ET) Tweet.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

though McCabe told the President he had worked “very closely” with Comey and was part of all the decisions made in the Clinton investigation.

b. Nexus to a proceeding. The nexus element would be satisfied by evidence showing that a grand jury proceeding or criminal prosecution arising from an FBI investigation was objectively foreseeable and actually contemplated by the President when he terminated Comey.

Several facts would be relevant to such a showing. At the time the President fired Comey, a grand jury had not begun to hear evidence related to the Russia investigation and no grand jury subpoenas had been issued. On March 20, 2017, however, Comey had announced that the FBI was investigating Russia’s interference in the election, including “an assessment of whether any crimes were committed.” It was widely known that the FBI, as part of the Russia investigation, was investigating the hacking of the DNC’s computers—a clear criminal offense.

In addition, at the time the President fired Comey, evidence indicates the President knew that Flynn was still under criminal investigation and could potentially be prosecuted, despite the President’s February 14, 2017 request that Comey “let[] Flynn go.” On March 5, 2017, the White House Counsel’s Office was informed that the FBI was asking for transition-period records relating to Flynn—indicating that the FBI was still actively investigating him. The same day, the President told advisors he wanted to call Dana Boente, then the Acting Attorney General for the Russia investigation, to find out whether the White House or the President was being investigated. On March 31, 2017, the President signaled his awareness that Flynn remained in legal jeopardy by tweeting that “Mike Flynn should ask for immunity” before he agreed to provide testimony to the FBI or Congress. And in late March or early April, the President asked McFarland to pass a message to Flynn telling him that the President felt bad for him and that he should stay strong, further demonstrating the President’s awareness of Flynn’s criminal exposure.

c. Intent. Substantial evidence indicates that the catalyst for the President’s decision to fire Comey was Comey’s unwillingness to publicly state that the President was not personally under investigation, despite the President’s repeated requests that Comey make such an announcement. In the week leading up to Comey’s May 3, 2017 Senate Judiciary Committee testimony, the President told McGahn that it would be the last straw if Comey did not set the record straight and publicly announce that the President was not under investigation. But during his May 3 testimony, Comey refused to answer questions about whether the President was being investigated. Comey’s refusal angered the President, who criticized Sessions for leaving him isolated and exposed, saying “You left me on an island.” Two days later, the President told advisors he had decided to fire Comey and dictated a letter to Stephen Miller that began with a reference to the fact that the President was not being investigated: “While I greatly appreciate you informing me that I am not under investigation concerning what I have often stated is a fabricated story on a Trump-Russia relationship . . .” The President later asked Rosenstein to include “Russia” in his memorandum and to say that Comey had told the President that he was not under investigation. And the President’s final termination letter included a sentence, at the President’s insistence and against McGahn’s advice, stating that Comey had told the President on three separate occasions that he was not under investigation.

The President’s other stated rationales for why he fired Comey are not similarly supported by the evidence. The termination letter the President and Stephen Miller prepared in Bedminster

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

cited Comey's handling of the Clinton email investigation, and the President told McCabe he fired Comey for that reason. But the facts surrounding Comey's handling of the Clinton email investigation were well known to the President at the time he assumed office, and the President had made it clear to both Comey and the President's senior staff in early 2017 that he wanted Comey to stay on as director. And Rosenstein articulated his criticism of Comey's handling of the Clinton investigation after the President had already decided to fire Comey. The President's draft termination letter also stated that morale in the FBI was at an all-time low and Sanders told the press after Comey's termination that the White House had heard from "countless" FBI agents who had lost confidence in Comey. But the evidence does not support those claims. The President told Comey at their January 27 dinner that "the people of the FBI really like [him]," no evidence suggests that the President heard otherwise before deciding to terminate Comey, and Sanders acknowledged to investigators that her comments were not founded on anything.

We also considered why it was important to the President that Comey announce publicly that he was not under investigation. Some evidence indicates that the President believed that the erroneous perception he was under investigation harmed his ability to manage domestic and foreign affairs, particularly in dealings with Russia. The President told Comey that the "cloud" of "this Russia business" was making it difficult to run the country. The President told Sessions and McGahn that foreign leaders had expressed sympathy to him for being under investigation and that the perception he was under investigation was hurting his ability to address foreign relations issues. The President complained to Rogers that "the thing with the Russians [was] messing up" his ability to get things done with Russia, and told Coats, "I can't do anything with Russia, there's things I'd like to do with Russia, with trade, with ISIS, they're all over me with this." The President also may have viewed Comey as insubordinate for his failure to make clear in the May 3 testimony that the President was not under investigation.

Other evidence, however, indicates that the President wanted to protect himself from an investigation into his campaign. The day after learning about the FBI's interview of Flynn, the President had a one-on-one dinner with Comey, against the advice of senior aides, and told Comey he needed Comey's "loyalty." When the President later asked Comey for a second time to make public that he was not under investigation, he brought up loyalty again, saying "Because I have been very loyal to you, very loyal, we had that thing, you know." After the President learned of Sessions's recusal from the Russia investigation, the President was furious and said he wanted an Attorney General who would protect him the way he perceived Robert Kennedy and Eric Holder to have protected their presidents. The President also said he wanted to be able to tell his Attorney General "who to investigate."

In addition, the President had a motive to put the FBI's Russia investigation behind him. The evidence does not establish that the termination of Comey was designed to cover up a conspiracy between the Trump Campaign and Russia: As described in Volume I, the evidence uncovered in the investigation did not establish that the President or those close to him were involved in the charged Russian computer-hacking or active-measure conspiracies, or that the President otherwise had an unlawful relationship with any Russian official. But the evidence does indicate that a thorough FBI investigation would uncover facts about the campaign and the President personally that the President could have understood to be crimes or that would give rise to personal and political concerns. Although the President publicly stated during and after the election that he had no connection to Russia, the Trump Organization, through Michael Cohen,

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

was pursuing the proposed Trump Tower Moscow project through June 2016 and candidate Trump was repeatedly briefed on the progress of those efforts.⁴⁹⁸ In addition, some witnesses said that Trump was aware that **Harm to Ongoing Matter** at a time when public reports stated that Russian intelligence officials were behind the hacks, and that Trump privately sought information about future WikiLeaks releases.⁴⁹⁹ More broadly, multiple witnesses described the President's preoccupation with press coverage of the Russia investigation and his persistent concern that it raised questions about the legitimacy of his election.⁵⁰⁰

Finally, the President and White House aides initially advanced a pretextual reason to the press and the public for Comey's termination. In the immediate aftermath of the firing, the President dictated a press statement suggesting that he had acted based on the DOJ recommendations, and White House press officials repeated that story. But the President had decided to fire Comey before the White House solicited those recommendations. Although the President ultimately acknowledged that he was going to fire Comey regardless of the Department of Justice's recommendations, he did so only after DOJ officials made clear to him that they would resist the White House's suggestion that they had prompted the process that led to Comey's termination. The initial reliance on a pretextual justification could support an inference that the President had concerns about providing the real reason for the firing, although the evidence does not resolve whether those concerns were personal, political, or both.

E. The President's Efforts to Remove the Special Counsel

Overview

The Acting Attorney General appointed a Special Counsel on May 17, 2017, prompting the President to state that it was the end of his presidency and that Attorney General Sessions had failed to protect him and should resign. Sessions submitted his resignation, which the President ultimately did not accept. The President told senior advisors that the Special Counsel had conflicts of interest, but they responded that those claims were "ridiculous" and posed no obstacle to the Special Counsel's service. Department of Justice ethics officials similarly cleared the Special Counsel's service. On June 14, 2017, the press reported that the President was being personally investigated for obstruction of justice and the President responded with a series of tweets

⁴⁹⁸ See Volume II, Section II.K.1, *infra*.

⁴⁹⁹ See Volume I, Section III.D.1, *supra*.

⁵⁰⁰ In addition to whether the President had a motive related to Russia-related matters that an FBI investigation could uncover, we considered whether the President's intent in firing Comey was connected to other conduct that could come to light as a result of the FBI's Russian-interference investigation. In particular, Michael Cohen was a potential subject of investigation because of his pursuit of the Trump Tower Moscow project and involvement in other activities. And facts uncovered in the Russia investigation, which our Office referred to the U.S. Attorney's Office for the Southern District of New York, ultimately led to the conviction of Cohen in the Southern District of New York for campaign-finance offenses related to payments he said he made at the direction of the President. See Volume II, Section II.K.5, *infra*. The investigation, however, did not establish that when the President fired Comey, he was considering the possibility that the FBI's investigation would uncover these payments or that the President's intent in firing Comey was otherwise connected to a concern about these matters coming to light.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

criticizing the Special Counsel's investigation. That weekend, the President called McGahn and directed him to have the Special Counsel removed because of asserted conflicts of interest. McGahn did not carry out the instruction for fear of being seen as triggering another Saturday Night Massacre and instead prepared to resign. McGahn ultimately did not quit and the President did not follow up with McGahn on his request to have the Special Counsel removed.

Evidence

I. The Appointment of the Special Counsel and the President's Reaction

On May 17, 2017, Acting Attorney General Rosenstein appointed Robert S. Mueller, III as Special Counsel and authorized him to conduct the Russia investigation and matters that arose from the investigation.⁵⁰¹ The President learned of the Special Counsel's appointment from Sessions, who was with the President, Hunt, and McGahn conducting interviews for a new FBI Director.⁵⁰² Sessions stepped out of the Oval Office to take a call from Rosenstein, who told him about the Special Counsel appointment, and Sessions then returned to inform the President of the news.⁵⁰³ According to notes written by Hunt, when Sessions told the President that a Special Counsel had been appointed, the President slumped back in his chair and said, "Oh my God. This is terrible. This is the end of my Presidency. I'm fucked."⁵⁰⁴ The President became angry and lambasted the Attorney General for his decision to recuse from the investigation, stating, "How could you let this happen, Jeff?"⁵⁰⁵ The President said the position of Attorney General was his most important appointment and that Sessions had "let [him] down," contrasting him to Eric Holder and Robert Kennedy.⁵⁰⁶ Sessions recalled that the President said to him, "you were supposed to protect me," or words to that effect.⁵⁰⁷ The President returned to the consequences of the appointment and said, "Everyone tells me if you get one of these independent counsels it ruins your presidency. It takes years and years and I won't be able to do anything. This is the worst thing that ever happened to me."⁵⁰⁸

⁵⁰¹ Office of the Deputy Attorney General, Order No. 3915-2017, *Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters* (May 17, 2017).

⁵⁰² Sessions 1/17/18 302, at 13; Hunt 2/1/18 302, at 18; McGahn 12/14/17 302, at 4; Hunt-000039 (Hunt 5/17/17 Notes).

⁵⁰³ Sessions 1/17/18 302, at 13; Hunt 2/1/18 302, at 18; McGahn 12/14/17 302, at 4; Hunt-000039 (Hunt 5/17/17 Notes).

⁵⁰⁴ Hunt-000039 (Hunt 5/17/17 Notes).

⁵⁰⁵ Hunt-000039 (Hunt 5/17/17 Notes); Sessions 1/17/18 302, at 13-14.

⁵⁰⁶ Hunt-000040; see Sessions 1/17/18 302, at 14.

⁵⁰⁷ Sessions 1/17/18 302, at 14.

⁵⁰⁸ Hunt-000040 (Hunt 5/17/17 Notes); see Sessions 1/17/18 302, at 14. Early the next morning, the President tweeted, "This is the single greatest witch hunt of a politician in American history!" @realDonaldTrump 5/18/17 (7:52 a.m. ET) Tweet.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

The President then told Sessions he should resign as Attorney General.⁵⁰⁹ Sessions agreed to submit his resignation and left the Oval Office.⁵¹⁰ Hicks saw the President shortly after Sessions departed and described the President as being extremely upset by the Special Counsel's appointment.⁵¹¹ Hicks said that she had only seen the President like that one other time, when the Access Hollywood tape came out during the campaign.⁵¹²

The next day, May 18, 2017, FBI agents delivered to McGahn a preservation notice that discussed an investigation related to Comey's termination and directed the White House to preserve all relevant documents.⁵¹³ When he received the letter, McGahn issued a document hold to White House staff and instructed them not to send out any burn bags over the weekend while he sorted things out.⁵¹⁴

Also on May 18, Sessions finalized a resignation letter that stated, "Pursuant to our conversation of yesterday, and at your request, I hereby offer my resignation."⁵¹⁵ Sessions, accompanied by Hunt, brought the letter to the White House and handed it to the President.⁵¹⁶ The President put the resignation letter in his pocket and asked Sessions several times whether he wanted to continue serving as Attorney General.⁵¹⁷ Sessions ultimately told the President he wanted to stay, but it was up to the President.⁵¹⁸ The President said he wanted Sessions to stay.⁵¹⁹ At the conclusion of the meeting, the President shook Sessions's hand but did not return the resignation letter.⁵²⁰

When Priebus and Bannon learned that the President was holding onto Sessions's resignation letter, they became concerned that it could be used to influence the Department of Justice.⁵²¹ Priebus told Sessions it was not good for the President to have the letter because it

⁵⁰⁹ Hunt-000041 (Hunt 5/17/17 Notes); Sessions 1/17/18 302, at 14.

⁵¹⁰ Hunt-000041 (Hunt 5/17/17 Notes); Sessions 1/17/18 302, at 14.

⁵¹¹ Hicks 12/8/17 302, at 21.

⁵¹² Hicks 12/8/17 302, at 21. The Access Hollywood tape was released on October 7, 2016, as discussed in Volume I, Section III.D.1, *supra*.

⁵¹³ McGahn 12/14/17 302, at 9; SCR015_000175-82 (Undated Draft Memoranda to White House Staff).

⁵¹⁴ McGahn 12/14/17 302, at 9; SCR015_000175-82 (Undated Draft Memoranda to White House Staff). The White House Counsel's Office had previously issued a document hold on February 27, 2017. SCR015_000171 (2/17/17 Memorandum from McGahn to Executive Office of the President Staff).

⁵¹⁵ Hunt-000047 (Hunt 5/18/17 Notes); 5/18/17 Letter, Sessions to President Trump (resigning as Attorney General).

⁵¹⁶ Hunt-000047-49 (Hunt 5/18/17 Notes); Sessions 1/17/18 302, at 14.

⁵¹⁷ Hunt-000047-49 (Hunt 5/18/17 Notes); Sessions 1/17/18 302, at 14.

⁵¹⁸ Hunt-000048-49 (Hunt 5/18/17 Notes); Sessions 1/17/18 302, at 14.

⁵¹⁹ Sessions 1/17/18 302, at 14.

⁵²⁰ Hunt-000049 (Hunt 5/18/17 Notes).

⁵²¹ Hunt-000050-51 (Hunt 5/18/17 Notes).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

would function as a kind of “shock collar” that the President could use any time he wanted; Priebus said the President had “DOJ by the throat.”⁵²² Priebus and Bannon told Sessions they would attempt to get the letter back from the President with a notation that he was not accepting Sessions’s resignation.⁵²³

On May 19, 2017, the President left for a trip to the Middle East.⁵²⁴ Hicks recalled that on the President’s flight from Saudi Arabia to Tel Aviv, the President pulled Sessions’s resignation letter from his pocket, showed it to a group of senior advisors, and asked them what he should do about it.⁵²⁵ During the trip, Priebus asked about the resignation letter so he could return it to Sessions, but the President told him that the letter was back at the White House, somewhere in the residence.⁵²⁶ It was not until May 30, three days after the President returned from the trip, that the President returned the letter to Sessions with a notation saying, “Not accepted.”⁵²⁷

2. The President Asserts that the Special Counsel has Conflicts of Interest

In the days following the Special Counsel’s appointment, the President repeatedly told advisors, including Priebus, Bannon, and McGahn, that Special Counsel Mueller had conflicts of interest.⁵²⁸ The President cited as conflicts that Mueller had interviewed for the FBI Director position shortly before being appointed as Special Counsel, that he had worked for a law firm that represented people affiliated with the President, and that Mueller had disputed certain fees relating to his membership in a Trump golf course in Northern Virginia.⁵²⁹ The President’s advisors pushed

⁵²² Hunt-000050 (Hunt 5/18/17 Notes); Priebus 10/13/17 302, at 21; Hunt 2/1/18 302, at 21.

⁵²³ Hunt-000051 (Hunt 5/18/17 Notes).

⁵²⁴ SCR026_000110 (President’s Daily Diary, 5/19/17).

⁵²⁵ Hicks 12/8/17 302, at 22.

⁵²⁶ Priebus 10/13/17 302, at 21. Hunt’s notes state that when Priebus returned from the trip, Priebus told Hunt that the President was supposed to have given him the letter, but when he asked for it, the President “slapped the desk” and said he had forgotten it back at the hotel. Hunt-000052 (Hunt Notes, undated).

⁵²⁷ Hunt-000052-53 (Hunt 5/30/17 Notes); 5/18/17 Letter, Sessions to President Trump (resignation letter). Robert Porter, who was the White House Staff Secretary at the time, said that in the days after the President returned from the Middle East trip, the President took Sessions’s letter out of a drawer in the Oval Office and showed it to Porter. Porter 4/13/18 302, at 8. Personal Privacy

⁵²⁸ Priebus 1/18/18 302, at 12; Bannon 2/14/18 302, at 10; McGahn 3/8/18 302, at 1; McGahn 12/14/17 302, at 10; Bannon 10/26/18 302, at 12.

⁵²⁹ Priebus 1/18/18 302, at 12; Bannon 2/14/18 302, at 10. In October 2011, Mueller resigned his family’s membership from Trump National Golf Club in Sterling, Virginia, in a letter that noted that “we live in the District and find that we are unable to make full use of the Club” and that inquired “whether we would be entitled to a refund of a portion of our initial membership fee,” which was paid in 1994. 10/12/11 Letter, Muellers to Trump National Golf Club. About two weeks later, the controller of the club responded that the Muellers’ resignation would be effective October 31, 2011, and that they would be “placed on a waitlist to be refunded on a first resigned / first refunded basis” in accordance with the club’s legal

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

back on his assertion of conflicts, telling the President they did not count as true conflicts.⁵³⁰ Bannon recalled telling the President that the purported conflicts were “ridiculous” and that none of them was real or could come close to justifying precluding Mueller from serving as Special Counsel.⁵³¹ As for Mueller’s interview for FBI Director, Bannon recalled that the White House had invited Mueller to speak to the President to offer a perspective on the institution of the FBI.⁵³² Bannon said that, although the White House thought about beseeching Mueller to become Director again, he did not come in looking for the job.⁵³³ Bannon also told the President that the law firm position did not amount to a conflict in the legal community.⁵³⁴ And Bannon told the President that the golf course dispute did not rise to the level of a conflict and claiming one was “ridiculous and petty.”⁵³⁵ The President did not respond when Bannon pushed back on the stated conflicts of interest.⁵³⁶

On May 23, 2017, the Department of Justice announced that ethics officials had determined that the Special Counsel’s prior law firm position did not bar his service, generating media reports that Mueller had been cleared to serve.⁵³⁷ McGahn recalled that around the same time, the President complained about the asserted conflicts and prodded McGahn to reach out to Rosenstein about the issue.⁵³⁸ McGahn said he responded that he could not make such a call and that the President should instead consult his personal lawyer because it was not a White House issue.⁵³⁹ Contemporaneous notes of a May 23, 2017 conversation between McGahn and the President reflect that McGahn told the President that he would not call Rosenstein and that he would suggest that the President not make such a call either.⁵⁴⁰ McGahn advised that the President could discuss the issue with his personal attorney but it would “look like still trying to meddle in [the] investigation” and “knocking out Mueller” would be “[a]nother fact used to claim obst[ruction] of

documents. 10/27/11 Letter, Muellers to Trump National Golf Club. The Muellers have not had further contact with the club.

⁵³⁰ Priebus 4/3/18 302, at 3; Bannon 10/26/18 302, at 13 (confirming that he, Priebus, and McGahn pushed back on the asserted conflicts).

⁵³¹ Bannon 10/26/18 302, at 12-13.

⁵³² Bannon 10/26/18 302, at 12.

⁵³³ Bannon 10/26/18 302, at 12.

⁵³⁴ Bannon 10/26/18 302, at 12.

⁵³⁵ Bannon 10/26/18 302, at 13.

⁵³⁶ Bannon 10/26/18 302, at 12.

⁵³⁷ Matt Zapotosky & Matea Gold, *Justice Department ethics experts clear Mueller to lead Russia probe*, Washington Post (May 23, 2017).

⁵³⁸ McGahn 3/8/18 302, at 1; McGahn 12/14/17 302, at 10; Priebus 1/18/18 302, at 12.

⁵³⁹ McGahn 3/8/18 302, at 1. McGahn and Donaldson said that after the appointment of the Special Counsel, they considered themselves potential fact witnesses and accordingly told the President that inquiries related to the investigation should be brought to his personal counsel. McGahn 12/14/17 302, at 7; Donaldson 4/2/18 302, at 5.

⁵⁴⁰ SC_AD_00361 (Donaldson 5/31/17 Notes).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

just[ice].”⁵⁴¹ McGahn told the President that his “biggest exposure” was not his act of firing Comey but his “other contacts” and “calls,” and his “ask re: Flynn.”⁵⁴² By the time McGahn provided this advice to the President, there had been widespread reporting on the President’s request for Comey’s loyalty, which the President publicly denied; his request that Comey “let[] Flynn go,” which the President also denied; and the President’s statement to the Russian Foreign Minister that the termination of Comey had relieved “great pressure” related to Russia, which the President did not deny.⁵⁴³

On June 8, 2017, Comey testified before Congress about his interactions with the President before his termination, including the request for loyalty, the request that Comey “let[] Flynn go,” and the request that Comey “lift the cloud” over the presidency caused by the ongoing investigation.⁵⁴⁴ Comey’s testimony led to a series of news reports about whether the President had obstructed justice.⁵⁴⁵ On June 9, 2017, the Special Counsel’s Office informed the White House Counsel’s Office that investigators intended to interview intelligence community officials who had allegedly been asked by the President to push back against the Russia investigation.⁵⁴⁶

On Monday, June 12, 2017, Christopher Ruddy, the chief executive of Newsmax Media and a longtime friend of the President’s, met at the White House with Priebus and Bannon.⁵⁴⁷ Ruddy recalled that they told him the President was strongly considering firing the Special Counsel

⁵⁴¹ SC_AD_00361 (Donaldson 5/31/17 Notes).

⁵⁴² SC_AD_00361 (Donaldson 5/31/17 Notes).

⁵⁴³ See, e.g., Michael S. Schmidt, *In a Private Dinner, Trump Demanded Loyalty. Comey Demurred.*, New York Times (May 11, 2017); Michael S. Schmidt, *Comey Memorandum Says Trump Asked Him to End Flynn Investigation*, New York Times (May 16, 2017); Matt Apuzzo et al., *Trump Told Russians That Firing ‘Not Job’ Comey Eased Pressure From Investigation*, New York Times (May 19, 2017).

⁵⁴⁴ *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (Statement for the Record of James B. Comey, former Director of the FBI, at 5-6). Comey testified that he deliberately caused his memorandum documenting the February 14, 2017 meeting to be leaked to the New York Times in response to a tweet from the President, sent on May 12, 2017, that stated “James Comey better hope that there are no ‘tapes’ of our conversations before he starts leaking to the press!” and because he thought sharing the memorandum with a reporter “might prompt the appointment of a special counsel.” *Hearing on Russian Election Interference Before the Senate Select Intelligence Committee*, 115th Cong. (June 8, 2017) (CQ Cong. Transcripts, at 55) (testimony by James B. Comey, former Director of the FBI).

⁵⁴⁵ See, e.g., Matt Zapotosky, *Comey lays out the case that Trump obstructed justice*, Washington Post (June 8, 2017) (“Legal analysts said Comey’s testimony clarified and bolstered the case that the president obstructed justice.”).

⁵⁴⁶ 6/9/17 Email, Special Counsel’s Office to the White House Counsel’s Office. This Office made the notification to give the White House an opportunity to invoke executive privilege in advance of the interviews. On June 12, 2017, the Special Counsel’s Office interviewed Admiral Rogers in the presence of agency counsel. Rogers 6/12/17 302, at 1. On June 13, the Special Counsel’s Office interviewed Ledgett. Ledgett 6/13/17 302, at 1. On June 14, the Office interviewed Coats and other personnel from his office. Coats 6/14/17 302, at 1; Gistaro 6/14/17 302, at 1; Culver 6/14/17 302, at 1.

⁵⁴⁷ Ruddy 6/6/18 302, at 5.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

and that he would do so precipitously, without vetting the decision through Administration officials.⁵⁴⁸ Ruddy asked Priebus if Ruddy could talk publicly about the discussion they had about the Special Counsel, and Priebus said he could.⁵⁴⁹ Priebus told Ruddy he hoped another blow up like the one that followed the termination of Comey did not happen.⁵⁵⁰ Later that day, Ruddy stated in a televised interview that the President was “considering perhaps terminating the Special Counsel” based on purported conflicts of interest.⁵⁵¹ Ruddy later told another news outlet that “Trump is definitely considering” terminating the Special Counsel and “it’s not something that’s being dismissed.”⁵⁵² Ruddy’s comments led to extensive coverage in the media that the President was considering firing the Special Counsel.⁵⁵³

White House officials were unhappy with that press coverage and Ruddy heard from friends that the President was upset with him.⁵⁵⁴ On June 13, 2017, Sanders asked the President for guidance on how to respond to press inquiries about the possible firing of the Special Counsel.⁵⁵⁵ The President dictated an answer, which Sanders delivered, saying that “[w]hile the president has every right to” fire the Special Counsel, “he has no intention to do so.”⁵⁵⁶

Also on June 13, 2017, the President’s personal counsel contacted the Special Counsel’s Office and raised concerns about possible conflicts.⁵⁵⁷ The President’s counsel cited Mueller’s previous partnership in his law firm, his interview for the FBI Director position, and an asserted personal relationship he had with Comey.⁵⁵⁸ That same day, Rosenstein had testified publicly before Congress and said he saw no evidence of good cause to terminate the Special Counsel, including for conflicts of interest.⁵⁵⁹ Two days later, on June 15, 2017, the Special Counsel’s

⁵⁴⁸ Ruddy 6/6/18 302, at 5-6.

⁵⁴⁹ Ruddy 6/6/18 302, at 6.

⁵⁵⁰ Ruddy 6/6/18 302, at 6.

⁵⁵¹ *Trump Confidant Christopher Ruddy says Mueller has “real conflicts” as special counsel*, PBS (June 12, 2017); Michael D. Shear & Maggie Haberman, *Friend Says Trump Is Considering Firing Mueller as Special Counsel*, New York Times (June 12, 2017).

⁵⁵² Katherine Faulders & Veronica Stracqualursi, *Trump friend Chris Ruddy says Spicer’s ‘bizarre’ statement doesn’t deny claim Trump seeking Mueller firing*, ABC (June 13, 2017).

⁵⁵³ See, e.g., Michael D. Shear & Maggie Haberman, *Friend Says Trump Is Considering Firing Mueller as Special Counsel*, New York Times (June 12, 2017).

⁵⁵⁴ Ruddy 6/6/18 302, at 6-7.

⁵⁵⁵ Sanders 7/3/18 302, at 6-7.

⁵⁵⁶ Glenn Thrush et al., *Trump Stews, Staff Steps In, and Mueller Is Safe for Now*, New York Times (June 13, 2017); see Sanders 7/3/18 302, at 6 (Sanders spoke with the President directly before speaking to the press on Air Force One and the answer she gave is the answer the President told her to give).

⁵⁵⁷ Special Counsel’s Office Attorney 6/13/17 Notes.

⁵⁵⁸ Special Counsel’s Office Attorney 6/13/17 Notes.

⁵⁵⁹ *Hearing on Fiscal 2018 Justice Department Budget before the Senate Appropriations Subcommittee on Commerce, Justice, and Science*, 115th Cong. (June 13, 2017) (CQ Cong. Transcripts, at 14) (testimony by Rod Rosenstein, Deputy Attorney General).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Office informed the Acting Attorney General's office about the areas of concern raised by the President's counsel and told the President's counsel that their concerns had been communicated to Rosenstein so that the Department of Justice could take any appropriate action.⁵⁶⁰

3. The Press Reports that the President is Being Investigated for Obstruction of Justice and the President Directs the White House Counsel to Have the Special Counsel Removed

On the evening of June 14, 2017, the Washington Post published an article stating that the Special Counsel was investigating whether the President had attempted to obstruct justice.⁵⁶¹ This was the first public report that the President himself was under investigation by the Special Counsel's Office, and cable news networks quickly picked up on the report.⁵⁶² The Post story stated that the Special Counsel was interviewing intelligence community leaders, including Coats and Rogers, about what the President had asked them to do in response to Comey's March 20, 2017 testimony; that the inquiry into obstruction marked "a major turning point" in the investigation; and that while "Trump had received private assurances from then-FBI Director James B. Comey starting in January that he was not personally under investigation," "[o]fficials say that changed shortly after Comey's firing."⁵⁶³ That evening, at approximately 10:31 p.m., the President called McGahn on McGahn's personal cell phone and they spoke for about 15 minutes.⁵⁶⁴ McGahn did not have a clear memory of the call but thought they might have discussed the stories reporting that the President was under investigation.⁵⁶⁵

Beginning early the next day, June 15, 2017, the President issued a series of tweets acknowledging the existence of the obstruction investigation and criticizing it. He wrote: "They made up a phony collusion with the Russians story, found zero proof, so now they go for obstruction of justice on the phony story. Nice";⁵⁶⁶ "You are witnessing the single greatest WITCH HUNT in American political history—led by some very bad and conflicted people!";⁵⁶⁷ and "Crooked H destroyed phones w/ hammer, 'bleached' emails, & had husband meet w/AG days

⁵⁶⁰ Special Counsel's Office Attorney 6/15/17 Notes.

⁵⁶¹ Devlin Barrett et al., *Special counsel is investigating Trump for possible obstruction of justice, officials say*, Washington Post (June 14, 2017).

⁵⁶² CNN, for example, began running a chyron at 6:55 p.m. that stated: "WASH POST: MUELLER INVESTIGATING TRUMP FOR OBSTRUCTION OF JUSTICE." CNN, (June 14, 2017, published online at 7:15 p.m. ET).

⁵⁶³ Devlin Barrett et al., *Special counsel is investigating Trump for possible obstruction of justice, officials say*, Washington Post (June 14, 2017).

⁵⁶⁴ SCR026_000183 (President's Daily Diary, 6/14/17) (reflecting call from the President to McGahn on 6/14/17 with start time 10:31 p.m. and end time 10:46 p.m.); Call Records of Don McGahn.

⁵⁶⁵ McGahn 2/28/19 302, at 1-2. McGahn thought he and the President also probably talked about the investiture ceremony for Supreme Court Justice Neil Gorsuch, which was scheduled for the following day. McGahn 2/28/18 302, at 2.

⁵⁶⁶ @realDonaldTrump 6/15/17 (6:55 a.m. ET) Tweet.

⁵⁶⁷ @realDonaldTrump 6/15/17 (7:57 a.m. ET) Tweet.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

before she was cleared—and they talk about obstruction?”⁵⁶⁸ The next day, June 16, 2017, the President wrote additional tweets criticizing the investigation: “After 7 months of investigations & committee hearings about my ‘collusion with the Russians,’ nobody has been able to show any proof. Sad!”;⁵⁶⁹ and “I am being investigated for firing the FBI Director by the man who told me to fire the FBI Director! Witch Hunt.”⁵⁷⁰

On Saturday, June 17, 2017, the President called McGahn and directed him to have the Special Counsel removed.⁵⁷¹ McGahn was at home and the President was at Camp David.⁵⁷² In interviews with this Office, McGahn recalled that the President called him at home twice and on both occasions directed him to call Rosenstein and say that Mueller had conflicts that precluded him from serving as Special Counsel.⁵⁷³

On the first call, McGahn recalled that the President said something like, “You gotta do this. You gotta call Rod.”⁵⁷⁴ McGahn said he told the President that he would see what he could do.⁵⁷⁵ McGahn was perturbed by the call and did not intend to act on the request.⁵⁷⁶ He and other advisors believed the asserted conflicts were “silly” and “not real,” and they had previously communicated that view to the President.⁵⁷⁷ McGahn also had made clear to the President that the White House Counsel’s Office should not be involved in any effort to press the issue of conflicts.⁵⁷⁸ McGahn was concerned about having any role in asking the Acting Attorney General to fire the Special Counsel because he had grown up in the Reagan era and wanted to be more like Judge

⁵⁶⁸ @realDonaldTrump 6/15/17 (3:56 p.m. ET) Tweet.

⁵⁶⁹ @realDonaldTrump 6/16/17 (7:53 a.m. ET) Tweet.

⁵⁷⁰ @realDonaldTrump 6/16/17 (9:07 a.m. ET) Tweet.

⁵⁷¹ McGahn 3/8/18 302, at 1-2; McGahn 12/14/17 302, at 10.

⁵⁷² McGahn 3/8/18 302, at 1, 3; SCR026_000196 (President’s Daily Diary, 6/17/17) (records showing President departed the White House at 11:07 a.m. on June 17, 2017, and arrived at Camp David at 11:37 a.m.).

⁵⁷³ McGahn 3/8/18 302, at 1-2; McGahn 12/14/17 302, at 10. Phone records show that the President called McGahn in the afternoon on June 17, 2017, and they spoke for approximately 23 minutes. SCR026_000196 (President’s Daily Diary, 6/17/17) (reflecting call from the President to McGahn on 6/17/17 with start time 2:23 p.m. and end time 2:46 p.m.); (Call Records of Don McGahn). Phone records do not show another call between McGahn and the President that day. Although McGahn recalled receiving multiple calls from the President on the same day, in light of the phone records he thought it was possible that the first call instead occurred on June 14, 2017, shortly after the press reported that the President was under investigation for obstruction of justice. McGahn 2/28/19 302, at 1-3. While McGahn was not certain of the specific dates of the calls, McGahn was confident that he had at least two phone conversations with the President in which the President directed him to call the Acting Attorney General to have the Special Counsel removed. McGahn 2/28/19 302, at 1-3.

⁵⁷⁴ McGahn 3/8/18 302, at 1.

⁵⁷⁵ McGahn 3/8/18 302, at 1.

⁵⁷⁶ McGahn 3/8/18 302, at 1.

⁵⁷⁷ McGahn 3/8/18 302, at 1-2.

⁵⁷⁸ McGahn 3/8/18 302, at 1-2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Robert Bork and not “Saturday Night Massacre Bork.”⁵⁷⁹ McGahn considered the President’s request to be an inflection point and he wanted to hit the brakes.⁵⁸⁰

When the President called McGahn a second time to follow up on the order to call the Department of Justice, McGahn recalled that the President was more direct, saying something like, “Call Rod, tell Rod that Mueller has conflicts and can’t be the Special Counsel.”⁵⁸¹ McGahn recalled the President telling him “Mueller has to go” and “Call me back when you do it.”⁵⁸² McGahn understood the President to be saying that the Special Counsel had to be removed by Rosenstein.⁵⁸³ To end the conversation with the President, McGahn left the President with the impression that McGahn would call Rosenstein.⁵⁸⁴ McGahn recalled that he had already said no to the President’s request and he was worn down, so he just wanted to get off the phone.⁵⁸⁵

McGahn recalled feeling trapped because he did not plan to follow the President’s directive but did not know what he would say the next time the President called.⁵⁸⁶ McGahn decided he had to resign.⁵⁸⁷ He called his personal lawyer and then called his chief of staff, Annie Donaldson, to inform her of his decision.⁵⁸⁸ He then drove to the office to pack his belongings and submit his resignation letter.⁵⁸⁹ Donaldson recalled that McGahn told her the President had called and demanded he contact the Department of Justice and that the President wanted him to do something that McGahn did not want to do.⁵⁹⁰ McGahn told Donaldson that the President had called at least twice and in one of the calls asked “have you done it?”⁵⁹¹ McGahn did not tell Donaldson the specifics of the President’s request because he was consciously trying not to involve her in the

⁵⁷⁹ McGahn 3/8/18 302, at 2.

⁵⁸⁰ McGahn 3/8/18 302, at 2.

⁵⁸¹ McGahn 3/8/18 302, at 5.

⁵⁸² McGahn 3/8/18 302, at 2, 5; McGahn 2/28/19 302, at 3.

⁵⁸³ McGahn 3/8/18 302, at 1-2, 5.

⁵⁸⁴ McGahn 3/8/18 302, at 2.

⁵⁸⁵ McGahn 2/28/19 302, at 3; McGahn 3/8/18 302, at 2.

⁵⁸⁶ McGahn 3/8/18 302, at 2.

⁵⁸⁷ McGahn 3/8/18 302, at 2.

⁵⁸⁸ McGahn 3/8/18 302, at 2-3; McGahn 2/28/19 302, at 3; Donaldson 4/2/18 302, at 4; Call Records of Don McGahn.

⁵⁸⁹ McGahn 3/8/18 302, at 2; Donaldson 4/2/18 302, at 4.

⁵⁹⁰ Donaldson 4/2/18 302, at 4.

⁵⁹¹ Donaldson 4/2/18 302, at 4.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

investigation, but Donaldson inferred that the President's directive was related to the Russia investigation.⁵⁹² Donaldson prepared to resign along with McGahn.⁵⁹³

That evening, McGahn called both Priebus and Bannon and told them that he intended to resign.⁵⁹⁴ McGahn recalled that, after speaking with his attorney and given the nature of the President's request, he decided not to share details of the President's request with other White House staff.⁵⁹⁵ Priebus recalled that McGahn said that the President had asked him to "do crazy shit," but he thought McGahn did not tell him the specifics of the President's request because McGahn was trying to protect Priebus from what he did not need to know.⁵⁹⁶ Priebus and Bannon both urged McGahn not to quit, and McGahn ultimately returned to work that Monday and remained in his position.⁵⁹⁷ He had not told the President directly that he planned to resign, and when they next saw each other the President did not ask McGahn whether he had followed through with calling Rosenstein.⁵⁹⁸

Around the same time, Chris Christie recalled a telephone call with the President in which the President asked what Christie thought about the President firing the Special Counsel.⁵⁹⁹ Christie advised against doing so because there was no substantive basis for the President to fire the Special Counsel, and because the President would lose support from Republicans in Congress if he did so.⁶⁰⁰

Analysis

In analyzing the President's direction to McGahn to have the Special Counsel removed, the following evidence is relevant to the elements of obstruction of justice:

a. **Obstructive act.** As with the President's firing of Comey, the attempt to remove the Special Counsel would qualify as an obstructive act if it would naturally obstruct the

⁵⁹² McGahn 2/28/19 302, at 3-4; Donaldson 4/2/18 302, at 4-5. Donaldson said she believed McGahn consciously did not share details with her because he did not want to drag her into the investigation. Donaldson 4/2/18 302, at 5; *see* McGahn 2/28/19 302, at 3.

⁵⁹³ Donaldson 4/2/18 302, at 5.

⁵⁹⁴ McGahn 12/14/17 302, at 10; Call Records of Don McGahn; McGahn 2/28/19 302, at 3-4; Priebus 4/3/18 302, at 6-7.

⁵⁹⁵ McGahn 2/28/19 302, at 4. Priebus and Bannon confirmed that McGahn did not tell them the specific details of the President's request. Priebus 4/3/18 302, at 7; Bannon 2/14/18 302, at 10.

⁵⁹⁶ Priebus 4/3/18 302, at 7.

⁵⁹⁷ McGahn 3/8/18 302, at 3; McGahn 2/28/19 302, at 3-4.

⁵⁹⁸ McGahn 3/8/18 302, at 3.

⁵⁹⁹ Christie 2/13/19 302, at 7. Christie did not recall the precise date of this call, but believed it was after Christopher Wray was announced as the nominee to be the new FBI director, which was on June 7, 2017. Christie 2/13/19 302, at 7. Telephone records show that the President called Christie twice after that time period, on July 4, 2017, and July 14, 2017. Call Records of Chris Christie.

⁶⁰⁰ Christie 2/13/19 302, at 7.

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

investigation and any grand jury proceedings that might flow from the inquiry. Even if the removal of the lead prosecutor would not prevent the investigation from continuing under a new appointee, a factfinder would need to consider whether the act had the potential to delay further action in the investigation, chill the actions of any replacement Special Counsel, or otherwise impede the investigation.

A threshold question is whether the President in fact directed McGahn to have the Special Counsel removed. After news organizations reported that in June 2017 the President had ordered McGahn to have the Special Counsel removed, the President publicly disputed these accounts, and privately told McGahn that he had simply wanted McGahn to bring conflicts of interest to the Department of Justice's attention. See Volume II, Section II.I, *infra*. Some of the President's specific language that McGahn recalled from the calls is consistent with that explanation. Substantial evidence, however, supports the conclusion that the President went further and in fact directed McGahn to call Rosenstein to have the Special Counsel removed.

First, McGahn's clear recollection was that the President directed him to tell Rosenstein not only that conflicts existed but also that "Mueller has to go." McGahn is a credible witness with no motive to lie or exaggerate given the position he held in the White House.⁶⁰¹ McGahn spoke with the President twice and understood the directive the same way both times, making it unlikely that he misheard or misinterpreted the President's request. In response to that request, McGahn decided to quit because he did not want to participate in events that he described as akin to the Saturday Night Massacre. He called his lawyer, drove to the White House, packed up his office, prepared to submit a resignation letter with his chief of staff, told Priebus that the President had asked him to "do crazy shit," and informed Priebus and Bannon that he was leaving. Those acts would be a highly unusual reaction to a request to convey information to the Department of Justice.

Second, in the days before the calls to McGahn, the President, through his counsel, had already brought the asserted conflicts to the attention of the Department of Justice. Accordingly, the President had no reason to have McGahn call Rosenstein that weekend to raise conflicts issues that already had been raised.

Third, the President's sense of urgency and repeated requests to McGahn to take immediate action on a weekend—"You gotta do this. You gotta call Rod."—support McGahn's recollection that the President wanted the Department of Justice to take action to remove the Special Counsel. Had the President instead sought only to have the Department of Justice re-examine asserted conflicts to evaluate whether they posed an ethical bar, it would have been unnecessary to set the process in motion on a Saturday and to make repeated calls to McGahn.

Finally, the President had discussed "knocking out Mueller" and raised conflicts of interest in a May 23, 2017 call with McGahn, reflecting that the President connected the conflicts to a plan to remove the Special Counsel. And in the days leading up to June 17, 2017, the President made clear to Priebus and Bannon, who then told Ruddy, that the President was considering terminating

⁶⁰¹ When this Office first interviewed McGahn about this topic, he was reluctant to share detailed information about what had occurred and only did so after continued questioning. See McGahn 12/14/17 302 (agent notes).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

the Special Counsel. Also during this time period, the President reached out to Christie to get his thoughts on firing the Special Counsel. This evidence shows that the President was not just seeking an examination of whether conflicts existed but instead was looking to use asserted conflicts as a way to terminate the Special Counsel.

b. Nexus to an official proceeding. To satisfy the proceeding requirement, it would be necessary to establish a nexus between the President's act of seeking to terminate the Special Counsel and a pending or foreseeable grand jury proceeding.

Substantial evidence indicates that by June 17, 2017, the President knew his conduct was under investigation by a federal prosecutor who could present any evidence of federal crimes to a grand jury. On May 23, 2017, McGahn explicitly warned the President that his "biggest exposure" was not his act of firing Comey but his "other contacts" and "calls," and his "ask re: Flynn." By early June, it was widely reported in the media that federal prosecutors had issued grand jury subpoenas in the Flynn inquiry and that the Special Counsel had taken over the Flynn investigation.⁶⁰² On June 9, 2017, the Special Counsel's Office informed the White House that investigators would be interviewing intelligence agency officials who allegedly had been asked by the President to push back against the Russia investigation. On June 14, 2017, news outlets began reporting that the President was himself being investigated for obstruction of justice. Based on widespread reporting, the President knew that such an investigation could include his request for Comey's loyalty; his request that Comey "let[] Flynn go"; his outreach to Coats and Rogers; and his termination of Comey and statement to the Russian Foreign Minister that the termination had relieved "great pressure" related to Russia. And on June 16, 2017, the day before he directed McGahn to have the Special Counsel removed, the President publicly acknowledged that his conduct was under investigation by a federal prosecutor, tweeting, "I am being investigated for firing the FBI Director by the man who told me to fire the FBI Director!"

c. Intent. Substantial evidence indicates that the President's attempts to remove the Special Counsel were linked to the Special Counsel's oversight of investigations that involved the President's conduct—and, most immediately, to reports that the President was being investigated for potential obstruction of justice.

Before the President terminated Comey, the President considered it critically important that he was not under investigation and that the public not erroneously think he was being investigated. As described in Volume II, Section II.D, *supra*, advisors perceived the President, while he was drafting the Comey termination letter, to be concerned more than anything else about getting out that he was not personally under investigation. When the President learned of the appointment of the Special Counsel on May 17, 2017, he expressed further concern about the investigation, saying "[t]his is the end of my Presidency." The President also faulted Sessions for recusing, saying "you were supposed to protect me."

On June 14, 2017, when the Washington Post reported that the Special Counsel was investigating the President for obstruction of justice, the President was facing what he had wanted

⁶⁰² See, e.g., Evan Perez et al., *CNN exclusive: Grand jury subpoenas issued in FBI's Russia investigation*, CNN (May 9, 2017); Matt Ford, *Why Mueller Is Taking Over the Michael Flynn Grand Jury*, The Atlantic (June 2, 2017).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

to avoid: a criminal investigation into his own conduct that was the subject of widespread media attention. The evidence indicates that news of the obstruction investigation prompted the President to call McGahn and seek to have the Special Counsel removed. By mid-June, the Department of Justice had already cleared the Special Counsel's service and the President's advisors had told him that the claimed conflicts of interest were "silly" and did not provide a basis to remove the Special Counsel. On June 13, 2017, the Acting Attorney General testified before Congress that no good cause for removing the Special Counsel existed, and the President dictated a press statement to Sanders saying he had no intention of firing the Special Counsel. But the next day, the media reported that the President was under investigation for obstruction of justice and the Special Counsel was interviewing witnesses about events related to possible obstruction—spurring the President to write critical tweets about the Special Counsel's investigation. The President called McGahn at home that night and then called him on Saturday from Camp David. The evidence accordingly indicates that news that an obstruction investigation had been opened is what led the President to call McGahn to have the Special Counsel terminated.

There also is evidence that the President knew that he should not have made those calls to McGahn. The President made the calls to McGahn after McGahn had specifically told the President that the White House Counsel's Office—and McGahn himself—could not be involved in pressing conflicts claims and that the President should consult with his personal counsel if he wished to raise conflicts. Instead of relying on his personal counsel to submit the conflicts claims, the President sought to use his official powers to remove the Special Counsel. And after the media reported on the President's actions, he denied that he ever ordered McGahn to have the Special Counsel terminated and made repeated efforts to have McGahn deny the story, as discussed in Volume II, Section II.I, *infra*. Those denials are contrary to the evidence and suggest the President's awareness that the direction to McGahn could be seen as improper.

F. The President's Efforts to Curtail the Special Counsel Investigation

Overview

Two days after the President directed McGahn to have the Special Counsel removed, the President made another attempt to affect the course of the Russia investigation. On June 19, 2017, the President met one-on-one with Corey Lewandowski in the Oval Office and dictated a message to be delivered to Attorney General Sessions that would have had the effect of limiting the Russia investigation to future election interference only. One month later, the President met again with Lewandowski and followed up on the request to have Sessions limit the scope of the Russia investigation. Lewandowski told the President the message would be delivered soon. Hours later, the President publicly criticized Sessions in an unplanned press interview, raising questions about Sessions's job security.

1. The President Asks Corey Lewandowski to Deliver a Message to Sessions to Curtail the Special Counsel Investigation

On June 19, 2017, two days after the President directed McGahn to have the Special Counsel removed, the President met one-on-one in the Oval Office with his former campaign

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

manager Corey Lewandowski.⁶⁰³ Senior White House advisors described Lewandowski as a “devotee” of the President and said the relationship between the President and Lewandowski was “close.”⁶⁰⁴

During the June 19 meeting, Lewandowski recalled that, after some small talk, the President brought up Sessions and criticized his recusal from the Russia investigation.⁶⁰⁵ The President told Lewandowski that Sessions was weak and that if the President had known about the likelihood of recusal in advance, he would not have appointed Sessions.⁶⁰⁶ The President then asked Lewandowski to deliver a message to Sessions and said “write this down.”⁶⁰⁷ This was the first time the President had asked Lewandowski to take dictation, and Lewandowski wrote as fast as possible to make sure he captured the content correctly.⁶⁰⁸

The President directed that Sessions should give a speech publicly announcing:

I know that I recused myself from certain things having to do with specific areas. But our POTUS . . . is being treated very unfairly. He shouldn't have a Special Prosecutor/Counsel b/c he hasn't done anything wrong. I was on the campaign w/ him for nine months, there were no Russians involved with him. I know it for a fact b/c I was there. He didn't do anything wrong except he ran the greatest campaign in American history.⁶⁰⁹

The dictated message went on to state that Sessions would meet with the Special Counsel to limit his jurisdiction to future election interference:

Now a group of people want to subvert the Constitution of the United States. I am going to meet with the Special Prosecutor to explain this is very unfair and let the Special Prosecutor move forward with investigating election meddling for future elections so that nothing can happen in future elections.⁶¹⁰

⁶⁰³ Lewandowski 4/6/18 302, at 2; SCR026 000201 (President's Daily Diary, 6/19/17).

Personal Privacy

⁶⁰⁴ Kelly 8/2/18 302, at 7; Dearborn 6/20/18 302, at 1 (describing Lewandowski as a “comfort to the President” whose loyalty was appreciated). Kelly said that when he was Chief of Staff and the President had meetings with friends like Lewandowski, Kelly tried not to be there and to push the meetings to the residence to create distance from the West Wing. Kelly 8/2/18 302, at 7.

⁶⁰⁵ Lewandowski 4/6/18 302, at 2.

⁶⁰⁶ Lewandowski 4/6/18 302, at 2.

⁶⁰⁷ Lewandowski 4/6/18 302, at 2.

⁶⁰⁸ Lewandowski 4/6/18 302, at 3.

⁶⁰⁹ Lewandowski 4/6/18 302, at 2-3; Lewandowski 6/19/17 Notes, at 1-2.

⁶¹⁰ Lewandowski 4/6/18 302, at 3; Lewandowski 6/19/17 Notes, at 3.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

The President said that if Sessions delivered that statement he would be the “most popular guy in the country.”⁶¹¹ Lewandowski told the President he understood what the President wanted Sessions to do.⁶¹²

Lewandowski wanted to pass the message to Sessions in person rather than over the phone.⁶¹³ He did not want to meet at the Department of Justice because he did not want a public log of his visit and did not want Sessions to have an advantage over him by meeting on what Lewandowski described as Sessions’s turf.⁶¹⁴ Lewandowski called Sessions and arranged a meeting for the following evening at Lewandowski’s office, but Sessions had to cancel due to a last minute conflict.⁶¹⁵ Shortly thereafter, Lewandowski left Washington, D.C., without having had an opportunity to meet with Sessions to convey the President’s message.⁶¹⁶ Lewandowski stored the notes in a safe at his home, which he stated was his standard procedure with sensitive items.⁶¹⁷

2. The President Follows Up with Lewandowski

Following his June meeting with the President, Lewandowski contacted Rick Dearborn, then a senior White House official, and asked if Dearborn could pass a message to Sessions.⁶¹⁸ Dearborn agreed without knowing what the message was, and Lewandowski later confirmed that Dearborn would meet with Sessions for dinner in late July and could deliver the message then.⁶¹⁹ Lewandowski recalled thinking that the President had asked him to pass the message because the President knew Lewandowski could be trusted, but Lewandowski believed Dearborn would be a better messenger because he had a longstanding relationship with Sessions and because Dearborn was in the government while Lewandowski was not.⁶²⁰

On July 19, 2017, the President again met with Lewandowski alone in the Oval Office.⁶²¹ In the preceding days, as described in Volume II, Section II.G, *infra*, emails and other information about the June 9, 2016 meeting between several Russians and Donald Trump Jr., Jared Kushner, and Paul Manafort had been publicly disclosed. In the July 19 meeting with Lewandowski, the

⁶¹¹ Lewandowski 4/6/18 302, at 3; Lewandowski 6/19/17 Notes, at 4.

⁶¹² Lewandowski 4/6/18 302, at 3.

⁶¹³ Lewandowski 4/6/18 302, at 3-4.

⁶¹⁴ Lewandowski 4/6/18 302, at 4.

⁶¹⁵ Lewandowski 4/6/18 302, at 4.

⁶¹⁶ Lewandowski 4/6/18 302, at 4.

⁶¹⁷ Lewandowski 4/6/18 302, at 4.

⁶¹⁸ Lewandowski 4/6/18 302, at 4; *see* Dearborn 6/20/18 302, at 3.

⁶¹⁹ Lewandowski 4/6/18 302, at 4-5.

⁶²⁰ Lewandowski 4/6/18 302, at 4, 6.

⁶²¹ Lewandowski 4/6/18 302, at 5; SCR029b_000002-03 (6/5/18 Additional Response to Special Counsel Request for Certain Visitor Log Information).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

President raised his previous request and asked if Lewandowski had talked to Sessions.⁶²² Lewandowski told the President that the message would be delivered soon.⁶²³ Lewandowski recalled that the President told him that if Sessions did not meet with him, Lewandowski should tell Sessions he was fired.⁶²⁴

Immediately following the meeting with the President, Lewandowski saw Dearborn in the anteroom outside the Oval Office and gave him a typewritten version of the message the President had dictated to be delivered to Sessions.⁶²⁵ Lewandowski told Dearborn that the notes were the message they had discussed, but Dearborn did not recall whether Lewandowski said the message was from the President.⁶²⁶ The message “definitely raised an eyebrow” for Dearborn, and he recalled not wanting to ask where it came from or think further about doing anything with it.⁶²⁷ Dearborn also said that being asked to serve as a messenger to Sessions made him uncomfortable.⁶²⁸ He recalled later telling Lewandowski that he had handled the situation, but he did not actually follow through with delivering the message to Sessions, and he did not keep a copy of the typewritten notes Lewandowski had given him.⁶²⁹

3. The President Publicly Criticizes Sessions in a New York Times Interview

Within hours of the President’s meeting with Lewandowski on July 19, 2017, the President gave an unplanned interview to the New York Times in which he criticized Sessions’s decision to recuse from the Russia investigation.⁶³⁰ The President said that “Sessions should have never recused himself, and if he was going to recuse himself, he should have told me before he took the job, and I would have picked somebody else.”⁶³¹ Sessions’s recusal, the President said, was “very unfair to the president. How do you take a job and then recuse yourself? If he would have recused himself before the job, I would have said, ‘Thanks, Jeff, but I can’t, you know, I’m not going to

⁶²² Lewandowski 4/6/18 302, at 5.

⁶²³ Lewandowski 4/6/18 302, at 5.

⁶²⁴ Lewandowski 4/6/18 302, at 6. Priebus vaguely recalled Lewandowski telling him that in approximately May or June 2017 the President had asked Lewandowski to get Sessions’s resignation. Priebus recalled that Lewandowski described his reaction as something like, “What can I do? I’m not an employee of the administration. I’m a nobody.” Priebus 4/3/18 302, at 6.

⁶²⁵ Lewandowski 4/6/18 302, at 5. Lewandowski said he asked Hope Hicks to type the notes when he went in to the Oval Office, and he then retrieved the notes from her partway through his meeting with the President. Lewandowski 4/6/18 302, at 5.

⁶²⁶ Lewandowski 4/6/18 302, at 5; Dearborn 6/20/18 302, at 3.

⁶²⁷ Dearborn 6/20/18 302, at 3.

⁶²⁸ Dearborn 6/20/18 302, at 3.

⁶²⁹ Dearborn 6/20/18 302, at 3-4.

⁶³⁰ Peter Baker et al., *Excerpts From The Times’s Interview With Trump*, New York Times (July 19, 2017).

⁶³¹ Peter Baker et al., *Excerpts From The Times’s Interview With Trump*, New York Times (July 19, 2017).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

take you.’ It’s extremely unfair, and that’s a mild word, to the president.”⁶³² Hicks, who was present for the interview, recalled trying to “throw [herself] between the reporters and [the President]” to stop parts of the interview, but the President “loved the interview.”⁶³³

Later that day, Lewandowski met with Hicks and they discussed the President’s New York Times interview.⁶³⁴ Lewandowski recalled telling Hicks about the President’s request that he meet with Sessions and joking with her about the idea of firing Sessions as a private citizen if Sessions would not meet with him.⁶³⁵ As Hicks remembered the conversation, Lewandowski told her the President had recently asked him to meet with Sessions and deliver a message that he needed to do the “right thing” and resign.⁶³⁶ While Hicks and Lewandowski were together, the President called Hicks and told her he was happy with how coverage of his New York Times interview criticizing Sessions was playing out.⁶³⁷

4. The President Orders Priebus to Demand Sessions’s Resignation

Three days later, on July 21, 2017, the Washington Post reported that U.S. intelligence intercepts showed that Sessions had discussed campaign-related matters with the Russian ambassador, contrary to what Sessions had said publicly.⁶³⁸ That evening, Priebus called Hunt to talk about whether Sessions might be fired or might resign.⁶³⁹ Priebus had previously talked to Hunt when the media had reported on tensions between Sessions and the President, and, after speaking to Sessions, Hunt had told Priebus that the President would have to fire Sessions if he wanted to remove Sessions because Sessions was not going to quit.⁶⁴⁰ According to Hunt, who took contemporaneous notes of the July 21 call, Hunt told Priebus that, as they had previously discussed, Sessions had no intention of resigning.⁶⁴¹ Hunt asked Priebus what the President would

⁶³² Peter Baker et al., *Excerpts From The Times’s Interview With Trump*, New York Times (July 19, 2017).

⁶³³ Hicks 12/8/17 302, at 23.

⁶³⁴ Hicks 3/13/18 302, at 10; Lewandowski 4/6/18 302, at 6.

⁶³⁵ Lewandowski 4/6/18 302, at 6.

⁶³⁶ Hicks 3/13/18 302, at 10. Hicks thought that the President might be able to make a recess appointment of a new Attorney General because the Senate was about to go on recess. Hicks 3/13/18 302, at 10. Lewandowski recalled that in the afternoon of July 19, 2017, following his meeting with the President, he conducted research on recess appointments but did not share his research with the President. Lewandowski 4/6/18 302, at 7.

⁶³⁷ Lewandowski 4/6/18 302, at 6.

⁶³⁸ Adam Entous et al., *Sessions discussed Trump campaign-related matters with Russian ambassador, U.S. intelligence intercepts show*, Washington Post (July 21, 2017). The underlying events concerning the Sessions-Kislyak contacts are discussed in Volume I, Section IV.A.4.c, *supra*.

⁶³⁹ Hunt 2/1/18 302, at 23.

⁶⁴⁰ Hunt 2/1/18 302, at 23.

⁶⁴¹ Hunt 2/1/18 302, at 23-24; Hunt 7/21/17 Notes, at 1.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

accomplish by firing Sessions, pointing out there was an investigation before and there would be an investigation after.⁶⁴²

Early the following morning, July 22, 2017, the President tweeted, "A new INTELLIGENCE LEAK from the Amazon Washington Post, this time against A.G. Jeff Sessions. These illegal leaks, like Comey's, must stop!"⁶⁴³ Approximately one hour later, the President tweeted, "So many people are asking why isn't the A.G. or Special Council looking at the many Hillary Clinton or Comey crimes. 33,000 e-mails deleted?"⁶⁴⁴ Later that morning, while aboard Marine One on the way to Norfolk, Virginia, the President told Priebus that he had to get Sessions to resign immediately.⁶⁴⁵ The President said that the country had lost confidence in Sessions and the negative publicity was not tolerable.⁶⁴⁶ According to contemporaneous notes taken by Priebus, the President told Priebus to say that he "need[ed] a letter of resignation on [his] desk immediately" and that Sessions had "no choice" but "must immediately resign."⁶⁴⁷ Priebus replied that if they fired Sessions, they would never get a new Attorney General confirmed and that the Department of Justice and Congress would turn their backs on the President, but the President suggested he could make a recess appointment to replace Sessions.⁶⁴⁸

Priebus believed that the President's request was a problem, so he called McGahn and asked for advice, explaining that he did not want to pull the trigger on something that was "all wrong."⁶⁴⁹ Although the President tied his desire for Sessions to resign to Sessions's negative press and poor performance in congressional testimony, Priebus believed that the President's desire to replace Sessions was driven by the President's hatred of Sessions's recusal from the Russia investigation.⁶⁵⁰ McGahn told Priebus not to follow the President's order and said they should consult their personal counsel, with whom they had attorney-client privilege.⁶⁵¹ McGahn

⁶⁴² Hunt 2/1/18 302, at 23-24; Hunt 7/21/17 Notes, at 1-2.

⁶⁴³ @realDonaldTrump 7/22/17 (6:33 a.m. ET) Tweet.

⁶⁴⁴ @realDonaldTrump 7/22/17 (7:44 a.m. ET) Tweet. Three minutes later, the President tweeted, "What about all of the Clinton ties to Russia, including Podesta Company, Uranium deal, Russian Reset, big dollar speeches etc." @realDonaldTrump 7/22/17 (7:47 a.m. ET) Tweet.

⁶⁴⁵ Priebus 1/18/18 302, at 13-14.

⁶⁴⁶ Priebus 1/18/18 302, at 14; Priebus 4/3/18 302, at 4-5; see RP_000073 (Priebus 7/22/17 Notes).

⁶⁴⁷ RP_000073 (Priebus 7/22/17 Notes).

⁶⁴⁸ Priebus 4/3/18 302, at 5.

⁶⁴⁹ Priebus 1/18/18 302, at 14; Priebus 4/3/18 302, at 4-5.

⁶⁵⁰ Priebus 4/3/18 302, at 5.

⁶⁵¹ RP_000074 (Priebus 7/22/17 Notes); McGahn 12/14/17 302, at 11; Priebus 1/18/18 302, at 14. Priebus followed McGahn's advice and called his personal attorney to discuss the President's request because he thought it was the type of thing about which one would need to consult an attorney. Priebus 1/18/18 302, at 14.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

and Priebus discussed the possibility that they would both have to resign rather than carry out the President's order to fire Sessions.⁶⁵²

That afternoon, the President followed up with Priebus about demanding Sessions's resignation, using words to the effect of, "Did you get it? Are you working on it?"⁶⁵³ Priebus said that he believed that his job depended on whether he followed the order to remove Sessions, although the President did not directly say so.⁶⁵⁴ Even though Priebus did not intend to carry out the President's directive, he told the President he would get Sessions to resign.⁶⁵⁵ Later in the day, Priebus called the President and explained that it would be a calamity if Sessions resigned because Priebus expected that Rosenstein and Associate Attorney General Rachel Brand would also resign and the President would be unable to get anyone else confirmed.⁶⁵⁶ The President agreed to hold off on demanding Sessions's resignation until after the Sunday shows the next day, to prevent the shows from focusing on the firing.⁶⁵⁷

By the end of that weekend, Priebus recalled that the President relented and agreed not to ask Sessions to resign.⁶⁵⁸ Over the next several days, the President tweeted about Sessions. On the morning of Monday, July 24, 2017, the President criticized Sessions for neglecting to investigate Clinton and called him "beleaguered."⁶⁵⁹ On July 25, the President tweeted, "Attorney General Jeff Sessions has taken a VERY weak position on Hillary Clinton crimes (where are E-mails & DNC server) & Intel leakers!"⁶⁶⁰ The following day, July 26, the President tweeted, "Why didn't A.G. Sessions replace Acting FBI Director Andrew McCabe, a Comey friend who was in charge of Clinton investigation."⁶⁶¹ According to Hunt, in light of the President's frequent public attacks, Sessions prepared another resignation letter and for the rest of the year carried it with him in his pocket every time he went to the White House.⁶⁶²

⁶⁵² McGahn 12/14/17 302, at 11; RP_000074 (Priebus 7/22/17 Notes) ("discuss resigning together").

⁶⁵³ Priebus 1/18/18 302, at 14; Priebus 4/3/18 302, at 4.

⁶⁵⁴ Priebus 4/3/18 302, at 4.

⁶⁵⁵ Priebus 1/18/18 302, at 15.

⁶⁵⁶ Priebus 1/18/18 302, at 15.

⁶⁵⁷ Priebus 1/18/18 302, at 15.

⁶⁵⁸ Priebus 1/18/18 302, at 15.

⁶⁵⁹ @realDonaldTrump 7/24/17 (8:49 a.m. ET) Tweet ("So why aren't the Committees and investigators, and of course our beleaguered A.G., looking into Crooked Hillarys crimes & Russia relations?").

⁶⁶⁰ @realDonaldTrump 7/25/17 (6:12 a.m. ET) Tweet. The President sent another tweet shortly before this one asking "where is the investigation A.G." @realDonaldTrump 7/25/17 (6:03 a.m. ET) Tweet.

⁶⁶¹ @realDonaldTrump 7/26/17 (9:48 a.m. ET) Tweet.

⁶⁶² Hunt 2/1/18 302, at 24-25.

U.S. Department of Justice

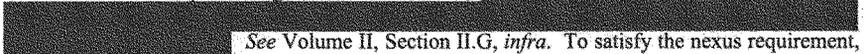
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~*Analysis*

In analyzing the President's efforts to have Lewandowski deliver a message directing Sessions to publicly announce that the Special Counsel investigation would be confined to future election interference, the following evidence is relevant to the elements of obstruction of justice:

a. Obstructive act. The President's effort to send Sessions a message through Lewandowski would qualify as an obstructive act if it would naturally obstruct the investigation and any grand jury proceedings that might flow from the inquiry.

The President sought to have Sessions announce that the President "shouldn't have a Special Prosecutor/Counsel" and that Sessions was going to "meet with the Special Prosecutor to explain this is very unfair and let the Special Prosecutor move forward with investigating election meddling for future elections so that nothing can happen in future elections." The President wanted Sessions to disregard his recusal from the investigation, which had followed from a formal DOJ ethics review, and have Sessions declare that he knew "for a fact" that "there were no Russians involved with the campaign" because he "was there." The President further directed that Sessions should explain that the President should not be subject to an investigation "because he hasn't done anything wrong." Taken together, the President's directives indicate that Sessions was being instructed to tell the Special Counsel to end the existing investigation into the President and his campaign, with the Special Counsel being permitted to "move forward with investigating election meddling for future elections."

b. Nexus to an official proceeding. As described above, by the time of the President's initial one-on-one meeting with Lewandowski on June 19, 2017, the existence of a grand jury investigation supervised by the Special Counsel was public knowledge. By the time of the President's follow-up meeting with Lewandowski, ^{Grand Jury}

 See Volume II, Section II.G, *infra*. To satisfy the nexus requirement, it would be necessary to show that limiting the Special Counsel's investigation would have the natural and probable effect of impeding that grand jury proceeding.

c. Intent. Substantial evidence indicates that the President's effort to have Sessions limit the scope of the Special Counsel's investigation to future election interference was intended to prevent further investigative scrutiny of the President's and his campaign's conduct.

As previously described, *see* Volume II, Section II.B, *supra*, the President knew that the Russia investigation was focused in part on his campaign, and he perceived allegations of Russian interference to cast doubt on the legitimacy of his election. The President further knew that the investigation had broadened to include his own conduct and whether he had obstructed justice. Those investigations would not proceed if the Special Counsel's jurisdiction were limited to future election interference only.

The timing and circumstances of the President's actions support the conclusion that he sought that result. The President's initial direction that Sessions should limit the Special Counsel's investigation came just two days after the President had ordered McGahn to have the Special Counsel removed, which itself followed public reports that the President was personally under

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

investigation for obstruction of justice. The sequence of those events raises an inference that after seeking to terminate the Special Counsel, the President sought to exclude his and his campaign's conduct from the investigation's scope. The President raised the matter with Lewandowski again on July 19, 2017, just days after emails and information about the June 9, 2016 meeting between Russians and senior campaign officials had been publicly disclosed, generating substantial media coverage and investigative interest.

The manner in which the President acted provides additional evidence of his intent. Rather than rely on official channels, the President met with Lewandowski alone in the Oval Office. The President selected a loyal "devotee" outside the White House to deliver the message, supporting an inference that he was working outside White House channels, including McGahn, who had previously resisted contacting the Department of Justice about the Special Counsel. The President also did not contact the Acting Attorney General, who had just testified publicly that there was no cause to remove the Special Counsel. Instead, the President tried to use Sessions to restrict and redirect the Special Counsel's investigation when Sessions was recused and could not properly take any action on it.

The July 19, 2017 events provide further evidence of the President's intent. The President followed up with Lewandowski in a separate one-on-one meeting one month after he first dictated the message for Sessions, demonstrating he still sought to pursue the request. And just hours after Lewandowski assured the President that the message would soon be delivered to Sessions, the President gave an unplanned interview to the New York Times in which he publicly attacked Sessions and raised questions about his job security. Four days later, on July 22, 2017, the President directed Priebus to obtain Sessions's resignation. That evidence could raise an inference that the President wanted Sessions to realize that his job might be on the line as he evaluated whether to comply with the President's direction that Sessions publicly announce that, notwithstanding his recusal, he was going to confine the Special Counsel's investigation to future election interference.

G. The President's Efforts to Prevent Disclosure of Emails About the June 9, 2016 Meeting Between Russians and Senior Campaign Officials

Overview

By June 2017, the President became aware of emails setting up the June 9, 2016 meeting between senior campaign officials and Russians who offered derogatory information on Hillary Clinton as "part of Russia and its government's support for Mr. Trump." On multiple occasions in late June and early July 2017, the President directed aides not to publicly disclose the emails, and he then dictated a statement about the meeting to be issued by Donald Trump Jr. describing the meeting as about adoption.

Evidence

1. The President Learns About the Existence of Emails Concerning the June 9, 2016 Trump Tower Meeting

In mid-June 2017—the same week that the President first asked Lewandowski to pass a message to Sessions—senior Administration officials became aware of emails exchanged during

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

the campaign arranging a meeting between Donald Trump Jr., Paul Manafort, Jared Kushner, and a Russian attorney.⁶⁶³ As described in Volume I, Section IV.A.5, *supra*, the emails stated that the “Crown [P]rosecutor of Russia” had offered “to provide the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia” as part of “Russia and its government’s support for Mr. Trump.”⁶⁶⁴ Trump Jr. responded, “[I]f it’s what you say I love it,”⁶⁶⁵ and he, Kushner, and Manafort met with the Russian attorney and several other Russian individuals at Trump Tower on June 9, 2016.⁶⁶⁶ At the meeting, the Russian attorney claimed that funds derived from illegal activities in Russia were provided to Hillary Clinton and other Democrats, and the Russian attorney then spoke about the Magnitsky Act, a 2012 U.S. statute that imposed financial and travel sanctions on Russian officials and that had resulted in a retaliatory ban in Russia on U.S. adoptions of Russian children.⁶⁶⁷

According to written answers submitted by the President in response to questions from this Office, the President had no recollection of learning of the meeting or the emails setting it up at the time the meeting occurred or at any other time before the election.⁶⁶⁸

The Trump Campaign had previously received a document request from SSCI that called for the production of various information, including, “[a] list and a description of all meetings” between any “individual affiliated with the Trump campaign” and “any individual formally or informally affiliated with the Russian government or Russian business interests which took place between June 16, 2015, and 12 pm on January 20, 2017,” and associated records.⁶⁶⁹ Trump Organization attorneys became aware of the June 9 meeting no later than the first week of June 2017, when they began interviewing the meeting participants, and the Trump Organization attorneys provided the emails setting up the meeting to the President’s personal counsel.⁶⁷⁰ Mark Corallo, who had been hired as a spokesman for the President’s personal legal team, recalled that he learned about the June 9 meeting around June 21 or 22, 2017.⁶⁷¹ Priebus recalled learning about the June 9 meeting from Fox News host Sean Hannity in late June 2017.⁶⁷² Priebus notified one

⁶⁶³ Hicks 3/13/18 302, at 1; Raffel 2/8/18 302, at 2.

⁶⁶⁴ RG000061 (6/3/16 Email, Goldstone to Trump Jr.); @DonaldJTrumpJR 7/11/17 (11:01 a.m. ET) Tweet.

⁶⁶⁵ RG000061 (6/3/16 Email, Trump Jr. to Goldstone); @DonaldJTrumpJR 7/11/17 (11:01 a.m. ET) Tweet.

⁶⁶⁶ Samochorniov 7/12/17 302, at 4.

⁶⁶⁷ See Volume I, Section IV.A.5, *supra* (describing meeting in detail).

⁶⁶⁸ Written Responses of Donald J. Trump (Nov. 20, 2018), at 8 (Response to Question I, Parts (a) through (c)). The President declined to answer questions about his knowledge of the June 9 meeting or other events after the election.

⁶⁶⁹ DJTFP_SCO_PDF_00000001-02 (5/17/17 Letter, SSCI to Donald J. Trump for President, Inc.).

⁶⁷⁰ Goldstone 2/8/18 302, at 12; 6/2/17 and 6/5/17 Emails, Goldstone & Garten; Raffel 2/8/18 302, at 3; Hicks 3/13/18 302, at 2.

⁶⁷¹ Corallo 2/15/18 302, at 3.

⁶⁷² Priebus 4/3/18 302, at 7.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

of the President's personal attorneys, who told Priebus he was already working on it.⁶⁷³ By late June, several advisors recalled receiving media inquiries that could relate to the June 9 meeting.⁶⁷⁴

2. The President Directs Communications Staff Not to Publicly Disclose Information About the June 9 Meeting

Communications advisors Hope Hicks and Josh Raffel recalled discussing with Jared Kushner and Ivanka Trump that the emails were damaging and would inevitably be leaked.⁶⁷⁵ Hicks and Raffel advised that the best strategy was to proactively release the emails to the press.⁶⁷⁶ On or about June 22, 2017, Hicks attended a meeting in the White House residence with the President, Kushner, and Ivanka Trump.⁶⁷⁷ According to Hicks, Kushner said that he wanted to fill the President in on something that had been discovered in the documents he was to provide to the congressional committees involving a meeting with him, Manafort, and Trump Jr.⁶⁷⁸ Kushner brought a folder of documents to the meeting and tried to show them to the President, but the President stopped Kushner and said he did not want to know about it, shutting the conversation down.⁶⁷⁹

On June 28, 2017, Hicks viewed the emails at Kushner's attorney's office.⁶⁸⁰ She recalled being shocked by the emails because they looked "really bad."⁶⁸¹ The next day, Hicks spoke privately with the President to mention her concern about the emails, which she understood were soon going to be shared with Congress.⁶⁸² The President seemed upset because too many people knew about the emails and he told Hicks that just one lawyer should deal with the matter.⁶⁸³ The President indicated that he did not think the emails would leak, but said they would leak if everyone had access to them.⁶⁸⁴

⁶⁷³ Priebus 4/3/18 302, at 7.

⁶⁷⁴ Corallo 2/15/18 302, at 3; Hicks 12/7/17 302, at 8; Raffel 2/8/18 302, at 3.

⁶⁷⁵ Raffel 2/8/18 302, at 2-3; Hicks 3/13/18 302, at 2.

⁶⁷⁶ Raffel 2/8/18 302, at 2-3, 5; Hicks 3/13/18 302, at 2; Hicks 12/7/17 302, at 8.

⁶⁷⁷ Hicks 12/7/17 302, at 6-7; Hicks 3/13/18 302, at 1.

⁶⁷⁸ Hicks 12/7/17 302, at 7; Hicks 3/13/18 302, at 1.

⁶⁷⁹ Hicks 12/7/17 302, at 7; Hicks 3/13/18 302, at 1. Counsel for Ivanka Trump provided an attorney proffer that is consistent with Hicks's account and with the other events involving Ivanka Trump set forth in this section of the report. Kushner said that he did not recall talking to the President at this time about the June 9 meeting or the underlying emails. Kushner 4/11/18 302, at 30.

⁶⁸⁰ Hicks 3/13/18 302, at 1-2.

⁶⁸¹ Hicks 3/13/18 302, at 2.

⁶⁸² Hicks 12/7/17 302, at 8.

⁶⁸³ Hicks 3/13/18 302, at 2-3; Hicks 12/7/17 302, at 8.

⁶⁸⁴ Hicks 12/7/17 302, at 8.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Later that day, Hicks, Kushner, and Ivanka Trump went together to talk to the President.⁶⁸⁵ Hicks recalled that Kushner told the President the June 9 meeting was not a big deal and was about Russian adoption, but that emails existed setting up the meeting.⁶⁸⁶ Hicks said she wanted to get in front of the story and have Trump Jr. release the emails as part of an interview with “softball questions.”⁶⁸⁷ The President said he did not want to know about it and they should not go to the press.⁶⁸⁸ Hicks warned the President that the emails were “really bad” and the story would be “massive” when it broke, but the President was insistent that he did not want to talk about it and said he did not want details.⁶⁸⁹ Hicks recalled that the President asked Kushner when his document production was due.⁶⁹⁰ Kushner responded that it would be a couple of weeks and the President said, “then leave it alone.”⁶⁹¹ Hicks also recalled that the President said Kushner’s attorney should give the emails to whomever he needed to give them to, but the President did not think they would be leaked to the press.⁶⁹² Raffel later heard from Hicks that the President had directed the group not to be proactive in disclosing the emails because the President believed they would not leak.⁶⁹³

3. The President Directs Trump Jr.’s Response to Press Inquiries About the June 9 Meeting

The following week, the President departed on an overseas trip for the G20 summit in Hamburg, Germany, accompanied by Hicks, Raffel, Kushner, and Ivanka Trump, among others.⁶⁹⁴ On July 7, 2017, while the President was overseas, Hicks and Raffel learned that the New York Times was working on a story about the June 9 meeting.⁶⁹⁵ The next day, Hicks told the President about the story and he directed her not to comment.⁶⁹⁶ Hicks thought the President’s reaction was odd because he usually considered not responding to the press to be the ultimate sin.⁶⁹⁷ Later that day, Hicks and the President again spoke about the story.⁶⁹⁸ Hicks recalled that the President asked

⁶⁸⁵ Hicks 12/7/17 302, at 8; Hicks 3/13/18 302, at 2.

⁶⁸⁶ Hicks 3/13/18 302, at 2; Hicks 12/7/17 302, at 9.

⁶⁸⁷ Hicks 3/13/18 302, at 2-3.

⁶⁸⁸ Hicks 3/13/18 302, at 2-3; Hicks 12/7/17 302, at 9.

⁶⁸⁹ Hicks 3/13/18 302, at 3; Hicks 12/7/17 302, at 9.

⁶⁹⁰ Hicks 3/13/18 302, at 3.

⁶⁹¹ Hicks 3/13/18 302, at 3.

⁶⁹² Hicks 12/7/17 302, at 9.

⁶⁹³ Raffel 2/8/18 302, at 5.

⁶⁹⁴ Raffel 2/8/18 302, at 6.

⁶⁹⁵ Raffel 2/8/18 302, at 6-7; Hicks 3/13/18 302, at 3.

⁶⁹⁶ Hicks 12/7/17 302, at 10; Hicks 3/13/18 302, at 3.

⁶⁹⁷ Hicks 12/7/17 302, at 10.

⁶⁹⁸ Hicks 3/13/18 302, at 3.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

her what the meeting had been about, and she said that she had been told the meeting was about Russian adoption.⁶⁹⁹ The President responded, “then just say that.”⁷⁰⁰

On the flight home from the G20 on July 8, 2017, Hicks obtained a draft statement about the meeting to be released by Trump Jr. and brought it to the President.⁷⁰¹ The draft statement began with a reference to the information that was offered by the Russians in setting up the meeting: “I was asked to have a meeting by an acquaintance I knew from the 2013 Miss Universe pageant with an individual who I was told might have information helpful to the campaign.”⁷⁰² Hicks again wanted to disclose the entire story, but the President directed that the statement not be issued because it said too much.⁷⁰³ The President told Hicks to say only that Trump Jr. took a brief meeting and it was about Russian adoption.⁷⁰⁴ After speaking with the President, Hicks texted Trump Jr. a revised statement on the June 9 meeting that read:

It was a short meeting. I asked Jared and Paul to stop by. We discussed a program about the adoption of Russian children that was active and popular with American families years ago and was since ended by the Russian government, but it was not a campaign issue at that time and there was no follow up.⁷⁰⁵

Hicks’s text concluded, “Are you ok with this? Attributed to you.”⁷⁰⁶ Trump Jr. responded by text message that he wanted to add the word “primarily” before “discussed” so that the statement would read, “We primarily discussed a program about the adoption of Russian children.”⁷⁰⁷ Trump Jr. texted that he wanted the change because “[t]hey started with some Hillary thing which was bs and some other nonsense which we shot down fast.”⁷⁰⁸ Hicks texted back, “I think that’s right too but boss man worried it invites a lot of questions[.] [U]ltimately [d]efer to you and [your attorney] on that word Bc I know it’s important and I think the mention of a campaign issue adds something to it in case we have to go further.”⁷⁰⁹ Trump Jr. responded, “If I don’t have it in there it appears as though I’m lying later when they inevitably leak something.”⁷¹⁰ Trump Jr.’s statement—adding

⁶⁹⁹ Hicks 3/13/18 302, at 3; Hicks 12/7/17 302, at 10.

⁷⁰⁰ Hicks 3/13/18 302, at 3; *see* Hicks 12/7/17 302, at 10.

⁷⁰¹ Hicks 3/13/18 302, at 4.

⁷⁰² Hicks 7/8/17 Notes.

⁷⁰³ Hicks 3/13/18 302, at 4-5; Hicks 12/7/17 302, at 11.

⁷⁰⁴ Hicks 12/7/17 302, at 11.

⁷⁰⁵ SCR011a_000004 (7/8/17 Text Message, Hicks to Trump Jr.).

⁷⁰⁶ SCR011a_000004 (7/8/17 Text Message, Hicks to Trump Jr.).

⁷⁰⁷ SCR011a_000005 (7/8/17 Text Message, Trump Jr. to Hicks).

⁷⁰⁸ SCR011a_000005 (7/8/17 Text Message, Trump Jr. to Hicks).

⁷⁰⁹ SCR011a_000005 (7/8/17 Text Message, Hicks to Trump Jr.).

⁷¹⁰ SCR011a_000006 (7/8/17 Text Message, Trump Jr. to Hicks).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

the word “primarily” and making other minor additions—was then provided to the New York Times.⁷¹¹ The full statement provided to the *Times* stated:

It was a short introductory meeting. I asked Jared and Paul to stop by. We primarily discussed a program about the adoption of Russian children that was active and popular with American families years ago and was since ended by the Russian government, but it was not a campaign issue at the time and there was no follow up. I was asked to attend the meeting by an acquaintance, but was not told the name of the person I would be meeting with beforehand.⁷¹²

The statement did not mention the offer of derogatory information about Clinton or any discussion of the Magnitsky Act or U.S. sanctions, which were the principal subjects of the meeting, as described in Volume I, Section IV.A.5, *supra*.

A short while later, while still on Air Force One, Hicks learned that Priebus knew about the emails, which further convinced her that additional information about the June 9 meeting would leak and the White House should be proactive and get in front of the story.⁷¹³ Hicks recalled again going to the President to urge him that they should be fully transparent about the June 9 meeting, but he again said no, telling Hicks, “You’ve given a statement. We’re done.”⁷¹⁴

Later on the flight home, Hicks went to the President’s cabin, where the President was on the phone with one of his personal attorneys.⁷¹⁵ At one point the President handed the phone to Hicks, and the attorney told Hicks that he had been working with Circa News on a separate story, and that she should not talk to the New York Times.⁷¹⁶

4. The Media Reports on the June 9, 2016 Meeting

Before the President’s flight home from the G20 landed, the New York Times published its story about the June 9, 2016 meeting.⁷¹⁷ In addition to the statement from Trump Jr., the Times story also quoted a statement from Corallo on behalf of the President’s legal team suggesting that the meeting might have been a setup by individuals working with the firm that produced the Steele reporting.⁷¹⁸ Corallo also worked with Circa News on a story published an hour later that

⁷¹¹ Hicks 3/13/18 302, at 6; see Jo Becker et al., *Trump Team Met With Lawyer Linked to Kremlin During Campaign*, New York Times (July 8, 2017).

⁷¹² See Jo Becker et al., *Trump Team Met With Lawyer Linked to Kremlin During Campaign*, New York Times (July 8, 2017).

⁷¹³ Hicks 3/13/18 302, at 6; Raffel 2/8/18 302, at 9-10.

⁷¹⁴ Hicks 12/7/17 302, at 12; Raffel 2/8/18 302, at 10.

⁷¹⁵ Hicks 3/13/18 302, at 7.

⁷¹⁶ Hicks 3/13/18 302, at 7.

⁷¹⁷ See Jo Becker et al., *Trump Team Met With Lawyer Linked to Kremlin During Campaign*, New York Times (July 8, 2017); Raffel 2/8/18 302, at 10.

⁷¹⁸ See Jo Becker et al., *Trump Team Met With Lawyer Linked to Kremlin During Campaign*, New York Times (July 8, 2017).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

questioned whether Democratic operatives had arranged the June 9 meeting to create the appearance of improper connections between Russia and Trump family members.⁷¹⁹ Hicks was upset about Corallo's public statement and called him that evening to say the President had not approved the statement.⁷²⁰

The next day, July 9, 2017, Hicks and the President called Corallo together and the President criticized Corallo for the statement he had released.⁷²¹ Corallo told the President the statement had been authorized and further observed that Trump Jr.'s statement was inaccurate and that a document existed that would contradict it.⁷²² Corallo said that he purposely used the term "document" to refer to the emails setting up the June 9 meeting because he did not know what the President knew about the emails.⁷²³ Corallo recalled that when he referred to the "document" on the call with the President, Hicks responded that only a few people had access to it and said "it will never get out."⁷²⁴ Corallo took contemporaneous notes of the call that say: "Also mention existence of doc. Hope says 'only a few people have it. It will never get out.'"⁷²⁵ Hicks later told investigators that she had no memory of making that comment and had always believed the emails would eventually be leaked, but she might have been channeling the President on the phone call because it was clear to her throughout her conversations with the President that he did not think the emails would leak.⁷²⁶

On July 11, 2017, Trump Jr. posted redacted images of the emails setting up the June 9 meeting on Twitter; the New York Times reported that he did so "[a]fter being told that The Times was about to publish the content of the emails."⁷²⁷ Later that day, the media reported that the President had been personally involved in preparing Trump Jr.'s initial statement to the New York Times that had claimed the meeting "primarily" concerned "a program about the adoption of Russian children."⁷²⁸ Over the next several days, the President's personal counsel repeatedly and

⁷¹⁹ See Donald Trump Jr. gathered members of campaign for meeting with Russian lawyer before election, *Circa News* (July 8, 2017).

⁷²⁰ Hicks 3/13/18 302, at 8; Corallo 2/15/18 302, at 6-7.

⁷²¹ Corallo 2/15/18 302, at 7.

⁷²² Corallo 2/15/18 302, at 7.

⁷²³ Corallo 2/15/18 302, at 7-9.

⁷²⁴ Corallo 2/15/18 302, at 8.

⁷²⁵ Corallo 2/15/18 302, at 8; Corallo 7/9/17 Notes ("Sunday 9th - Hope calls w/ POTUS on line"). Corallo said he is "100% confident" that Hicks said "It will never get out" on the call. Corallo 2/15/18 302, at 9.

⁷²⁶ Hicks 3/13/18 302, at 9.

⁷²⁷ @DonaldJTrumpJR 7/11/17 (11:01 a.m. ET) Tweet; Jo Becker et al., *Russian Dirt on Clinton? 'I Love It,' Donald Trump Jr. Said*, *New York Times* (July 11, 2017).

⁷²⁸ See, e.g., Peter Baker & Maggie Haberman, *Rancor at White House as Russia Story Refuses to Let the Page Turn*, *New York Times* (July 11, 2017) (reporting that the President "signed off" on Trump Jr.'s statement).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

inaccurately denied that the President played any role in drafting Trump Jr.'s statement.⁷²⁹ After consulting with the President on the issue, White House Press Secretary Sarah Sanders told the media that the President "certainly didn't dictate" the statement, but that "he weighed in, offered suggestions like any father would do."⁷³⁰ Several months later, the President's personal counsel stated in a private communication to the Special Counsel's Office that "the President dictated a short but accurate response to the New York Times article on behalf of his son, Donald Trump, Jr."⁷³¹ The President later told the press that it was "irrelevant" whether he dictated the statement and said, "It's a statement to the New York Times. . . . That's not a statement to a high tribunal of judges."⁷³²

On July 12, 2017, the Special Counsel's Office ~~Grand Jury~~ Trump Jr. ~~Grand Jury~~ related to the June 9 meeting and those who attended the June 9 meeting.⁷³³

On July 19, 2017, the President had his follow-up meeting with Lewandowski and then met with reporters for the New York Times. In addition to criticizing Sessions in his Times interview, the President addressed the June 9, 2016 meeting and said he "didn't know anything about the meeting" at the time.⁷³⁴ The President added, "As I've said—most other people, you know, when they call up and say, 'By the way, we have information on your opponent,' I think most politicians — I was just with a lot of people, they said . . . , 'Who wouldn't have taken a meeting like that?'"⁷³⁵

Analysis

In analyzing the President's actions regarding the disclosure of information about the June 9 meeting, the following evidence is relevant to the elements of obstruction of justice:

a. **Obstructive act.** On at least three occasions between June 29, 2017, and July 9, 2017, the President directed Hicks and others not to publicly disclose information about the June

⁷²⁹ See, e.g., David Wright, *Trump lawyer: President was aware of "nothing"*, CNN (July 12, 2017) (quoting the President's personal attorney as saying, "I wasn't involved in the statement drafting at all nor was the President."); see also Good Morning America, ABC (July 12, 2017) ("The President didn't sign off on anything. . . . The President wasn't involved in that."); Meet the Press, NBC (July 16, 2017) ("I do want to be clear—the President was not involved in the drafting of the statement.").

⁷³⁰ Sarah Sanders, *White House Daily Briefing*, C-SPAN (Aug. 1, 2017); Sanders 7/3/18 302, at 9 (the President told Sanders he "weighed in, as any father would" and knew she intended to tell the press what he said).

⁷³¹ 1/29/18 Letter, President's Personal Counsel to Special Counsel's Office, at 18.

⁷³² Remarks by President Trump in Press Gaggle (June 15, 2018).

⁷³³ ~~Grand Jury~~.

⁷³⁴ Peter Baker et al., *Excerpts From The Times's Interview With Trump*, New York Times (July 19, 2017).

⁷³⁵ Peter Baker et al., *Excerpts From The Times's Interview With Trump*, New York Times (July 19, 2017).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

9, 2016 meeting between senior campaign officials and a Russian attorney. On June 29, Hicks warned the President that the emails setting up the June 9 meeting were “really bad” and the story would be “massive” when it broke, but the President told her and Kushner to “leave it alone.” Early on July 8, after Hicks told the President the New York Times was working on a story about the June 9 meeting, the President directed her not to comment, even though Hicks said that the President usually considered not responding to the press to be the ultimate sin. Later that day, the President rejected Trump Jr.’s draft statement that would have acknowledged that the meeting was with “an individual who I was told might have information helpful to the campaign.” The President then dictated a statement to Hicks that said the meeting was about Russian adoption (which the President had twice been told was discussed at the meeting). The statement dictated by the President did not mention the offer of derogatory information about Clinton.

Each of these efforts by the President involved his communications team and was directed at the press. They would amount to obstructive acts only if the President, by taking these actions, sought to withhold information from or mislead congressional investigators or the Special Counsel. On May 17, 2017, the President’s campaign received a document request from SSCI that clearly covered the June 9 meeting and underlying emails, and those documents also plainly would have been relevant to the Special Counsel’s investigation.

But the evidence does not establish that the President took steps to prevent the emails or other information about the June 9 meeting from being provided to Congress or the Special Counsel. The series of discussions in which the President sought to limit access to the emails and prevent their public release occurred in the context of developing a press strategy. The only evidence we have of the President discussing the production of documents to Congress or the Special Counsel is the conversation on June 29, 2017, when Hicks recalled the President acknowledging that Kushner’s attorney should provide emails related to the June 9 meeting to whomever he needed to give them to. We do not have evidence of what the President discussed with his own lawyers at that time.

b. Nexus to an official proceeding. As described above, by the time of the President’s attempts to prevent the public release of the emails regarding the June 9 meeting, the existence of a grand jury investigation supervised by the Special Counsel was public knowledge, and the President had been told that the emails were responsive to congressional inquiries. To satisfy the nexus requirement, however, it would be necessary to show that preventing the release of the emails to the public would have the natural and probable effect of impeding the grand jury proceeding or congressional inquiries. As noted above, the evidence does not establish that the President sought to prevent disclosure of the emails in those official proceedings.

c. Intent. The evidence establishes the President’s substantial involvement in the communications strategy related to information about his campaign’s connections to Russia and his desire to minimize public disclosures about those connections. The President became aware of the emails no later than June 29, 2017, when he discussed them with Hicks and Kushner, and he could have been aware of them as early as June 2, 2017, when lawyers for the Trump Organization began interviewing witnesses who participated in the June 9 meeting. The President thereafter repeatedly rejected the advice of Hicks and other staffers to publicly release information about the June 9 meeting. The President expressed concern that multiple people had access to the emails and instructed Hicks that only one lawyer should deal with the matter. And the President

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

dictated a statement to be released by Trump Jr. in response to the first press accounts of the June 9 meeting that said the meeting was about adoption.

But as described above, the evidence does not establish that the President intended to prevent the Special Counsel's Office or Congress from obtaining the emails setting up the June 9 meeting or other information about that meeting. The statement recorded by Corallo—that the emails “will never get out”—can be explained as reflecting a belief that the emails would not be made public if the President's press strategy were followed, even if the emails were provided to Congress and the Special Counsel.

H. The President's Further Efforts to Have the Attorney General Take Over the Investigation

Overview

From summer 2017 through 2018, the President attempted to have Attorney General Sessions reverse his recusal, take control of the Special Counsel's investigation, and order an investigation of Hillary Clinton.

Evidence

1. The President Again Seeks to Have Sessions Reverse his Recusal

After returning Sessions's resignation letter at the end of May 2017, but before the President's July 19, 2017 New York Times interview in which he publicly criticized Sessions for recusing from the Russia investigation, the President took additional steps to have Sessions reverse his recusal. In particular, at some point after the May 17, 2017 appointment of the Special Counsel, Sessions recalled, the President called him at home and asked if Sessions would “unrecuse” himself.⁷³⁶ According to Sessions, the President asked him to reverse his recusal so that Sessions could direct the Department of Justice to investigate and prosecute Hillary Clinton, and the “gist” of the conversation was that the President wanted Sessions to unrecuse from “all of it,” including the Special Counsel's Russia investigation.⁷³⁷ Sessions listened but did not respond, and he did not reverse his recusal or order an investigation of Clinton.⁷³⁸

In early July 2017, the President asked Staff Secretary Rob Porter what he thought of Associate Attorney General Rachel Brand.⁷³⁹ Porter recalled that the President asked him if Brand was good, tough, and “on the team.”⁷⁴⁰ The President also asked if Porter thought Brand was interested in being responsible for the Special Counsel's investigation and whether she would want

⁷³⁶ Sessions 1/17/18 302, at 15. That was the second time that the President asked Sessions to reverse his recusal from campaign-related investigations. See Volume II, Section II.C.1, *supra* (describing President's March 2017 request at Mar-a-Lago for Sessions to unrecuse).

⁷³⁷ Sessions 1/17/18 302, at 15.

⁷³⁸ Sessions 1/17/18 302, at 15.

⁷³⁹ Porter 4/13/18 302, at 11; Porter 5/8/18 302, at 6.

⁷⁴⁰ Porter 4/13/18 302, at 11; Porter 5/8/18 302, at 6.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

to be Attorney General one day.⁷⁴¹ Because Porter knew Brand, the President asked him to sound her out about taking responsibility for the investigation and being Attorney General.⁷⁴² Contemporaneous notes taken by Porter show that the President told Porter to “Keep in touch with your friend,” in reference to Brand.⁷⁴³ Later, the President asked Porter a few times in passing whether he had spoken to Brand, but Porter did not reach out to her because he was uncomfortable with the task.⁷⁴⁴ In asking him to reach out to Brand, Porter understood the President to want to find someone to end the Russia investigation or fire the Special Counsel, although the President never said so explicitly.⁷⁴⁵ Porter did not contact Brand because he was sensitive to the implications of that action and did not want to be involved in a chain of events associated with an effort to end the investigation or fire the Special Counsel.⁷⁴⁶

McGahn recalled that during the summer of 2017, he and the President discussed the fact that if Sessions were no longer in his position the Special Counsel would report directly to a non-recused Attorney General.⁷⁴⁷ McGahn told the President that things might not change much under a new Attorney General.⁷⁴⁸ McGahn also recalled that in or around July 2017, the President frequently brought up his displeasure with Sessions.⁷⁴⁹ Hicks recalled that the President viewed Sessions’s recusal from the Russia investigation as an act of disloyalty.⁷⁵⁰ In addition to criticizing Sessions’s recusal, the President raised other concerns about Sessions and his job performance with McGahn and Hicks.⁷⁵¹

⁷⁴¹ Porter 4/13/18 302, at 11; Porter 5/8/18 302, at 6. Because of Sessions’s recusal, if Rosenstein were no longer in his position, Brand would, by default, become the DOJ official in charge of supervising the Special Counsel’s investigation, and if both Sessions and Rosenstein were removed, Brand would be next in line to become Acting Attorney General for all DOJ matters. See 28 U.S.C. § 508.

⁷⁴² Porter 4/13/18 302, at 11; Porter 5/8/18 302, at 6.

⁷⁴³ SC_RRP000020 (Porter 7/10/17 Notes).

⁷⁴⁴ Porter 4/13/18 302, at 11-12.

⁷⁴⁵ Porter 4/13/18 302, at 11-12.

⁷⁴⁶ Porter 4/13/18 302, at 11-12. Brand confirmed that no one ever raised with her the prospect of taking over the Russia investigation or becoming Attorney General. Brand 1/29/19 302, at 2.

⁷⁴⁷ McGahn 12/14/17 302, at 11.

⁷⁴⁸ McGahn 12/14/17 302, at 11.

⁷⁴⁹ McGahn 12/14/17 302, at 9.

⁷⁵⁰ Hicks 3/13/18 302, at 10.

⁷⁵¹ McGahn 12/14/17 302, at 9; Hicks 3/13/18 302, at 10.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

2. Additional Efforts to Have Sessions Unrecuse or Direct Investigations Covered by his Recusal

Later in 2017, the President continued to urge Sessions to reverse his recusal from campaign-related investigations and considered replacing Sessions with an Attorney General who would not be recused.

On October 16, 2017, the President met privately with Sessions and said that the Department of Justice was not investigating individuals and events that the President thought the Department should be investigating.⁷⁵² According to contemporaneous notes taken by Porter, who was at the meeting, the President mentioned Clinton's emails and said, "Don't have to tell us, just take [a] look."⁷⁵³ Sessions did not offer any assurances or promises to the President that the Department of Justice would comply with that request.⁷⁵⁴ Two days later, on October 18, 2017, the President tweeted, "Wow, FBI confirms report that James Comey drafted letter exonerating Crooked Hillary Clinton long before investigation was complete. Many people not interviewed, including Clinton herself. Comey stated under oath that he didn't do this-obviously a fix? Where is Justice Dept?"⁷⁵⁵ On October 29, 2017, the President tweeted that there was "ANGER & UNITY" over a "lack of investigation" of Clinton and "the Comey fix," and concluded: "DO SOMETHING!"⁷⁵⁶

On December 6, 2017, five days after Flynn pleaded guilty to lying about his contacts with the Russian government, the President asked to speak with Sessions in the Oval Office at the end of a cabinet meeting.⁷⁵⁷ During that Oval Office meeting, which Porter attended, the President again suggested that Sessions could "unrecuse," which Porter linked to taking back supervision of the Russia investigation and directing an investigation of Hillary Clinton.⁷⁵⁸ According to contemporaneous notes taken by Porter, the President said, "I don't know if you could un-recuse yourself. You'd be a hero. Not telling you to do anything. Dershowitz says POTUS can get involved. Can order AG to investigate. I don't want to get involved. I'm not going to get involved. I'm not going to do anything or direct you to do anything. I just want to be treated fairly."⁷⁵⁹ According to Porter's notes, Sessions responded, "We are taking steps; whole new leadership

⁷⁵² Porter 5/8/18 302, at 10.

⁷⁵³ SC_RRP000024 (Porter 10/16/17 Notes); see Porter 5/8/18 302, at 10.

⁷⁵⁴ Porter 5/8/18 302, at 10.

⁷⁵⁵ @realDonaldTrump 10/18/17 (6:21 a.m. ET) Tweet; @realDonaldTrump 10/18/17 (6:27 a.m. ET) Tweet.

⁷⁵⁶ @realDonaldTrump 10/29/17 (9:53 a.m. ET) Tweet; @realDonaldTrump 10/29/17 (10:02 a.m. ET) Tweet; @realDonaldTrump 10/29/17 (10:17 a.m. ET) Tweet.

⁷⁵⁷ Porter 4/13/18 302, at 5-6; see SC_RRP000031 (Porter 12/6/17 Notes) ("12:45pm With the President, Gen. Kelly, and Sessions (who I pulled in after the Cabinet meeting)"); SC_RRP000033 (Porter 12/6/17 Notes) ("Post-cabinet meeting - POTUS asked me to get AG Sessions. Asked me to stay. Also COS Kelly.").

⁷⁵⁸ Porter 5/8/18 302, at 12; Porter 4/13/18 302, at 5-6.

⁷⁵⁹ SC_RRP000033 (Porter 12/6/17 Notes); see Porter 4/13/18 302, at 6; Porter 5/8/18 302, at 12.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

team. Professionals; will operate according to the law.⁷⁶⁰ Sessions also said, "I never saw anything that was improper," which Porter thought was noteworthy because it did not fit with the previous discussion about Clinton.⁷⁶¹ Porter understood Sessions to be reassuring the President that he was on the President's team.⁷⁶²

At the end of December, the President told the New York Times it was "too bad" that Sessions had recused himself from the Russia investigation.⁷⁶³ When asked whether Holder had been a more loyal Attorney General to President Obama than Sessions was to him, the President said, "I don't want to get into loyalty, but I will tell you that, I will say this: Holder protected President Obama. Totally protected him. When you look at the things that they did, and Holder protected the president. And I have great respect for that, I'll be honest."⁷⁶⁴ Later in January, the President brought up the idea of replacing Sessions and told Porter that he wanted to "clean house" at the Department of Justice.⁷⁶⁵ In a meeting in the White House residence that Porter attended on January 27, 2018, Porter recalled that the President talked about the great attorneys he had in the past with successful win records, such as Roy Cohn and Jay Goldberg, and said that one of his biggest failings as President was that he had not surrounded himself with good attorneys, citing Sessions as an example.⁷⁶⁶ The President raised Sessions's recusal and brought up and criticized the Special Counsel's investigation.⁷⁶⁷

Over the next several months, the President continued to criticize Sessions in tweets and media interviews and on several occasions appeared to publicly encourage him to take action in the Russia investigation despite his recusal.⁷⁶⁸ On June 5, 2018, for example, the President

⁷⁶⁰ SC_RRP000033 (Porter 12/6/17 Notes); see Porter 4/13/18 302, at 6.

⁷⁶¹ SC_RRP000033 (Porter 12/6/17 Notes); Porter 4/13/18 302, at 6.

⁷⁶² Porter 4/13/18 302, at 6-7.

⁷⁶³ Michael S. Schmidt & Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. "Look Very Bad"*, New York Times (Dec. 28, 2017).

⁷⁶⁴ Michael S. Schmidt & Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. "Look Very Bad"*, New York Times (Dec. 28, 2017).

⁷⁶⁵ Porter 4/13/18 302, at 14.

⁷⁶⁶ Porter 5/8/18 302, at 15. Contemporaneous notes Porter took of the conversation state, "Roy Cohn (14-0) / Jay Goldberg (12-0)." SC_RRP000047 (Porter 1/27/18 Notes).

⁷⁶⁷ Porter 5/8/18 302, at 15-16.

⁷⁶⁸ See, e.g., @realDonaldTrump 2/28/18 (9:34 a.m. ET) Tweet ("Why is A.G. Jeff Sessions asking the Inspector General to investigate potentially massive FISA abuse. Will take forever, has no prosecutorial power and already late with reports on Comey etc. Isn't the I.G. an Obama guy? Why not use Justice Department lawyers? DISGRACEFUL!"); @realDonaldTrump 4/7/18 (4:52 p.m. ET) Tweet ("Lawmakers of the House Judiciary Committee are angrily accusing the Department of Justice of missing the Thursday Deadline for turning over UNREDACTED Documents relating to FISA abuse, FBI, Comey, Lynch, McCabe, Clinton Emails and much more. Slow walking – what is going on? BAD!"); @realDonaldTrump 4/22/18 (8:22 a.m. ET) Tweet ("GOP Lawmakers asking Sessions to Investigate Comey and Hillary Clinton." @FoxNews Good luck with that request!"); @realDonaldTrump 12/16/18 (3:37 p.m. ET) Tweet

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

tweeted, “The Russian Witch Hunt Hoax continues, all because Jeff Sessions didn’t tell me he was going to recuse himself. . . . I would have quickly picked someone else. So much time and money wasted, so many lives ruined . . . and Sessions knew better than most that there was No Collusion!”⁷⁶⁹ On August 1, 2018, the President tweeted that “Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now.”⁷⁷⁰ On August 23, 2018, the President publicly criticized Sessions in a press interview and suggested that prosecutions at the Department of Justice were politically motivated because Paul Manafort had been prosecuted but Democrats had not.⁷⁷¹ The President said, “I put in an Attorney General that never took control of the Justice Department, Jeff Sessions.”⁷⁷² That day, Sessions issued a press statement that said, “I took control of the Department of Justice the day I was sworn in While I am Attorney General, the actions of the Department of Justice will not be improperly influenced by political considerations.”⁷⁷³ The next day, the President tweeted a response: “Department of Justice will not be improperly influenced by political considerations.” Jeff, this is GREAT, what everyone wants, so look into all of the corruption on the ‘other side’ including deleted Emails, Comey lies & leaks, Mueller conflicts, McCabe, Strzok, Page, Ohr, FISA abuse, Christopher Steele & his phony and corrupt Dossier, the Clinton Foundation, illegal surveillance of Trump campaign, Russian collusion by Dems – and so much more. Open up the papers & documents without redaction? Come on Jeff, you can do it, the country is waiting!”⁷⁷⁴

On November 7, 2018, the day after the midterm elections, the President replaced Sessions with Sessions’s chief of staff as Acting Attorney General.⁷⁷⁵

Analysis

In analyzing the President’s efforts to have Sessions unrecuse himself and regain control of the Russia investigation, the following considerations and evidence are relevant to the elements of obstruction of justice:

a. **Obstructive act.** To determine if the President’s efforts to have the Attorney General unrecuse could qualify as an obstructive act, it would be necessary to assess evidence on whether those actions would naturally impede the Russia investigation. That inquiry would take into account the supervisory role that the Attorney General, if unrecused, would play in the Russia investigation. It also would have to take into account that the Attorney General’s recusal covered

(“Jeff Sessions should be ashamed of himself for allowing this total HOAX to get started in the first place!”).

⁷⁶⁹ @realDonaldTrump 6/5/18 (7:31 a.m. ET) Tweet.

⁷⁷⁰ @realDonaldTrump 8/1/18 (9:24 a.m. ET) Tweet.

⁷⁷¹ Fox & Friends Interview of President Trump, Fox News (Aug. 23, 2018).

⁷⁷² Fox & Friends Interview of President Trump, Fox News (Aug. 23, 2018).

⁷⁷³ Sessions 8/23/18 Press Statement.

⁷⁷⁴ @realDonaldTrump 8/24/18 (6:17 a.m. ET) Tweet; @realDonaldTrump 8/24/18 (6:28 a.m. ET) Tweet.

⁷⁷⁵ @realDonaldTrump 11/7/18 (2:44 p.m. ET) Tweet.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

other campaign-related matters. The inquiry would not turn on what Attorney General Sessions would actually do if unrecused, but on whether the efforts to reverse his recusal would naturally have had the effect of impeding the Russia investigation.

On multiple occasions in 2017, the President spoke with Sessions about reversing his recusal so that he could take over the Russia investigation and begin an investigation and prosecution of Hillary Clinton. For example, in early summer 2017, Sessions recalled the President asking him to unrecuse, but Sessions did not take it as a directive. When the President raised the issue again in December 2017, the President said, as recorded by Porter, “Not telling you to do anything. . . . I’m not going to get involved. I’m not going to do anything or direct you to do anything. I just want to be treated fairly.” The duration of the President’s efforts—which spanned from March 2017 to August 2018—and the fact that the President repeatedly criticized Sessions in public and in private for failing to tell the President that he would have to recuse is relevant to assessing whether the President’s efforts to have Sessions unrecuse could qualify as obstructive acts.

b. Nexus to an official proceeding. As described above, by mid-June 2017, the existence of a grand jury investigation supervised by the Special Counsel was public knowledge. In addition, in July 2017, a different grand jury supervised by the Special Counsel was empaneled in the District of Columbia, and the press reported on the existence of this grand jury in early August 2017.⁷⁷⁶ Whether the conduct towards the Attorney General would have a foreseeable impact on those proceedings turns on much of the same evidence discussed above with respect to the obstructive-act element.

c. Intent. There is evidence that at least one purpose of the President’s conduct toward Sessions was to have Sessions assume control over the Russia investigation and supervise it in a way that would restrict its scope. By the summer of 2017, the President was aware that the Special Counsel was investigating him personally for obstruction of justice. And in the wake of the disclosures of emails about the June 9 meeting between Russians and senior members of the campaign, *see* Volume II, Section II.G, *supra*, it was evident that the investigation into the campaign now included the President’s son, son-in-law, and former campaign manager. The President had previously and unsuccessfully sought to have Sessions publicly announce that the Special Counsel investigation would be confined to future election interference. Yet Sessions remained recused. In December 2017, shortly after Flynn pleaded guilty, the President spoke to Sessions in the Oval Office with only Porter present and told Sessions that he would be a hero if he unrecused. Porter linked that request to the President’s desire that Sessions take back supervision of the Russia investigation and direct an investigation of Hillary Clinton. The President said in that meeting that he “just want[ed] to be treated fairly,” which could reflect his perception that it was unfair that he was being investigated while Hillary Clinton was not. But a principal effect of that act would be to restore supervision of the Russia investigation to the Attorney General—a position that the President frequently suggested should be occupied by someone like Eric Holder and Bobby Kennedy, who the President described as protecting their

⁷⁷⁶ *E.g.*, Del Quentin Wilbur & Byron Tau, *Special Counsel Robert Mueller Impanels Washington Grand Jury in Russia Probe*, Wall Street Journal (Aug. 3, 2017); Carol D. Leonnig et al., *Special Counsel Mueller using grand jury in federal court in Washington as part of Russia investigation*, Washington Post (Aug. 3, 2017).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

presidents. A reasonable inference from those statements and the President's actions is that the President believed that an unrecused Attorney General would play a protective role and could shield the President from the ongoing Russia investigation.

I. The President Orders McGahn to Deny that the President Tried to Fire the Special Counsel

Overview

In late January 2018, the media reported that in June 2017 the President had ordered McGahn to have the Special Counsel fired based on purported conflicts of interest but McGahn had refused, saying he would quit instead. After the story broke, the President, through his personal counsel and two aides, sought to have McGahn deny that he had been directed to remove the Special Counsel. Each time he was approached, McGahn responded that he would not refute the press accounts because they were accurate in reporting on the President's effort to have the Special Counsel removed. The President later personally met with McGahn in the Oval Office with only the Chief of Staff present and tried to get McGahn to say that the President never ordered him to fire the Special Counsel. McGahn refused and insisted his memory of the President's direction to remove the Special Counsel was accurate. In that same meeting, the President challenged McGahn for taking notes of his discussions with the President and asked why he had told Special Counsel investigators that he had been directed to have the Special Counsel removed.

Evidence

1. The Press Reports that the President Tried to Fire the Special Counsel

On January 25, 2018, the New York Times reported that in June 2017, the President had ordered McGahn to have the Department of Justice fire the Special Counsel.⁷⁷⁷ According to the article, “[a]mid the first wave of news media reports that Mr. Mueller was examining a possible obstruction case, the president began to argue that Mr. Mueller had three conflicts of interest that disqualified him from overseeing the investigation.”⁷⁷⁸ The article further reported that “[a]fter receiving the president’s order to fire Mr. Mueller, the White House counsel . . . refused to ask the Justice Department to dismiss the special counsel, saying he would quit instead.”⁷⁷⁹ The article stated that the president “ultimately backed down after the White House counsel threatened to resign rather than carry out the directive.”⁷⁸⁰ After the article was published, the President

⁷⁷⁷ Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25. 2018).

⁷⁷⁸ Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25. 2018).

⁷⁷⁹ Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25. 2018).

⁷⁸⁰ Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25. 2018).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

dismissed the story when asked about it by reporters, saying, "Fake news, folks. Fake news. A typical New York Times fake story."⁷⁸¹

The next day, the Washington Post reported on the same event but added that McGahn had not told the President directly that he intended to resign rather than carry out the directive to have the Special Counsel terminated.⁷⁸² In that respect, the Post story clarified the Times story, which could be read to suggest that McGahn had told the President of his intention to quit, causing the President to back down from the order to have the Special Counsel fired.⁷⁸³

2. The President Seeks to Have McGahn Dispute the Press Reports

On January 26, 2018, the President's personal counsel called McGahn's attorney and said that the President wanted McGahn to put out a statement denying that he had been asked to fire the Special Counsel and that he had threatened to quit in protest.⁷⁸⁴ McGahn's attorney spoke with McGahn about that request and then called the President's personal counsel to relay that McGahn would not make a statement.⁷⁸⁵ McGahn's attorney informed the President's personal counsel that the Times story was accurate in reporting that the President wanted the Special Counsel removed.⁷⁸⁶ Accordingly, McGahn's attorney said, although the article was inaccurate in some other respects, McGahn could not comply with the President's request to dispute the story.⁷⁸⁷ Hicks recalled relaying to the President that one of his attorneys had spoken to McGahn's attorney about the issue.⁷⁸⁸

⁷⁸¹ Sophie Tatum & Kara Scannell, *Trump denies he called for Mueller's firing*, CNN (Jan. 26, 2018); Michael S. Schmidt & Maggie Haberman, *Trump Ordered Mueller Fired, but Backed Off When White House Counsel Threatened to Quit*, New York Times (Jan. 25, 2018).

⁷⁸² The *Post* article stated, "Despite internal objections, Trump decided to assert that Mueller had unacceptable conflicts of interest and moved to remove him from his position. . . . In response, McGahn said he would not remain at the White House if Trump went through with the move. . . . McGahn did not deliver his resignation threat directly to Trump but was serious about his threat to leave." Rosalind S. Helderman & Josh Dawsey, *Trump moved to fire Mueller in June, bringing White House counsel to the brink of leaving*, Washington Post (Jan. 26, 2018).

⁷⁸³ Rosalind S. Helderman & Josh Dawsey, *Trump moved to fire Mueller in June, bringing White House counsel to the brink of leaving*, Washington Post (Jan. 26, 2018); see McGahn 3/8/17 302, at 3-4.

⁷⁸⁴ McGahn 3/8/18 302, at 3 (agent note).

⁷⁸⁵ McGahn 3/8/18 302, at 3 (agent note).

⁷⁸⁶ McGahn 3/8/18 302, at 3-4 (agent note).

⁷⁸⁷ McGahn 3/8/18 302, at 4 (agent note).

⁷⁸⁸ Hicks 3/13/18 302, at 11. Hicks also recalled that the President spoke on the phone that day with Chief of Staff John Kelly and that the President said Kelly told him that McGahn had totally refuted the story and was going to put out a statement. Hicks 3/13/18 302, at 11. But Kelly said that he did not speak to McGahn when the article came out and did not tell anyone he had done so. Kelly 8/2/18 302, at 1-2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Also on January 26, 2017, Hicks recalled that the President asked Sanders to contact McGahn about the story.⁷⁸⁹ McGahn told Sanders there was no need to respond and indicated that some of the article was accurate.⁷⁹⁰ Consistent with that position, McGahn did not correct the *Times* story.

On February 4, 2018, Priebus appeared on Meet the Press and said he had not heard the President say that he wanted the Special Counsel fired.⁷⁹¹ After Priebus's appearance, the President called Priebus and said he did a great job on Meet the Press.⁷⁹² The President also told Priebus that the President had "never said any of those things about" the Special Counsel.⁷⁹³

The next day, on February 5, 2018, the President complained about the *Times* article to Porter.⁷⁹⁴ The President told Porter that the article was "bullshit" and he had not sought to terminate the Special Counsel.⁷⁹⁵ The President said that McGahn leaked to the media to make himself look good.⁷⁹⁶ The President then directed Porter to tell McGahn to create a record to make clear that the President never directed McGahn to fire the Special Counsel.⁷⁹⁷ Porter thought the matter should be handled by the White House communications office, but the President said he wanted McGahn to write a letter to the file "for our records" and wanted something beyond a press statement to demonstrate that the reporting was inaccurate.⁷⁹⁸ The President referred to McGahn as a "lying bastard" and said that he wanted a record from him.⁷⁹⁹ Porter recalled the President

⁷⁸⁹ Hicks 3/13/18 302, at 11. Sanders did not recall whether the President asked her to speak to McGahn or if she did it on her own. Sanders 7/23/18 302, at 2.

⁷⁹⁰ Sanders 7/23/18 302, at 1-2.

⁷⁹¹ Meet the Press Interview with Reince Priebus, NBC (Feb. 4, 2018).

⁷⁹² Priebus 4/3/18 302, at 10.

⁷⁹³ Priebus 4/3/18 302, at 10.

⁷⁹⁴ Porter 4/13/18 302, at 16-17. Porter did not recall the timing of this discussion with the President. Porter 4/13/18 302, at 17. Evidence indicates it was February 5, 2018. On the back of a pocket card dated February 5, 2018, Porter took notes that are consistent with his description of the discussion: "COS: (1) Letter from DM - Never threatened to quit - DJT never told him to fire M." SC_RRP000053 (Porter Undated Notes). Porter said it was possible he took the notes on a day other than February 5. Porter 4/13/18 302, at 17. But Porter also said that "COS" referred to matters he wanted to discuss with Chief of Staff Kelly, Porter 4/13/18 302, at 17, and Kelly took notes dated February 5, 2018, that state "POTUS - Don McGahn letter - Mueller + resigning." WH000017684 (Kelly 2/5/18 Notes). Kelly said he did not recall what the notes meant, but thought the President may have "mused" about having McGahn write a letter. Kelly 8/2/18 302, at 3. McGahn recalled that Porter spoke with him about the President's request about two weeks after the New York Times story was published, which is consistent with the discussion taking place on or about February 5. McGahn 3/8/18 302, at 4.

⁷⁹⁵ Porter 4/13/18 302, at 17.

⁷⁹⁶ Porter 4/13/18 302, at 17.

⁷⁹⁷ Porter 4/13/18 302, at 17.

⁷⁹⁸ Porter 4/13/18 302, at 17; Porter 5/8/18 302, at 18.

⁷⁹⁹ Porter 4/13/18 302, at 17; Porter 5/8/18 302, at 18.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

saying something to the effect of, "If he doesn't write a letter, then maybe I'll have to get rid of him."⁸⁰⁰

Later that day, Porter spoke to McGahn to deliver the President's message.⁸⁰¹ Porter told McGahn that he had to write a letter to dispute that he was ever ordered to terminate the Special Counsel.⁸⁰² McGahn shrugged off the request, explaining that the media reports were true.⁸⁰³ McGahn told Porter that the President had been insistent on firing the Special Counsel and that McGahn had planned to resign rather than carry out the order, although he had not personally told the President he intended to quit.⁸⁰⁴ Porter told McGahn that the President suggested that McGahn would be fired if he did not write the letter.⁸⁰⁵ McGahn dismissed the threat, saying that the optics would be terrible if the President followed through with firing him on that basis.⁸⁰⁶ McGahn said he would not write the letter the President had requested.⁸⁰⁷ Porter said that to his knowledge the issue of McGahn's letter never came up with the President again, but Porter did recall telling Kelly about his conversation with McGahn.⁸⁰⁸

The next day, on February 6, 2018, Kelly scheduled time for McGahn to meet with him and the President in the Oval Office to discuss the Times article.⁸⁰⁹ The morning of the meeting, the President's personal counsel called McGahn's attorney and said that the President was going to be speaking with McGahn and McGahn could not resign no matter what happened in the meeting.⁸¹⁰

The President began the Oval Office meeting by telling McGahn that the New York Times story did not "look good" and McGahn needed to correct it.⁸¹¹ McGahn recalled the President said, "I never said to fire Mueller. I never said 'fire.' This story doesn't look good. You need to correct this. You're the White House counsel."⁸¹²

⁸⁰⁰ Porter 4/13/18 302, at 17.

⁸⁰¹ Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰² Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰³ Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰⁴ Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰⁵ Porter 4/13/18 302, at 17; McGahn 3/8/18 302, at 4.

⁸⁰⁶ Porter 4/13/18 302, at 17-18; McGahn 3/8/18 302, at 4.

⁸⁰⁷ McGahn 3/8/18 302, at 4.

⁸⁰⁸ Porter 4/13/18 302, at 18.

⁸⁰⁹ McGahn 3/8/18 302, at 4; WH000017685 (Kelly 2/6/18 Notes). McGahn recalled that, before the Oval Office meeting, he told Kelly that he was not inclined to fix the article. McGahn 3/8/18 302, at 4.

⁸¹⁰ McGahn 3/8/18 302, at 5 (agent note); 2/26/19 Email, Counsel for Don McGahn to Special Counsel's Office (confirming February 6, 2018 date of call from the President's personal counsel).

⁸¹¹ McGahn 3/8/18 302, at 4; Kelly 8/2/18 302, at 2.

⁸¹² McGahn 3/8/18 302, at 4; Kelly 8/2/18 302, at 2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

In response, McGahn acknowledged that he had not told the President directly that he planned to resign, but said that the story was otherwise accurate.⁸¹³ The President asked McGahn, "Did I say the word 'fire'?"⁸¹⁴ McGahn responded, "What you said is, 'Call Rod [Rosenstein], tell Rod that Mueller has conflicts and can't be the Special Counsel.'"⁸¹⁵ The President responded, "I never said that."⁸¹⁶ The President said he merely wanted McGahn to raise the conflicts issue with Rosenstein and leave it to him to decide what to do.⁸¹⁷ McGahn told the President he did not understand the conversation that way and instead had heard, "Call Rod. There are conflicts. Mueller has to go."⁸¹⁸ The President asked McGahn whether he would "do a correction," and McGahn said no.⁸¹⁹ McGahn thought the President was testing his mettle to see how committed McGahn was to what happened.⁸²⁰ Kelly described the meeting as "a little tense."⁸²¹

The President also asked McGahn in the meeting why he had told Special Counsel's Office investigators that the President had told him to have the Special Counsel removed.⁸²² McGahn responded that he had to and that his conversations with the President were not protected by attorney-client privilege.⁸²³ The President then asked, "What about these notes? Why do you take notes? Lawyers don't take notes. I never had a lawyer who took notes."⁸²⁴ McGahn responded that he keeps notes because he is a "real lawyer" and explained that notes create a record and are not a bad thing.⁸²⁵ The President said, "I've had a lot of great lawyers, like Roy Cohn. He did not take notes."⁸²⁶

After the Oval Office meeting concluded, Kelly recalled McGahn telling him that McGahn and the President "did have that conversation" about removing the Special Counsel.⁸²⁷ McGahn recalled that Kelly said that he had pointed out to the President after the Oval Office that McGahn

⁸¹³ McGahn 3/8/18 302, at 4.

⁸¹⁴ McGahn 3/8/18 302, at 4; Kelly 8/2/18 302, at 2.

⁸¹⁵ McGahn 3/8/18 302, at 5.

⁸¹⁶ McGahn 3/8/18 302, at 5.

⁸¹⁷ McGahn 3/8/18 302, at 5.

⁸¹⁸ McGahn 3/8/18 302, at 5.

⁸¹⁹ McGahn 3/8/18 302, at 5; Kelly 8/2/18 302, at 2.

⁸²⁰ McGahn 3/8/18 302, at 5.

⁸²¹ Kelly 8/2/18 302, at 2.

⁸²² McGahn 3/8/18 302, at 5.

⁸²³ McGahn 3/8/18 302, at 5.

⁸²⁴ McGahn 3/8/18 302, at 5. McGahn said the President was referring to Donaldson's notes, which the President thought of as McGahn's notes. McGahn 3/8/18 302, at 5.

⁸²⁵ McGahn 3/8/18 302, at 5.

⁸²⁶ McGahn 3/8/18 302, at 5.

⁸²⁷ Kelly 8/2/18 302, at 2.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

had not backed down and would not budge.⁸²⁸ Following the Oval Office meeting, the President's personal counsel called McGahn's counsel and relayed that the President was "fine" with McGahn.⁸²⁹

Analysis

In analyzing the President's efforts to have McGahn deny that he had been ordered to have the Special Counsel removed, the following evidence is relevant to the elements of obstruction of justice:

a. **Obstructive act.** The President's repeated efforts to get McGahn to create a record denying that the President had directed him to remove the Special Counsel would qualify as an obstructive act if it had the natural tendency to constrain McGahn from testifying truthfully or to undermine his credibility as a potential witness if he testified consistently with his memory, rather than with what the record said.

There is some evidence that at the time the New York Times and Washington Post stories were published in late January 2018, the President believed the stories were wrong and that he had never told McGahn to have Rosenstein remove the Special Counsel. The President correctly understood that McGahn had not told the President directly that he planned to resign. In addition, the President told Priebus and Porter that he had not sought to terminate the Special Counsel, and in the Oval Office meeting with McGahn, the President said, "I never said to fire Mueller. I never said 'fire.'" That evidence could indicate that the President was not attempting to persuade McGahn to change his story but was instead offering his own—but different—recollection of the substance of his June 2017 conversations with McGahn and McGahn's reaction to them.

Other evidence cuts against that understanding of the President's conduct. As previously described, *see* Volume II, Section II.E, *supra*, substantial evidence supports McGahn's account that the President had directed him to have the Special Counsel removed, including the timing and context of the President's directive; the manner in which McGahn reacted; and the fact that the President had been told the conflicts were insubstantial, were being considered by the Department of Justice, and should be raised with the President's personal counsel rather than brought to McGahn. In addition, the President's subsequent denials that he had told McGahn to have the Special Counsel removed were carefully worded. When first asked about the New York Times story, the President said, "Fake news, folks. Fake news. A typical New York Times fake story." And when the President spoke with McGahn in the Oval Office, he focused on whether he had used the word "fire," saying, "I never said to fire Mueller. I never said 'fire'" and "Did I say the word 'fire'?" The President's assertion in the Oval Office meeting that he had never directed McGahn to have the Special Counsel removed thus runs counter to the evidence.

In addition, even if the President sincerely disagreed with McGahn's memory of the June 17, 2017 events, the evidence indicates that the President knew by the time of the Oval Office

⁸²⁸ McGahn 3/8/18 302, at 5. Kelly did not recall discussing the Oval Office meeting with the President after the fact. Kelly 8/2/18 302, at 2. Handwritten notes taken by Kelly state, "Don[.] Mueller discussion in June. - Bannon Priebus - came out okay." WH000017685 (Kelly 2/6/18 Notes).

⁸²⁹ McGahn 3/8/18 302, at 5 (agent note).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

meeting that McGahn's account differed and that McGahn was firm in his views. Shortly after the story broke, the President's counsel told McGahn's counsel that the President wanted McGahn to make a statement denying he had been asked to fire the Special Counsel, but McGahn responded through his counsel that that aspect of the story was accurate and he therefore could not comply with the President's request. The President then directed Sanders to tell McGahn to correct the story, but McGahn told her he would not do so because the story was accurate in reporting on the President's order. Consistent with that position, McGahn never issued a correction. More than a week later, the President brought up the issue again with Porter, made comments indicating the President thought McGahn had leaked the story, and directed Porter to have McGahn create a record denying that the President had tried to fire the Special Counsel. At that point, the President said he might "have to get rid of" McGahn if McGahn did not comply. McGahn again refused and told Porter, as he had told Sanders and as his counsel had told the President's counsel, that the President had in fact ordered him to have Rosenstein remove the Special Counsel. That evidence indicates that by the time of the Oval Office meeting the President was aware that McGahn did not think the story was false and did not want to issue a statement or create a written record denying facts that McGahn believed to be true. The President nevertheless persisted and asked McGahn to repudiate facts that McGahn had repeatedly said were accurate.

b. Nexus to an official proceeding. By January 2018, the Special Counsel's use of a grand jury had been further confirmed by the return of several indictments. The President also was aware that the Special Counsel was investigating obstruction-related events because, among other reasons, on January 8, 2018, the Special Counsel's Office provided his counsel with a detailed list of topics for a possible interview with the President.⁸³⁰ The President knew that McGahn had personal knowledge of many of the events the Special Counsel was investigating and that McGahn had already been interviewed by Special Counsel investigators. And in the Oval Office meeting, the President indicated he knew that McGahn had told the Special Counsel's Office about the President's effort to remove the Special Counsel. The President challenged McGahn for disclosing that information and for taking notes that he viewed as creating unnecessary legal exposure. That evidence indicates the President's awareness that the June 17, 2017 events were relevant to the Special Counsel's investigation and any grand jury investigation that might grow out of it.

To establish a nexus, it would be necessary to show that the President's actions would have the natural tendency to affect such a proceeding or that they would hinder, delay, or prevent the communication of information to investigators. Because McGahn had spoken to Special Counsel investigators before January 2018, the President could not have been seeking to influence his prior statements in those interviews. But because McGahn had repeatedly spoken to investigators and the obstruction inquiry was not complete, it was foreseeable that he would be interviewed again on obstruction-related topics. If the President were focused solely on a press strategy in seeking to have McGahn refute the New York Times article, a nexus to a proceeding or to further investigative interviews would not be shown. But the President's efforts to have McGahn write a letter "for our records" approximately ten days after the stories had come out—well past the typical

⁸³⁰ 1/29/18 Letter, President's Personal Counsel to Special Counsel's Office, at 1-2 ("In our conversation of January 8, your office identified the following topics as areas you desired to address with the President in order to complete your investigation on the subjects of alleged collusion and obstruction of justice"; listing 16 topics).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

time to issue a correction for a news story—indicates the President was not focused solely on a press strategy, but instead likely contemplated the ongoing investigation and any proceedings arising from it.

c. Intent. Substantial evidence indicates that in repeatedly urging McGahn to dispute that he was ordered to have the Special Counsel terminated, the President acted for the purpose of influencing McGahn's account in order to deflect or prevent further scrutiny of the President's conduct towards the investigation.

Several facts support that conclusion. The President made repeated attempts to get McGahn to change his story. As described above, by the time of the last attempt, the evidence suggests that the President had been told on multiple occasions that McGahn believed the President had ordered him to have the Special Counsel terminated. McGahn interpreted his encounter with the President in the Oval Office as an attempt to test his mettle and see how committed he was to his memory of what had occurred. The President had already laid the groundwork for pressing McGahn to alter his account by telling Porter that it might be necessary to fire McGahn if he did not deny the story, and Porter relayed that statement to McGahn. Additional evidence of the President's intent may be gleaned from the fact that his counsel was sufficiently alarmed by the prospect of the President's meeting with McGahn that he called McGahn's counsel and said that McGahn could not resign no matter what happened in the Oval Office that day. The President's counsel was well aware of McGahn's resolve not to issue what he believed to be a false account of events despite the President's request. Finally, as noted above, the President brought up the Special Counsel investigation in his Oval Office meeting with McGahn and criticized him for telling this Office about the June 17, 2017 events. The President's statements reflect his understanding—and his displeasure—that those events would be part of an obstruction-of-justice inquiry.

J. The President's Conduct Towards Flynn, Manafort, **HOM**

Overview

In addition to the interactions with McGahn described above, the President has taken other actions directed at possible witnesses in the Special Counsel's investigation, including Flynn, Manafort, **HOM** and as described in the next section, Cohen. When Flynn withdrew from a joint defense agreement with the President, the President's personal counsel stated that Flynn's actions would be viewed as reflecting "hostility" towards the President. During Manafort's prosecution and while the jury was deliberating, the President repeatedly stated that Manafort was being treated unfairly and made it known that Manafort could receive a pardon. **Harm to Ongoing Matter**

Evidence

1. Conduct Directed at Michael Flynn

As previously noted, *see* Volume II, Section II.B, *supra*, the President asked for Flynn's resignation on February 13, 2017. Following Flynn's resignation, the President made positive public comments about Flynn, describing him as a "wonderful man," "a fine person," and a "very

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

good person.⁸³¹ The President also privately asked advisors to pass messages to Flynn conveying that the President still cared about him and encouraging him to stay strong.⁸³²

In late November 2017, Flynn began to cooperate with this Office. On November 22, 2017, Flynn withdrew from a joint defense agreement he had with the President.⁸³³ Flynn's counsel told the President's personal counsel and counsel for the White House that Flynn could no longer have confidential communications with the White House or the President.⁸³⁴ Later that night, the President's personal counsel left a voicemail for Flynn's counsel that said:

I understand your situation, but let me see if I can't state it in starker terms. . . . [I]t wouldn't surprise me if you've gone on to make a deal with . . . the government. . . . [I]f . . . there's information that implicates the President, then we've got a national security issue. . . . so, you know, . . . we need some kind of heads up. Um, just for the sake of protecting all our interests if we can. . . . [R]emember what we've always said about the President and his feelings toward Flynn and, that still remains⁸³⁵

On November 23, 2017, Flynn's attorneys returned the call from the President's personal counsel to acknowledge receipt of the voicemail.⁸³⁶ Flynn's attorneys reiterated that they were no longer in a position to share information under any sort of privilege.⁸³⁷ According to Flynn's attorneys, the President's personal counsel was indignant and vocal in his disagreement.⁸³⁸ The President's personal counsel said that he interpreted what they said to him as a reflection of Flynn's

⁸³¹ See, e.g., *Remarks by President Trump in Press Conference*, White House (Feb. 16, 2018) (stating that "Flynn is a fine person" and "I don't think [Flynn] did anything wrong. If anything, he did something right . . . You know, he was just doing his job"); *Interview of Donald J. Trump*, NBC (May 11, 2017) (stating that Flynn is a "very good person").

⁸³² See Priebeus 1/18/17 302, at 9-10 (the President asked Priebeus to contact Flynn the week he was terminated to convey that the President still cared about him and felt bad about what happened to him; Priebeus thought the President did not want Flynn to have a problem with him); McFarland 12/22/17 302, at 18 (about a month or two after Flynn was terminated, the President asked McFarland to get in touch with Flynn and tell him that he was a good guy, he should stay strong, and the President felt bad for him); Flynn 1/19/18 302, at 9 (recalling the call from Priebeus and an additional call from Hicks who said she wanted to relay on behalf of the President that the President hoped Flynn was okay); Christie 2/13/19 302, at 3 (describing a phone conversation between Kushner and Flynn the day after Flynn was fired where Kushner said, "You know the President respects you. The President cares about you. I'll get the President to send out a positive tweet about you later," and the President nodded his assent to Kushner's comment promising a tweet).

⁸³³ Counsel for Flynn 3/1/18 302, at 1.

⁸³⁴ Counsel for Flynn 3/1/18 302, at 1.

⁸³⁵ 11/22/17 Voicemail Transcript, President's Personal Counsel to Counsel for Michael Flynn.

⁸³⁶ Counsel for Flynn 3/1/18 302, at 1.

⁸³⁷ Counsel for Flynn 3/1/18 302, at 1.

⁸³⁸ Counsel for Flynn 3/1/18 302, at 1.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

hostility towards the President and that he planned to inform his client of that interpretation.⁸³⁹ Flynn's attorneys understood that statement to be an attempt to make them reconsider their position because the President's personal counsel believed that Flynn would be disturbed to know that such a message would be conveyed to the President.⁸⁴⁰

On December 1, 2017, Flynn pleaded guilty to making false statements pursuant to a cooperation agreement.⁸⁴¹ The next day, the President told the press that he was not concerned about what Flynn might tell the Special Counsel.⁸⁴² In response to a question about whether the President still stood behind Flynn, the President responded, "We'll see what happens."⁸⁴³ Over the next several days, the President made public statements expressing sympathy for Flynn and indicating he had not been treated fairly.⁸⁴⁴ On December 15, 2017, the President responded to a press inquiry about whether he was considering a pardon for Flynn by saying, "I don't want to talk about pardons for Michael Flynn yet. We'll see what happens. Let's see. I can say this: When you look at what's gone on with the FBI and with the Justice Department, people are very, very angry."⁸⁴⁵

2. Conduct Directed at Paul Manafort

On October 27, 2017, a grand jury in the District of Columbia indicted Manafort and former deputy campaign manager Richard Gates on multiple felony counts, and on February 22, 2018, a grand jury in the Eastern District of Virginia indicted Manafort and Gates on additional felony

⁸³⁹ Counsel for Flynn 3/1/18 302, at 2. Because of attorney-client privilege issues, we did not seek to interview the President's personal counsel about the extent to which he discussed his statements to Flynn's attorneys with the President.

⁸⁴⁰ Counsel for Flynn 3/1/18 302, at 2.

⁸⁴¹ Information, *United States v. Michael T. Flynn*, 1:17-cr-232 (D.D.C. Dec. 1, 2017), Doc. 1; Plea Agreement, *United States v. Michael T. Flynn*, 1:17-cr-232 (D.D.C. Dec. 1, 2017), Doc. 3.

⁸⁴² *President Trump Remarks on Tax Reform and Michael Flynn's Guilty Plea*, C-SPAN (Dec. 2, 2017).

⁸⁴³ *President Trump Remarks on Tax Reform and Michael Flynn's Guilty Plea*, C-SPAN (Dec. 2, 2017).

⁸⁴⁴ See @realDonaldTrump 12/2/17 (9:06 p.m. ET) Tweet ("So General Flynn lies to the FBI and his life is destroyed, while Crooked Hillary Clinton, on that now famous FBI holiday 'interrogation' with no swearing in and no recording, lies many times... and nothing happens to her? Rigged system, or just a double standard?"); President Trump Departure Remarks, C-SPAN (Dec. 4, 2017) ("Well, I feel badly for General Flynn. I feel very badly. He's led a very strong life. And I feel very badly.")

⁸⁴⁵ *President Trump White House Departure*, C-SPAN (Dec. 15, 2017).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

counts.⁸⁴⁶ The charges in both cases alleged criminal conduct by Manafort that began as early as 2005 and continued through 2018.⁸⁴⁷

In January 2018, Manafort told Gates that he had talked to the President's personal counsel and they were "going to take care of us."⁸⁴⁸ Manafort told Gates it was stupid to plead, saying that he had been in touch with the President's personal counsel and repeating that they should "sit tight" and "we'll be taken care of."⁸⁴⁹ Gates asked Manafort outright if anyone mentioned pardons and Manafort said no one used that word.⁸⁵⁰

As the proceedings against Manafort progressed in court, the President told Porter that he never liked Manafort and that Manafort did not know what he was doing on the campaign.⁸⁵¹ The President discussed with aides whether and in what way Manafort might be cooperating with the Special Counsel's investigation, and whether Manafort knew any information that would be harmful to the President.⁸⁵²

In public, the President made statements criticizing the prosecution and suggesting that Manafort was being treated unfairly. On June 15, 2018, before a scheduled court hearing that day on whether Manafort's bail should be revoked based on new charges that Manafort had tampered with witnesses while out on bail, the President told the press, "I feel badly about a lot of them

⁸⁴⁶ Indictment, *United States v. Paul J. Manafort, Jr. and Richard W. Gates III*, 1:17-cr-201 (D.D.C. Oct. 27, 2017), Doc. 13 ("*Manafort and Gates* D.D.C. Indictment"); Indictment, *United States v. Paul J. Manafort, Jr. and Richard W. Gates III*, 1:18-cr-83 (E.D. Va. Feb. 22, 2018), Doc. 9 ("*Manafort and Gates* E.D. Va. Indictment")

⁸⁴⁷ *Manafort and Gates* D.D.C. Indictment; *Manafort and Gates* E.D. Va. Indictment.

⁸⁴⁸ Gates 4/18/18 302, at 4. In February 2018, Gates pleaded guilty, pursuant to a cooperation plea agreement, to a superseding criminal information charging him with conspiring to defraud and commit multiple offenses (*i.e.*, tax fraud, failure to report foreign bank accounts, and acting as an unregistered agent of a foreign principal) against the United States, as well as making false statements to our Office. Superseding Criminal Information, *United States v. Richard W. Gates III*, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 195; Plea Agreement, *United States v. Richard W. Gates III*, 1:17-cr-201 (D.D.C. Feb. 23, 2018), Doc. 205. Gates has provided information and in-court testimony that the Office has deemed to be reliable.

⁸⁴⁹ Gates 4/18/18 302, at 4.

⁸⁵⁰ Gates 4/18/18 302, at 4. Manafort told this Office that he never told Gates that he had talked to the President's personal counsel or suggested that they would be taken care of. Manafort also said he hoped for a pardon but never discussed one with the President, although he noticed the President's public comments about pardons. Manafort 10/1/18 302, at 11. As explained in Volume I, Section IV.A.8, *supra*, Manafort entered into a plea agreement with our Office. The U.S. District Court for the District of Columbia determined that he breached the agreement by being untruthful in proffer sessions and before the grand jury. Order, *United States v. Manafort*, 1:17-cr-201 (D.D.C. Feb. 13, 2019), Doc. 503.

⁸⁵¹ Porter 5/8/18 302, at 11. Priebus recalled that the President never really liked Manafort. *See* Priebus 4/3/18 302, at 11. Hicks said that candidate Trump trusted Manafort's judgment while he worked on the Campaign, but she also once heard Trump tell Gates to keep an eye on Manafort. Hicks 3/13/18 302, at 16.

⁸⁵² Porter 5/8/18 302, at 11; McGahn 12/14/17 302, at 14.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

because I think a lot of it is very unfair. I mean, I look at some of them where they go back 12 years. Like Manafort has nothing to do with our campaign. But I feel so—I tell you, I feel a little badly about it. They went back 12 years to get things that he did 12 years ago? . . . I feel badly for some people, because they’ve gone back 12 years to find things about somebody, and I don’t think it’s right.”⁸⁵³ In response to a question about whether he was considering a pardon for Manafort or other individuals involved in the Special Counsel’s investigation, the President said, “I don’t want to talk about that. No, I don’t want to talk about that. . . . But look, I do want to see people treated fairly. That’s what it’s all about.”⁸⁵⁴ Hours later, Manafort’s bail was revoked and the President tweeted, “Wow, what a tough sentence for Paul Manafort, who has represented Ronald Reagan, Bob Dole and many other top political people and campaigns. Didn’t know Manafort was the head of the Mob. What about Comey and Crooked Hillary and all the others? Very unfair!”⁸⁵⁵

Immediately following the revocation of Manafort’s bail, the President’s personal lawyer, Rudolph Giuliani, gave a series of interviews in which he raised the possibility of a pardon for Manafort. Giuliani told the New York Daily News that “[w]hen the whole thing is over, things might get cleaned up with some presidential pardons.”⁸⁵⁶ Giuliani also said in an interview that, although the President should not pardon anyone while the Special Counsel’s investigation was ongoing, “when the investigation is concluded, he’s kind of on his own, right?”⁸⁵⁷ In a CNN interview two days later, Giuliani said, “I guess I should clarify this once and for all. . . . The president has issued no pardons in this investigation. The president is not going to issue pardons in this investigation. . . . When it’s over, hey, he’s the president of the United States. He retains his pardon power. Nobody is taking that away from him.”⁸⁵⁸ Giuliani rejected the suggestion that his and the President’s comments could signal to defendants that they should not cooperate in a criminal prosecution because a pardon might follow, saying the comments were “certainly not intended that way.”⁸⁵⁹ Giuliani said the comments only acknowledged that an individual involved in the investigation would not be “excluded from [a pardon], if in fact the president and his advisors . . . come to the conclusion that you have been treated unfairly.”⁸⁶⁰ Giuliani observed that pardons were not unusual in political investigations but said, “That doesn’t mean they’re going to happen

⁸⁵³ Remarks by President Trump in Press Gaggle, White House (June 15, 2018).

⁸⁵⁴ Remarks by President Trump in Press Gaggle, White House (June 15, 2018).

⁸⁵⁵ @realDonaldTrump 6/15/18 (1:41 p.m. ET) Tweet.

⁸⁵⁶ Chris Sommerfeldt, *Rudy Giuliani says Mueller probe ‘might get cleaned up’ with ‘presidential pardons’ in light of Paul Manafort going to jail*, New York Daily News (June 15, 2018).

⁸⁵⁷ Sharon LaFraniere, *Judge Orders Paul Manafort Jailed Before Trial, Citing New Obstruction Charges*, New York Times (June 15, 2018) (quoting Giuliani).

⁸⁵⁸ *State of the Union with Jake Tapper Transcript*, CNN (June 17, 2018); see Karoun Demirjian, *Giuliani suggests Trump may pardon Manafort after Mueller’s probe*, Washington Post (June 17, 2018).

⁸⁵⁹ *State of the Union with Jake Tapper Transcript*, CNN (June 17, 2018).

⁸⁶⁰ *State of the Union with Jake Tapper Transcript*, CNN (June 17, 2018).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

here. Doesn't mean that anybody should rely on it. . . . Big signal is, nobody has been pardoned yet."⁸⁶¹

On July 31, 2018, Manafort's criminal trial began in the Eastern District of Virginia, generating substantial news coverage.⁸⁶² The next day, the President tweeted, "This is a terrible situation and Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now, before it continues to stain our country any further. Bob Mueller is totally conflicted, and his 17 Angry Democrats that are doing his dirty work are a disgrace to USA!"⁸⁶³ Minutes later, the President tweeted, "Paul Manafort worked for Ronald Reagan, Bob Dole and many other highly prominent and respected political leaders. He worked for me for a very short time. Why didn't government tell me that he was under investigation. These old charges have nothing to do with Collusion—a Hoax!"⁸⁶⁴ Later in the day, the President tweeted, "Looking back on history, who was treated worse, Alfonse Capone, legendary mob boss, killer and 'Public Enemy Number One,' or Paul Manafort, political operative & Reagan/Dole darling, now serving solitary confinement—although convicted of nothing? Where is the Russian Collusion?"⁸⁶⁵ The President's tweets about the Manafort trial were widely covered by the press.⁸⁶⁶ When asked about the President's tweets, Sanders told the press, "Certainly, the President's been clear. He thinks Paul Manafort's been treated unfairly."⁸⁶⁷

On August 16, 2018, the Manafort case was submitted to the jury and deliberations began. At that time, Giuliani had recently suggested to reporters that the Special Counsel investigation needed to be "done in the next two or three weeks,"⁸⁶⁸ and media stories reported that a Manafort acquittal would add to criticism that the Special Counsel investigation was not worth the time and expense, whereas a conviction could show that ending the investigation would be premature.⁸⁶⁹

⁸⁶¹ *State of the Union with Jake Tapper Transcript*, CNN (June 17, 2018).

⁸⁶² See, e.g., Katelyn Polantz, *Takeaways from day one of the Paul Manafort trial*, CNN (July 31, 2018); Frank Bruni, *Paul Manafort's Trial Is Donald Trump's, Too*, New York Times Opinion (July 31, 2018); Rachel Weiner et al., *Paul Manafort trial Day 2: Witnesses describe extravagant clothing purchases, home remodels, lavish cars paid with wire transfers*, Washington Post (Aug. 1, 2018).

⁸⁶³ @realDonaldTrump 8/1/18 (9:24 a.m. ET) Tweet. Later that day, when Sanders was asked about the President's tweet, she told reporters, "It's not an order. It's the President's opinion." Sarah Sanders, *White House Daily Briefing*, C-SPAN (Aug. 1, 2018).

⁸⁶⁴ @realDonaldTrump 8/1/18 (9:34 a.m. ET) Tweet.

⁸⁶⁵ @realDonaldTrump 8/1/18 (11:35 a.m. ET) Tweet.

⁸⁶⁶ See, e.g., Carol D. Leonnig et al., *Trump calls Manafort prosecution "a hoax," says Sessions should stop Mueller investigation "right now"*, Washington Post (Aug. 1, 2018); Louis Nelson, *Trump claims Manafort case has "nothing to do with collusion"*, Politico (Aug. 1, 2018).

⁸⁶⁷ Sarah Sanders, *White House Daily Briefing*, C-SPAN (Aug. 1, 2018).

⁸⁶⁸ Chris Strohm & Shannon Pettypiece, *Mueller Probe Doesn't Need to Shut Down Before Midterms, Officials Say*, Bloomberg (Aug. 15, 2018).

⁸⁶⁹ See, e.g., Katelyn Polantz et al., *Manafort jury ends first day of deliberations without a verdict*, CNN (Aug. 16, 2018); David Voreacos, *What Mueller's Manafort Case Means for the Trump Battle to*

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

On August 17, 2018, as jury deliberations continued, the President commented on the trial from the South Lawn of the White House. In an impromptu exchange with reporters that lasted approximately five minutes, the President twice called the Special Counsel's investigation a "rigged witch hunt."⁸⁷⁰ When asked whether he would pardon Manafort if he was convicted, the President said, "I don't talk about that now. I don't talk about that."⁸⁷¹ The President then added, without being asked a further question, "I think the whole Manafort trial is very sad when you look at what's going on there. I think it's a very sad day for our country. He worked for me for a very short period of time. But you know what, he happens to be a very good person. And I think it's very sad what they've done to Paul Manafort."⁸⁷² The President did not take further questions.⁸⁷³ In response to the President's statements, Manafort's attorney said, "Mr. Manafort really appreciates the support of President Trump."⁸⁷⁴

On August 21, 2018, the jury found Manafort guilty on eight felony counts. Also on August 21, Michael Cohen pleaded guilty to eight offenses, including a campaign-finance violation that he said had occurred "in coordination with, and at the direction of, a candidate for federal office."⁸⁷⁵ The President reacted to Manafort's convictions that day by telling reporters, "Paul Manafort's a good man" and "it's a very sad thing that happened."⁸⁷⁶ The President described the Special Counsel's investigation as "a witch hunt that ends in disgrace."⁸⁷⁷ The next day, the President tweeted, "I feel very badly for Paul Manafort and his wonderful family. 'Justice' took a 12 year old tax case, among other things, applied tremendous pressure on him and, unlike Michael Cohen, he refused to 'break'—make up stories in order to get a 'deal.' Such respect for a brave man!"⁸⁷⁸

In a Fox News interview on August 22, 2018, the President said: "[Cohen] makes a better deal when he uses me, like everybody else. And one of the reasons I respect Paul Manafort so much is he went through that trial—you know they make up stories. People make up stories. This

Come, Bloomberg (Aug. 2, 2018); Gabby Morrongiello, *What a guilty verdict for Manafort would mean for Trump and Mueller*, Washington Examiner (Aug. 18, 2018).

⁸⁷⁰ President Trump Remarks on John Brennan and Mueller Probe, C-SPAN (Aug. 17, 2018).

⁸⁷¹ President Trump Remarks on John Brennan and Mueller Probe, C-SPAN (Aug. 17, 2018).

⁸⁷² President Trump Remarks on John Brennan and Mueller Probe, C-SPAN (Aug. 17, 2018).

⁸⁷³ President Trump Remarks on John Brennan and Mueller Probe, C-SPAN (Aug. 17, 2018).

⁸⁷⁴ *Trump calls Manafort "very good person," All In with Chris Hayes* (Aug. 17, 2018) (transcript); *Manafort lawyer: We appreciate Trump's support*, CNN (Aug. 17, 2018) (<https://www.cnn.com/videos/politics/2018/08/17/paul-manafort-attorney-trump-jury-deliberations-schneider-lead-vpx.cnn>).

⁸⁷⁵ Transcript at 23, *United States v. Michael Cohen*, 1:18-cr-602 (S.D.N.Y. Aug. 21, 2018), Doc. 7 (Cohen 8/21/18 Transcript).

⁸⁷⁶ *President Trump Remarks on Manafort Trial*, C-SPAN (Aug. 21, 2018).

⁸⁷⁷ *President Trump Remarks on Manafort Trial*, C-SPAN (Aug. 21, 2018).

⁸⁷⁸ @realDonaldTrump 8/22/18 (9:21 a.m. ET) Tweet.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

whole thing about flipping, they call it, I know all about flipping.”⁸⁷⁹ The President said that flipping was “not fair” and “almost ought to be outlawed.”⁸⁸⁰ In response to a question about whether he was considering a pardon for Manafort, the President said, “I have great respect for what he’s done, in terms of what he’s gone through. . . . He worked for many, many people many, many years, and I would say what he did, some of the charges they threw against him, every consultant, every lobbyist in Washington probably does.”⁸⁸¹ Giuliani told journalists that the President “really thinks Manafort has been horribly treated” and that he and the President had discussed the political fallout if the President pardoned Manafort.⁸⁸² The next day, Giuliani told the Washington Post that the President had asked his lawyers for advice on the possibility of a pardon for Manafort and other aides, and had been counseled against considering a pardon until the investigation concluded.⁸⁸³

On September 14, 2018, Manafort pleaded guilty to charges in the District of Columbia and signed a plea agreement that required him to cooperate with investigators.⁸⁸⁴ Giuliani was reported to have publicly said that Manafort remained in a joint defense agreement with the President following Manafort’s guilty plea and agreement to cooperate, and that Manafort’s attorneys regularly briefed the President’s lawyers on the topics discussed and the information Manafort had provided in interviews with the Special Counsel’s Office.⁸⁸⁵ On November 26, 2018, the Special Counsel’s Office disclosed in a public court filing that Manafort had breached his plea agreement by lying about multiple subjects.⁸⁸⁶ The next day, Giuliani said that the President had been “upset for weeks” about what he considered to be “the un-American, horrible treatment of

⁸⁷⁹ *Fox & Friends Exclusive Interview with President Trump*, Fox News (Aug. 23, 2018) (recorded the previous day).

⁸⁸⁰ *Fox & Friends Exclusive Interview with President Trump*, Fox News (Aug. 23, 2018) (recorded the previous day).

⁸⁸¹ *Fox & Friends Exclusive Interview with President Trump*, Fox News (Aug. 23, 2018) (recorded the previous day).

⁸⁸² Maggie Haberman & Katie Rogers, “How Did We End Up Here?” *Trump Wonders as the White House Soldiers On*, New York Times (Aug. 22, 2018).

⁸⁸³ Carol D. Leonnig & Josh Dawsey, *Trump recently sought his lawyers’ advice on possibility of pardoning Manafort, Giuliani says*, Washington Post (Aug. 23, 2018).

⁸⁸⁴ Plea Agreement, *United States v. Paul J. Manafort, Jr.*, 1:17-cr-201 (D.D.C. Sept. 14, 2018), Doc. 422.

⁸⁸⁵ Karen Freifeld & Nathan Layne, *Trump lawyer: Manafort said nothing damaging in Mueller interviews*, Reuters (Oct. 22, 2018); Michael S. Schmidt et al., *Manafort’s Lawyer Said to Brief Trump Attorneys on What He Told Mueller*, New York Times (Nov. 27, 2018); Dana Bash, *Manafort team briefed Giuliani on Mueller meetings*, CNN, Posted 11/28/18, available at <https://www.cnn.com/videos/politics/2018/11/28/manafort-lawyers-keeping-trump-lawyers-giuliani-updated-mueller-probe-bash-sot-nr-vpx.cnn>; see Sean Hannity, *Interview with Rudy Giuliani*, Fox News (Sept. 14, 2018) (Giuliani: “[T]here was a quote put out by a source close to Manafort that the plea agreement has, and cooperation agreement has, nothing to do with the Trump campaign. . . . Now, I know that because I’ve been privy to a lot of facts I can’t repeat.”).

⁸⁸⁶ Joint Status Report, *United States v. Paul J. Manafort, Jr.*, (D.D.C. Nov. 26, 2018), Doc. 455.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Manafort.⁸⁸⁷ In an interview on November 28, 2018, the President suggested that it was “very brave” that Manafort did not “flip”:

If you told the truth, you go to jail. You know this flipping stuff is terrible. You flip and you lie and you get—the prosecutors will tell you 99 percent of the time they can get people to flip. It’s rare that they can’t. But I had three people: Manafort, Corsi—I don’t know Corsi, but he refuses to say what they demanded.⁸⁸⁸ Manafort, Corsi, [HOM]. It’s actually very brave.⁸⁸⁹

In response to a question about a potential pardon for Manafort, the President said, “It was never discussed, but I wouldn’t take it off the table. Why would I take it off the table?”⁸⁹⁰

3. Harm to Ongoing Matter

Harm to Ongoing Matter
[Redacted]
[Redacted]⁸⁹¹ Harm to Ongoing Matter
[Redacted]⁸⁹² Harm to Ongoing Matter
[Redacted]⁹³

Harm to Ongoing Matter
[Redacted]
[Redacted]⁸⁹⁴ Harm to Ongoing Matter

⁸⁸⁷ Stephen Collinson, *Trump appears consumed by Mueller investigation as details emerge*, CNN (Nov. 29, 2018).

⁸⁸⁸ “Corsi” is a reference to Jerome Corsi, [HOM] who was involved in efforts to coordinate with WikiLeaks and Assange, and who stated publicly at that time that he had refused a plea offer from the Special Counsel’s Office because he was “not going to sign a lie.” Sara Murray & Eli Watkins, [HOM] *says he won’t agree to plea deal*, CNN (Nov. 26, 2018).

⁸⁸⁹ Marisa Schultz & Nikki Schwab, *Oval Office Interview with President Trump: Trump says pardon for Paul Manafort still a possibility*, New York Post (Nov. 28, 2018). That same day, the President tweeted: “While the disgusting Fake News is doing everything within their power not to report it that way, at least 3 major players are intimating that the Angry Mueller Gang of Dems is viciously telling witnesses to lie about facts & they will get relief. This is our Joseph McCarthy Era!” @realDonaldTrump 11/28/18 (8:39 a.m. ET) Tweet.

⁸⁹⁰ Marisa Schultz & Nikki Schwab, *New York Post Oval Office Interview with President Trump: Trump says pardon for Paul Manafort still a possibility*, New York Post (Nov. 28, 2018).

[Redacted]⁸⁹¹ Harm to Ongoing Matter
[Redacted]
[Redacted]⁸⁹² Harm to Ongoing Matter
[Redacted]
[Redacted]⁸⁹³ Harm to Ongoing Matter
[Redacted]
[Redacted]⁸⁹⁴ Harm to Ongoing Matter

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Harm to Ongoing Matter

⁸⁹⁵ Harm to Ongoing Matter

⁸⁹⁶

Harm to Ongoing Matter

Harm to Ongoing Matter

Harm to Ongoing Matter

⁸⁹⁸ Harm to Ongoing Matter

Harm to Ongoing Matter

⁸⁹⁷

⁸⁹⁹

Harm to Ongoing Matter

⁸⁹⁵ Harm to Ongoing Matter

⁸⁹⁶ Harm to Ongoing Matter

⁸⁹⁷ Harm to Ongoing Matter

⁸⁹⁸ Harm to Ongoing Matter

⁸⁹⁹ Harm to Ongoing Matter

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Harm to Ongoing Matter

00

Harm to Ongoing Matter

901 Harm to Ongoing Matter

902 Harm to Ongoing Matter

903

Harm to Ongoing Matter

04

Harm to Ongoing Matter

05

Harm to Ongoing Matter

06

Harm to Ongoing Matter

907

Harm to Ongoing Matter

08

900 Harm to Ongoing Matter

901 Harm to Ongoing Matter

902 Harm to Ongoing Matter

903 Harm to Ongoing Matter

904 Harm to Ongoing Matter

905 Harm to Ongoing Matter

906 Harm to Ongoing Matter

907 Harm to Ongoing Matter

908 Harm to Ongoing Matter

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Analysis

In analyzing the President's conduct towards Flynn, Manafort, [HOM], the following evidence is relevant to the elements of obstruction of justice:

a. **Obstructive act.** The President's actions towards witnesses in the Special Counsel's investigation would qualify as obstructive if they had the natural tendency to prevent particular witnesses from testifying truthfully, or otherwise would have the probable effect of influencing, delaying, or preventing their testimony to law enforcement.

With regard to Flynn, the President sent private and public messages to Flynn encouraging him to stay strong and conveying that the President still cared about him before he began to cooperate with the government. When Flynn's attorneys withdrew him from a joint defense agreement with the President, signaling that Flynn was potentially cooperating with the government, the President's personal counsel initially reminded Flynn's counsel of the President's warm feelings towards Flynn and said "that still remains." But when Flynn's counsel reiterated that Flynn could no longer share information under a joint defense agreement, the President's personal counsel stated that the decision would be interpreted as reflecting Flynn's hostility towards the President. That sequence of events could have had the potential to affect Flynn's decision to cooperate, as well as the extent of that cooperation. Because of privilege issues, however, we could not determine whether the President was personally involved in or knew about the specific message his counsel delivered to Flynn's counsel.

With respect to Manafort, there is evidence that the President's actions had the potential to influence Manafort's decision whether to cooperate with the government. The President and his personal counsel made repeated statements suggesting that a pardon was a possibility for Manafort, while also making it clear that the President did not want Manafort to "flip" and cooperate with the government. On June 15, 2018, the day the judge presiding over Manafort's D.C. case was considering whether to revoke his bail, the President said that he "felt badly" for Manafort and stated, "I think a lot of it is very unfair." And when asked about a pardon for Manafort, the President said, "I do want to see people treated fairly. That's what it's all about." Later that day, after Manafort's bail was revoked, the President called it a "tough sentence" that was "Very unfair!" Two days later, the President's personal counsel stated that individuals involved in the Special Counsel's investigation could receive a pardon "if in fact the [P]resident and his advisors . . . come to the conclusion that you have been treated unfairly"—using language that paralleled how the President had already described the treatment of Manafort. Those statements, combined with the President's commendation of Manafort for being a "brave man" who "refused to 'break,'" suggested that a pardon was a more likely possibility if Manafort continued not to cooperate with the government. And while Manafort eventually pleaded guilty pursuant to a cooperation agreement, he was found to have violated the agreement by lying to investigators.

The President's public statements during the Manafort trial, including during jury deliberations, also had the potential to influence the trial jury. On the second day of trial, for example, the President called the prosecution a "terrible situation" and a "hoax" that "continues to stain our country" and referred to Manafort as a "Reagan/Dole darling" who was "serving solitary confinement" even though he was "convicted of nothing." Those statements were widely picked up by the press. While jurors were instructed not to watch or read news stories about the case and

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

are presumed to follow those instructions, the President's statements during the trial generated substantial media coverage that could have reached jurors if they happened to see the statements or learned about them from others. And the President's statements during jury deliberations that Manafort "happens to be a very good person" and that "it's very sad what they've done to Paul Manafort" had the potential to influence jurors who learned of the statements, which the President made just as jurors were considering whether to convict or acquit Manafort.

Harm to Ongoing Matter

b. Nexus to an official proceeding. The President's actions towards Flynn, Manafort, **HOM** appear to have been connected to pending or anticipated official proceedings involving each individual. The President's conduct towards Flynn **HOM** principally occurred when both were under criminal investigation by the Special Counsel's Office and press reports speculated about whether they would cooperate with the Special Counsel's investigation. And the President's conduct towards Manafort was directly connected to the official proceedings involving him. The President made statements about Manafort and the charges against him during Manafort's criminal trial. And the President's comments about the prospect of Manafort "flipping" occurred when it was clear the Special Counsel continued to oversee grand jury proceedings.

c. Intent. Evidence concerning the President's intent related to Flynn as a potential witness is inconclusive. As previously noted, because of privilege issues we do not have evidence establishing whether the President knew about or was involved in his counsel's communications with Flynn's counsel stating that Flynn's decision to withdraw from the joint defense agreement and cooperate with the government would be viewed as reflecting "hostility" towards the President. And regardless of what the President's personal counsel communicated, the President continued to express sympathy for Flynn after he pleaded guilty pursuant to a cooperation agreement, stating that Flynn had "led a very strong life" and the President "fe[lt] very badly" about what had happened to him.

Evidence concerning the President's conduct towards Manafort indicates that the President intended to encourage Manafort to not cooperate with the government. Before Manafort was convicted, the President repeatedly stated that Manafort had been treated unfairly. One day after Manafort was convicted on eight felony charges and potentially faced a lengthy prison term, the President said that Manafort was "a brave man" for refusing to "break" and that "flipping" "almost ought to be outlawed." At the same time, although the President had privately told aides he did not like Manafort, he publicly called Manafort "a good man" and said he had a "wonderful family." And when the President was asked whether he was considering a pardon for Manafort, the President did not respond directly and instead said he had "great respect for what [Manafort]'s done, in terms of what he's gone through." The President added that "some of the charges they threw against him, every consultant, every lobbyist in Washington probably does." In light of the President's counsel's previous statements that the investigations "might get cleaned up with some presidential pardons" and that a pardon would be possible if the President "come[s] to the conclusion that you have been treated unfairly," the evidence supports the inference that the

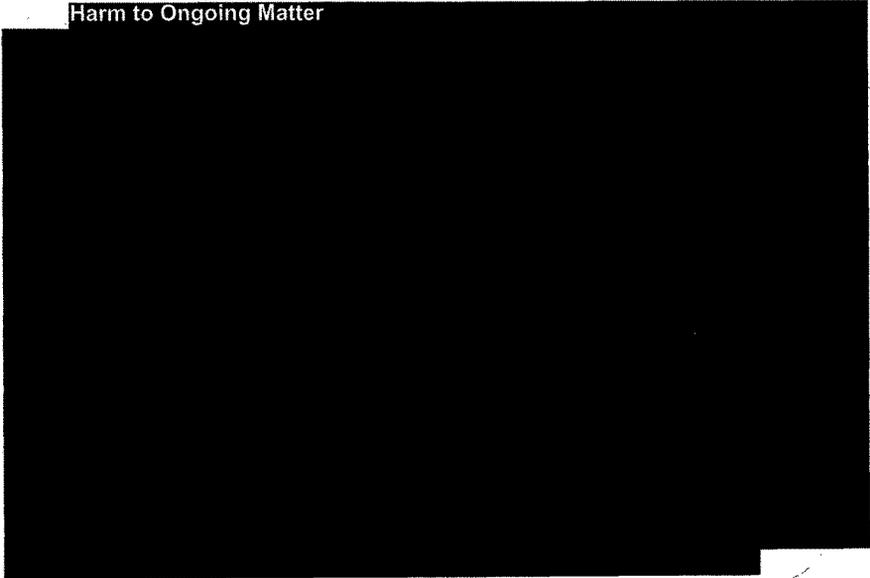
U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

President intended Manafort to believe that he could receive a pardon, which would make cooperation with the government as a means of obtaining a lesser sentence unnecessary.

We also examined the evidence of the President's intent in making public statements about Manafort at the beginning of his trial and when the jury was deliberating. Some evidence supports a conclusion that the President intended, at least in part, to influence the jury. The trial generated widespread publicity, and as the jury began to deliberate, commentators suggested that an acquittal would add to pressure to end the Special Counsel's investigation. By publicly stating on the second day of deliberations that Manafort "happens to be a very good person" and that "it's very sad what they've done to Paul Manafort" right after calling the Special Counsel's investigation a "rigged witch hunt," the President's statements could, if they reached jurors, have the natural tendency to engender sympathy for Manafort among jurors, and a factfinder could infer that the President intended that result. But there are alternative explanations for the President's comments, including that he genuinely felt sorry for Manafort or that his goal was not to influence the jury but to influence public opinion. The President's comments also could have been intended to continue sending a message to Manafort that a pardon was possible. As described above, the President made his comments about Manafort being "a very good person" immediately after declining to answer a question about whether he would pardon Manafort.

Harm to Ongoing Matter



U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~**K. The President's Conduct Involving Michael Cohen***Overview*

The President's conduct involving Michael Cohen spans the full period of our investigation. During the campaign, Cohen pursued the Trump Tower Moscow project on behalf of the Trump Organization. Cohen briefed candidate Trump on the project numerous times, including discussing whether Trump should travel to Russia to advance the deal. After the media began questioning Trump's connections to Russia, Cohen promoted a "party line" that publicly distanced Trump from Russia and asserted he had no business there. Cohen continued to adhere to that party line in 2017, when Congress asked him to provide documents and testimony in its Russia investigation. In an attempt to minimize the President's connections to Russia, Cohen submitted a letter to Congress falsely stating that he only briefed Trump on the Trump Tower Moscow project three times, that he did not consider asking Trump to travel to Russia, that Cohen had not received a response to an outreach he made to the Russian government, and that the project ended in January 2016, before the first Republican caucus or primary. While working on the congressional statement, Cohen had extensive discussions with the President's personal counsel, who, according to Cohen, said that Cohen should not contradict the President and should keep the statement short and "tight." After the FBI searched Cohen's home and office in April 2018, the President publicly asserted that Cohen would not "flip" and privately passed messages of support to him. Cohen also discussed pardons with the President's personal counsel and believed that if he stayed on message, he would get a pardon or the President would do "something else" to make the investigation end. But after Cohen began cooperating with the government in July 2018, the President publicly criticized him, called him a "rat," and suggested his family members had committed crimes.

*Evidence*1. Candidate Trump's Awareness of and Involvement in the Trump Tower Moscow Project

The President's interactions with Cohen as a witness took place against the background of the President's involvement in the Trump Tower Moscow project.

As described in detail in Volume I, Section IV.A.1, *supra*, from September 2015 until at least June 2016, the Trump Organization pursued a Trump Tower Moscow project in Russia, with negotiations conducted by Cohen, then-executive vice president of the Trump Organization and special counsel to Donald J. Trump.⁹⁰⁹ The Trump Organization had previously and

⁹⁰⁹ In August 2018 and November 2018, Cohen pleaded guilty to multiple crimes of deception, including making false statements to Congress about the Trump Tower Moscow project, as described later in this section. When Cohen first met with investigators from this Office, he repeated the same lies he told Congress about the Trump Tower Moscow project. Cohen 8/7/18 302, at 12-17. But after Cohen pleaded guilty to offenses in the Southern District of New York on August 21, 2018, he met with investigators again and corrected the record. The Office found Cohen's testimony in these subsequent proffer sessions to be consistent with and corroborated by other information obtained in the course of the Office's investigation. The Office's sentencing submission in Cohen's criminal case stated: "Starting with his second meeting with the [Special Counsel's Office] in September 2018, the defendant has accepted responsibility not only for

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

unsuccessfully pursued a building project in Moscow.⁹¹⁰ According to Cohen, in approximately September 2015 he obtained internal approval from Trump to negotiate on behalf of the Trump Organization to have a Russian corporation build a tower in Moscow that licensed the Trump name and brand.⁹¹¹ Cohen thereafter had numerous brief conversations with Trump about the project.⁹¹² Cohen recalled that Trump wanted to be updated on any developments with Trump Tower Moscow and on several occasions brought the project up with Cohen to ask what was happening on it.⁹¹³ Cohen also discussed the project on multiple occasions with Donald Trump Jr. and Ivanka Trump.⁹¹⁴

In the fall of 2015, Trump signed a Letter of Intent for the project that specified highly lucrative terms for the Trump Organization.⁹¹⁵ In December 2015, Felix Sater, who was handling negotiations between Cohen and the Russian corporation, asked Cohen for a copy of his and Trump's passports to facilitate travel to Russia to meet with government officials and possible financing partners.⁹¹⁶ Cohen recalled discussing the trip with Trump and requesting a copy of Trump's passport from Trump's personal secretary, Rhona Graff.⁹¹⁷

By January 2016, Cohen had become frustrated that Sater had not set up a meeting with Russian government officials, so Cohen reached out directly by email to the office of Dmitry

his false statements concerning the [Trump Tower] Moscow Project, but also his broader efforts through public statements and testimony before Congress to minimize his role in, and what he knew about, contacts between the [Trump Organization] and Russian interests during the course of the campaign. . . . The information provided by Cohen about the [Trump Tower] Moscow Project in these proffer sessions is consistent with and corroborated by other information obtained in the course of the [Special Counsel's Office's] investigation. . . . The defendant, without prompting by the [Special Counsel's Office], also corrected other false and misleading statements that he had made concerning his outreach to and contacts with Russian officials during the course of the campaign." Gov't Sentencing Submission at 4, *United States v. Michael Cohen*, 1:18-cr-850 (S.D.N.Y. Dec. 7, 2018), Doc. 14. At Cohen's sentencing, our Office further explained that Cohen had "provided valuable information . . . while taking care and being careful to note what he knows and what he doesn't know." Transcript at 19, *United States v. Michael Cohen*, 1:18-cr-850 (S.D.N.Y. Dec. 12, 2018), Doc. 17 (*Cohen* 12/12/18 Transcript).

⁹¹⁰ See Volume I, Section IV.A.1, *supra* (noting that starting in at least 2013, several employees of the Trump Organization, including then-president of the organization Donald J. Trump, pursued a Trump Tower Moscow deal with several Russian counterparties).

⁹¹¹ Cohen 9/12/18 302, at 1-4; Cohen 8/7/18 302, at 15.

⁹¹² Cohen 9/12/18 302, at 2, 4.

⁹¹³ Cohen 9/12/18 302, at 4.

⁹¹⁴ Cohen 9/12/18 302, at 4, 10.

⁹¹⁵ MDC-H-000618-25 (10/28/15 Letter of Intent, signed by Donald J. Trump, Trump Acquisition, LLC and Andrey Rozov, I.C. Expert Investment Company); Cohen 9/12/18 302, at 3; Written Responses of Donald J. Trump (Nov. 20, 2018), at 15 (Response to Question III, Parts (a) through (g)).

⁹¹⁶ MDC-H-000600 (12/19/15 Email, Sater to Cohen).

⁹¹⁷ Cohen 9/12/18 302, at 5.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Peskov, who was Putin's deputy chief of staff and press secretary.⁹¹⁸ On January 20, 2016, Cohen received an email response from Elena Poliakova, Peskov's personal assistant, and phone records confirm that they then spoke for approximately twenty minutes, during which Cohen described the Trump Tower Moscow project and requested assistance in moving the project forward.⁹¹⁹ Cohen recalled briefing candidate Trump about the call soon afterwards.⁹²⁰ Cohen told Trump he spoke with a woman he identified as "someone from the Kremlin," and Cohen reported that she was very professional and asked detailed questions about the project.⁹²¹ Cohen recalled telling Trump he wished the Trump Organization had assistants who were as competent as the woman from the Kremlin.⁹²²

Cohen thought his phone call renewed interest in the project.⁹²³ The day after Cohen's call with Poliakova, Sater texted Cohen, asking him to "[c]all me when you have a few minutes to chat . . . It's about Putin they called today."⁹²⁴ Sater told Cohen that the Russian government liked the project and on January 25, 2016, sent an invitation for Cohen to visit Moscow "for a working visit."⁹²⁵ After the outreach from Sater, Cohen recalled telling Trump that he was waiting to hear back on moving the project forward.⁹²⁶

After January 2016, Cohen continued to have conversations with Sater about Trump Tower Moscow and continued to keep candidate Trump updated about those discussions and the status of the project.⁹²⁷ Cohen recalled that he and Trump wanted Trump Tower Moscow to succeed and that Trump never discouraged him from working on the project because of the campaign.⁹²⁸ In March or April 2016, Trump asked Cohen if anything was happening in Russia.⁹²⁹ Cohen also

⁹¹⁸ See FS00004 (12/30/15 Text Message, Cohen to Sater); TRUMPORG_MC_000233 (1/11/16 Email, Cohen to pr_peskova@prpress.gof.ru); MDC-H-000690 (1/14/16 Email, Cohen to info@prpress.gov.ru); TRUMPORG_MC_000235 (1/16/16 Email, Cohen to pr_peskova@prpress.gov.ru).

⁹¹⁹ 1/20/16 Email, Poliakova to Cohen; Call Records of Michael Cohen. (Showing a 22-minute call on January 20, 2016, between Cohen and the number Poliakova provided in her email); Cohen 9/12/18 302, at 2-3. After the call, Cohen saved Poliakova's contact information in his Trump Organization Outlook contact list. 1/20/16 Cohen Microsoft Outlook Entry (6:22 a.m.).

⁹²⁰ Cohen 11/20/18 302, at 5.

⁹²¹ Cohen 11/20/18 302, at 5-6; Cohen 11/12/18 302, at 4.

⁹²² Cohen 11/20/18 302, at 5.

⁹²³ Cohen 9/12/18 302, at 5.

⁹²⁴ FS00011 (1/21/16 Text Messages, Sater & Cohen).

⁹²⁵ Cohen 9/12/18 302, at 5; 1/25/16 Email, Sater to Cohen (attachment).

⁹²⁶ Cohen 11/20/18 302, at 5.

⁹²⁷ Cohen 9/12/18 302, at 6. In later congressional testimony, Cohen stated that he briefed Trump on the project approximately six times after January 2016. *Hearing on Issues Related to Trump Organization Before the House Oversight and Reform Committee*, 116th Cong. (Feb. 27, 2019) (CQ Cong. Transcripts, at 24) (testimony of Michael Cohen).

⁹²⁸ Cohen 9/12/18 302, at 6.

⁹²⁹ Cohen 9/18/18 302, at 4.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

recalled briefing Donald Trump Jr. in the spring—a conversation that Cohen said was not “idle chit chat” because Trump Tower Moscow was potentially a \$1 billion deal.⁹³⁰

Cohen recalled that around May 2016, he again raised with candidate Trump the possibility of a trip to Russia to advance the Trump Tower Moscow project.⁹³¹ At that time, Cohen had received several texts from Sater seeking to arrange dates for such a trip.⁹³² On May 4, 2016, Sater wrote to Cohen, “I had a chat with Moscow. ASSUMING the trip does happen the question is before or after the convention. . . . Obviously the premeeting trip (you only) can happen anytime you want but the 2 big guys [is] the question. I said I would confirm and revert.”⁹³³ Cohen responded, “My trip before Cleveland. Trump once he becomes the nominee after the convention.”⁹³⁴ On May 5, 2016, Sater followed up with a text that Cohen thought he probably read to Trump:

Peskov would like to invite you as his guest to the St. Petersburg Forum which is Russia’s Davos it’s June 16-19. He wants to meet there with you and possibly introduce you to either Putin or Medvedev. . . . This is perfect. The entire business class of Russia will be there as well. He said anything you want to discuss including dates and subjects are on the table to discuss.⁹³⁵

Cohen recalled discussing the invitation to the St. Petersburg Economic Forum with candidate Trump and saying that Putin or Russian Prime Minister Dmitry Medvedev might be there.⁹³⁶ Cohen remembered that Trump said that he would be willing to travel to Russia if Cohen could “lock and load” on the deal.⁹³⁷ In June 2016, Cohen decided not to attend the St. Petersburg Economic Forum because Sater had not obtained a formal invitation for Cohen from Peskov.⁹³⁸ Cohen said he had a quick conversation with Trump at that time but did not tell him that the project was over because he did not want Trump to complain that the deal was on-again-off-again if it were revived.⁹³⁹

During the summer of 2016, Cohen recalled that candidate Trump publicly claimed that he had nothing to do with Russia and then shortly afterwards privately checked with Cohen about the status of the Trump Tower Moscow project, which Cohen found “interesting.”⁹⁴⁰ At some point

⁹³⁰ Cohen 9/12/18 302, at 10.

⁹³¹ Cohen 9/12/18 302, at 7.

⁹³² Cohen 9/12/18 302, at 7.

⁹³³ FS00015 (5/4/16 Text Message, Sater to Cohen).

⁹³⁴ FS00015 (5/4/16 Text Message, Cohen to Sater).

⁹³⁵ FS00016-17 (5/5/16 Text Messages, Sater & Cohen).

⁹³⁶ Cohen 9/12/18 302, at 7.

⁹³⁷ Cohen 9/12/18 302, at 7.

⁹³⁸ Cohen 9/12/18 302, at 7-8.

⁹³⁹ Cohen 9/12/18 302, at 8.

⁹⁴⁰ Cohen 3/19/19 302, at 2.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

that summer, Cohen recalled having a brief conversation with Trump in which Cohen said the Trump Tower Moscow project was going nowhere because the Russian development company had not secured a piece of property for the project.⁹⁴¹ Trump said that was “too bad,” and Cohen did not recall talking with Trump about the project after that.⁹⁴² Cohen said that at no time during the campaign did Trump tell him not to pursue the project or that the project should be abandoned.⁹⁴³

2. Cohen Determines to Adhere to a “Party Line” Distancing Candidate Trump From Russia

As previously discussed, *see* Volume II, Section II.A, *supra*, when questions about possible Russian support for candidate Trump emerged during the 2016 presidential campaign, Trump denied having any personal, financial, or business connection to Russia, which Cohen described as the “party line” or “message” to follow for Trump and his senior advisors.⁹⁴⁴

After the election, the Trump Organization sought to formally close out certain deals in advance of the inauguration.⁹⁴⁵ Cohen recalled that Trump Tower Moscow was on the list of deals to be closed out.⁹⁴⁶ In approximately January 2017, Cohen began receiving inquiries from the media about Trump Tower Moscow, and he recalled speaking to the President-Elect when those inquiries came in.⁹⁴⁷ Cohen was concerned that truthful answers about the Trump Tower Moscow project might not be consistent with the “message” that the President-Elect had no relationship with Russia.⁹⁴⁸

In an effort to “stay on message,” Cohen told a New York Times reporter that the Trump Tower Moscow deal was not feasible and had ended in January 2016.⁹⁴⁹ Cohen recalled that this was part of a “script” or talking points he had developed with President-Elect Trump and others to

⁹⁴¹ Cohen 3/19/19 302, at 2. Cohen could not recall the precise timing of this conversation, but said he thought it occurred in June or July 2016. Cohen recalled that the conversation happened at some point after candidate Trump was publicly stating that he had nothing to do with Russia. Cohen 3/19/19 302, at 2.

⁹⁴² Cohen 3/19/19 302, at 2.

⁹⁴³ Cohen 3/19/19 302, at 2.

⁹⁴⁴ Cohen 11/20/18 302, at 1; Cohen 9/18/18 302, at 3, 5; Cohen 9/12/18 302, at 9.

⁹⁴⁵ Cohen 9/18/18 302, at 1-2; *see also* Rtskhilladze 4/4/18 302, at 8-9.

⁹⁴⁶ Cohen 9/18/18 302, at 1-2.

⁹⁴⁷ Cohen 9/18/18 302, at 3.

⁹⁴⁸ Cohen 11/20/18 302, at 4.

⁹⁴⁹ Cohen 9/18/18 302, at 5. The article was published on February 19, 2017, and reported that Sater and Cohen had been working on plan for a Trump Tower Moscow “as recently as the fall of 2015” but had come to a halt because of the presidential campaign. Consistent with Cohen’s intended party line message, the article stated, “Cohen said the Trump Organization had received a letter of intent for a project in Moscow from a Russian real estate developer at that time but determined that the project was not feasible.” Megan Twohey & Scott Shane, *A Back-Channel Plan for Ukraine and Russia*, *Courtesy of Trump Associates*, New York Times (Feb. 19, 2017).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

dismiss the idea of a substantial connection between Trump and Russia.⁹⁵⁰ Cohen said that he discussed the talking points with Trump but that he did not explicitly tell Trump he thought they were untrue because Trump already knew they were untrue.⁹⁵¹ Cohen thought it was important to say the deal was done in January 2016, rather than acknowledge that talks continued in May and June 2016, because it limited the period when candidate Trump could be alleged to have a relationship with Russia to an early point in the campaign, before Trump had become the party's presumptive nominee.⁹⁵²

3. Cohen Submits False Statements to Congress Minimizing the Trump Tower Moscow Project in Accordance with the Party Line

In early May 2017, Cohen received requests from Congress to provide testimony and documents in connection with congressional investigations of Russian interference in the 2016 election.⁹⁵³ At that time, Cohen understood Congress's interest in him to be focused on the allegations in the Steele reporting concerning a meeting Cohen allegedly had with Russian officials in Prague during the campaign.⁹⁵⁴ Cohen had never traveled to Prague and was not concerned about those allegations, which he believed were provably false.⁹⁵⁵ On May 18, 2017, Cohen met with the President to discuss the request from Congress, and the President instructed Cohen that he should cooperate because there was nothing there.⁹⁵⁶

Cohen eventually entered into a joint defense agreement (JDA) with the President and other individuals who were part of the Russia investigation.⁹⁵⁷ In the months leading up to his congressional testimony, Cohen frequently spoke with the President's personal counsel.⁹⁵⁸ Cohen

⁹⁵⁰ Cohen 9/18/18 302, at 5-6.

⁹⁵¹ Cohen 9/18/18 302, at 6.

⁹⁵² Cohen 9/12/18 302, at 10.

⁹⁵³ P-SCO-00000328 (5/9/17 Letter, HPSCI to Cohen); P-SCO-00000331 (5/12/17 Letter, SSCI to Cohen).

⁹⁵⁴ Cohen 11/20/18 302, at 2-3.

⁹⁵⁵ Cohen 11/20/18 302, at 2-3.

⁹⁵⁶ Cohen 11/12/18 302, at 2; Cohen 11/20/19 302, at 3.

⁹⁵⁷ Cohen 11/12/18 302, at 2.

⁹⁵⁸ Cohen 11/12/18 302, at 2-3; Cohen 11/20/18, at 2-6. Cohen told investigators about his conversations with the President's personal counsel after waiving any privilege of his own and after this Office advised his counsel not to provide any communications that would be covered by any other privilege, including communications protected by a joint defense or common interest privilege. As a result, most of what Cohen told us about his conversations with the President's personal counsel concerned what Cohen had communicated to the President's personal counsel, and not what was said in response. Cohen described certain statements made by the President's personal counsel, however, that are set forth in this section. Cohen and his counsel were better positioned than this Office to evaluate whether any privilege protected those statements because they had knowledge of the scope of their joint defense agreement and access to privileged communications that may have provided context for evaluating the statements they shared. After interviewing Cohen about these matters, we asked the President's personal counsel if he wished to provide information to us about his conversations with Cohen related to Cohen's congressional testimony about

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

said that in those conversations the President's personal counsel would sometimes say that he had just been with the President.⁹⁵⁹ Cohen recalled that the President's personal counsel told him the JDA was working well together and assured him that there was nothing there and if they stayed on message the investigations would come to an end soon.⁹⁶⁰ At that time, Cohen's legal bills were being paid by the Trump Organization,⁹⁶¹ and Cohen was told not to worry because the investigations would be over by summer or fall of 2017.⁹⁶² Cohen said that the President's personal counsel also conveyed that, as part of the JDA, Cohen was protected, which he would not be if he "went rogue."⁹⁶³ Cohen recalled that the President's personal counsel reminded him that "the President loves you" and told him that if he stayed on message, the President had his back.⁹⁶⁴

In August 2017, Cohen began drafting a statement about Trump Tower Moscow to submit to Congress along with his document production.⁹⁶⁵ The final version of the statement contained several false statements about the project.⁹⁶⁶ First, although the Trump Organization continued to pursue the project until at least June 2016, the statement said, "The proposal was under consideration at the Trump Organization from September 2015 until the end of January 2016. By the end of January 2016, I determined that the proposal was not feasible for a variety of business reasons and should not be pursued further. Based on my business determinations, the Trump Organization abandoned the proposal."⁹⁶⁷ Second, although Cohen and candidate Trump had discussed possible travel to Russia by Trump to pursue the venture, the statement said, "Despite overtures by Mr. Sater, I never considered asking Mr. Trump to travel to Russia in connection with this proposal. I told Mr. Sater that Mr. Trump would not travel to Russia unless there was a definitive agreement in place."⁹⁶⁸ Third, although Cohen had regularly briefed Trump on the status

Trump Tower Moscow. The President's personal counsel declined and, through his own counsel, indicated that he could not disaggregate information he had obtained from Cohen from information he had obtained from other parties in the JDA. In view of the admonition this Office gave to Cohen's counsel to withhold communications that could be covered by privilege, the President's personal counsel's uncertainty about the provenance of his own knowledge, the burden on a privilege holder to establish the elements to support a claim of privilege, and the substance of the statements themselves, we have included relevant statements Cohen provided in this report. If the statements were to be used in a context beyond this report, further analysis could be warranted.

⁹⁵⁹ Cohen 11/20/18 302, at 6.

⁹⁶⁰ Cohen 11/20/18 302, at 2, 4.

⁹⁶¹ Cohen 11/20/18 302, at 4.

⁹⁶² Cohen 9/18/18 302, at 8; Cohen 11/20/18 302, at 3-4.

⁹⁶³ Cohen 11/20/18 302, at 4.

⁹⁶⁴ Cohen 9/18/18 302, at 11; Cohen 11/20/18 302, at 2.

⁹⁶⁵ P-SCO-000003680 and P-SCO-000003687 (8/16/17 Email and Attachment, Michael Cohen's Counsel to Cohen). Cohen said it was not his idea to write a letter to Congress about Trump Tower Moscow. Cohen 9/18/18 302, at 7.

⁹⁶⁶ P-SCO-00009478 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

⁹⁶⁷ P-SCO-00009478 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

⁹⁶⁸ P-SCO-00009478 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

of the project and had numerous conversations about it, the statement said, "Mr. Trump was never in contact with anyone about this proposal other than me on three occasions, including signing a non-binding letter of intent in 2015."⁹⁶⁹ Fourth, although Cohen's outreach to Peskov in January 2016 had resulted in a lengthy phone call with a representative from the Kremlin, the statement said that Cohen did "not recall any response to my email [to Peskov], nor any other contacts by me with Mr. Peskov or other Russian government officials about the proposal."⁹⁷⁰

Cohen's statement was circulated in advance to, and edited by, members of the JDA.⁹⁷¹ Before the statement was finalized, early drafts contained a sentence stating, "The building project led me to make limited contacts with Russian government officials."⁹⁷² In the final version of the statement, that line was deleted.⁹⁷³ Cohen thought he was told that it was a decision of the JDA to take out that sentence, and he did not push back on the deletion.⁹⁷⁴ Cohen recalled that he told the President's personal counsel that he would not contest a decision of the JDA.⁹⁷⁵

Cohen also recalled that in drafting his statement for Congress, he spoke with the President's personal counsel about a different issue that connected candidate Trump to Russia: Cohen's efforts to set up a meeting between Trump and Putin in New York during the 2015 United Nations General Assembly.⁹⁷⁶ In September 2015, Cohen had suggested the meeting to Trump, who told Cohen to reach out to Putin's office about it.⁹⁷⁷ Cohen spoke and emailed with a Russian official about a possible meeting, and recalled that Trump asked him multiple times for updates on the proposed meeting with Putin.⁹⁷⁸ When Cohen called the Russian official a second time, she told him it would not follow proper protocol for Putin to meet with Trump, and Cohen relayed that

⁹⁶⁹ P-SCO-00009478 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

⁹⁷⁰ P-SCO-00009478 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

⁹⁷¹ Cohen 9/12/18 302, at 8-9. Cohen also testified in Congress that the President's counsel reviewed and edited the statement. *Hearing on Issues Related to Trump Organization Before the House Oversight and Reform Committee*, 116th Cong. (Feb. 27, 2019) (CQ Cong. Transcripts, at 24-25) (testimony by Michael Cohen). Because of concerns about the common interest privilege, we did not obtain or review all drafts of Cohen's statement. Based on the drafts that were released through this Office's filter process, it appears that the substance of the four principal false statements described above were contained in an early draft prepared by Cohen and his counsel. P-SCO-0000003680 and P-SCO-0000003687 (8/16/17 Email and Attachment, Cohen's counsel to Cohen).

⁹⁷² P-SCO-0000003687 (8/16/17 Draft Statement of Michael Cohen); Cohen 11/20/18 302, at 4.

⁹⁷³ Cohen 11/20/18 302, at 4. A different line stating that Cohen did "not recall any response to my email [to Peskov in January 2016], nor any other contacts by me with Mr. Peskov or other Russian government officials about the proposal" remained in the draft. See P-SCO-0000009478 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

⁹⁷⁴ Cohen 11/20/18 302, at 4.

⁹⁷⁵ Cohen 11/20/18 302, at 5.

⁹⁷⁶ Cohen 9/18/18 302, at 10-11.

⁹⁷⁷ Cohen 9/18/18 302, at 11; Cohen 11/12/18 302, at 4.

⁹⁷⁸ Cohen 9/18/18 302, at 11; Cohen 11/12/18 302, at 5.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

message to Trump.⁹⁷⁹ Cohen anticipated he might be asked questions about the proposed Trump-Putin meeting when he testified before Congress because he had talked about the potential meeting on Sean Hannity's radio show.⁹⁸⁰ Cohen recalled explaining to the President's personal counsel the "whole story" of the attempt to set up a meeting between Trump and Putin and Trump's role in it.⁹⁸¹ Cohen recalled that he and the President's personal counsel talked about keeping Trump out of the narrative, and the President's personal counsel told Cohen the story was not relevant and should not be included in his statement to Congress.⁹⁸²

Cohen said that his "agenda" in submitting the statement to Congress with false representations about the Trump Tower Moscow project was to minimize links between the project and the President, give the false impression that the project had ended before the first presidential primaries, and shut down further inquiry into Trump Tower Moscow, with the aim of limiting the ongoing Russia investigations.⁹⁸³ Cohen said he wanted to protect the President and be loyal to him by not contradicting anything the President had said.⁹⁸⁴ Cohen recalled he was concerned that if he told the truth about getting a response from the Kremlin or speaking to candidate Trump about travel to Russia to pursue the project, he would contradict the message that no connection existed between Trump and Russia, and he rationalized his decision to provide false testimony because the deal never happened.⁹⁸⁵ He was not concerned that the story would be contradicted by individuals who knew it was false because he was sticking to the party line adhered to by the whole group.⁹⁸⁶ Cohen wanted the support of the President and the White House, and he believed that following the party line would help put an end to the Special Counsel and congressional investigations.⁹⁸⁷

Between August 18, 2017, when the statement was in an initial draft stage, and August 28, 2017, when the statement was submitted to Congress, phone records reflect that Cohen spoke with the President's personal counsel almost daily.⁹⁸⁸ On August 27, 2017, the day before Cohen

⁹⁷⁹ Cohen 11/12/18 302, at 5.

⁹⁸⁰ Cohen 9/18/18 302, at 11.

⁹⁸¹ Cohen 3/19/19 302, at 2.

⁹⁸² Cohen 3/19/19 302, at 2; *see* Cohen 9/18/18 302, at 11 (recalling that he was told that if he stayed on message and kept the President out of the narrative, the President would have his back).

⁹⁸³ Cohen 9/12/18 302, at 8; Information at 4-5, *United States v. Michael Cohen*, 1:18-cr-850 (S.D.N.Y. Nov. 29, 2018), Doc. 2 (*Cohen* Information).

⁹⁸⁴ Cohen 11/20/18 302, at 4.

⁹⁸⁵ Cohen 11/20/18 302, at 4; Cohen 11/12/18 302, at 2-3, 4, 6.

⁹⁸⁶ Cohen 9/12/18 302, at 9.

⁹⁸⁷ Cohen 9/12/18 302, at 8-9.

⁹⁸⁸ Cohen 11/12/18 302, at 2-3; Cohen 11/20/18 302, at 5; Call Records of Michael Cohen (Reflecting three contacts on August 18, 2017 (24 seconds; 5 minutes 25 seconds; and 10 minutes 58 seconds); two contacts on August 19 (23 seconds and 24 minutes 26 seconds); three contacts on August 23 (8 seconds; 20 minutes 33 seconds; and 5 minutes 8 seconds); one contact on August 24 (11 minutes 59 seconds); 14 contacts on August 27 (28 seconds; 4 minutes 37 seconds; 1 minute 16 seconds; 1 minutes 35

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

submitted the statement to Congress, Cohen and the President's personal counsel had numerous contacts by phone, including calls lasting three, four, six, eleven, and eighteen minutes.⁹⁸⁹ Cohen recalled telling the President's personal counsel, who did not have first-hand knowledge of the project, that there was more detail on Trump Tower Moscow that was not in the statement, including that there were more communications with Russia and more communications with candidate Trump than the statement reflected.⁹⁹⁰ Cohen stated that the President's personal counsel responded that it was not necessary to elaborate or include those details because the project did not progress and that Cohen should keep his statement short and "tight" and the matter would soon come to an end.⁹⁹¹ Cohen recalled that the President's personal counsel said "his client" appreciated Cohen, that Cohen should stay on message and not contradict the President, that there was no need to muddy the water, and that it was time to move on.⁹⁹² Cohen said he agreed because it was what he was expected to do.⁹⁹³ After Cohen later pleaded guilty to making false statements to Congress about the Trump Tower Moscow project, this Office sought to speak with the President's personal counsel about these conversations with Cohen, but counsel declined, citing potential privilege concerns.⁹⁹⁴

At the same time that Cohen finalized his written submission to Congress, he served as a source for a Washington Post story published on August 27, 2017, that reported in depth for the first time that the Trump Organization was "pursuing a plan to develop a massive Trump Tower in Moscow" at the same time as candidate Trump was "running for president in late 2015 and early 2016."⁹⁹⁵ The article reported that "the project was abandoned at the end of January 2016, just before the presidential primaries began, several people familiar with the proposal said."⁹⁹⁶ Cohen recalled that in speaking to the Post, he held to the false story that negotiations for the deal ceased in January 2016.⁹⁹⁷

seconds; 6 minutes 16 seconds; 1 minutes 10 seconds; 3 minutes 5 seconds; 18 minutes 55 seconds; 4 minutes 56 seconds; 11 minutes 6 seconds; 8 seconds; 3 seconds; 2 seconds; 2 seconds).

⁹⁸⁹ Cohen 11/20/18 302, at 5; Call Records of Michael Cohen. (Reflecting 14 contacts on August 27, 2017 (28 seconds; 4 minutes 37 seconds; 1 minute 16 seconds; 1 minutes 35 seconds; 6 minutes 16 seconds; 1 minutes 10 seconds; 3 minutes 5 seconds; 18 minutes 55 seconds; 4 minutes 56 seconds; 11 minutes 6 seconds; 8 seconds; 3 seconds; 2 seconds; 2 seconds)).

⁹⁹⁰ Cohen 11/20/18 302, at 5.

⁹⁹¹ Cohen 11/20/18 302, at 5. Cohen also vaguely recalled telling the President's personal counsel that he spoke with a woman from the Kremlin and that the President's personal counsel responded to the effect of "so what?" because the deal never happened. Cohen 11/20/18 302, at 5.

⁹⁹² Cohen 11/20/18 302, at 5.

⁹⁹³ Cohen 11/20/18 302, at 5.

⁹⁹⁴ 2/8/19 email, Counsel for personal counsel to the President to Special Counsel's Office.

⁹⁹⁵ Cohen 9/18/18 302, at 7; Carol D. Leonnig et al., *Trump's business sought deal on a Trump Tower in Moscow while he ran for president*, Washington Post (Aug. 27, 2017).

⁹⁹⁶ Carol D. Leonnig et al., *Trump's business sought deal on a Trump Tower in Moscow while he ran for president*, Washington Post (Aug. 27, 2017).

⁹⁹⁷ Cohen 9/18/18 302, at 7.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

On August 28, 2017, Cohen submitted his statement about the Trump Tower Moscow project to Congress.⁹⁹⁸ Cohen did not recall talking to the President about the specifics of what the statement said or what Cohen would later testify to about Trump Tower Moscow.⁹⁹⁹ He recalled speaking to the President more generally about how he planned to stay on message in his testimony.¹⁰⁰⁰ On September 19, 2017, in anticipation of his impending testimony, Cohen orchestrated the public release of his opening remarks to Congress, which criticized the allegations in the Steele material and claimed that the Trump Tower Moscow project “was terminated in January of 2016; which occurred before the Iowa caucus and months before the very first primary.”¹⁰⁰¹ Cohen said the release of his opening remarks was intended to shape the narrative and let other people who might be witnesses know what Cohen was saying so they could follow the same message.¹⁰⁰² Cohen said his decision was meant to mirror Jared Kushner’s decision to release a statement in advance of Kushner’s congressional testimony, which the President’s personal counsel had told Cohen the President liked.¹⁰⁰³ Cohen recalled that on September 20, 2017, after Cohen’s opening remarks had been printed by the media, the President’s personal counsel told him that the President was pleased with the Trump Tower Moscow statement that had gone out.¹⁰⁰⁴

On October 24 and 25, 2017, Cohen testified before Congress and repeated the false statements he had included in his written statement about Trump Tower Moscow.¹⁰⁰⁵ Phone records show that Cohen spoke with the President’s personal counsel immediately after his testimony on both days.¹⁰⁰⁶

4. The President Sends Messages of Support to Cohen

In January 2018, the media reported that Cohen had arranged a \$130,000 payment during the campaign to prevent a woman from publicly discussing an alleged sexual encounter she had

⁹⁹⁸ P-SCO-000009477 - 9478 (8/28/17 Letter and Attachment, Cohen to SSCI).

⁹⁹⁹ Cohen 11/12/18 302, at 2; Cohen 9/12/18 302, at 9.

¹⁰⁰⁰ Cohen 9/12/18 302, at 9.

¹⁰⁰¹ Cohen 9/18/18 302, at 7; *see, e.g., READ: Michael Cohen’s statement to the Senate intelligence committee*, CNN (Sept. 19, 2017).

¹⁰⁰² Cohen 9/18/18 302, at 7.

¹⁰⁰³ Cohen 9/18/18 302, at 7; Cohen 11/20/18 302, at 6.

¹⁰⁰⁴ Cohen 11/20/18 302, at 6. Phone records show that the President’s personal counsel called Cohen on the morning of September 20, 2017, and they spoke for approximately 11 minutes, and that they had two more contacts that day, one of which lasted approximately 18 minutes. Call Records of Michael Cohen. (Reflecting three contacts on September 20, 2017, with calls lasting for 11 minutes 3 seconds; 2 seconds; and 18 minutes 38 seconds).

¹⁰⁰⁵ *Cohen Information*, at 4; Executive Session, Permanent Select Committee on Intelligence, U.S. House of Representatives, Interview of Michael Cohen (Oct. 24, 2017), at 10-11, 117-119.

¹⁰⁰⁶ Call Records of Michael Cohen. (Reflecting two contacts on October 24, 2017 (12 minutes 8 seconds and 8 minutes 27 seconds) and three contacts on October 25, 2017 (1 second; 4 minutes 6 seconds; and 6 minutes 6 seconds)).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

with the President before he ran for office.¹⁰⁰⁷ This Office did not investigate Cohen's campaign-period payments to women.¹⁰⁰⁸ However, those events, as described here, are potentially relevant to the President's and his personal counsel's interactions with Cohen as a witness who later began to cooperate with the government.

On February 13, 2018, Cohen released a statement to news organizations that stated, "In a private transaction in 2016, I used my own personal funds to facilitate a payment of \$130,000 to [the woman]. Neither the Trump Organization nor the Trump campaign was a party to the transaction with [the woman], and neither reimbursed me for the payment, either directly or indirectly."¹⁰⁰⁹ In congressional testimony on February 27, 2019, Cohen testified that he had discussed what to say about the payment with the President and that the President had directed Cohen to say that the President "was not knowledgeable . . . of [Cohen's] actions" in making the payment.¹⁰¹⁰ On February 19, 2018, the day after the New York Times wrote a detailed story attributing the payment to Cohen and describing Cohen as the President's "fixer," Cohen received a text message from the President's personal counsel that stated, "Client says thanks for what you do."¹⁰¹¹

On April 9, 2018, FBI agents working with the U.S. Attorney's Office for the Southern District of New York executed search warrants on Cohen's home, hotel room, and office.¹⁰¹² That day, the President spoke to reporters and said that he had "just heard that they broke into the office of one of my personal attorneys—a good man."¹⁰¹³ The President called the searches "a real disgrace" and said, "It's an attack on our country, in a true sense. It's an attack on what we all

¹⁰⁰⁷ See, e.g., Michael Rothfeld & Joe Palazzolo, *Trump Lawyer Arranged \$130,000 Payment for Adult-Film Star's Silence*, Wall Street Journal (Jan. 12, 2018).

¹⁰⁰⁸ The Office was authorized to investigate Cohen's establishment and use of Essential Consultants LLC, which Cohen created to facilitate the \$130,000 payment during the campaign, based on evidence that the entity received funds from Russian-backed entities. Cohen's use of Essential Consultants to facilitate the \$130,000 payment to the woman during the campaign was part of the Office's referral of certain Cohen-related matters to the U.S. Attorney's Office for the Southern District of New York.

¹⁰⁰⁹ See, e.g., Mark Berman, *Longtime Trump attorney says he made \$130,000 payment to Stormy Daniels with his money*, Washington Post (Feb. 14, 2018).

¹⁰¹⁰ *Hearing on Issues Related to Trump Organization Before the House Oversight and Reform Committee*, 116th Cong. (Feb. 27, 2019) (CQ Cong. Transcripts, at 147-148) (testimony of Michael Cohen). Toll records show that Cohen was connected to a White House phone number for approximately five minutes on January 19, 2018, and for approximately seven minutes on January 30, 2018, and that Cohen called Melania Trump's cell phone several times between January 26, 2018, and January 30, 2018. Call Records of Michael Cohen.

¹⁰¹¹ 2/19/18 Text Message, President's personal counsel to Cohen; see Jim Rutenberg et al., *Tools of Trump's Fixer: Payouts, Intimidation and the Tabloids*, New York Times (Feb. 18, 2018).

¹⁰¹² Gov't Opp. to Def. Mot. for Temp. Restraining Order, *In the Matter of Search Warrants Executed on April 9, 2018*, 18-mj-3161 (S.D.N.Y. Apr. 13, 2018), Doc. 1 ("On April 9, 2018, agents from the New York field office of the Federal Bureau of Investigation . . . executed search warrants for Michael Cohen's residence, hotel room, office, safety deposit box, and electronic devices.").

¹⁰¹³ Remarks by President Trump Before Meeting with Senior Military Leadership, White House (Apr. 9, 2018).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

stand for.”¹⁰¹⁴ Cohen said that after the searches he was concerned that he was “an open book,” that he did not want issues arising from the payments to women to “come out,” and that his false statements to Congress were “a big concern.”¹⁰¹⁵

A few days after the searches, the President called Cohen.¹⁰¹⁶ According to Cohen, the President said he wanted to “check in” and asked if Cohen was okay, and the President encouraged Cohen to “hang in there” and “stay strong.”¹⁰¹⁷ Cohen also recalled that following the searches he heard from individuals who were in touch with the President and relayed to Cohen the President’s support for him.¹⁰¹⁸ Cohen recalled that [REDACTED], a friend of the President’s, reached out to say that he was with “the Boss” in Mar-a-Lago and the President had said “he loves you” and not to worry.¹⁰¹⁹ Cohen recalled that [REDACTED] for the Trump Organization, told him, “the boss loves you.”¹⁰²⁰ And Cohen said that [REDACTED], a friend of the President’s, told him, “everyone knows the boss has your back.”¹⁰²¹

On or about April 17, 2018, Cohen began speaking with an attorney, Robert Costello, who had a close relationship with Rudolph Giuliani, one of the President’s personal lawyers.¹⁰²² Costello told Cohen that he had a “back channel of communication” to Giuliani, and that Giuliani had said the “channel” was “crucial” and “must be maintained.”¹⁰²³ On April 20, 2018, the New York Times published an article about the President’s relationship with and treatment of Cohen.¹⁰²⁴ The President responded with a series of tweets predicting that Cohen would not “flip”:

The New York Times and a third rate reporter . . . are going out of their way to destroy Michael Cohen and his relationship with me in the hope that he will ‘flip.’ They use non-existent ‘sources’ and a drunk/drugged up loser who hates Michael, a fine person with a wonderful family. Michael is a businessman for his own account/lawyer who I have always liked & respected. Most people will flip if the Government lets them out of trouble, even

¹⁰¹⁴ Remarks by President Trump Before Meeting with Senior Military Leadership, White House (Apr. 9, 2018).

¹⁰¹⁵ Cohen, 10/17/18 302, at 11.

¹⁰¹⁶ Cohen 3/19/19 302, at 4.

¹⁰¹⁷ Cohen 3/19/19 302, at 4.

¹⁰¹⁸ Cohen 9/12/18 302, at 11.

¹⁰¹⁹ Cohen 9/12/18 302, at 11.

¹⁰²⁰ Cohen 9/12/18 302, at 11.

¹⁰²¹ Cohen 9/12/18 302, at 11.

¹⁰²² 4/17/18 Email, Citron to Cohen; 4/19/18 Email, Costello to Cohen; MC-SCO-001 (7/7/18 redacted billing statement from Davidoff, Hutcher & Citron to Cohen).

¹⁰²³ 4/21/18 Email, Costello to Cohen.

¹⁰²⁴ See Maggie Haberman et al., *Michael Cohen Has Said He Would Take a Bullet for Trump. Maybe Not Anymore.*, New York Times (Apr. 20, 2018).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

if it means lying or making up stories. Sorry, I don't see Michael doing that despite the horrible Witch Hunt and the dishonest media!¹⁰²⁵

In an email that day to Cohen, Costello wrote that he had spoken with Giuliani.¹⁰²⁶ Costello told Cohen the conversation was "Very Very Positive[.] You are 'loved'. . . they are in our corner. . . . Sleep well tonight[], you have friends in high places."¹⁰²⁷

Cohen said that following these messages he believed he had the support of the White House if he continued to toe the party line, and he determined to stay on message and be part of the team.¹⁰²⁸ At the time, Cohen understood that his legal fees were still being paid by the Trump Organization, which he said was important to him.¹⁰²⁹ Cohen believed he needed the power of the President to take care of him, so he needed to defend the President and stay on message.¹⁰³⁰

Cohen also recalled speaking with the President's personal counsel about pardons after the searches of his home and office had occurred, at a time when the media had reported that pardon discussions were occurring at the White House.¹⁰³¹ Cohen told the President's personal counsel he had been a loyal lawyer and servant, and he said that after the searches he was in an uncomfortable position and wanted to know what was in it for him.¹⁰³² According to Cohen, the President's personal counsel responded that Cohen should stay on message, that the investigation was a witch hunt, and that everything would be fine.¹⁰³³ Cohen understood based on this conversation and previous conversations about pardons with the President's personal counsel that as long as he stayed on message, he would be taken care of by the President, either through a pardon or through the investigation being shut down.¹⁰³⁴

¹⁰²⁵ @realDonaldTrump 4/21/18 (9:10 a.m. ET) Tweets.

¹⁰²⁶ 4/21/18 Email, Costello to Cohen.

¹⁰²⁷ 4/21/18 Email, Costello to Cohen. **Harm to Ongoing Matter**

¹⁰²⁸ Cohen 9/12/18 302, at 11.

¹⁰²⁹ Cohen 9/12/18 302, at 10.

¹⁰³⁰ Cohen 9/12/18 302, at 10.

¹⁰³¹ Cohen 11/20/18 302, at 7. At a White House press briefing on April 23, 2018, in response to a question about whether the White House had "close[d] the door one way or the other on the President pardoning Michael Cohen," Sanders said, "It's hard to close the door on something that hasn't taken place. I don't like to discuss or comment on hypothetical situations that may or may not ever happen. I would refer you to personal attorneys to comment on anything specific regarding that case, but we don't have anything at this point." Sarah Sanders, *White House Daily Briefing*, C-SPAN (Apr. 23, 2018).

¹⁰³² Cohen 11/20/18 302, at 7; Cohen 3/19/19 302, at 3.

¹⁰³³ Cohen 3/19/19 302, at 3.

¹⁰³⁴ Cohen 3/19/19 302, at 3-4.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

On April 24, 2018, the President responded to a reporter's inquiry whether he would consider a pardon for Cohen with, "Stupid question."¹⁰³⁵ On June 8, 2018, the President said he "hadn't even thought about" pardons for Manafort or Cohen, and continued, "It's far too early to be thinking about that. They haven't been convicted of anything. There's nothing to pardon."¹⁰³⁶ And on June 15, 2018, the President expressed sympathy for Cohen, Manafort, and Flynn in a press interview and said, "I feel badly about a lot of them, because I think a lot of it is very unfair."¹⁰³⁷

5. The President's Conduct After Cohen Began Cooperating with the Government

On July 2, 2018, ABC News reported based on an "exclusive" interview with Cohen that Cohen "strongly signaled his willingness to cooperate with special counsel Robert Mueller and federal prosecutors in the Southern District of New York—even if that puts President Trump in jeopardy."¹⁰³⁸ That week, the media reported that Cohen had added an attorney to his legal team who previously had worked as a legal advisor to President Bill Clinton.¹⁰³⁹

Beginning on July 20, 2018, the media reported on the existence of a recording Cohen had made of a conversation he had with candidate Trump about a payment made to a second woman who said she had had an affair with Trump.¹⁰⁴⁰ On July 21, 2018, the President responded: "Inconceivable that the government would break into a lawyer's office (early in the morning)—almost unheard of. Even more inconceivable that a lawyer would tape a client—totally unheard of & perhaps illegal. The good news is that your favorite President did nothing wrong!"¹⁰⁴¹ On July 27, 2018, after the media reported that Cohen was willing to inform investigators that Donald Trump Jr. told his father about the June 9, 2016 meeting to get "dirt" on Hillary Clinton,¹⁰⁴² the President tweeted: "[S]o the Fake News doesn't waste my time with dumb questions, NO, I did NOT know of the meeting with my son, Don jr. Sounds to me like someone is trying to make up

¹⁰³⁵ Remarks by President Trump and President Macron of France Before Restricted Bilateral Meeting, The White House (Apr. 24, 2018).

¹⁰³⁶ *President Donald Trump Holds Media Availability Before Departing for the G-7 Summit*, CQ Newsmaker Transcripts (June 8, 2018).

¹⁰³⁷ Remarks by President Trump in Press Gaggle, The White House (June 15, 2018).

¹⁰³⁸ *EXCLUSIVE: Michael Cohen says family and country, not President Trump, is his 'first loyalty'*, ABC (July 2, 2018). Cohen said in the interview, "To be crystal clear, my wife, my daughter and my son, and this country have my first loyalty."

¹⁰³⁹ See e.g., Darren Samuelsohn, *Michael Cohen hires Clinton scandal veteran Lanny Davis*, Politico (July 5, 2018).

¹⁰⁴⁰ See, e.g., Matt Apuzzo et al., *Michael Cohen Secretly Taped Trump Discussing Payment to Playboy Model*, New York Times (July 20, 2018).

¹⁰⁴¹ @realDonaldTrump 7/21/18 (8:10 a.m. ET) Tweet.

¹⁰⁴² See, e.g., Jim Sciutto, *Cuomo Prime Time Transcript*, CNN (July 26, 2018).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

stories in order to get himself out of an unrelated jam (Taxi cabs maybe?). He even retained Bill and Crooked Hillary's lawyer. Gee, I wonder if they helped him make the choice!"¹⁰⁴³

On August 21, 2018, Cohen pleaded guilty in the Southern District of New York to eight felony charges, including two counts of campaign-finance violations based on the payments he had made during the final weeks of the campaign to women who said they had affairs with the President.¹⁰⁴⁴ During the plea hearing, Cohen stated that he had worked "at the direction of" the candidate in making those payments.¹⁰⁴⁵ The next day, the President contrasted Cohen's cooperation with Manafort's refusal to cooperate, tweeting, "I feel very badly for Paul Manafort and his wonderful family. 'Justice' took a 12 year old tax case, among other things, applied tremendous pressure on him and, unlike Michael Cohen, he refused to 'break'—make up stories in order to get a 'deal.' Such respect for a brave man!"¹⁰⁴⁶

On September 17, 2018, this Office submitted written questions to the President that included questions about the Trump Tower Moscow project and attached Cohen's written statement to Congress and the Letter of Intent signed by the President.¹⁰⁴⁷ Among other issues, the questions asked the President to describe the timing and substance of discussions he had with Cohen about the project, whether they discussed a potential trip to Russia, and whether the President "at any time direct[ed] or suggest[ed] that discussions about the Trump Moscow project should cease," or whether the President was "informed at any time that the project had been abandoned."¹⁰⁴⁸

On November 20, 2018, the President submitted written responses that did not answer those questions about Trump Tower Moscow directly and did not provide any information about the timing of the candidate's discussions with Cohen about the project or whether he participated in any discussions about the project being abandoned or no longer pursued.¹⁰⁴⁹ Instead, the President's answers stated in relevant part:

I had few conversations with Mr. Cohen on this subject. As I recall, they were brief, and they were not memorable. I was not enthused about the proposal, and I do not recall any discussion of travel to Russia in connection with it. I do not remember discussing it with

¹⁰⁴³ @realDonaldTrump 7/27/18 (7:26 a.m. ET) Tweet; @realDonaldTrump 7/27/18 (7:38 a.m. ET) Tweet; @realDonaldTrump 7/27/18 (7:56 a.m. ET) Tweet. At the time of these tweets, the press had reported that Cohen's financial interests in taxi cab medallions were being scrutinized by investigators. See, e.g., Matt Apuzzo et al., *Michael Cohen Secretly Taped Trump Discussing Payment to Playboy Model*, New York Times (July 20, 2018).

¹⁰⁴⁴ Cohen Information.

¹⁰⁴⁵ Cohen 8/21/18 Transcript, at 23.

¹⁰⁴⁶ @realDonaldTrump 8/22/18 (9:21 a.m. ET) Tweet.

¹⁰⁴⁷ 9/17/18 Letter, Special Counsel's Office to President's Personal Counsel (attaching written questions for the President, with attachments).

¹⁰⁴⁸ 9/17/18 Letter, Special Counsel's Office to President's Personal Counsel (attaching written questions for the President), Question III, Parts (a) through (g).

¹⁰⁴⁹ Written Responses of Donald J. Trump (Nov. 20, 2018).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

anyone else at the Trump Organization, although it is possible. I do not recall being aware at the time of any communications between Mr. Cohen and Felix Sater and any Russian government official regarding the Letter of Intent.¹⁰⁵⁰

On November 29, 2018, Cohen pleaded guilty to making false statements to Congress based on his statements about the Trump Tower Moscow project.¹⁰⁵¹ In a plea agreement with this Office, Cohen agreed to “provide truthful information regarding any and all matters as to which this Office deems relevant.”¹⁰⁵² Later on November 29, after Cohen’s guilty plea had become public, the President spoke to reporters about the Trump Tower Moscow project, saying:

I decided not to do the project. . . . I decided ultimately not to do it. There would have been nothing wrong if I did do it. If I did do it, there would have been nothing wrong. That was my business. . . . It was an option that I decided not to do. . . . I decided not to do it. The primary reason . . . I was focused on running for President. . . . I was running my business while I was campaigning. There was a good chance that I wouldn’t have won, in which case I would’ve gone back into the business. And why should I lose lots of opportunities?¹⁰⁵³

The President also said that Cohen was “a weak person. And by being weak, unlike other people that you watch—he is a weak person. And what he’s trying to do is get a reduced sentence. So he’s lying about a project that everybody knew about.”¹⁰⁵⁴ The President also brought up Cohen’s written submission to Congress regarding the Trump Tower Moscow project: “So here’s the story: Go back and look at the paper that Michael Cohen wrote before he testified in the House and/or Senate. It talked about his position.”¹⁰⁵⁵ The President added, “Even if [Cohen] was right, it doesn’t matter because I was allowed to do whatever I wanted during the campaign.”¹⁰⁵⁶

In light of the President’s public statements following Cohen’s guilty plea that he “decided not to do the project,” this Office again sought information from the President about whether he participated in any discussions about the project being abandoned or no longer pursued, including when he “decided not to do the project,” who he spoke to about that decision, and what motivated

¹⁰⁵⁰ Written Responses of Donald J. Trump (Nov. 20, 2018), at 15 (Response to Question III, Parts (a) through (g)).

¹⁰⁵¹ Cohen Information; Cohen 8/21/18 Transcript.

¹⁰⁵² Plea Agreement at 4, *United States v. Michael Cohen*, 1:18-cr-850 (S.D.N.Y. Nov. 29, 2018).

¹⁰⁵³ *President Trump Departure Remarks*, C-SPAN (Nov. 29, 2018). In contrast to the President’s remarks following Cohen’s guilty plea, Cohen’s August 28, 2017 statement to Congress stated that Cohen, not the President, “decided to abandon the proposal” in late January 2016; that Cohen “did not ask or brief Mr. Trump . . . before I made the decision to terminate further work on the proposal”; and that the decision to abandon the proposal was “unrelated” to the Campaign. P-SCO-000009477 (Statement of Michael D. Cohen, Esq. (Aug. 28, 2017)).

¹⁰⁵⁴ *President Trump Departure Remarks*, C-SPAN (Nov. 29, 2018).

¹⁰⁵⁵ *President Trump Departure Remarks*, C-SPAN (Nov. 29, 2018).

¹⁰⁵⁶ *President Trump Departure Remarks*, C-SPAN (Nov. 29, 2018).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

the decision.¹⁰⁵⁷ The Office also again asked for the timing of the President's discussions with Cohen about Trump Tower Moscow and asked him to specify "what period of the campaign" he was involved in discussions concerning the project.¹⁰⁵⁸ In response, the President's personal counsel declined to provide additional information from the President and stated that "the President has fully answered the questions at issue."¹⁰⁵⁹

In the weeks following Cohen's plea and agreement to provide assistance to this Office, the President repeatedly implied that Cohen's family members were guilty of crimes. On December 3, 2018, after Cohen had filed his sentencing memorandum, the President tweeted, "Michael Cohen asks judge for no Prison Time. You mean he can do all of the TERRIBLE, unrelated to Trump, things having to do with fraud, big loans, Taxis, etc., and not serve a long prison term? He makes up stories to get a GREAT & ALREADY reduced deal for himself, and get his wife and father-in-law (who has the money?) off Scott Free. He lied for this outcome and should, in my opinion, serve a full and complete sentence."¹⁰⁶⁰ **Harm to Ongoing Matter**

1061

On December 12, 2018, Cohen was sentenced to three years of imprisonment.¹⁰⁶² The next day, the President sent a series of tweets that said:

I never directed Michael Cohen to break the law. . . . Those charges were just agreed to by him in order to embarrass the president and get a much reduced prison sentence, which he did—including the fact that *his family was temporarily let off the hook*. As a lawyer, Michael has great liability to me!¹⁰⁶³

On December 16, 2018, the President tweeted, "Remember, Michael Cohen only became a 'Rat' after the FBI did something which was absolutely unthinkable & unheard of until the Witch Hunt was illegally started. They BROKE INTO AN ATTORNEY'S OFFICE! Why didn't they break into the DNC to get the Server, or Crooked's office?"¹⁰⁶⁴

In January 2019, after the media reported that Cohen would provide public testimony in a congressional hearing, the President made additional public comments suggesting that Cohen's

¹⁰⁵⁷ 1/23/19 Letter, Special Counsel's Office to President's Personal Counsel.

¹⁰⁵⁸ 1/23/19 Letter, Special Counsel's Office to President's Personal Counsel.

¹⁰⁵⁹ 2/6/19 Letter, President's Personal Counsel to Special Counsel's Office.

¹⁰⁶⁰ @realDonaldTrump 12/3/18 (10:24 a.m. ET and 10:29 a.m. ET) Tweets (emphasis added).

¹⁰⁶¹ @realDonaldTrump 12/3/18 (10:48 a.m. ET) Tweet.

¹⁰⁶² *Cohen* 12/12/18 Transcript.

¹⁰⁶³ @realDonaldTrump 12/13/18 (8:17 a.m. ET, 8:25 a.m. ET, and 8:39 a.m. ET) Tweets (emphasis added).

¹⁰⁶⁴ @realDonaldTrump 12/16/18 (9:39 a.m. ET) Tweet.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

family members had committed crimes. In an interview on Fox on January 12, 2019, the President was asked whether he was worried about Cohen's testimony and responded:

[I]n order to get his sentence reduced, [Cohen] says "I have an idea, I'll ah, tell—I'll give you some information on the president." Well, there is no information. But *he should give information maybe on his father-in-law because that's the one that people want to look at because where does that money—that's the money in the family. And I guess he didn't want to talk about his father-in-law*, he's trying to get his sentence reduced. So it's ah, pretty sad. You know, it's weak and it's very sad to watch a thing like that.¹⁰⁶⁵

On January 18, 2019, the President tweeted, "Kevin Corke, @FoxNews 'Don't forget, Michael Cohen has already been convicted of perjury and fraud, and as recently as this week, the Wall Street Journal has suggested that he may have stolen tens of thousands of dollars. . . . Lying to reduce his jail time! *Watch father-in-law!*"¹⁰⁶⁶

On January 23, 2019, Cohen postponed his congressional testimony, citing threats against his family.¹⁰⁶⁷ The next day, the President tweeted, "So interesting that bad lawyer Michael Cohen, who sadly will not be testifying before Congress, is using the lawyer of Crooked Hillary Clinton to represent him—Gee, how did that happen?"¹⁰⁶⁸

Also in January 2019, Giuliani gave press interviews that appeared to confirm Cohen's account that the Trump Organization pursued the Trump Tower Moscow project well past January 2016. Giuliani stated that "it's our understanding that [discussions about the Trump Moscow project] went on throughout 2016. Weren't a lot of them, but there were conversations. Can't be sure of the exact date. But the president can remember having conversations with him about it. . . . The president also remembers—yeah, probably up—could be up to as far as October, November."¹⁰⁶⁹ In an interview with the New York Times, Giuliani quoted the President as saying that the discussions regarding the Trump Moscow project were "going on from the day I announced to the day I won."¹⁰⁷⁰ On January 21, 2019, Giuliani issued a statement that said: "My recent statements about discussions during the 2016 campaign between Michael Cohen and candidate Donald Trump about a potential Trump Moscow 'project' were hypothetical and not based on conversations I had with the president."¹⁰⁷¹

¹⁰⁶⁵ *Jeanine Pirro Interview with President Trump*, Fox News (Jan. 12, 2019) (emphasis added).

¹⁰⁶⁶ @realDonaldTrump 1/18/19 (10:02 a.m. ET) Tweet (emphasis added).

¹⁰⁶⁷ Statement by Lanny Davis, Cohen's personal counsel (Jan. 23, 2019).

¹⁰⁶⁸ @realDonaldTrump 1/24/19 (7:48 a.m. ET) Tweet.

¹⁰⁶⁹ Meet the Press Interview with Rudy Giuliani, NBC (Jan. 20, 2019).

¹⁰⁷⁰ Mark Mazzetti et al., *Moscow Skyscraper Talks Continued Through "the Day I Won," Trump Is Said to Acknowledge*, New York Times (Jan. 20, 2019).

¹⁰⁷¹ Maggie Haberman, *Giuliani Says His Moscow Trump Tower Comments Were "Hypothetical"*, New York Times (Jan. 21, 2019). In a letter to this Office, the President's counsel stated that Giuliani's public comments "were not intended to suggest nor did they reflect knowledge of the existence or timing

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Analysis

In analyzing the President's conduct related to Cohen, the following evidence is relevant to the elements of obstruction of justice.

a. Obstructive act. We gathered evidence of the President's conduct related to Cohen on two issues: (i) whether the President or others aided or participated in Cohen's false statements to Congress, and (ii) whether the President took actions that would have the natural tendency to prevent Cohen from providing truthful information to the government.

i. First, with regard to Cohen's false statements to Congress, while there is evidence, described below, that the President knew Cohen provided false testimony to Congress about the Trump Tower Moscow project, the evidence available to us does not establish that the President directed or aided Cohen's false testimony.

Cohen said that his statements to Congress followed a "party line" that developed within the campaign to align with the President's public statements distancing the President from Russia. Cohen also recalled that, in speaking with the President in advance of testifying, he made it clear that he would stay on message—which Cohen believed they both understood would require false testimony. But Cohen said that he and the President did not explicitly discuss whether Cohen's testimony about the Trump Tower Moscow project would be or was false, and the President did not direct him to provide false testimony. Cohen also said he did not tell the President about the specifics of his planned testimony. During the time when his statement to Congress was being drafted and circulated to members of the JDA, Cohen did not speak directly to the President about the statement, but rather communicated with the President's personal counsel—as corroborated by phone records showing extensive communications between Cohen and the President's personal counsel before Cohen submitted his statement and when he testified before Congress.

Cohen recalled that in his discussions with the President's personal counsel on August 27, 2017—the day before Cohen's statement was submitted to Congress—Cohen said that there were more communications with Russia and more communications with candidate Trump than the statement reflected. Cohen recalled expressing some concern at that time. According to Cohen, the President's personal counsel—who did not have first-hand knowledge of the project—responded by saying that there was no need to muddy the water, that it was unnecessary to include those details because the project did not take place, and that Cohen should keep his statement short and tight, not elaborate, stay on message, and not contradict the President. Cohen's recollection of the content of those conversations is consistent with direction about the substance of Cohen's draft statement that appeared to come from members of the JDA. For example, Cohen omitted any reference to his outreach to Russian government officials to set up a meeting between Trump and Putin during the United Nations General Assembly, and Cohen believed it was a decision of

of conversations beyond that contained in the President's [written responses to the Special Counsel's Office].” 2/6/19 Letter, President's Personal Counsel to Special Counsel's Office.

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

the JDA to delete the sentence, "The building project led me to make limited contacts with Russian government officials."

The President's personal counsel declined to provide us with his account of his conversations with Cohen, and there is no evidence available to us that indicates that the President was aware of the information Cohen provided to the President's personal counsel. The President's conversations with his personal counsel were presumptively protected by attorney-client privilege, and we did not seek to obtain the contents of any such communications. The absence of evidence about the President and his counsel's conversations about the drafting of Cohen's statement precludes us from assessing what, if any, role the President played.

ii. Second, we considered whether the President took actions that would have the natural tendency to prevent Cohen from providing truthful information to criminal investigators or to Congress.

Before Cohen began to cooperate with the government, the President publicly and privately urged Cohen to stay on message and not "flip." Cohen recalled the President's personal counsel telling him that he would be protected so long as he did not go "rogue." In the days and weeks that followed the April 2018 searches of Cohen's home and office, the President told reporters that Cohen was a "good man" and said he was "a fine person with a wonderful family . . . who I have always liked & respected." Privately, the President told Cohen to "hang in there" and "stay strong." People who were close to both Cohen and the President passed messages to Cohen that "the President loves you," "the boss loves you," and "everyone knows the boss has your back." Through the President's personal counsel, the President also had previously told Cohen "thanks for what you do" after Cohen provided information to the media about payments to women that, according to Cohen, both Cohen and the President knew was false. At that time, the Trump Organization continued to pay Cohen's legal fees, which was important to Cohen. Cohen also recalled discussing the possibility of a pardon with the President's personal counsel, who told him to stay on message and everything would be fine. The President indicated in his public statements that a pardon had not been ruled out, and also stated publicly that "[m]ost people will flip if the Government lets them out of trouble" but that he "d[idn't] see Michael doing that."

After it was reported that Cohen intended to cooperate with the government, however, the President accused Cohen of "mak[ing] up stories in order to get himself out of an unrelated jam (Taxi cabs maybe?)," called Cohen a "rat," and on multiple occasions publicly suggested that Cohen's family members had committed crimes. The evidence concerning this sequence of events could support an inference that the President used inducements in the form of positive messages in an effort to get Cohen not to cooperate, and then turned to attacks and intimidation to deter the provision of information or undermine Cohen's credibility once Cohen began cooperating.

b. Nexus to an official proceeding. The President's relevant conduct towards Cohen occurred when the President knew the Special Counsel's Office, Congress, and the U.S. Attorney's Office for the Southern District of New York were investigating Cohen's conduct. The President acknowledged through his public statements and tweets that Cohen potentially could cooperate with the government investigations.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

c. **Intent.** In analyzing the President's intent in his actions towards Cohen as a potential witness, there is evidence that could support the inference that the President intended to discourage Cohen from cooperating with the government because Cohen's information would shed adverse light on the President's campaign-period conduct and statements.

i. Cohen's false congressional testimony about the Trump Tower Moscow project was designed to minimize connections between the President and Russia and to help limit the congressional and DOJ Russia investigations—a goal that was in the President's interest, as reflected by the President's own statements. During and after the campaign, the President made repeated statements that he had “no business” in Russia and said that there were “no deals that could happen in Russia, because we've stayed away.” As Cohen knew, and as he recalled communicating to the President during the campaign, Cohen's pursuit of the Trump Tower Moscow project cast doubt on the accuracy or completeness of these statements.

In connection with his guilty plea, Cohen admitted that he had multiple conversations with candidate Trump to give him status updates about the Trump Tower Moscow project, that the conversations continued through at least June 2016, and that he discussed with Trump possible travel to Russia to pursue the project. The conversations were not off-hand, according to Cohen, because the project had the potential to be so lucrative. In addition, text messages to and from Cohen and other records further establish that Cohen's efforts to advance the project did not end in January 2016 and that in May and June 2016, Cohen was considering the timing for possible trips to Russia by him and Trump in connection with the project.

The evidence could support an inference that the President was aware of these facts at the time of Cohen's false statements to Congress. Cohen discussed the project with the President in early 2017 following media inquiries. Cohen recalled that on September 20, 2017, the day after he released to the public his opening remarks to Congress—which said the project “was terminated in January of 2016”—the President's personal counsel told him the President was pleased with what Cohen had said about Trump Tower Moscow. And after Cohen's guilty plea, the President told reporters that he had ultimately decided not to do the project, which supports the inference that he remained aware of his own involvement in the project and the period during the Campaign in which the project was being pursued.

ii. The President's public remarks following Cohen's guilty plea also suggest that the President may have been concerned about what Cohen told investigators about the Trump Tower Moscow project. At the time the President submitted written answers to questions from this Office about the project and other subjects, the media had reported that Cohen was cooperating with the government but Cohen had not yet pleaded guilty to making false statements to Congress. Accordingly, it was not publicly known what information about the project Cohen had provided to the government. In his written answers, the President did not provide details about the timing and substance of his discussions with Cohen about the project and gave no indication that he had decided to no longer pursue the project. Yet after Cohen pleaded guilty, the President publicly stated that he had personally made the decision to abandon the project. The President then declined to clarify the seeming discrepancy to our Office or answer additional questions. The content and timing of the President's provision of information about his knowledge and actions regarding the Trump Tower Moscow project is evidence that the President may have been concerned about the information that Cohen could provide as a witness.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

iii. The President's concern about Cohen cooperating may have been directed at the Southern District of New York investigation into other aspects of the President's dealings with Cohen rather than an investigation of Trump Tower Moscow. There also is some evidence that the President's concern about Cohen cooperating was based on the President's stated belief that Cohen would provide false testimony against the President in an attempt to obtain a lesser sentence for his unrelated criminal conduct. The President tweeted that Manafort, unlike Cohen, refused to "break" and "make up stories in order to get a 'deal.'" And after Cohen pleaded guilty to making false statements to Congress, the President said, "what [Cohen]'s trying to do is get a reduced sentence. So he's lying about a project that everybody knew about." But the President also appeared to defend the underlying conduct, saying, "Even if [Cohen] was right, it doesn't matter because I was allowed to do whatever I wanted during the campaign." As described above, there is evidence that the President knew that Cohen had made false statements about the Trump Tower Moscow project and that Cohen did so to protect the President and minimize the President's connections to Russia during the campaign.

iv. Finally, the President's statements insinuating that members of Cohen's family committed crimes after Cohen began cooperating with the government could be viewed as an effort to retaliate against Cohen and chill further testimony adverse to the President by Cohen or others. It is possible that the President believes, as reflected in his tweets, that Cohen "ma[d]e[] up stories" in order to get a deal for himself and "get his wife and father-in-law . . . off Scott Free." It also is possible that the President's mention of Cohen's wife and father-in-law were not intended to affect Cohen as a witness but rather were part of a public-relations strategy aimed at discrediting Cohen and deflecting attention away from the President on Cohen-related matters. But the President's suggestion that Cohen's family members committed crimes happened more than once, including just before Cohen was sentenced (at the same time as the President stated that Cohen "should, in my opinion, serve a full and complete sentence") and again just before Cohen was scheduled to testify before Congress. The timing of the statements supports an inference that they were intended at least in part to discourage Cohen from further cooperation.

L. Overarching Factual Issues

Although this report does not contain a traditional prosecution decision or declination decision, the evidence supports several general conclusions relevant to analysis of the facts concerning the President's course of conduct.

1. Three features of this case render it atypical compared to the heartland obstruction-of-justice prosecutions brought by the Department of Justice.

First, the conduct involved actions by the President. Some of the conduct did not implicate the President's constitutional authority and raises garden-variety obstruction-of-justice issues. Other events we investigated, however, drew upon the President's Article II authority, which raised constitutional issues that we address in Volume II, Section III.B, *infra*. A factual analysis of that conduct would have to take into account both that the President's acts were facially lawful and that his position as head of the Executive Branch provides him with unique and powerful means of influencing official proceedings, subordinate officers, and potential witnesses.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Second, many obstruction cases involve the attempted or actual cover-up of an underlying crime. Personal criminal conduct can furnish strong evidence that the individual had an improper obstructive purpose, *see, e.g., United States v. Willoughby*, 860 F.2d 15, 24 (2d Cir. 1988), or that he contemplated an effect on an official proceeding, *see, e.g., United States v. Bindow*, 804 F.3d 558, 591 (2d Cir. 2015). But proof of such a crime is not an element of an obstruction offense. *See United States v. Greer*, 872 F.3d 790, 798 (6th Cir. 2017) (stating, in applying the obstruction sentencing guideline, that “obstruction of a criminal investigation is punishable even if the prosecution is ultimately unsuccessful or even if the investigation ultimately reveals no underlying crime”). Obstruction of justice can be motivated by a desire to protect non-criminal personal interests, to protect against investigations where underlying criminal liability falls into a gray area, or to avoid personal embarrassment. The injury to the integrity of the justice system is the same regardless of whether a person committed an underlying wrong.

In this investigation, the evidence does not establish that the President was involved in an underlying crime related to Russian election interference. But the evidence does point to a range of other possible personal motives animating the President’s conduct. These include concerns that continued investigation would call into question the legitimacy of his election and potential uncertainty about whether certain events—such as advance notice of WikiLeaks’s release of hacked information or the June 9, 2016 meeting between senior campaign officials and Russians—could be seen as criminal activity by the President, his campaign, or his family.

Third, many of the President’s acts directed at witnesses, including discouragement of cooperation with the government and suggestions of possible future pardons, occurred in public view. While it may be more difficult to establish that public-facing acts were motivated by a corrupt intent, the President’s power to influence actions, persons, and events is enhanced by his unique ability to attract attention through use of mass communications. And no principle of law excludes public acts from the scope of obstruction statutes. If the likely effect of the acts is to intimidate witnesses or alter their testimony, the justice system’s integrity is equally threatened.

2. Although the events we investigated involved discrete acts—*e.g.*, the President’s statement to Comey about the Flynn investigation, his termination of Comey, and his efforts to remove the Special Counsel—it is important to view the President’s pattern of conduct as a whole. That pattern sheds light on the nature of the President’s acts and the inferences that can be drawn about his intent.

a. Our investigation found multiple acts by the President that were capable of exerting undue influence over law enforcement investigations, including the Russian-interference and obstruction investigations. The incidents were often carried out through one-on-one meetings in which the President sought to use his official power outside of usual channels. These actions ranged from efforts to remove the Special Counsel and to reverse the effect of the Attorney General’s recusal; to the attempted use of official power to limit the scope of the investigation; to direct and indirect contacts with witnesses with the potential to influence their testimony. Viewing the acts collectively can help to illuminate their significance. For example, the President’s direction to McGahn to have the Special Counsel removed was followed almost immediately by his direction to Lewandowski to tell the Attorney General to limit the scope of the Russia investigation to prospective election-interference only—a temporal connection that suggests that both acts were taken with a related purpose with respect to the investigation.

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

The President's efforts to influence the investigation were mostly unsuccessful, but that is largely because the persons who surrounded the President declined to carry out orders or accede to his requests. Comey did not end the investigation of Flynn, which ultimately resulted in Flynn's prosecution and conviction for lying to the FBI. McGahn did not tell the Acting Attorney General that the Special Counsel must be removed, but was instead prepared to resign over the President's order. Lewandowski and Dearborn did not deliver the President's message to Sessions that he should confine the Russia investigation to future election meddling only. And McGahn refused to recede from his recollections about events surrounding the President's direction to have the Special Counsel removed, despite the President's multiple demands that he do so. Consistent with that pattern, the evidence we obtained would not support potential obstruction charges against the President's aides and associates beyond those already filed.

b. In considering the full scope of the conduct we investigated, the President's actions can be divided into two distinct phases reflecting a possible shift in the President's motives. In the first phase, before the President fired Comey, the President had been assured that the FBI had not opened an investigation of him personally. The President deemed it critically important to make public that he was not under investigation, and he included that information in his termination letter to Comey after other efforts to have that information disclosed were unsuccessful.

Soon after he fired Comey, however, the President became aware that investigators were conducting an obstruction-of-justice inquiry into his own conduct. That awareness marked a significant change in the President's conduct and the start of a second phase of action. The President launched public attacks on the investigation and individuals involved in it who could possess evidence adverse to the President, while in private, the President engaged in a series of targeted efforts to control the investigation. For instance, the President attempted to remove the Special Counsel; he sought to have Attorney General Sessions unrecuse himself and limit the investigation; he sought to prevent public disclosure of information about the June 9, 2016 meeting between Russians and campaign officials; and he used public forums to attack potential witnesses who might offer adverse information and to praise witnesses who declined to cooperate with the government. Judgments about the nature of the President's motives during each phase would be informed by the totality of the evidence.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

III. LEGAL DEFENSES TO THE APPLICATION OF OBSTRUCTION-OF-JUSTICE STATUTES TO THE PRESIDENT

The President's personal counsel has written to this Office to advance statutory and constitutional defenses to the potential application of the obstruction-of-justice statutes to the President's conduct.¹⁰⁷² As a statutory matter, the President's counsel has argued that a core obstruction-of-justice statute, 18 U.S.C. § 1512(c)(2), does not cover the President's actions.¹⁰⁷³ As a constitutional matter, the President's counsel argued that the President cannot obstruct justice by exercising his constitutional authority to close Department of Justice investigations or terminate the FBI Director.¹⁰⁷⁴ Under that view, any statute that restricts the President's exercise of those powers would impermissibly intrude on the President's constitutional role. The President's counsel has conceded that the President may be subject to criminal laws that do not directly involve exercises of his Article II authority, such as laws prohibiting bribing witnesses or suborning perjury.¹⁰⁷⁵ But counsel has made a categorical argument that "the President's exercise of his constitutional authority here to terminate an FBI Director and to close investigations cannot constitutionally constitute obstruction of justice."¹⁰⁷⁶

In analyzing counsel's statutory arguments, we concluded that the President's proposed interpretation of Section 1512(c)(2) is contrary to the litigating position of the Department of Justice and is not supported by principles of statutory construction.

As for the constitutional arguments, we recognized that the Department of Justice and the courts have not definitively resolved these constitutional issues. We therefore analyzed the President's position through the framework of Supreme Court precedent addressing the separation of powers. Under that framework, we concluded, Article II of the Constitution does not categorically and permanently immunize the President from potential liability for the conduct that we investigated. Rather, our analysis led us to conclude that the obstruction-of-justice statutes can

¹⁰⁷² 6/23/17 Letter, President's Personal Counsel to Special Counsel's Office; *see also* 1/29/18 Letter, President's Personal Counsel to Special Counsel's Office; 2/6/18 Letter, President's Personal Counsel to Special Counsel's Office; 8/8/18 Letter, President's Personal Counsel to Special Counsel's Office, at 4.

¹⁰⁷³ 2/6/18 Letter, President's Personal Counsel to Special Counsel's Office, at 2-9. Counsel has also noted that other potentially applicable obstruction statutes, such as 18 U.S.C. § 1505, protect only pending proceedings. 6/23/17 Letter, President's Personal Counsel to Special Counsel's Office, at 7-8. Section 1512(c)(2) is not limited to pending proceedings, but also applies to future proceedings that the person contemplated. *See* Volume II, Section III.A, *supra*.

¹⁰⁷⁴ 6/23/17 Letter, President's Personal Counsel to Special Counsel's Office, at 1 ("[T]he President cannot obstruct . . . by simply exercising these inherent Constitutional powers.").

¹⁰⁷⁵ 6/23/17 Letter, President's Personal Counsel to Special Counsel's Office, at 2 n. 1.

¹⁰⁷⁶ 6/23/17 Letter, President's Personal Counsel to Special Counsel's Office, at 2 n.1 (dashes omitted); *see also* 8/8/18 Letter, President's Personal Counsel to Special Counsel's Office, at 4 ("[T]he obstruction-of-justice statutes cannot be read so expansively as to create potential liability based on facially lawful acts undertaken by the President in furtherance of his core Article II discretionary authority to remove principal officers or carry out the prosecution function.").

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

validly prohibit a President's corrupt efforts to use his official powers to curtail, end, or interfere with an investigation.

A. Statutory Defenses to the Application of Obstruction-Of-Justice Provisions to the Conduct Under Investigation

The obstruction-of-justice statute most readily applicable to our investigation is 18 U.S.C. § 1512(c)(2). Section 1512(c) provides:

(c) Whoever corruptly—

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

The Department of Justice has taken the position that Section 1512(c)(2) states a broad, independent, and unqualified prohibition on obstruction of justice.¹⁰⁷⁷ While defendants have argued that subsection (c)(2) should be read to cover only acts that would impair the availability or integrity of evidence because that is subsection (c)(1)'s focus, strong arguments weigh against that proposed limitation. The text of Section 1512(c)(2) confirms that its sweep is not tethered to Section 1512(c)(1); courts have so interpreted it; its history does not counsel otherwise; and no principle of statutory construction dictates a contrary view. On its face, therefore, Section 1512(c)(2) applies to all corrupt means of obstructing a proceeding, pending or contemplated—including by improper exercises of official power. In addition, other statutory provisions that are potentially applicable to certain conduct we investigated broadly prohibit obstruction of proceedings that are pending before courts, grand juries, and Congress. See 18 U.S.C. §§ 1503, 1505. Congress has also specifically prohibited witness tampering. See 18 U.S.C. § 1512(b).

1. The Text of Section 1512(c)(2) Prohibits a Broad Range of Obstructive Acts

Several textual features of Section 1512(c)(2) support the conclusion that the provision broadly prohibits corrupt means of obstructing justice and is not limited by the more specific prohibitions in Section 1512(c)(1), which focus on evidence impairment.

First, the text of Section 1512(c)(2) is unqualified: it reaches acts that “obstruct[], influence[], or impede[] any official proceeding” when committed “corruptly.” Nothing in Section 1512(c)(2)'s text limits the provision to acts that would impair the integrity or availability of evidence for use in an official proceeding. In contrast, Section 1512(c)(1) explicitly includes the requirement that the defendant act “with the intent to impair the object's integrity or availability

¹⁰⁷⁷ See U.S. Br., *United States v. Kumar*, Nos. 06–5482–cr(L), 06–5654–cr(CON) (2d Cir. filed Oct. 26, 2007), at pp. 15–28; *United States v. Singleton*, Nos. H-04-CR-514SS, H-06-cr-80 (S.D. Tex. filed June 5, 2006).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

for use in an official proceeding,” a requirement that Congress also included in two other sections of Section 1512. See 18 U.S.C. §§ 1512(a)(2)(B)(ii) (use of physical force with intent to cause a person to destroy an object “with intent to impair the integrity or availability of the object for use in an official proceeding”); 1512(b)(2)(B) (use of intimidation, threats, corrupt persuasion, or misleading conduct with intent to cause a person to destroy an object “with intent to impair the integrity or availability of the object for use in an official proceeding”). But no comparable intent or conduct element focused on evidence impairment appears in Section 1512(c)(2). The intent element in Section 1512(c)(2) comes from the word “corruptly.” See, e.g., *United States v. McKibbins*, 656 F.3d 707, 711 (7th Cir. 2011) (“The intent element is important because the word ‘corruptly’ is what serves to separate criminal and innocent acts of obstruction.”) (internal quotation marks omitted). And the conduct element in Section 1512(c)(2) is “obstruct[ing], influenc[ing], or imped[ing]” a proceeding. Congress is presumed to have acted intentionally in the disparate inclusion and exclusion of evidence-impairment language. See *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (“[W]hen ‘Congress includes particular language in one section of a statute but omits it in another’—let alone in the very next provision—this Court ‘presume[s]’ that Congress intended a difference in meaning”) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)); accord *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767, 777 (2018).

Second, the structure of Section 1512 supports the conclusion that Section 1512(c)(2) defines an independent offense. Section 1512(c)(2) delineates a complete crime with different elements from Section 1512(c)(1)—and each subsection of Section 1512(c) contains its own “attempt” prohibition, underscoring that they are independent prohibitions. The two subsections of Section 1512(c) are connected by the conjunction “or,” indicating that each provides an alternative basis for criminal liability. See *Loughrin*, 573 U.S. at 357 (“ordinary use [of ‘or’] is almost always disjunctive, that is, the words it connects are to be given separate meanings”) (internal quotation marks omitted). In *Loughrin*, for example, the Supreme Court relied on the use of the word “or” to hold that adjacent and overlapping subsections of the bank fraud statute, 18 U.S.C. § 1344, state distinct offenses and that subsection 1344(2) therefore should not be interpreted to contain an additional element specified only in subsection 1344(1). *Id.*; see also *Shaw v. United States*, 137 S. Ct. 462, 465-469 (2016) (recognizing that the subsections of the bank fraud statute “overlap substantially” but identifying distinct circumstances covered by each).¹⁰⁷⁸ And here, as in *Loughrin*, Section 1512(c)’s “two clauses have separate numbers, line breaks before, between, and after them, and equivalent indentation—thus placing the clauses visually on an equal footing and indicating that they have separate meanings.” 573 U.S. at 359.

Third, the introductory word “otherwise” in Section 1512(c)(2) signals that the provision covers obstructive acts that are different from those listed in Section 1512(c)(1). See *Black’s Law Dictionary* 1101 (6th ed. 1990) (“otherwise” means “in a different manner; in another way, or in other ways”); see also, e.g., *American Heritage College Dictionary Online* (“1. In another way;

¹⁰⁷⁸ The Office of Legal Counsel recently relied on several of the same interpretive principles in concluding that language that appeared in the first clause of the Wire Act, 18 U.S.C. § 1084, restricting its prohibition against certain betting or wagering activities to “any sporting event or contest,” did not apply to the second clause of the same statute, which reaches other betting or wagering activities. See *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling* (Nov. 2, 2018), slip op. 7 (relying on plain language); *id.* at 11 (finding it not “tenable to read into the second clause the qualifier ‘on any sporting event or contest’ that appears in the first clause”); *id.* at 12 (relying on *Digital Realty*).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

differently; 2. Under other circumstances”); *see also Gooch v. United States*, 297 U.S. 124, 128 (1936) (characterizing “otherwise” as a “broad term” and holding that a statutory prohibition on kidnapping “for ransom or reward or otherwise” is not limited by the words “ransom” and “reward” to kidnappings for pecuniary benefits); *Collazos v. United States*, 368 F.3d 190, 200 (2d Cir. 2004) (construing “otherwise” in 28 U.S.C. § 2466(1)(C) to reach beyond the “specific examples” listed in prior subsections, thereby covering the “myriad means that human ingenuity might devise to permit a person to avoid the jurisdiction of a court”); *cf. Begay v. United States*, 553 U.S. 137, 144 (2006) (recognizing that “otherwise” is defined to mean “in a different way or manner,” and holding that the word “otherwise” introducing the residual clause in the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii), can, but need not necessarily, “refer to a crime that is similar to the listed examples in some respects but different in others”).¹⁰⁷⁹ The purpose of the word “otherwise” in Section 1512(c)(2) is therefore to clarify that the provision covers obstructive acts *other* than the destruction of physical evidence with the intent to impair its integrity or availability, which is the conduct addressed in Section 1512(c)(1). The word “otherwise” does not signal that Section 1512(c)(2) has less breadth in covering obstructive conduct than the language of the provision implies.

2. Judicial Decisions Support a Broad Reading of Section 1512(c)(2)

Courts have not limited Section 1512(c)(2) to conduct that impairs evidence, but instead have read it to cover obstructive acts in any form.

As one court explained, “[t]his expansive subsection operates as a catch-all to cover ‘otherwise’ obstructive behavior that might not constitute a more specific offense like document destruction, which is listed in (c)(1).” *United States v. Volpendesto*, 746 F.3d 273, 286 (7th Cir. 2014) (some quotation marks omitted). For example, in *United States v. Ring*, 628 F. Supp. 2d 195 (D.D.C. 2009), the court rejected the argument that “§ 1512(c)(2)’s reference to conduct that ‘otherwise obstructs, influences, or impedes any official proceeding’ is limited to conduct that is similar to the type of conduct proscribed by subsection (c)(1)—namely, conduct that impairs the integrity or availability of ‘record[s], documents[s], or other object[s] for use in an official proceeding.” *Id.* at 224. The court explained that “the meaning of § 1512(c)(2) is plain on its face.” *Id.* (alternations in original). And courts have upheld convictions under Section 1512(c)(2) that did not involve evidence impairment, but instead resulted from conduct that more broadly thwarted arrests or investigations. *See, e.g., United States v. Martinez*, 862 F.3d 223, 238 (2d Cir. 2017) (police officer tipped off suspects about issuance of arrest warrants before “outstanding warrants could be executed, thereby potentially interfering with an ongoing grand jury proceeding”); *United States v. Ahrensfield*, 698 F.3d 1310, 1324-1326 (10th Cir. 2012) (officer disclosed existence of an undercover investigation to its target); *United States v. Phillips*, 583 F.3d 1261, 1265 (10th Cir. 2009) (defendant disclosed identity of an undercover officer thus preventing him from making controlled purchases from methamphetamine dealers). Those cases illustrate that Section 1512(c)(2) applies to corrupt acts—including by public officials—that frustrate the

¹⁰⁷⁹ In *Sykes v. United States*, 564 U.S. 1, 15 (2011), the Supreme Court substantially abandoned *Begay*’s reading of the residual clause, and in *Johnson v. United States*, 135 S. Ct. 2551 (2015), the Court invalidated the residual clause as unconstitutionally vague. *Begay*’s analysis of the word “otherwise” is thus of limited value.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

commencement or conduct of a proceeding, and not just to acts that make evidence unavailable or impair its integrity.

Section 1512(c)(2)'s breadth is reinforced by the similarity of its language to the omnibus clause of 18 U.S.C. § 1503, which covers anyone who "corruptly . . . obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice." That clause of Section 1503 follows two more specific clauses that protect jurors, judges, and court officers. The omnibus clause has nevertheless been construed to be "far more general in scope than the earlier clauses of the statute." *United States v. Aguilar*, 515 U.S. 593, 599 (1995). "The omnibus clause is essentially a catch-all provision which generally prohibits conduct that interferes with the due administration of justice." *United States v. Brenson*, 104 F.3d 1267, 1275 (11th Cir. 1997). Courts have accordingly given it a "non-restrictive reading." *United States v. Kumar*, 617 F.3d 612, 620 (2d Cir. 2010); *id.* at 620 n.7 (collecting cases from the Third, Fourth, Sixth, Seventh, and Eleventh Circuits). As one court has explained, the omnibus clause "prohibits acts that are similar in result, rather than manner, to the conduct described in the first part of the statute." *United States v. Howard*, 569 F.2d 1331, 1333 (5th Cir. 1978). While the specific clauses "forbid certain means of obstructing justice . . . the omnibus clause aims at obstruction of justice itself, regardless of the means used to reach that result." *Id.* (collecting cases). Given the similarity of Section 1512(c)(2) to Section 1503's omnibus clause, Congress would have expected Section 1512(c)(2) to cover acts that produced a similar result to the evidence-impairment provisions—*i.e.*, the result of obstructing justice—rather than covering only acts that were similar in manner. Read this way, Section 1512(c)(2) serves a distinct function in the federal obstruction-of-justice statutes: it captures corrupt conduct, other than document destruction, that has the natural tendency to obstruct contemplated as well as pending proceedings.

Section 1512(c)(2) overlaps with other obstruction statutes, but it does not render them superfluous. Section 1503, for example, which covers pending grand jury and judicial proceedings, and Section 1505, which covers pending administrative and congressional proceedings, reach "endeavors to influence, obstruct, or impede" the proceedings—a broader test for inchoate violations than Section 1512(c)(2)'s "attempt" standard, which requires a substantial step towards a completed offense. *See United States v. Sampson*, 898 F.3d 287, 302 (2d Cir. 2018) ("[E]fforts to witness tamper that rise to the level of an 'endeavor' yet fall short of an 'attempt' cannot be prosecuted under § 1512."); *United States v. Leisure*, 844 F.2d 1347, 1366-1367 (8th Cir. 1988) (collecting cases recognizing the difference between the "endeavor" and "attempt" standards). And 18 U.S.C. § 1519, which prohibits destruction of documents or records in contemplation of an investigation or proceeding, does not require the "nexus" showing under *Aguilar*, which Section 1512(c)(2) demands. *See, e.g., United States v. Yielding*, 657 F.3d 688, 712 (8th Cir. 2011) ("The requisite knowledge and intent [under Section 1519] can be present even if the accused lacks knowledge that he is likely to succeed in obstructing the matter."); *United States v. Gray*, 642 F.3d 371, 376-377 (2d Cir. 2011) ("[I]n enacting § 1519, Congress rejected any requirement that the government prove a link between a defendant's conduct and an imminent or pending official proceeding."). The existence of even "substantial" overlap is not "uncommon" in criminal statutes. *Loughrin*, 573 U.S. at 359 n.4; *see Shaw*, 137 S. Ct. at 458-469; *Aguilar*, 515 U.S. at 616 (Scalia, J., dissenting) ("The fact that there is now some overlap between § 1503 and § 1512 is no more intolerable than the fact that there is some overlap between the omnibus clause of § 1503 and the other provisions of § 1503 itself."). But given that Sections 1503, 1505, and

U.S. Department of Justice

~~Attorney-Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

1519 each reach conduct that Section 1512(c)(2) does not, the overlap provides no reason to give Section 1512(c)(2) an artificially limited construction. See *Shaw*, 137 S. Ct. at 469.¹⁰⁸⁰

3. The Legislative History of Section 1512(c)(2) Does Not Justify Narrowing Its Text

“Given the straightforward statutory command” in Section 1512(c)(2), “there is no reason to resort to legislative history.” *United States v. Gonzales*, 520 U.S. 1, 6 (1997). In any event, the legislative history of Section 1512(c)(2) is not a reason to impose extratextual limitations on its reach.

Congress enacted Section 1512(c)(2) as part the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, Tit. XI, § 1102, 116 Stat. 807. The relevant section of the statute was entitled “Tampering with a Record or Otherwise Impeding an Official Proceeding.” 116 Stat. 807 (emphasis added). That title indicates that Congress intended the two clauses to have independent effect. Section 1512(c) was added as a floor amendment in the Senate and explained as closing a certain “loophole” with respect to “document shredding.” See 148 Cong. Rec. S6545 (July 10, 2002) (Sen. Lott); *id.* at S6549-S6550 (Sen. Hatch). But those explanations do not limit the enacted text. See *Pittston Coal Group v. Sebben*, 488 U.S. 105, 115 (1988) (“[I]t is not the law that a statute can have no effects which are not explicitly mentioned in its legislative history.”); see also *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1143 (2018) (“Even if Congress did not foresee all of the applications of the statute, that is no reason not to give the statutory text a fair reading.”). The floor statements thus cannot detract from the meaning of the enacted text. See *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 457 (2002) (“Floor statements from two Senators cannot amend the clear and unambiguous language of a statute. We see no reason to give greater weight to the views of two Senators than to the collective votes of both Houses, which are memorialized in the unambiguous statutory text.”). That principle has particular force where one of the proponents of the amendment to Section 1512 introduced his remarks as only “briefly elaborat[ing] on some of the specific provisions contained in this bill.” 148 Cong. Rec. S6550 (Sen. Hatch).

Indeed, the language Congress used in Section 1512(c)(2)—prohibiting “corruptly . . . obstruct[ing], influenc[ing], or imped[ing] any official proceeding” or attempting to do so—parallels a provision that Congress considered years earlier in a bill designed to strengthen protections against witness tampering and obstruction of justice. While the earlier provision is not a direct antecedent of Section 1512(c)(2), Congress’s understanding of the broad scope of the

¹⁰⁸⁰ The Supreme Court’s decision in *Marinello v. United States*, 138 S. Ct. 1101 (2018), does not support imposing a non-textual limitation on Section 1512(c)(2). *Marinello* interpreted the tax obstruction statute, 26 U.S.C. § 7212(a), to require “a ‘nexus’ between the defendant’s conduct and a particular administrative proceeding.” *Id.* at 1109. The Court adopted that construction in light of the similar interpretation given to “other obstruction provisions,” *id.* (citing *Aguilar* and *Arthur Andersen*), as well as considerations of context, legislative history, structure of the criminal tax laws, fair warning, and lenity. *Id.* at 1106-1108. The type of “nexus” element the Court adopted in *Marinello* already applies under Section 1512(c)(2), and the remaining considerations the Court cited do not justify reading into Section 1512(c)(2) language that is not there. See *Bates v. United States*, 522 U.S. 23, 29 (1997) (the Court “ordinarily resist[s] reading words or elements into a statute that do not appear on its face.”).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

earlier provision is instructive. Recognizing that “the proper administration of justice may be impeded or thwarted” by a “variety of corrupt methods . . . limited only by the imagination of the criminally inclined,” S. Rep. No. 532, 97th Cong., 2d Sess. 17-18 (1982), Congress considered a bill that would have amended Section 1512 by making it a crime, *inter alia*, when a person “corruptly . . . influences, obstructs, or impedes . . . [t]he enforcement and prosecution of federal law,” “administration of a law under which an official proceeding is being or may be conducted,” or the “exercise of a Federal legislative power of inquiry.” *Id.* at 17-19 (quoting S. 2420).

The Senate Committee explained that:

[T]he purpose of preventing an obstruction of or miscarriage of justice cannot be fully carried out by a simple enumeration of the commonly prosecuted obstruction offenses. There must also be protection against the rare type of conduct that is the product of the inventive criminal mind and which also thwarts justice.

Id. at 18. The report gave examples of conduct “actually prosecuted under the current residual clause [in 18 U.S.C. § 1503], which would probably not be covered in this series [of provisions] without a residual clause.” *Id.* One prominent example was “[a] conspiracy to cover up the Watergate burglary and its aftermath by having the Central Intelligence Agency seek to interfere with an ongoing FBI investigation of the burglary.” *Id.* (citing *United States v. Haldeman*, 559 F.2d 31 (D.C. Cir. 1976)). The report therefore indicates a congressional awareness not only that residual-clause language resembling Section 1512(c)(2) broadly covers a wide variety of obstructive conduct, but also that such language reaches the improper use of governmental processes to obstruct justice—specifically, the Watergate cover-up orchestrated by White House officials including the President himself. See *Haldeman*, 559 F.3d at 51, 86-87, 120-129, 162.¹⁰⁸¹

4. General Principles of Statutory Construction Do Not Suggest That Section 1512(c)(2) is Inapplicable to the Conduct in this Investigation

The requirement of fair warning in criminal law, the interest in avoiding due process concerns in potentially vague statutes, and the rule of lenity do not justify narrowing the reach of Section 1512(c)(2)’s text.¹⁰⁸²

a. As with other criminal laws, the Supreme Court has “exercised restraint” in interpreting obstruction-of-justice provisions, both out of respect for Congress’s role in defining crimes and in the interest of providing individuals with “fair warning” of what a criminal statute prohibits. *Marinello v. United States*, 138 S. Ct. 1101, 1106 (2018); *Arthur Andersen*, 544 U.S. at 703;

¹⁰⁸¹ The Senate ultimately accepted the House version of the bill, which excluded an omnibus clause. See *United States v. Poindexter*, 951 F.2d 369, 382-383 (D.C. Cir. 1991) (tracing history of the proposed omnibus provision in the witness-protection legislation). During the floor debate on the bill, Senator Heinz, one of the initiators and primary backers of the legislation, explained that the omnibus clause was beyond the scope of the witness-protection measure at issue and likely “duplicative” of other obstruction laws, 128 Cong. Rec. 26,810 (1982) (Sen. Heinz), presumably referring to Sections 1503 and 1505.

¹⁰⁸² In a separate section addressing considerations unique to the presidency, we consider principles of statutory construction relevant in that context. See Volume II, Section III.B.1, *infra*.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Aguilar, 515 U.S. at 599-602. In several obstruction cases, the Court has imposed a nexus test that requires that the wrongful conduct targeted by the provision be sufficiently connected to an official proceeding to ensure the requisite culpability. *Marinello*, 138 S. Ct. at 1109; *Arthur Andersen*, 544 U.S. at 707-708; *Aguilar*, 515 U.S. at 600-602. Section 1512(c)(2) has been interpreted to require a similar nexus. See, e.g., *United States v. Young*, 916 F.3d 368; 386 (4th Cir. 2019); *United States v. Petruk*, 781 F.3d 438, 445 (8th Cir. 2015); *United States v. Phillips*, 583 F.3d 1261, 1264 (10th Cir. 2009); *United States v. Reich*, 479 F.3d 179, 186 (2d Cir. 2007). To satisfy the nexus requirement, the government must show as an objective matter that a defendant acted “in a manner that is likely to obstruct justice,” such that the statute “excludes defendants who have an evil purpose but use means that would only unnaturally and improbably be successful.” *Aguilar*, 515 U.S. at 601-602 (internal quotation marks omitted); see *id.* at 599 (“the endeavor must have the natural and probable effect of interfering with the due administration of justice”) (internal quotation marks omitted). The government must also show as a subjective matter that the actor “contemplated a particular, foreseeable proceeding.” *Petruk*, 781 F.3d at 445. Those requirements alleviate fair-warning concerns by ensuring that obstructive conduct has a close enough connection to existing or future proceedings to implicate the dangers targeted by the obstruction laws and that the individual actually has the obstructive result in mind.

b. Courts also seek to construe statutes to avoid due process vagueness concerns. See, e.g., *McDonnell v. United States*, 136 S. Ct. 2355, 2373 (2016); *Skilling v. United States*, 561 U.S. 358, 368, 402-404 (2010). Vagueness doctrine requires that a statute define a crime “with sufficient definiteness that ordinary people can understand what conduct is prohibited” and “in a manner that does not encourage arbitrary and discriminatory enforcement.” *Id.* at 402-403 (internal quotation marks omitted). The obstruction statutes’ requirement of acting “corruptly” satisfies that test.

“Acting ‘corruptly’ within the meaning of § 1512(c)(2) means acting with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct” the relevant proceeding. *United States v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013) (some quotation marks omitted). The majority opinion in *Aguilar* did not address the defendant’s vagueness challenge to the word “corruptly,” 515 U.S. at 600 n. 1, but Justice Scalia’s separate opinion did reach that issue and would have rejected the challenge, *id.* at 616-617 (Scalia, J., joined by Kennedy and Thomas, JJ., concurring in part and dissenting in part). “Statutory language need not be colloquial,” Justice Scalia explained, and “the term ‘corruptly’ in criminal laws has a longstanding and well-accepted meaning. It denotes an act done with an intent to give some advantage inconsistent with official duty and the rights of others.” *Id.* at 616 (internal quotation marks omitted; citing lower court authority and legal dictionaries). Justice Scalia added that “in the context of obstructing jury proceedings, any claim of ignorance of wrongdoing is incredible.” *Id.* at 617. Lower courts have also rejected vagueness challenges to the word “corruptly.” See, e.g., *United States v. Edwards*, 869 F.3d 490, 501-502 (7th Cir. 2017); *United States v. Brenson*, 104 F.3d 1267, 1280-1281 (11th Cir. 1997); *United States v. Howard*, 569 F.2d 1331, 1336 n.9 (5th Cir. 1978). This well-established intent standard precludes the need to limit the obstruction statutes to only certain kinds of inherently wrongful conduct.¹⁰⁸³

¹⁰⁸³ In *United States v. Poindexter*, 951 F.2d 369 (D.C. Cir. 1991), the court of appeals found the term “corruptly” in 18 U.S.C. § 1505 vague as applied to a person who provided false information to Congress. After suggesting that the word “corruptly” was vague on its face, 951 F.2d at 378, the court

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

c. Finally, the rule of lenity does not justify treating Section 1512(c)(2) as a prohibition on evidence impairment, as opposed to an omnibus clause. The rule of lenity is an interpretive principle that resolves ambiguity in criminal laws in favor of the less-severe construction. *Cleveland v. United States*, 531 U.S. 12, 25 (2000). “[A]s [the Court has] repeatedly emphasized,” however, the rule of lenity applies only if, “after considering text, structure, history and purpose, there remains a grievous ambiguity or uncertainty in the statute such that the Court must simply guess as to what Congress intended.” *Abramski v. United States*, 573 U.S. 169, 188 n.10 (2014) (internal quotation marks omitted). The rule has been cited, for example, in adopting a narrow meaning of “tangible object” in an obstruction statute when the prohibition’s title, history, and list of prohibited acts indicated a focus on destruction of records. See *Yates v. United States*, 135 S. Ct. 1074, 1088 (2015) (plurality opinion) (interpreting “tangible object” in the phrase “record, document, or tangible object” in 18 U.S.C. § 1519 to mean an item capable of recording or preserving information). Here, as discussed above, the text, structure, and history of Section 1512(c)(2) leaves no “grievous ambiguity” about the statute’s meaning. Section 1512(c)(2) defines a structurally independent general prohibition on obstruction of official proceedings.

5. Other Obstruction Statutes Might Apply to the Conduct in this Investigation

Regardless whether Section 1512(c)(2) covers all corrupt acts that obstruct, influence, or impede pending or contemplated proceedings, other statutes would apply to such conduct in pending proceedings, provided that the remaining statutory elements are satisfied. As discussed above, the omnibus clause in 18 U.S.C. § 1503(a) applies generally to obstruction of pending judicial and grand proceedings.¹⁰⁸⁴ See *Aguilar*, 515 U.S. at 598 (noting that the clause is “far more general in scope” than preceding provisions). Section 1503(a)’s protections extend to witness tampering and to other obstructive conduct that has a nexus to pending proceedings. See *Sampson*, 898 F.3d at 298-303 & n.6 (collecting cases from eight circuits holding that Section 1503 covers witness-related obstructive conduct, and cabining prior circuit authority). And Section 1505 broadly criminalizes obstructive conduct aimed at pending agency and congressional proceedings.¹⁰⁸⁵ See, e.g., *United States v. Rainey*, 757 F.3d 234, 241-247 (5th Cir. 2014).

concluded that the statute did not clearly apply to corrupt conduct by the person himself and the “core” conduct to which Section 1505 could constitutionally be applied was one person influencing another person to violate a legal duty. *Id.* at 379-386. Congress later enacted a provision overturning that result by providing that “[a]s used in [S]ection 1505, the term ‘corruptly’ means acting with an improper purpose, personally or by influencing another, including by making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.” 18 U.S.C. § 1515(b). Other courts have declined to follow *Poindexter* either by limiting it to Section 1505 and the specific conduct at issue in that case, see *Brenson*, 104 F.3d at 1280-1281; reading it as narrowly limited to certain types of conduct, see *United States v. Morrison*, 98 F.3d 619, 629-630 (D.C. Cir. 1996); or by noting that it predated *Arthur Andersen’s* interpretation of the term “corruptly,” see *Edwards*, 869 F.3d at 501-502.

¹⁰⁸⁴ Section 1503(a) provides for criminal punishment of:

Whoever . . . corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice.

¹⁰⁸⁵ Section 1505 provides for criminal punishment of:

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Finally, 18 U.S.C. § 1512(b)(3) criminalizes tampering with witnesses to prevent the communication of information about a crime to law enforcement. The nexus inquiry articulated in *Aguilar*—that an individual has “knowledge that his actions are likely to affect the judicial proceeding,” 515 U.S. at 599—does not apply to Section 1512(b)(3). See *United States v. Byrne*, 435 F.3d 16, 24-25 (1st Cir. 2006). The nexus inquiry turns instead on the actor’s intent to prevent communications to a federal law enforcement official. See *Fowler v. United States*, 563 U.S. 668, 673-678 (2011).

* * *

In sum, in light of the breadth of Section 1512(c)(2) and the other obstruction statutes, an argument that the conduct at issue in this investigation falls outside the scope of the obstruction laws lacks merit.

B. Constitutional Defenses to Applying Obstruction-Of-Justice Statutes to Presidential Conduct

The President has broad discretion to direct criminal investigations. The Constitution vests the “executive Power” in the President and enjoins him to “take Care that the Laws be faithfully executed.” U.S. CONST. ART II, §§ 1, 3. Those powers and duties form the foundation of prosecutorial discretion. See *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (Attorney General and United States Attorneys “have this latitude because they are designated by statute as the President’s delegates to help him discharge his constitutional responsibility to ‘take Care that the Laws be faithfully executed.’”). The President also has authority to appoint officers of the United States and to remove those whom he has appointed. U.S. CONST. ART II, § 2, cl. 2 (granting authority to the President to appoint all officers with the advice and consent of the Senate, but providing that Congress may vest the appointment of inferior officers in the President alone, the heads of departments, or the courts of law); see also *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477, 492-493, 509 (2010) (describing removal authority as flowing from the President’s “responsibility to take care that the laws be faithfully executed”).

Although the President has broad authority under Article II, that authority coexists with Congress’s Article I power to enact laws that protect congressional proceedings, federal investigations, the courts, and grand juries against corrupt efforts to undermine their functions. Usually, those constitutional powers function in harmony, with the President enforcing the criminal laws under Article II to protect against corrupt obstructive acts. But when the President’s official actions come into conflict with the prohibitions in the obstruction statutes, any constitutional tension is reconciled through separation-of-powers analysis.

Whoever corruptly . . . influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

The President's counsel has argued that "the President's exercise of his constitutional authority . . . to terminate an FBI Director and to close investigations . . . cannot constitutionally constitute obstruction of justice."¹⁰⁸⁶ As noted above, no Department of Justice position or Supreme Court precedent directly resolved this issue. We did not find counsel's contention, however, to accord with our reading of the Supreme Court authority addressing separation-of-powers issues. Applying the Court's framework for analysis, we concluded that Congress can validly regulate the President's exercise of official duties to prohibit actions motivated by a corrupt intent to obstruct justice. The limited effect on presidential power that results from that restriction would not impermissibly undermine the President's ability to perform his Article II functions.

1. The Requirement of a Clear Statement to Apply Statutes to Presidential Conduct Does Not Limit the Obstruction Statutes

Before addressing Article II issues directly, we consider one threshold statutory-construction principle that is unique to the presidency: "The principle that general statutes must be read as not applying to the President if they do not expressly apply where application would arguably limit the President's constitutional role." OLC, *Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. 350, 352 (1995). This "clear statement rule," *id.*, has its source in two principles: statutes should be construed to avoid serious constitutional questions, and Congress should not be assumed to have altered the constitutional separation of powers without clear assurance that it intended that result. OLC, *The Constitutional Separation of Powers Between the President and Congress*, 20 Op. O.L.C. 124, 178 (1996).

The Supreme Court has applied that clear-statement rule in several cases. In one leading case, the Court construed the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, not to apply to judicial review of presidential action. *Franklin v. Massachusetts*, 505 U.S. 788, 800-801 (1992). The Court explained that it "would require an express statement by Congress before assuming it intended the President's performance of his statutory duties to be reviewed for abuse of discretion." *Id.* at 801. In another case, the Court interpreted the word "utilized" in the Federal Advisory Committee Act (FACA), 5 U.S.C. App., to apply only to the use of advisory committees established directly or indirectly by the government, thereby excluding the American Bar Association's advice to the Department of Justice about federal judicial candidates. *Public Citizen v. United States Department of Justice*, 491 U.S. 440, 455, 462-467 (1989). The Court explained that a broader interpretation of the term "utilized" in FACA would raise serious questions whether the statute "infringed unduly on the President's Article II power to nominate federal judges and violated the doctrine of separation of powers." *Id.* at 466-467. Another case found that an established canon of statutory construction applied with "special force" to provisions that would impinge on the President's foreign-affairs powers if construed broadly. *Salé v. Haitian Centers Council*, 509 U.S. 155, 188 (1993) (applying the presumption against extraterritorial application to construe the Refugee Act of 1980 as not governing in an overseas context where it could affect "foreign and military affairs for which the President has unique responsibility"). *See Application*

¹⁰⁸⁶ 6/23/17 Letter, President's Personal Counsel to Special Counsel's Office, at 2 n. 1.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges, 19 Op. O.L.C. at 353-354 (discussing *Franklin*, *Public Citizen*, and *Sale*).

The Department of Justice has relied on this clear-statement principle to interpret certain statutes as not applying to the President at all, similar to the approach taken in *Franklin*. See, e.g., Memorandum for Richard T. Burrell, Office of the President, from Laurence H. Silberman, Deputy Attorney General, *Re: Conflict of Interest Problems Arising out of the President's Nomination of Nelson A. Rockefeller to be Vice President under the Twenty-Fifth Amendment to the Constitution*, at 2, 5 (Aug. 28, 1974) (criminal conflict-of-interest statute, 18 U.S.C. § 208, does not apply to the President). Other OLC opinions interpret statutory text not to apply to certain presidential or executive actions because of constitutional concerns. See *Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. at 350-357 (consanguinity limitations on court appointments, 28 U.S.C. § 458, found inapplicable to "presidential appointments of judges to the federal judiciary"); *Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts*, 13 Op. O.L.C. 300, 304-306 (1989) (limitation on the use of appropriated funds for certain lobbying programs found inapplicable to certain communications by the President and executive officials).

But OLC has also recognized that this clear-statement rule "does not apply with respect to a statute that raises no separation of powers questions were it to be applied to the President," such as the federal bribery statute, 18 U.S.C. § 201. *Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. at 357 n.11. OLC explained that "[a]pplication of § 201 raises no separation of powers question, let alone a serious one," because [t]he Constitution confers no power in the President to receive bribes." *Id.* In support of that conclusion, OLC noted constitutional provisions that forbid increases in the President's compensation while in office, "which is what a bribe would function to do," *id.* (citing U.S. CONST. ART. II, § 1, cl. 7), and the express constitutional power of "Congress to impeach [and convict] a President for, *inter alia*, bribery," *id.* (citing U.S. CONST. ART II, § 4).

Under OLC's analysis, Congress can permissibly criminalize certain obstructive conduct by the President, such as suborning perjury, intimidating witnesses, or fabricating evidence, because those prohibitions raise no separation-of-powers questions. See *Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. at 357 n.11. The Constitution does not authorize the President to engage in such conduct, and those actions would transgress the President's duty to "take Care that the Laws be faithfully executed." U.S. CONST. ART II, §§ 3. In view of those clearly permissible applications of the obstruction statutes to the President, *Franklin's* holding that the President is entirely excluded from a statute absent a clear statement would not apply in this context.

A more limited application of a clear-statement rule to exclude from the obstruction statutes only certain acts by the President—for example, removing prosecutors or ending investigations for corrupt reasons—would be difficult to implement as a matter of statutory interpretation. It is not obvious how a clear-statement rule would apply to an omnibus provision like Section 1512(c)(2) to exclude corruptly motivated obstructive acts only when carried out in the President's conduct of office. No statutory term could easily bear that specialized meaning. For example, the word "corruptly" has a well-established meaning that does not exclude exercises of official power for corrupt ends. Indeed, an established definition states that "corruptly" means action with an

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

intent to secure an improper advantage “inconsistent with official duty and the rights of others.” *BALLENTINE’S LAW DICTIONARY* 276 (3d ed. 1969) (emphasis added). And it would be contrary to ordinary rules of statutory construction to adopt an unconventional meaning of a statutory term only when applied to the President. See *United States v. Santos*, 553 U.S. 507, 522 (2008) (plurality opinion of Scalia, J.) (rejecting proposal to “giv[e] the same word, in the same statutory provision, different meanings in different factual contexts”); cf. *Public Citizen*, 491 U.S. at 462-467 (giving the term “utilized” in the FACA a uniform meaning to avoid constitutional questions). Nor could such an exclusion draw on a separate and established background interpretive presumption, such as the presumption against extraterritoriality applied in *Sale*. The principle that courts will construe a statute to avoid serious constitutional questions “is not a license for the judiciary to rewrite language enacted by the legislature.” *Salinas v. United States*, 522 U.S. 52, 59-60 (1997). “It is one thing to acknowledge and accept . . . well defined (or even newly enunciated), generally applicable, background principles of assumed legislative intent. It is quite another to espouse the broad proposition that criminal statutes do not have to be read as broadly as they are written, but are subject to case-by-case exceptions.” *Brogan v. United States*, 522 U.S. 398, 406 (1998).

When a proposed construction “would thus function as an extra-textual limit on [a statute’s] compass,” thereby preventing the statute “from applying to a host of cases falling within its clear terms,” *Loughrin*, 573 U.S. at 357, it is doubtful that the construction would reflect Congress’s intent. That is particularly so with respect to obstruction statutes, which “have been given a broad and all-inclusive meaning.” *Rainey*, 757 F.3d at 245 (discussing Sections 1503 and 1505) (internal quotation marks omitted). Accordingly, since no established principle of interpretation would exclude the presidential conduct we have investigated from statutes such as Sections 1503, 1505, 1512(b), and 1512(c)(2), we proceed to examine the separation-of-powers issues that could be raised as an Article II defense to the application of those statutes.

2. Separation-of-Powers Principles Support the Conclusion that Congress May Validly Prohibit Corrupt Obstructive Acts Carried Out Through the President’s Official Powers

When Congress imposes a limitation on the exercise of Article II powers, the limitation’s validity depends on whether the measure “disrupts the balance between the coordinate branches.” *Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1977). “Even when a branch does not arrogate power to itself, . . . the separation-of-powers doctrine requires that a branch not impair another in the performance of its constitutional duties.” *Loving v. United States*, 517 U.S. 748, 757 (1996). The “separation of powers does not mean,” however, “that the branches ‘ought to have no partial agency in, or no controul over the acts of each other.’” *Clinton v. Jones*, 520 U.S. 681, 703 (1997) (quoting James Madison, *The Federalist* No. 47, pp. 325–326 (J. Cooke ed. 1961) (emphasis omitted)). In this context, a balancing test applies to assess separation-of-powers issues. Applying that test here, we concluded that Congress can validly make obstruction-of-justice statutes applicable to corruptly motivated official acts of the President without impermissibly undermining his Article II functions.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

a. The Supreme Court's Separation-of-Powers Balancing Test Applies In This Context

A congressionally imposed limitation on presidential action is assessed to determine “the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions,” and, if the “potential for disruption is present[,] . . . whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress.” *Administrator of General Services*, 433 U.S. at 443; see *Nixon v. Fitzgerald*, 457 U.S. 731, 753-754 (1982); *United States v. Nixon*, 418 U.S. 683, 706-707 (1974). That balancing test applies to a congressional regulation of presidential power through the obstruction-of-justice laws.¹⁰⁸⁷

When an Article II power has not been “explicitly assigned by the text of the Constitution to be within the sole province of the President, but rather was thought to be encompassed within the general grant to the President of the ‘executive Power,’” the Court has balanced competing constitutional considerations. *Public Citizen*, 491 U.S. at 484 (Kennedy, J., concurring in the judgment, joined by Rehnquist, C.J., and O’Connor, J.). As Justice Kennedy noted in *Public Citizen*, the Court has applied a balancing test to restrictions on “the President’s power to remove Executive officers, a power [that] . . . is not conferred by any explicit provision in the text of the Constitution (as is the appointment power), but rather is inferred to be a necessary part of the grant of the ‘executive Power.’” *Id.* (citing *Morrison v. Olson*, 487 U.S. 654, 694 (1988), and *Myers v. United States*, 272 U.S. 52, 115–116 (1926)). Consistent with that statement, *Morrison* sustained a good-cause limitation on the removal of an inferior officer with defined prosecutorial responsibilities after determining that the limitation did not impermissibly undermine the President’s ability to perform his Article II functions. 487 U.S. at 691-693, 695-696. The Court has also evaluated other general executive-power claims through a balancing test. For example, the Court evaluated the President’s claim of an absolute privilege for presidential communications about his official acts by balancing that interest against the Judicial Branch’s need for evidence in a criminal case. *United States v. Nixon*, *supra* (recognizing a qualified constitutional privilege for presidential communications on official matters). The Court has also upheld a law that provided for archival access to presidential records despite a claim of absolute presidential privilege over the records. *Administrator of General Services*, 433 U.S. at 443-445, 451-455. The analysis in those cases supports applying a balancing test to assess the constitutionality of applying the obstruction-of-justice statutes to presidential exercises of executive power.

Only in a few instances has the Court applied a different framework. When the President’s power is “both ‘exclusive’ and ‘conclusive’ on the issue,” Congress is precluded from regulating its exercise. *Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2084 (2015). In *Zivotofsky*, for example, the Court followed “Justice Jackson’s familiar tripartite framework” in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-638 (1952) (Jackson, J., concurring), and held that the President’s

¹⁰⁸⁷ OLC applied such a balancing test in concluding that the President is not subject to criminal prosecution while in office, relying on many of the same precedents discussed in this section. See *A Sitting President’s Amenability to Indictment and Criminal Prosecution*, 24 Op. O.L.C. 222, 237-238, 244-245 (2000) (relying on, *inter alia*, *United States v. Nixon*, *Nixon v. Fitzgerald*, and *Clinton v. Jones*, and quoting the legal standard from *Administrator of General Services v. Nixon* that is applied in the text). OLC recognized that “[t]he balancing analysis” it had initially relied on in finding that a sitting President is immune from prosecution had “been adopted as the appropriate mode of analysis by the Court.” *Id.* at 244.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

authority to recognize foreign nations is exclusive. *Id.* at 2083, 2094. *See also Public Citizen* 491 U.S. at 485-486 (Kennedy, J., concurring in the judgment) (citing the power to grant pardons under U.S. CONST., ART. II, § 2, cl. 1, and the Presentment Clauses for legislation, U.S. CONST., ART. I, § 7, Cls. 2, 3, as examples of exclusive presidential powers by virtue of constitutional text).

But even when a power is exclusive, “Congress’ powers, and its central role in making laws, give it substantial authority regarding many of the policy determinations that precede and follow” the President’s act. *Zivotofsky*, 135 S. Ct. at 2087. For example, although the President’s power to grant pardons is exclusive and not subject to congressional regulation, *see United States v. Klein*, 80 U.S. (13 Wall.) 128, 147-148 (1872), Congress has the authority to prohibit the corrupt use of “anything of value” to influence the testimony of another person in a judicial, congressional, or agency proceeding, 18 U.S.C. § 201(b)(3)—which would include the offer or promise of a pardon to induce a person to testify falsely or not to testify at all. The offer of a pardon would precede the act of pardoning and thus be within Congress’s power to regulate even if the pardon itself is not. Just as the Speech or Debate Clause, U.S. CONST. ART. I, § 6, cl. 1, absolutely protects legislative acts, but not a legislator’s “taking or agreeing to take money for a promise to act in a certain way . . . for it is taking the bribe, not performance of the illicit compact, that is a criminal act,” *United States v. Brewster*, 408 U.S. 501, 526 (1972) (emphasis omitted), the promise of a pardon to corruptly influence testimony would not be a constitutionally immunized act. The application of obstruction statutes to such promises therefore would raise no serious separation-of-powers issue.

b. The Effect of Obstruction-of-Justice Statutes on the President’s Capacity to Perform His Article II Responsibilities is Limited

Under the Supreme Court’s balancing test for analyzing separation-of-powers issues, the first task is to assess the degree to which applying obstruction-of-justice statutes to presidential actions affects the President’s ability to carry out his Article II responsibilities. *Administrator of General Services*, 433 U.S. at 443. As discussed above, applying obstruction-of-justice statutes to presidential conduct that does not involve the President’s conduct of office—such as influencing the testimony of witnesses—is constitutionally unproblematic. The President has no more right than other citizens to impede official proceedings by corruptly influencing witness testimony. The conduct would be equally improper whether effectuated through direct efforts to produce false testimony or suppress the truth, or through the actual, threatened, or promised use of official powers to achieve the same result.

The President’s action in curtailing criminal investigations or prosecutions, or discharging law enforcement officials, raises different questions. Each type of action involves the exercise of executive discretion in furtherance of the President’s duty to “take Care that the Laws be faithfully executed.” U.S. CONST., ART. II, § 3. Congress may not supplant the President’s exercise of executive power to supervise prosecutions or to remove officers who occupy law enforcement positions. *See Bowsher v. Synar*, 478 U.S. 714, 726-727 (1986) (“Congress cannot reserve for itself the power of removal of an officer charged with the execution of the laws except by impeachment. . . . [Because t]he structure of the Constitution does not permit Congress to execute the laws, . . . [t]his kind of congressional control over the execution of the laws . . . is constitutionally impermissible.”). Yet the obstruction-of-justice statutes do not aggrandize power in Congress or usurp executive authority. Instead, they impose a discrete limitation on conduct

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

only when it is taken with the "corrupt" intent to obstruct justice. The obstruction statutes thus would restrict presidential action only by prohibiting the President from acting to obstruct official proceedings for the improper purpose of protecting his own interests. See Volume II, Section III.A.3, *supra*.

The direct effect on the President's freedom of action would correspondingly be a limited one. A preclusion of "corrupt" official action is not a major intrusion on Article II powers. For example, the proper supervision of criminal law does not demand freedom for the President to act with the intention of shielding himself from criminal punishment, avoiding financial liability, or preventing personal embarrassment. To the contrary, a statute that prohibits official action undertaken for such personal purposes furthers, rather than hinders, the impartial and evenhanded administration of the law. And the Constitution does not mandate that the President have unfettered authority to direct investigations or prosecutions, with no limits whatsoever, in order to carry out his Article II functions. See *Heckler v. Chaney*, 470 U.S. 821, 833 (1985) ("Congress may limit an agency's exercise of enforcement power if it wishes, either by setting substantive priorities, or by otherwise circumscribing an agency's power to discriminate among issues or cases it will pursue."); *United States v. Nixon*, 418 U.S. at 707 ("[t]o read the Art. II powers of the President as providing an absolute privilege [to withhold confidential communications from a criminal trial]. . . would upset the constitutional balance of 'a workable government' and gravely impair the role of the courts under Art. III").

Nor must the President have unfettered authority to remove all Executive Branch officials involved in the execution of the laws. The Constitution establishes that Congress has legislative authority to structure the Executive Branch by authorizing Congress to create executive departments and officer positions and to specify how inferior officers are appointed. *E.g.*, U.S. CONST., ART. I, § 8, cl. 18 (Necessary and Proper Clause); ART. II, § 2, cl. 1 (Opinions Clause); ART. II, § 2, cl. 2 (Appointments Clause); see *Free Enterprise Fund*, 561 U.S. at 499. While the President's removal power is an important means of ensuring that officers faithfully execute the law, Congress has a recognized authority to place certain limits on removal. *Id.* at 493-495.

The President's removal powers are at their zenith with respect to principal officers—that is, officers who must be appointed by the President and who report to him directly. See *Free Enterprise Fund*, 561 U.S. at 493, 500. The President's "exclusive and illimitable power of removal" of those principal officers furthers "the President's ability to ensure that the laws are faithfully executed." *Id.* at 493, 498 (internal quotation marks omitted); *Myers*, 272 U.S. at 627. Thus, "there are some 'purely executive' officials who must be removable by the President at will if he is able to accomplish his constitutional role." *Morrison*, 487 U.S. at 690; *Myers*, 272 U.S. at 134 (the President's "cabinet officers must do his will," and "[t]he moment that he loses confidence in the intelligence, ability, judgment, or loyalty of any one of them, he must have the power to remove him without delay"); cf. *Humphrey's Executor v. United States*, 295 U.S. 602 (1935) (Congress has the power to create independent agencies headed by principal officers removable only for good cause). In light of those constitutional precedents, it may be that the obstruction statutes could not be constitutionally applied to limit the removal of a cabinet officer such as the Attorney General. See 5 U.S.C. § 101; 28 U.S.C. § 503. In that context, at least absent circumstances showing that the President was clearly attempting to thwart accountability for personal conduct while evading ordinary political checks and balances, even the highly limited

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

regulation imposed by the obstruction statutes could possibly intrude too deeply on the President's freedom to select and supervise the members of his cabinet.

The removal of inferior officers, in contrast, need not necessarily be at will for the President to fulfill his constitutionally assigned role in managing the Executive Branch. “[I]nferior officers are officers whose work is directed and supervised at some level by other officers appointed by the President with the Senate’s consent.” *Free Enterprise Fund*, 561 U.S. at 510 (quoting *Edmond v. United States*, 520 U.S. 651, 663 (1997)) (internal quotation marks omitted). The Supreme Court has long recognized Congress’s authority to place for-cause limitations on the President’s removal of “inferior Officers” whose appointment may be vested in the head of a department. U.S. CONST. ART. II, § 2, cl. 2. See *United States v. Perkins*, 116 U.S. 483, 485 (1886) (“The constitutional authority in Congress to thus vest the appointment [of inferior officers in the heads of departments] implies authority to limit, restrict, and regulate the removal by such laws as Congress may enact in relation to the officers so appointed”) (quoting lower court decision); *Morrison*, 487 U.S. at 689 n. 27 (citing *Perkins*); accord *id.* at 723-724 & n.4 (Scalia, J., dissenting) (recognizing that *Perkins* is “established” law); see also *Free Enterprise Fund*, 561 U.S. at 493-495 (citing *Perkins* and *Morrison*). The category of inferior officers includes both the FBI Director and the Special Counsel, each of whom reports to the Attorney General. See 28 U.S.C. §§ 509, 515(a), 531; 28 C.F.R. Part 600. Their work is thus “directed and supervised” by a presidentially-appointed, Senate-confirmed officer. See *In re: Grand Jury Investigation*, __ F.3d __, 2019 WL 921692, at *3-*4 (D.C. Cir. Feb. 26, 2019) (holding that the Special Counsel is an “inferior officer” for constitutional purposes).

Where the Constitution permits Congress to impose a good-cause limitation on the removal of an Executive Branch officer, the Constitution should equally permit Congress to bar removal for the corrupt purpose of obstructing justice. Limiting the range of permissible reasons for removal to exclude a “corrupt” purpose imposes a lesser restraint on the President than requiring an affirmative showing of good cause. It follows that for such inferior officers, Congress may constitutionally restrict the President’s removal authority if that authority was exercised for the corrupt purpose of obstructing justice. And even if a particular inferior officer’s position might be of such importance to the execution of the laws that the President must have at-will removal authority, the obstruction-of-justice statutes could still be constitutionally applied to forbid removal for a corrupt reason.¹⁰⁸⁸ A narrow and discrete limitation on removal that precluded corrupt action would leave ample room for all other considerations, including disagreement over policy or loss of confidence in the officer’s judgment or commitment. A corrupt-purpose prohibition therefore would not undermine the President’s ability to perform his Article II functions. Accordingly, because the separation-of-powers question is “whether the removal restrictions are of such a nature that they impede the President’s ability to perform his constitutional duty,” *Morrison*, 487 U.S. at 691, a restriction on removing an inferior officer for a

¹⁰⁸⁸ Although the FBI director is an inferior officer, he is appointed by the President and removable by him at will, see 28 U.S.C. § 532 note, and it is not clear that Congress could constitutionally provide the FBI director with good-cause tenure protection. See OLC, *Constitutionality of Legislation Extending the Term of the FBI Director*, 2011 WL 2566125, at *3 (O.L.C. June 20, 2011) (“tenure protection for an officer with the FBI Director’s broad investigative, administrative, and policymaking responsibilities would raise a serious constitutional question whether Congress had ‘impede[d] the President’s ability to perform his constitutional duty’ to take care that the laws be faithfully executed”) (quoting *Morrison*, 487 U.S. at 691).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

corrupt reason—a reason grounded in achieving personal rather than official ends—does not seriously hinder the President’s performance of his duties. The President retains broad latitude to supervise investigations and remove officials, circumscribed in this context only by the requirement that he not act for corrupt personal purposes.¹⁰⁸⁹

c. Congress Has Power to Protect Congressional, Grand Jury, and Judicial Proceedings Against Corrupt Acts from Any Source

Where a law imposes a burden on the President’s performance of Article II functions, separation-of-powers analysis considers whether the statutory measure “is justified by an overriding need to promote objectives within the constitutional authority of Congress.” *Administrator of General Services*, 433 U.S. at 443. Here, Congress enacted the obstruction-of-justice statutes to protect, among other things, the integrity of its own proceedings, grand jury investigations, and federal criminal trials. Those objectives are within Congress’s authority and serve strong governmental interests.

i. Congress has Article I authority to define generally applicable criminal law and apply it to all persons—including the President. Congress clearly has authority to protect its own legislative functions against corrupt efforts designed to impede legitimate fact-gathering and lawmaking efforts. See *Watkins v. United States*, 354 U.S. 178, 187, 206-207 (1957); *Chapman v. United States*, 5 App. D.C. 122, 130 (1895). Congress also has authority to establish a system of federal courts, which includes the power to protect the judiciary against obstructive acts. See U.S. CONST. ART. I, § 8, cls. 9, 18 (“The Congress shall have Power . . . To constitute Tribunals inferior to the supreme Court” and “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers”). The long lineage of the obstruction-of-justice statutes, which can be traced to at least 1831, attests to the necessity for that protection. See *An Act Declaratory of the Law Concerning Contempts of Court*, 4 Stat. 487-488 § 2 (1831) (making it a crime if “any person or persons shall corruptly . . . endeavor to influence, intimidate, or impede any juror, witness, or officer, in any court of the United States, in the discharge of his duty, or shall, corruptly . . . obstruct, or impede, or endeavor to obstruct or impede, the due administration of justice therein”).

ii. The Article III courts have an equally strong interest in being protected against obstructive acts, whatever their source. As the Supreme Court explained in *United States v. Nixon*, a “primary constitutional duty of the Judicial Branch” is “to do justice in criminal prosecutions.” 418 U.S. at 707; accord *Cheney v. United States District Court for the District of Columbia*, 542 U.S. 367, 384 (2004). In *Nixon*, the Court rejected the President’s claim of absolute executive privilege because “the allowance of the privilege to withhold evidence that is demonstrably

¹⁰⁸⁹ The obstruction statutes do not disqualify the President from acting in a case simply because he has a personal interest in it or because his own conduct may be at issue. As the Department of Justice has made clear, a claim of a conflict of interest, standing alone, cannot deprive the President of the ability to fulfill his constitutional function. See, e.g., OLC, *Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 O.L.C. Op. at 356 (citing Memorandum for Richard T. Burrell, Office of the President, from Laurence H. Silberman, Deputy Attorney General, Re: *Conflict of Interest Problems Arising out of the President’s Nomination of Nelson A. Rockefeller to be Vice President under the Twenty-Fifth Amendment to the Constitution*, at 2, 5 (Aug. 28, 1974)).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function of the courts.” 407 U.S. at 712. As *Nixon* illustrates, the need to safeguard judicial integrity is a compelling constitutional interest. See *id.* at 709 (noting that the denial of full disclosure of the facts surrounding relevant presidential communications threatens “[t]he very integrity of the judicial system and public confidence in the system”).

iii. Finally, the grand jury cannot achieve its constitutional purpose absent protection from corrupt acts. Serious federal criminal charges generally reach the Article III courts based on an indictment issued by a grand jury. *Cobbledick v. United States*, 309 U.S. 323, 327 (1940) (“The Constitution itself makes the grand jury a part of the judicial process.”). And the grand jury’s function is enshrined in the Fifth Amendment. U.S. CONST. AMEND. V. (“[n]o person shall be held to answer” for a serious crime “unless on a presentment or indictment of a Grand Jury”). “[T]he whole theory of [the grand jury’s] function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people,” *United States v. Williams*, 504 U.S. 36, 47 (1992), “pledged to indict no one because of prejudice and to free no one because of special favor.” *Costello v. United States*, 350 U.S. 359, 362 (1956). If the grand jury were not protected against corrupt interference from all persons, its function as an independent charging body would be thwarted. And an impartial grand jury investigation to determine whether probable cause exists to indict is vital to the criminal justice process.

* * *

The final step in the constitutional balancing process is to assess whether the separation-of-powers doctrine permits Congress to take action within its constitutional authority notwithstanding the potential impact on Article II functions. See *Administrator of General Services*, 433 U.S. at 443; see also *Morrison*, 487 U.S. at 691-693, 695-696; *United States v. Nixon*, 418 U.S. at 711-712. In the case of the obstruction-of-justice statutes, our assessment of the weighing of interests leads us to conclude that Congress has the authority to impose the limited restrictions contained in those statutes on the President’s official conduct to protect the integrity of important functions of other branches of government.

A general ban on corrupt action does not unduly intrude on the President’s responsibility to “take Care that the Laws be faithfully executed.” U.S. CONST. ART II, § 3.¹⁰⁹⁰ To the contrary, the concept of “faithful execution” connotes the use of power in the interest of the public, not in the office holder’s personal interests. See 1 Samuel Johnson, *A Dictionary of the English Language* 763 (1755) (“faithfully” def. 3: “[w]ith strict adherence to duty and allegiance”). And immunizing the President from the generally applicable criminal prohibition against corrupt obstruction of official proceedings would seriously impair Congress’s power to enact laws “to promote objectives within [its] constitutional authority,” *Administrator of General Services*, 433 U.S. at 425—*i.e.*, protecting the integrity of its own proceedings and the proceedings of Article III courts and grand juries.

¹⁰⁹⁰ As noted above, the President’s selection and removal of principal executive officers may have a unique constitutional status.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Accordingly, based on the analysis above, we were not persuaded by the argument that the President has blanket constitutional immunity to engage in acts that would corruptly obstruct justice through the exercise of otherwise-valid Article II powers.¹⁰⁹¹

3. Ascertaining Whether the President Violated the Obstruction Statutes Would Not Chill his Performance of his Article II Duties

Applying the obstruction statutes to the President's official conduct would involve determining as a factual matter whether he engaged in an obstructive act, whether the act had a nexus to official proceedings, and whether he was motivated by corrupt intent. But applying those standards to the President's official conduct should not hinder his ability to perform his Article II duties. Cf. *Nixon v. Fitzgerald*, 457 U.S. at 752-753 & n.32 (taking into account chilling effect on the President in adopting a constitutional rule of presidential immunity from private civil damages action based on official duties). Several safeguards would prevent a chilling effect: the existence of settled legal standards, the presumption of regularity in prosecutorial actions, and the existence of evidentiary limitations on probing the President's motives. And historical experience confirms that no impermissible chill should exist.

a. As an initial matter, the term "corruptly" sets a demanding standard. It requires a concrete showing that a person acted with an intent to obtain an "improper advantage for [him]self or someone else, inconsistent with official duty and the rights of others." *BALLENTINE'S LAW DICTIONARY* 276 (3d ed. 1969); see *United States v. Pasha*, 797 F.3d 1122, 1132 (D.C. Cir. 2015); *Aguilar*, 515 U.S. at 616 (Scalia, J., concurring in part and dissenting in part). That standard parallels the President's constitutional obligation to ensure the faithful execution of the laws. And virtually everything that the President does in the routine conduct of office will have a clear governmental purpose and will not be contrary to his official duty. Accordingly, the President has no reason to be chilled in those actions because, in virtually all instances, there will be no credible basis for suspecting a corrupt personal motive.

That point is illustrated by examples of conduct that would and would not satisfy the stringent corrupt-motivé standard. Direct or indirect action by the President to end a criminal investigation into his own or his family members' conduct to protect against personal embarrassment or legal liability would constitute a core example of corruptly motivated conduct. So too would action to halt an enforcement proceeding that directly and adversely affected the President's financial interests for the purpose of protecting those interests. In those examples,

¹⁰⁹¹ A possible remedy through impeachment for abuses of power would not substitute for potential criminal liability after a President leaves office. Impeachment would remove a President from office, but would not address the underlying culpability of the conduct or serve the usual purposes of the criminal law. Indeed, the Impeachment Judgment Clause recognizes that criminal law plays an independent role in addressing an official's conduct, distinct from the political remedy of impeachment. See U.S. CONST. ART. I, § 3, cl. 7. Impeachment is also a drastic and rarely invoked remedy, and Congress is not restricted to relying only on impeachment, rather than making criminal law applicable to a former President, as OLC has recognized. *A Sitting President's Amenability to Indictment and Criminal Prosecution*, 24 Op. O.L.C. at 255 ("Recognizing an immunity from prosecution for a sitting President would not preclude such prosecution once the President's term is over or he is otherwise removed from office by resignation or impeachment.").

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

official power is being used for the purpose of protecting the President's personal interests. In contrast, the President's actions to serve political or policy interests would not qualify as corrupt. The President's role as head of the government necessarily requires him to take into account political factors in making policy decisions that affect law-enforcement actions and proceedings. For instance, the President's decision to curtail a law-enforcement investigation to avoid international friction would not implicate the obstruction-of-justice statutes. The criminal law does not seek to regulate the consideration of such political or policy factors in the conduct of government. And when legitimate interests animate the President's conduct, those interests will almost invariably be readily identifiable based on objective factors. Because the President's conduct in those instances will obviously fall outside the zone of obstruction law, no chilling concern should arise.

b. There is also no reason to believe that investigations, let alone prosecutions, would occur except in highly unusual circumstances when a credible factual basis exists to believe that obstruction occurred. Prosecutorial action enjoys a presumption of regularity: absent "clear evidence to the contrary, courts presume that [prosecutors] have properly discharged their official duties." *Armstrong*, 517 U.S. at 464 (quoting *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926)). The presumption of prosecutorial regularity would provide even greater protection to the President than exists in routine cases given the prominence and sensitivity of any matter involving the President and the likelihood that such matters will be subject to thorough and careful review at the most senior levels of the Department of Justice. Under OLC's opinion that a sitting President is entitled to immunity from indictment, only a successor Administration would be able to prosecute a former President. But that consideration does not suggest that a President would have any basis for fearing abusive investigations or prosecutions after leaving office. There are "obvious political checks" against initiating a baseless investigation or prosecution of a former President. See *Administrator of General Services*, 433 U.S. at 448 (considering political checks in separation-of-powers analysis). And the Attorney General holds "the power to conduct the criminal litigation of the United States Government," *United States v. Nixon*, 418 U.S. at 694 (citing 28 U.S.C. § 516), which provides a strong institutional safeguard against politicized investigations or prosecutions.¹⁰⁹²

¹⁰⁹² Similar institutional safeguards protect Department of Justice officers and line prosecutors against unfounded investigations into prosecutorial acts. Prosecutors are generally barred from participating in matters implicating their personal interests, see 28 C.F.R. § 45.2, and are instructed not to be influenced by their "own professional or personal circumstances," Justice Manual § 9-27.260, so prosecutors would not frequently be in a position to take action that could be perceived as corrupt and personally motivated. And if such cases arise, criminal investigation would be conducted by responsible officials at the Department of Justice, who can be presumed to refrain from pursuing an investigation absent a credible factual basis. Those facts distinguish the criminal context from the common-law rule of prosecutorial immunity, which protects against the threat of suit by "a defendant [who] often will transform his resentment at being prosecuted into the ascription of improper and malicious actions." *Imbler v. Pachtman*, 424 U.S. 409, 425 (1976). As the Supreme Court has noted, the existence of civil immunity does not justify criminal immunity. See *O'Shea v. Littleton*, 414 U.S. 488, 503 (1974) ("Whatever may be the case with respect to civil liability generally, . . . we have never held that the performance of the duties of judicial, legislative, or executive officers, requires or contemplates the immunization of otherwise criminal deprivation of constitutional rights.") (citations omitted).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

These considerations distinguish the Supreme Court's holding in *Nixon v. Fitzgerald* that, in part because inquiries into the President's motives would be "highly intrusive," the President is absolutely immune from private civil damages actions based on his official conduct. 457 U.S. at 756-757. As *Fitzgerald* recognized, "there is a lesser public interest in actions for civil damages than, for example, in criminal prosecutions." *Fitzgerald*, 457 U.S. at 754 n.37; see *Cheney*, 542 U.S. at 384. And private actions are not subject to the institutional protections of an action under the supervision of the Attorney General and subject to a presumption of regularity. *Armstrong*, 517 U.S. at 464.

c. In the rare cases in which a substantial and credible basis justifies conducting an investigation of the President, the process of examining his motivations to determine whether he acted for a corrupt purpose need not have a chilling effect. Ascertaining the President's motivations would turn on any explanation he provided to justify his actions, the advice he received, the circumstances surrounding the actions, and the regularity or irregularity of the process he employed to make decisions. But grand juries and courts would not have automatic access to confidential presidential communications on those matters; rather, they could be presented in official proceedings only on a showing of sufficient need. *Nixon*, 418 U.S. at 712; *In re Sealed Case*, 121 F.3d 729, 754, 756-757 (D.C. Cir. 1997); see also *Administrator of General Services*, 433 U.S. at 448-449 (former President can invoke presidential communications privilege, although successor's failure to support the claim "detracts from [its] weight").

In any event, probing the President's intent in a criminal matter is unquestionably constitutional at least one context: the offense of bribery turns on the corrupt intent to receive a thing of value in return for being influenced in official action. 18 U.S.C. § 201(b)(2). There can be no serious argument against the President's potential criminal liability for bribery offenses, notwithstanding the need to ascertain his purpose and intent. See U.S. CONST. ART. I, § 3; ART. II, § 4; see also *Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. at 357 n.11 ("Application of § 201[to the President] raises no separation of powers issue, let alone a serious one.").

d. Finally, history provides no reason to believe that any asserted chilling effect justifies exempting the President from the obstruction laws. As a historical matter, Presidents have very seldom been the subjects of grand jury investigations. And it is rarer still for circumstances to raise even the possibility of a corrupt personal motive for arguably obstructive action through the President's use of official power. Accordingly, the President's conduct of office should not be chilled based on hypothetical concerns about the possible application of a corrupt-motive standard in this context.

* * *

In sum, contrary to the position taken by the President's counsel, we concluded that, in light of the Supreme Court precedent governing separation-of-powers issues, we had a valid basis for investigating the conduct at issue in this report. In our view, the application of the obstruction statutes would not impermissibly burden the President's performance of his Article II function to supervise prosecutorial conduct or to remove inferior law-enforcement officers. And the protection of the criminal justice system from corrupt acts by any person—including the President—accords with the fundamental principle of our government that "[n]o [person] in this

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

country is so high that he is above the law.” *United States v. Lee*, 106 U.S. 196, 220 (1882); see also *Clinton v. Jones*, 520 U.S. at 697; *United States v. Nixon*, *supra*.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~**IV. CONCLUSION**

Because we determined not to make a traditional prosecutorial judgment, we did not draw ultimate conclusions about the President's conduct. The evidence we obtained about the President's actions and intent presents difficult issues that would need to be resolved if we were making a traditional prosecutorial judgment. At the same time, if we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and the applicable legal standards, we are unable to reach that judgment. Accordingly, while this report does not conclude that the President committed a crime, it also does not exonerate him.

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Appendix A

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)



Office of the Deputy Attorney General
 Washington, D.C. 20530

ORDER NO. 3915-2017

APPOINTMENT OF SPECIAL COUNSEL
 TO INVESTIGATE RUSSIAN INTERFERENCE WITH THE
 2016 PRESIDENTIAL ELECTION AND RELATED MATTERS

By virtue of the authority vested in me as Acting Attorney General, including 28 U.S.C. §§ 509, 510, and 515, in order to discharge my responsibility to provide supervision and management of the Department of Justice, and to ensure a full and thorough investigation of the Russian government's efforts to interfere in the 2016 presidential election, I hereby order as follows:

- (a) Robert S. Mueller III is appointed to serve as Special Counsel for the United States Department of Justice.
- (b) The Special Counsel is authorized to conduct the investigation confirmed by then-FBI Director James B. Comey in testimony before the House Permanent Select Committee on Intelligence on March 20, 2017, including:
 - (i) any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and
 - (ii) any matters that arose or may arise directly from the investigation; and
 - (iii) any other matters within the scope of 28 C.F.R. § 600.4(a).
- (c) If the Special Counsel believes it is necessary and appropriate, the Special Counsel is authorized to prosecute federal crimes arising from the investigation of these matters.
- (d) Sections 600.4 through 600.10 of Title 28 of the Code of Federal Regulations are applicable to the Special Counsel.

Date

5/17/17

Rod J. Rosenstein
 Acting Attorney General

19597

396

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Appendix B

19599

398

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

APPENDIX B: GLOSSARY

The following glossary contains names and brief descriptions of individuals and entities referenced in the two volumes of this report. It is not intended to be comprehensive and is intended only to assist a reader in the reading the rest of the report.

Referenced Persons

Agalarov, Aras	Russian real-estate developer (owner of the Crocus Group); met Donald Trump in connection with the Miss Universe pageant and helped arrange the June 9, 2016 meeting at Trump Tower between Natalia Veselnitskaya and Trump Campaign officials.
Agalarov, Emin	Performer, executive vice president of Crocus Group, and son of Aras Agalarov; helped arrange the June 9, 2016 meeting at Trump Tower between Natalia Veselnitskaya and Trump Campaign officials.
Akhmetov, Rinat	Former member in the Ukrainian parliament who hired Paul Manafort to conduct work for Ukrainian political party, the Party of Regions.
Akhmetshin, Rinat	U.S. lobbyist and associate of Natalia Veselnitskaya who attended the June 9, 2016 meeting at Trump Tower between Veselnitskaya and Trump Campaign officials.
Aslanov, Dzheykhun (Jay)	Head of U.S. department of the Internet Research Agency, which engaged in an "active measures" social media campaign to interfere in the 2016 U.S. presidential election.
Assange, Julian	Founder of WikiLeaks, which in 2016 posted on the internet documents stolen from entities and individuals affiliated with the Democratic Party.
Aven, Petr	Chairman of the board of Alfa-Bank who attempted outreach to the Presidential Transition Team in connection with anticipated post-election sanctions.
Bannon, Stephen (Steve)	White House chief strategist and senior counselor to President Trump (Jan. 2017 – Aug. 2017); chief executive of the Trump Campaign.
Baranov, Andrey	Director of investor relations at Russian state-owned oil company, Rosneft, and associate of Carter Page.
Berkowitz, Avi	Assistant to Jared Kushner.
Boente, Dana	Acting Attorney General (Jan. 2017 – Feb. 2017); Acting Deputy Attorney General (Feb. 2017 – Apr. 2017).
Bogacheva, Anna	Internet Research Agency employee who worked on "active measures" social media campaign to interfere in in the 2016 U.S. presidential election; traveled to the United States under false pretenses in 2014.
Bossert, Thomas (Tom)	Former homeland security advisor to the President who also served as a senior official on the Presidential Transition Team.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Boyarkin, Viktor Employee of Russian oligarch Oleg Deripaska.

Boyd, Charles Chairman of the board of directors at the Center for the National Interest, a U.S.-based think tank with operations in and connections to Russia.

Boyko, Yuriy Member of the Ukrainian political party Opposition Bloc and member of the Ukrainian parliament.

Brand, Rachel Associate Attorney General (May 2017 – Feb. 2018).

Browder, William (Bill) Founder of Hermitage Capital Management who lobbied in favor of the Magnitsky Act, which imposed financial and travel sanctions on Russian officials.

Bulatov, Alexander Russian intelligence official who associated with Carter Page in 2008.

Burchik, Mikhail Executive director of the Internet Research Agency, which engaged in an “active measures” social media campaign to interfere in the 2016 U.S. presidential election.

Burck, William Personal attorney to Don McGahn, White House Counsel.

Burnham, James Attorney in the White House Counsel’s Office who attended January 2017 meetings between Sally Yates and Donald McGahn.

Burt, Richard Former U.S. ambassador who had done work Alfa-Bank and was a board member of the Center for the National Interest.

Bystrov, Mikhail General director of the Internet Research Agency, which engaged in an “active measures” social media campaign to interfere in the 2016 U.S. presidential election.

Calamari, Matt Chief operating officer for the Trump Organization.

Caputo, Michael Trump Campaign advisor.

Chaika, Yuri Prosecutor general of the Russian Federation who also maintained a relationship with Aras Agalarov.

Christie, Chris Former Governor of New Jersey.

Clapper, James Director of National Intelligence (Aug. 2010 – Jan. 2017).

Clovis, Samuel Jr. Chief policy advisor and national co-chair of the Trump Campaign.

Coats, Dan Director of National Intelligence.

Cobb, Ty Special Counsel to the President (July 2017 – May 2018).

Cohen, Michael Former vice president to the Trump Organization and special counsel to Donald Trump who spearheaded an effort to build a Trump-branded property in Moscow. He admitted to lying to Congress about the project.

Comey, James Jr. Director of the Federal Bureau of Investigation (Sept. 4, 2013 – May 9, 2017).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Conway, Kellyanne Counselor to President Trump and manager of the Trump Campaign.

Corallo, Mark Spokesman for President Trump's personal legal team (June 2017 – July 2017).

Corsi, Jerome Author and political commentator who formerly worked for WorldNetDaily and InfoWars. **Harm to Ongoing Matter**

Costello, Robert Attorney who represented he had a close relationship with Rudolph Giuliani, the President's personal counsel.

Credico, Randolph (Randy) Radio talk show host who interviewed Julian Assange in 2016. **Harm to Ongoing Matter**

Davis, Richard (Rick) Jr. Partner with Pegasus Sustainable Century Merchant Bank, business partner of Paul Manafort, and co-founder of the Davis Manafort lobbying firm.

Dearborn, Rick Former White House deputy chief of staff for policy who previously served as chief of staff to Senator Jeff Sessions.

Dempsey, Michael Office of Director of National Intelligence official who recalled discussions with Dan Coats after Coats's meeting with President Trump on March 22, 2017.

Denman, Diana Delegate to 2016 Republican National Convention who proposed a platform plank amendment that included armed support for Ukraine.

Deripaska, Oleg Russian businessman with ties to Vladimir Putin who hired Paul Manafort for consulting work between 2005 and 2009.

Dhillon, Uttam Attorney in the White House Counsel's Office (Jan. 2017 – June 2018).

Dmitriev, Kirill Head of the Russian Direct Investment Fund (RDIF); met with Erik Prince in the Seychelles in January 2017 and, separately, drafted a U.S.-Russia reconciliation plan with Rick Gerson.

Donaldson, Annie Chief of staff to White House Counsel Donald McGahn (Jan. 2017 – Dec. 2018).

Dvorkovich, Arkady Deputy prime minister of the Russian Federation and chairman of the board of directors of the New Economic School in Moscow. He met with Carter Page twice in 2016.

Dvoskin, Evgeney Executive of Genbank in Crimea and associate of Felix Sater.

Eisenberg, John Attorney in the White House Counsel's Office and legal counsel for the National Security Council.

Erchova, Lana (a/k/a Lana Alexander) Ex-wife of Dmitry Klokov who emailed Ivanka Trump to introduce Klokov to the Trump Campaign in the fall of 2015.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

- Fabrizio, Anthony (Tony)** Partner at the research and consulting firm Fabrizio, Lee & Associates. He was a pollster for the Trump Campaign and worked with Paul Manafort on Ukraine-related polling after the election.
- Fishbein, Jason** Attorney who performed worked for Julian Assange and also sent WikiLeaks a password for an unlaunched website PutinTrump.org on September 20, 2016.
- Flynn, Michael G. (a/k/a Michael Flynn Jr.)** Son of Michael T. Flynn, National Security Advisor (Jan. 20, 2017 – Feb. 13, 2017).
- Flynn, Michael T.** National Security Advisor (Jan. 20, 2017 – Feb. 13, 2017), Director of the Defense Intelligence Agency (July 2012 – Aug. 7, 2014), and Trump Campaign advisor. He pleaded guilty to lying to the FBI about communications with Ambassador Sergey Kislyak in December 2016.
- Foresman, Robert (Bob)** Investment banker who sought meetings with the Trump Campaign in spring 2016 to discuss Russian foreign policy, and after the election met with Michael Flynn.
- Futefas, Alan** Outside counsel for the Trump Organization and subsequently personal counsel for Donald Trump Jr.
- Garten, Alan** General counsel of the Trump Organization.
- Gates, Richard (Rick) III** Deputy campaign manager for Trump Campaign, Trump Inaugural Committee deputy chairman, and longtime employee of Paul Manafort. He pleaded guilty to conspiring to defraud the United States and violate U.S. laws, as well as making false statements to the FBI.
- Gerson, Richard (Rick)** New York hedge fund manager and associate of Jared Kushner. During the transition period, he worked with Kirill Dmitriev on a proposal for reconciliation between the United States and Russia.
- Gistaro, Edward** Deputy Director of National Intelligence for Intelligence Integration.
- Glassner, Michael** Political director of the Trump Campaign who helped introduce George Papadopoulos to others in the Trump Campaign.
- Goldstone, Robert** Publicist for Emin Agalarov who contacted Donald Trump Jr. to arrange the June 9, 2016 meeting at Trump Tower between Natalia Veselnitskaya and Trump Campaign officials.
- Gordon, Jeffrey (J.D.)** National security advisor to the Trump Campaign involved in changes to the Republican party platform and who communicated with Russian Ambassador Sergey Kislyak at the Republican National Convention.
- Gorkov, Sergey** Chairman of Vnesheconombank (VEB), a Russian state-owned bank, who met with Jared Kushner during the transition period.
- Graff, Rhona** Senior vice-president and executive assistant to Donald J. Trump at the Trump Organization.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

HOM	Harm to Ongoing Matter
Hawker, Jonathan	Public relations consultant at FTI Consulting; worked with Davis Manafort International LLC on public relations campaign in Ukraine.
Heilbrunn, Jacob	Editor of the National Interest, the periodical that officially hosted candidate Trump's April 2016 foreign policy speech.
Hicks, Hope	White House communications director (Aug. 2017 – Mar. 2018) and press secretary for the Trump Campaign.
Holt, Lester	NBC News anchor who interviewed President Trump on May 11, 2017.
Hunt, Jody	Chief of staff to Attorney General Jeff Sessions (Feb. 2017 – Oct. 2017).
Ivanov, Igor	President of the Russian International Affairs Council and former Russian foreign minister. Ivan Timofeev told George Papadopoulos that Ivanov advised on arranging a "Moscow visit" for the Trump Campaign.
Ivanov, Sergei	Special representative of Vladimir Putin, former Russian deputy prime minister, and former FSB deputy director. In January 2016, Michael Cohen emailed the Kremlin requesting to speak to Ivanov.
Kasowitz, Marc	President Trump's personal counsel (May 2017 – July 2017).
Katsyv, Denis	Son of Peter Katsyv; owner of Russian company Prevezon Holdings Ltd. and associate of Natalia Veselnitskaya.
Katsyv, Peter	Russian businessman and father of Denis Katsyv.
HOM	Harm to Ongoing Matter
Kaveladze, Irakli (Ike)	Vice president at Crocus Group and Aras Agalarov's deputy in the United States. He participated in the June 9, 2016 meeting at Trump Tower between Natalia Veselnitskaya and Trump Campaign officials.
Kaverzina, Irina	Employee of the Internet Research Agency, which engaged in an "active measures" social media campaign to interfere in the 2016 U.S. presidential election.
Kelly, John	White House chief of staff (July 2017 – Jan. 2019).
Khalilzad, Zalmay	U.S. special representative to Afghanistan and former U.S. ambassador. He met with Senator Jeff Sessions during foreign policy dinners put together through the Center for the National Interest.
Kilimnik, Konstantin	Russian-Ukrainian political consultant and long-time employee of Paul Manafort assessed by the FBI to have ties to Russian intelligence.
Kislyak, Sergey	Former Russian ambassador to the United States and current Russian senator from Mordovia.
Klimentov, Denis	Employee of the New Economic School who informed high-ranking Russian government officials of Carter Page's July 2016 visit to Moscow.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Klimentov, Dmitri	Brother of Denis Klimentov who contacted Kremlin press secretary Dmitri Peskov about Carter Page's July 2016 visit to Moscow.
Klokov, Dmitry	Executive for PJSC Federal Grid Company of Unified Energy System and former aide to Russia's minister of energy. He communicated with Michael Cohen about a possible meeting between Vladimir Putin and candidate Trump.
Kobyakov, Anton	Advisor to Vladimir Putin and member of the Roscongress Foundation who invited candidate Trump to the St. Petersburg International Economic Forum.
Krickovic, Andrej	Professor at the Higher School of Economics who recommended that Carter Page give a July 2016 commencement address in Moscow.
Krylova, Aleksandra	Internet Research Agency employee who worked on "active measures" social media campaign to interfere in the 2016 U.S. presidential election; traveled to the United States under false pretenses in 2014.
Kushner, Jared	President Trump's son-in-law and senior advisor to the President.
Kuznetsov, Sergey	Russian government official at the Russian Embassy to the United States who transmitted Vladimir Putin's congratulations to President-Elect Trump for his electoral victory on November 9, 2016.
Landrum, Pete	Advisor to Senator Jeff Sessions who attended the September 2016 meeting between Sessions and Russian Ambassador Sergey Kislyak.
Lavrov, Sergey	Russian minister of foreign affairs and former permanent representative of Russia to the United Nations.
Ledeen, Barbara	Senate staffer and associate of Michael Flynn who sought to obtain Hillary Clinton emails during the 2016 U.S. presidential campaign period.
Ledeen, Michael	Member of the Presidential Transition Team who advised on foreign policy and national security matters.
Ledgett, Richard	Deputy director of the National Security Agency (Jan. 2014 – Apr. 2017); present when President Trump called Michael Rogers on March 26, 2017.
Lewandowski, Corey	Campaign manager for the Trump Campaign (Jan. 2015 – June 2016).
Luff, Sandra	Legislative director for Senator Jeff Sessions; attended a September 2016 meeting between Sessions and Russian Ambassador Sergey Kislyak.
Lyovochkin, Serhiy	Member of Ukrainian parliament and member of Ukrainian political party, Opposition Bloc Party.
Magnitsky, Sergei	Russian tax specialist who alleged Russian government corruption and died in Russian police custody in 2009. His death prompted passage of

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

	the Magnitsky Act, which imposed financial and travel sanctions on Russian officials.
Malloch, Theodore (Ted)	Chief executive officer of Global Fiduciary Governance and the Roosevelt Group. He was a London-based associate of Jerome Corsi.
Manafort, Paul Jr.	Trump campaign member (March 2016 – Aug. 2016) and chairman and chief strategist (May 2016 – Aug. 2016).
Mashburn, John	Trump administration official and former policy director to the Trump Campaign.
McCabe, Andrew	Acting director of the FBI (May 2017 – Aug. 2017); deputy director of the FBI (Feb. 2016 – Jan. 2018).
McCord, Mary	Acting Assistant Attorney General (Oct. 2016 – May 2017).
McFarland, Kathleen (K.T.)	Deputy White House National Security Advisor (Jan. 2017 – May 2017).
McGahn, Donald (Don)	White House Counsel (Jan. 2017 – Oct. 2018).
Medvedev, Dmitry	Prime Minister of Russia.
Melnik, Yuriy	Spokesperson for the Russian Embassy in Washington, D.C., who connected with George Papadopoulos on social media.
Mifsud, Joseph	Maltese national and former London-based professor who, immediately after returning from Moscow in April 2016, told George Papadopoulos that the Russians had “dirt” in the form of thousands of Clinton emails.
Miller, Matt	Trump Campaign staff member who was present at the meeting of the National Security and Defense Platform Subcommittee in July 2016.
Miller, Stephen	Senior advisor to the President.
Millian, Sergei	Founder of the Russian American Chamber of Commerce who met with George Papadopoulos during the campaign.
Mnuchin, Steven	Secretary of the Treasury.
HOM	Harm to Ongoing Matter
Müller-Maguhn, Andrew	Member of hacker association Chaos Computer Club and associate of Julian Assange, founder of WikiLeaks.
Nader, George	Advisor to the United Arab Emirates’s Crown Prince who arranged a meeting between Kirill Dmitriev and Erik Prince during the transition period.
Netyksho, Viktor	Russian military officer in command of a unit involved in Russian hack-and-release operations to interfere in the 2016 U.S. presidential election.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Oganov, Georgiy Advisor to Oleg Deripaska and a board member of investment company Basic Element. He met with Paul Manafort in Spain in early 2017.

Oknyansky, Henry (a/k/a Henry Greenberg) Florida-based Russian individual who claimed to have derogatory information pertaining to Hillary Clinton. He met with Roger Stone in May 2016.

Page, Carter Foreign policy advisor to the Trump Campaign who advocated pro-Russian views and made July 2016 and December 2016 visits to Moscow.

Papadopoulos, George Foreign policy advisor to the Trump Campaign who received information from Joseph Mifsud that Russians had “dirt” in the form of thousands of Clinton emails. He pleaded guilty to lying to the FBI about his contact with Mifsud.

Parscale, Bradley Digital media director for the 2016 Trump Campaign.

Patten, William (Sam) Jr. Lobbyist and business partner of Konstantin Kilimnik.

Peskov, Dmitry Deputy chief of staff of and press secretary for the Russian presidential administration.

Phares, Walid Foreign policy advisor to the Trump Campaign and co-secretary general of the Transatlantic Parliamentary Group on Counterterrorism (TAG).

Pinedo, Richard U.S. person who pleaded guilty to a single-count information of identity fraud.

Podesta, John Jr. Clinton campaign chairman whose email account was hacked by the GRU. WikiLeaks released his stolen emails during the 2016 campaign.

Podobnyy, Victor Russian intelligence officer who interacted with Carter Page while operating inside the United States; later charged in 2015 with conspiring to act as an unregistered agent of Russia.

Poliakova, Elena Personal assistant to Dmitry Peskov who responded to Michael Cohen’s outreach about the Trump Tower Moscow project in January 2016.

Polonskaya, Olga Russian national introduced to George Papadopoulos by Joseph Mifsud as an individual with connections to Vladimir Putin.

Pompeo, Michael U.S. Secretary of State; director of the Central Intelligence Agency (Jan. 2017 – Apr. 2018).

Porter, Robert White House staff secretary (Jan. 2017 – Feb. 2018).

Priebus, Reince White House chief of staff (Jan. 2017 – July 2017); chair of the Republican National Committee (Jan. 2011 – Jan. 2017).

Prigozhin, Yevgeniy Head of Russian companies Concord Catering and Concord Management and Consulting; supported and financed the Internet Research Agency, which engaged in an “active measures” social media campaign to interfere in the 2016 U.S. presidential election.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

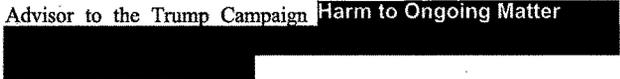
Prikhodko, Sergei	First deputy head of the Russian Government Office and former Russian deputy prime minister. In January 2016, he invited candidate Trump to the St. Petersburg International Economic Forum.
Prince, Erik	Businessman and Trump Campaign supporter who met with Presidential Transition Team officials after the election and traveled to the Seychelles to meet with Kirill Dmitriev in January 2017.
Raffel, Josh	White House communications advisor (Apr. 2017 – Feb. 2018).
Rasin, Alexei	Ukrainian associate of Henry Oknyansky who claimed to possess derogatory information regarding Hillary Clinton.
Rogers, Michael	Director of the National Security Agency (Apr. 2014 – May 2018).
Rosenstein, Rod	Deputy Attorney General (Apr. 2017 – present); Acting Attorney General for the Russian election interference investigation (May 2017 – Nov. 2018).
Rozov, Andrei	Chairman of I.C. Expert Investment Company, a Russian real-estate development corporation that signed a letter of intent for the Trump Tower Moscow project in 2015.
Rtskhiladze, Giorgi	Executive of the Silk Road Transatlantic Alliance, LLC who communicated with Cohen about a Trump Tower Moscow proposal.
Ruddy, Christopher	Chief executive of Newsmax Media and associate of President Trump.
Rybicki, James	FBI chief of staff (May 2015 – Feb. 2018).
Samochnov, Anatoli	Translator who worked with Natalia Veselnitskaya and attended a June 9, 2016 meeting at Trump Tower between Veselnitskaya and Trump Campaign officials.
Sanders, Sarah Huckabee	White House press secretary (July 2017 – present).
Sater, Felix	Real-estate advisor who worked with Michael Cohen to pursue a Trump Tower Moscow project.
Saunders, Paul J.	Executive with the Center for the National Interest who worked on outlines and logistics of candidate Trump's April 2016 foreign policy speech.
Sechin, Igor	Executive chairman of Rosneft, a Russian-stated owned oil company.
Sessions, Jefferson III (Jeff)	Attorney General (Feb. 2017 – Nov. 2018); U.S. Senator (Jan. 1997 – Feb. 2017); head of the Trump Campaign's foreign policy advisory team.
Shoygu, Sergey	Russian Minister of Defense.
Simes, Dimitri	President and chief executive officer of the Center for the National Interest.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Smith, Peter Investment banker active in Republican politics who sought to obtain Hillary Clinton emails during the 2016 U.S. presidential campaign period.

Spicer, Sean White House press secretary and communications director (Jan. 2017 – July 2017).

Stone, Roger Advisor to the Trump Campaign **Harm to Ongoing Matter**


Tillerson, Rex U.S. Secretary of State (Feb. 2017 – Mar. 2018).

Timofeev, Ivan Director of programs at the Russian International Affairs Council and program director of the Valdai Discussion Club who communicated in 2016 with George Papadopoulos, attempting to arrange a meeting between the Russian government and the Trump Campaign.

Trump, Donald Jr. President Trump's son; trustee and executive vice president of the Trump Organization; helped arrange and attended the June 9, 2016 meeting at Trump Tower between Natalia Veselnitskaya and Trump Campaign officials.

Trump, Eric President Trump's son; trustee and executive vice president of the Trump Organization.

Trump, Ivanka President Trump's daughter; advisor to the President and former executive vice president of the Trump Organization.

Ushakov, Yuri Viktorovich Aide to Vladimir Putin and former Russian ambassador to the United States; identified to the Presidential Transition Team as the proposed channel to the Russian government.

Vaino, Anton Chief of staff to Russian president Vladimir Putin.

Van der Zwaan, Alexander Former attorney at Skadden, Arps, Slate, Meagher & Flom, LLP; worked with Paul Manafort and Rick Gates.

Vargas, Catherine Executive assistant to Jared Kushner.

Vasilchenko, Gleb Internet Research Agency employee who engaged in an "active measures" social media campaign to interfere in the 2016 U.S. presidential election.

Veselnitskaya, Natalia Russian attorney who advocated for the repeal of the Magnitsky Act and was the principal speaker at the June 9, 2016 meeting at Trump Tower with Trump Campaign officials.

Weber, Shlomo Rector of the New Economic School (NES) in Moscow who invited Carter Page to speak at NES commencement in July 2016.

Yanukovych, Viktor Former president of Ukraine who had worked with Paul Manafort.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Yates, Sally Acting Attorney General (Jan. 20, 2017– Jan. 30, 2017); Deputy Attorney General (Jan. 10, 2015 – Jan. 30, 2017).

Yatsenko, Sergey Deputy chief financial officer of Gazprom, a Russian state-owned energy company, and associate of Carter Page.

Zakharova, Maria Director of the Russian Ministry of Foreign Affairs Information and Press Department who received notification of Carter Page's speech in July 2016 from Denis Klimentov.

Zayed al Nahyan, Mohammed bin Crown Prince of Abu Dhabi and deputy supreme commander of the United Arab Emirates (UAE) armed forces.

Entities and Organizations

Alfa-Bank Russia's largest commercial bank, which is headed by Petr Aven.

Center for the National Interest (CNI) U.S.-based think tank with expertise in and connections to Russia. CNI's publication, the National Interest, hosted candidate Trump's foreign policy speech in April 2016.

Concord Umbrella term for Concord Management and Consulting, LLC and Concord Catering, which are Russian companies controlled by Yevgeniy Prigozhin.

Crocus Group or Crocus International A Russian real-estate and property development company that, in 2013, hosted the Miss Universe Pageant, and from 2013 through 2014, worked with the Trump Organization on a Trump Moscow project.

DCLeaks Fictitious online persona operated by the GRU that released stolen documents during the 2016 U.S. presidential campaign period.

Democratic Congressional Campaign Committee Political committee working to elect Democrats to the House of Representatives; hacked by the GRU in April 2016.

Democratic National Committee Formal governing body for the Democratic Party; hacked by the GRU in April 2016.

Duma Lower House of the national legislature of the Russian Federation.

Gazprom Russian oil and gas company majority-owned by the Russian government.

Global Energy Capital, LLC Investment and management firm founded by Carter Page.

Global Partners in Diplomacy Event hosted in partnership with the U.S. Department of State and the Republican National Convention. In 2016, Jeff Sessions and J.D. Gordon delivered speeches at the event and interacted with Russian Ambassador Sergey Kislyak.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Guccifer 2.0	Fictitious online persona operated by the GRU that released stolen documents during the 2016 U.S. presidential campaign period.
I.C. Expert Investment Company	Russian real-estate and development corporation that signed a letter of intent with a Trump Organization subsidiary to develop a Trump Moscow property.
Internet Research Agency (IRA)	Russian entity based in Saint Petersburg and funded by Concord that engaged in an "active measures" social media campaign to interfere in the 2016 U.S. presidential election.
KLS Research LLC	Business established by an associate of and at the direction of Peter Smith to further Smith's search for Hillary Clinton emails.
Kremlin	Official residence of the president of the Russian Federation; it is used colloquially to refer to the office of the president or the Russian government.
LetterOne	Company that includes Petr Aven and Richard Burt as board members. During a board meeting in December 2016, Aven asked for Burt's help to make contact with the Presidential Transition Team.
Link Campus University	University in Rome, Italy, where George Papadopoulos was introduced to Joseph Mifsud.
London Centre of International Law Practice (LCILP)	International law advisory organization in London that employed Joseph Mifsud and George Papadopoulos.
Main Intelligence Directorate of the General Staff (GRU)	Russian Federation's military intelligence agency.
New Economic School in Moscow (NES)	Moscow-based school that invited Carter Page to speak at its July 2016 commencement ceremony.
Opposition Bloc	Ukrainian political party that incorporated members of the defunct Party of Regions.
Party of Regions	Ukrainian political party of former President Yanukovich. It was generally understood to align with Russian policies.
Pericles Emerging Market Partners LLP	Company registered in the Cayman Islands by Paul Manafort and his business partner Rick Davis. Oleg Deripaska invested in the fund.
Prevezon Holdings Ltd.	Russian company that was a defendant in a U.S. civil action alleging the laundering of proceeds from fraud exposed by Sergei Magnitsky.
Roscongress Foundation	Russian entity that organized the St. Petersburg International Economic Forum.
Rosneft	Russian state-owned oil and energy company.
Russian Direct Investment Fund	Sovereign wealth fund established by the Russian Government in 2011 and headed by Kirill Dmitriev.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Russian International Affairs Council	Russia-based nonprofit established by Russian government decree. It is associated with the Ministry of Foreign Affairs, and its members include Ivan Timofeev, Dmitry Peskov, and Petr Aven.
Silk Road Group	Privately held investment company that entered into a licensing agreement to build a Trump-branded hotel in Georgia.
St. Petersburg International Economic Forum	Annual event held in Russia and attended by prominent Russian politicians and businessmen.
Tatneft	Russian energy company.
Transatlantic Parliamentary Group on Counterterrorism	European group that sponsored a summit between European Parliament lawmakers and U.S. persons. George Papadopoulos, Sam Clovis, and Walid Phares attended the TAG summit in July 2016.
Unit 26165 (GRU)	GRU military cyber unit dedicated to targeting military, political, governmental, and non-governmental organizations outside of Russia. It engaged in computer intrusions of U.S. persons and organizations, as well as the subsequent release of the stolen data, in order to interfere in the 2016 U.S. presidential election.
Unit 74455 (GRU)	GRU military unit with multiple departments that engaged in cyber operations. It engaged in computer intrusions of U.S. persons and organizations, as well as the subsequent release of the stolen data, in order to interfere in the 2016 U.S. presidential election.
Valdai Discussion Club	Group that holds a conference attended by Russian government officials, including President Putin.
WikiLeaks	Organization founded by Julian Assange that posts information online, including data stolen from private, corporate, and U.S. Government entities. Released data stolen by the GRU during the 2016 U.S. presidential election.

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Index of Acronyms

CNI	Center for the National Interest
DCCC	Democratic Congressional Campaign Committee
DNC	Democratic National Committee
FBI	Federal Bureau of Investigation
FSB	Russian Federal Security Service
GEC	Global Energy Capital, LLC
GRU	Russian Federation's Main Intelligence Directorate of the General Staff
HPSCI	U.S. House of Representatives Permanent Select Committee on Intelligence
HRC	Hillary Rodham Clinton
IRA	Internet Research Agency
LCILP	London Centre of International Law Practice
NATO	North Atlantic Treaty Organization
NES	New Economic School
NSA	National Security Agency
ODNI	Office of the Director of National Intelligence
PTT	Presidential Transition Team
RDIF	Russian Direct Investment Fund
RIAC	Russian International Affairs Council
SBOE	State boards of elections
SCO	Special Counsel's Office
SJC	U.S. Senate Judiciary Committee
SSCI	U.S. Senate Select Committee on Intelligence
TAG	Transatlantic Parliamentary Group on Counterterrorism
VEB	Vnesheconombank

19614

413

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Appendix C

19615

414

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

APPENDIX C

INTRODUCTORY NOTE

The President provided written responses through his personal counsel to questions submitted to him by the Special Counsel's Office. We first explain the process that led to the submission of written questions and then attach the President's responses.

Beginning in December 2017, this Office sought for more than a year to interview the President on topics relevant to both Russian-election interference and obstruction-of-justice. We advised counsel that the President was a "subject" of the investigation under the definition of the Justice Manual—"a person whose conduct is within the scope of the grand jury's investigation." Justice Manual § 9-11.151 (2018). We also advised counsel that "[a]n interview with the President is vital to our investigation" and that this Office had "carefully considered the constitutional and other arguments raised by . . . counsel, and they d[id] not provide us with reason to forgo seeking an interview."¹ We additionally stated that "it is in the interest of the Presidency and the public for an interview to take place" and offered "numerous accommodations to aid the President's preparation and avoid surprise."² After extensive discussions with the Department of Justice about the Special Counsel's objective of securing the President's testimony, these accommodations included the submissions of written questions to the President on certain Russia-related topics.³

We received the President's written responses in late November 2018.⁴ In December 2018, we informed counsel of the insufficiency of those responses in several respects.⁵ We noted, among other things, that the President stated on more than 30 occasions that he "does not 'recall' or 'remember' or have an 'independent recollection'" of information called for by the questions.⁶ Other answers were "incomplete or imprecise."⁷ The written responses, we informed counsel, "demonstrate the inadequacy of the written format, as we have had no opportunity to ask follow-up questions that would ensure complete answers and potentially refresh your client's recollection or clarify the extent or nature of his lack of recollection."⁸ We again requested an in-person interview, limited to certain topics, advising the President's counsel that "[t]his is the President's

¹ 5/16/18 Letter, Special Counsel to the President's Personal Counsel, at 1.

² 5/16/18 Letter, Special Counsel's Office to the President's Personal Counsel, at 1; *see* 7/30/18 Letter, Special Counsel's Office to the President's Personal Counsel, at 1 (describing accommodations).

³ 9/17/18 Letter, Special Counsel's Office to the President's Personal Counsel, at 1 (submitting written questions).

⁴ 11/20/18 Letter, President's Personal Counsel to the Special Counsel's Office (transmitting written responses of Donald J. Trump).

⁵ 12/3/18 Letter, Special Counsel's Office to the President's Personal Counsel, at 3.

⁶ 12/3/18 Letter, Special Counsel's Office to the President's Personal Counsel, at 3.

⁷ 12/3/18 Letter, Special Counsel's Office to the President's Personal Counsel, at 3; *see* (noting, "for example," that the President "did not answer whether he had at any time directed or suggested that discussions about the Trump Moscow Project should cease . . . but he has since made public comments about that topic").

⁸ 12/3/18 Letter, Special Counsel's Office to the President's Personal Counsel, at 3.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

opportunity to voluntarily provide us with information for us to evaluate in the context of all of the evidence we have gathered."⁹ The President declined.¹⁰

Grand Jury

Grand Jury

Recognizing that the President would not be interviewed voluntarily, we considered whether to issue a subpoena for his testimony. We viewed the written answers to be inadequate. But at that point, our investigation had made significant progress and had produced substantial evidence for our report. We thus weighed the costs of potentially lengthy constitutional litigation, with resulting delay in finishing our investigation, against the anticipated benefits for our investigation and report. As explained in Volume II, Section II.B., we determined that the substantial quantity of information we had obtained from other sources allowed us to draw relevant factual conclusions on intent and credibility, which are often inferred from circumstantial evidence and assessed without direct testimony from the subject of the investigation.

* * *

⁹ 12/3/18 Letter, Special Counsel to the President's Personal Counsel.

¹⁰ 12/12/18 Letter, President's Personal Counsel to the Special Counsel's Office, at 2.

¹¹ Grand Jury

¹² Grand Jury

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

WRITTEN QUESTIONS TO BE ANSWERED UNDER OATH BY PRESIDENT DONALD J. TRUMP

I. June 9, 2016 Meeting at Trump Tower

- a. When did you first learn that Donald Trump, Jr., Paul Manafort, or Jared Kushner was considering participating in a meeting in June 2016 concerning potentially negative information about Hillary Clinton? Describe who you learned the information from and the substance of the discussion.
- b. Attached to this document as Exhibit A is a series of emails from June 2016 between, among others, Donald Trump, Jr. and Rob Goldstone. In addition to the emails reflected in Exhibit A, Donald Trump, Jr. had other communications with Rob Goldstone and Emin Agalarov between June 3, 2016, and June 9, 2016.
 - i. Did Mr. Trump, Jr. or anyone else tell you about or show you any of these communications? If yes, describe who discussed the communications with you, when, and the substance of the discussion(s).
 - ii. When did you first see or learn about all or any part of the emails reflected in Exhibit A?
 - iii. When did you first learn that the proposed meeting involved or was described as being part of Russia and its government's support for your candidacy?
 - iv. Did you suggest to or direct anyone not to discuss or release publicly all or any portion of the emails reflected in Exhibit A? If yes, describe who you communicated with, when, the substance of the communication(s), and why you took that action.
- c. On June 9, 2016, Donald Trump, Jr., Paul Manafort, and Jared Kushner attended a meeting at Trump Tower with several individuals, including a Russian lawyer, Natalia Veselnitskaya (the "June 9 meeting").
 - i. Other than as set forth in your answers to I.a and I.b, what, if anything, were you told about the possibility of this meeting taking place, or the scheduling of such a meeting? Describe who you discussed this with, when, and what you were informed about the meeting.
 - ii. When did you learn that some of the individuals attending the June 9 meeting were Russian or had any affiliation with any part of the Russian government? Describe who you learned this information from and the substance of the discussion(s).
 - iii. What were you told about what was discussed at the June 9 meeting? Describe each conversation in which you were told about what was discussed at the meeting, who the conversation was with, when it occurred, and the substance of the statements they made about the meeting.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

- iv. Were you told that the June 9 meeting was about, in whole or in part, adoption and/or the Magnitsky Act? If yes, describe who you had that discussion with, when, and the substance of the discussion.
- d. For the period June 6, 2016 through June 9, 2016, for what portion of each day were you in Trump Tower?
 - i. Did you speak or meet with Donald Trump, Jr., Paul Manafort, or Jared Kushner on June 9, 2016? If yes, did any portion of any of those conversations or meetings include any reference to any aspect of the June 9 meeting? If yes, describe who you spoke with and the substance of the conversation.
 - e. Did you communicate directly or indirectly with any member or representative of the Agalarov family after June 3, 2016? If yes, describe who you spoke with, when, and the substance of the communication.
 - f. Did you learn of any communications between Donald Trump, Jr., Paul Manafort, or Jared Kushner and any member or representative of the Agalarov family, Natalia Veselnitskaya, Rob Goldstone, or any Russian official or contact that took place after June 9, 2016 and concerned the June 9 meeting or efforts by Russia to assist the campaign? If yes, describe who you learned this information from, when, and the substance of what you learned.
 - g. On June 7, 2016, you gave a speech in which you said, in part, "I am going to give a major speech on probably Monday of next week and we're going to be discussing all of the things that have taken place with the Clintons."
 - i. Why did you make that statement?
 - ii. What information did you plan to share with respect to the Clintons?
 - iii. What did you believe the source(s) of that information would be?
 - iv. Did you expect any of the information to have come from the June 9 meeting?
 - v. Did anyone help draft the speech that you were referring to? If so, who?
 - vi. Why did you ultimately not give the speech you referenced on June 7, 2016?
 - h. Did any person or entity inform you during the campaign that Vladimir Putin or the Russian government supported your candidacy or opposed the candidacy of Hillary Clinton? If yes, describe the source(s) of the information, when you were informed, and the content of such discussion(s).
 - i. Did any person or entity inform you during the campaign that any foreign government or foreign leader, other than Russia or Vladimir Putin, had provided, wished to provide, or offered to provide tangible support to your campaign, including by way of offering to provide negative information on Hillary Clinton? If

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

yes, describe the source(s) of the information, when you were informed, and the content of such discussion(s).

II. Russian Hacking / Russian Efforts Using Social Media / WikiLeaks

- a. On June 14, 2016, it was publicly reported that computer hackers had penetrated the computer network of the Democratic National Committee (DNC) and that Russian intelligence was behind the unauthorized access, or hack. Prior to June 14, 2016, were you provided any information about any potential or actual hacking of the computer systems or email accounts of the DNC, the Democratic Congressional Campaign Committee (DCCC), the Clinton Campaign, Hillary Clinton, or individuals associated with the Clinton campaign? If yes, describe who provided this information, when, and the substance of the information.
- b. On July 22, 2016, WikiLeaks released nearly 20,000 emails sent or received by Democratic party officials.
 - i. Prior to the July 22, 2016 release, were you aware from any source that WikiLeaks, Guccifer 2.0, DCLeaks, or Russians had or potentially had possession of or planned to release emails or information that could help your campaign or hurt the Clinton campaign? If yes, describe who you discussed this issue with, when, and the substance of the discussion(s).
 - ii. After the release of emails by WikiLeaks on July 22, 2016, were you told that WikiLeaks possessed or might possess additional information that could be released during the campaign? If yes, describe who provided this information, when, and what you were told.
- c. Are you aware of any communications during the campaign, directly or indirectly, between Roger Stone, Donald Trump, Jr., Paul Manafort, or Rick Gates and (a) WikiLeaks, (b) Julian Assange, (c) other representatives of WikiLeaks, (d) Guccifer 2.0, (e) representatives of Guccifer 2.0, or (f) representatives of DCLeaks? If yes, describe who provided you with this information, when you learned of the communications, and what you know about those communications.
- d. On July 27, 2016, you stated at a press conference: "Russia, if you're listening, I hope you're able to find the 30,000 emails that are missing. I think you will probably be rewarded mightily by our press."
 - i. Why did you make that request of Russia, as opposed to any other country, entity, or individual?
 - ii. In advance of making that statement, what discussions, if any, did you have with anyone else about the substance of the statement?
 - iii. Were you told at any time before or after you made that statement that Russia was attempting to infiltrate or hack computer systems or email accounts of Hillary Clinton or her campaign? If yes, describe who provided this information, when, and what you were told.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

- e. On October 7, 2016, emails hacked from the account of John Podesta were released by WikiLeaks.
 - i. Where were you on October 7, 2016?
 - ii. Were you told at any time in advance of, or on the day of, the October 7 release that WikiLeaks possessed or might possess emails related to John Podesta? If yes, describe who told you this, when, and what you were told.
 - iii. Are you aware of anyone associated with you or your campaign, including Roger Stone, reaching out to WikiLeaks, either directly or through an intermediary, on or about October 7, 2016? If yes, identify the person and describe the substance of the conversations or contacts.
- f. Were you told of anyone associated with you or your campaign, including Roger Stone, having any discussions, directly or indirectly, with WikiLeaks, Guccifer 2.0, or DCLeaks regarding the content or timing of release of hacked emails? If yes, describe who had such contacts, how you became aware of the contacts, when you became aware of the contacts, and the substance of the contacts.
- g. From June 1, 2016 through the end of the campaign, how frequently did you communicate with Roger Stone? Describe the nature of your communication(s) with Mr. Stone.
 - i. During that time period, what efforts did Mr. Stone tell you he was making to assist your campaign, and what requests, if any, did you make of Mr. Stone?
 - ii. Did Mr. Stone ever discuss WikiLeaks with you or, as far as you were aware, with anyone else associated with the campaign? If yes, describe what you were told, from whom, and when.
 - iii. Did Mr. Stone at any time inform you about contacts he had with WikiLeaks or any intermediary of WikiLeaks, or about forthcoming releases of information? If yes, describe what Stone told you and when.
- h. Did you have any discussions prior to January 20, 2017, regarding a potential pardon or other action to benefit Julian Assange? If yes, describe who you had the discussion(s) with, when, and the content of the discussion(s).
- i. Were you aware of any efforts by foreign individuals or companies, including those in Russia, to assist your campaign through the use of social media postings or the organization of rallies? If yes, identify who you discussed such assistance with, when, and the content of the discussion(s).

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~**III. The Trump Organization Moscow Project**

- a. In October 2015, a "Letter of Intent," a copy of which is attached as Exhibit B, was signed for a proposed Trump Organization project in Moscow (the "Trump Moscow project").
 - i. When were you first informed of discussions about the Trump Moscow project? By whom? What were you told about the project?
 - ii. Did you sign the letter of intent?
- b. In a statement provided to Congress, attached as Exhibit C, Michael Cohen stated: "To the best of my knowledge, Mr. Trump was never in contact with anyone about this proposal other than me on three occasions, including signing a non-binding letter of intent in 2015." Describe all discussions you had with Mr. Cohen, or anyone else associated with the Trump Organization, about the Trump Moscow project, including who you spoke with, when, and the substance of the discussion(s).
- c. Did you learn of any communications between Michael Cohen or Felix Sater and any Russian government officials, including officials in the office of Dmitry Peskov, regarding the Trump Moscow project? If so, identify who provided this information to you, when, and the substance of what you learned.
- d. Did you have any discussions between June 2015 and June 2016 regarding a potential trip to Russia by you and/or Michael Cohen for reasons related to the Trump Moscow project? If yes, describe who you spoke with, when, and the substance of the discussion(s).
- e. Did you at any time direct or suggest that discussions about the Trump Moscow project should cease, or were you informed at any time that the project had been abandoned? If yes, describe who you spoke with, when, the substance of the discussion(s), and why that decision was made.
- f. Did you have any discussions regarding what information would be provided publicly or in response to investigative inquiries about potential or actual investments or business deals the Trump Organization had in Russia, including the Trump Moscow project? If yes, describe who you spoke with, when, and the substance of the discussion(s).
- g. Aside from the Trump Moscow project, did you or the Trump Organization have any other prospective or actual business interests, investments, or arrangements with Russia or any Russian interest or Russian individual during the campaign? If yes, describe the business interests, investments, or arrangements.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~**IV. Contacts with Russia and Russia-Related Issues During the Campaign**

- a. Prior to mid-August 2016, did you become aware that Paul Manafort had ties to the Ukrainian government? If yes, describe who you learned this information from, when, and the substance of what you were told. Did Mr. Manafort's connections to the Ukrainian or Russian governments play any role in your decision to have him join your campaign? If yes, describe that role.
- b. Were you aware that Paul Manafort offered briefings on the progress of your campaign to Oleg Deripaska? If yes, describe who you learned this information from, when, the substance of what you were told, what you understood the purpose was of sharing such information with Mr. Deripaska, and how you responded to learning this information.
- c. Were you aware of whether Paul Manafort or anyone else associated with your campaign sent or directed others to send internal Trump campaign information to any person located in Ukraine or Russia or associated with the Ukrainian or Russian governments? If yes, identify who provided you with this information, when, the substance of the discussion(s), what you understood the purpose was of sharing the internal campaign information, and how you responded to learning this information.
- d. Did Paul Manafort communicate to you, directly or indirectly, any positions Ukraine or Russia would want the U.S. to support? If yes, describe when he communicated those positions to you and the substance of those communications.
- e. During the campaign, were you told about efforts by Russian officials to meet with you or senior members of your campaign? If yes, describe who you had conversations with on this topic, when, and what you were told.
- f. What role, if any, did you have in changing the Republican Party platform regarding arming Ukraine during the Republican National Convention? Prior to the convention, what information did you have about this platform provision? After the platform provision was changed, who told you about the change, when did they tell you, what were you told about why it was changed, and who was involved?
- g. On July 27, 2016, in response to a question about whether you would recognize Crimea as Russian territory and lift sanctions on Russia, you said: "We'll be looking at that. Yeah, we'll be looking." Did you intend to communicate by that statement or at any other time during the campaign a willingness to lift sanctions and/or recognize Russia's annexation of Crimea if you were elected?

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

- i. What consideration did you give to lifting sanctions and/or recognizing Russia's annexation of Crimea if you were elected? Describe who you spoke with about this topic, when, the substance of the discussion(s).

V. Contacts with Russia and Russia-Related Issues During the Transition

- a. Were you asked to attend the World Chess Championship gala on November 10, 2016? If yes, who asked you to attend, when were you asked, and what were you told about why your presence was requested?
 - i. Did you attend any part of the event? If yes, describe any interactions you had with any Russians or representatives of the Russian government at the event.
- b. Following the Obama Administration's imposition of sanctions on Russia in December 2016 ("Russia sanctions"), did you discuss with Lieutenant General (LTG) Michael Flynn, K.T. McFarland, Steve Bannon, Reince Priebus, Jared Kushner, Erik Prince, or anyone else associated with the transition what should be communicated to the Russian government regarding the sanctions? If yes, describe who you spoke with about this issue, when, and the substance of the discussion(s).
- c. On December 29 and December 31, 2016, LTG Flynn had conversations with Russian Ambassador Sergey Kislyak about the Russia sanctions and Russia's response to the Russia sanctions.
 - i. Did you direct or suggest that LTG Flynn have discussions with anyone from the Russian government about the Russia sanctions?
 - ii. Were you told in advance of LTG Flynn's December 29, 2016 conversation that he was going to be speaking with Ambassador Kislyak? If yes, describe who told you this information, when, and what you were told. If no, when and from whom did you learn of LTG Flynn's December 29, 2016 conversation with Ambassador Kislyak?
 - iii. When did you learn of LTG Flynn and Ambassador Kislyak's call on December 31, 2016? Who told you and what were you told?
 - iv. When did you learn that sanctions were discussed in the December 29 and December 31, 2016 calls between LTG Flynn and Ambassador Kislyak? Who told you and what were you told?
- d. At any time between December 31, 2016, and January 20, 2017, did anyone tell you or suggest to you that Russia's decision not to impose reciprocal sanctions was attributable in any way to LTG Flynn's communications with Ambassador Kislyak? If yes, identify who provided you with this information, when, and the substance of what you were told.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

- e. On January 12, 2017, the Washington Post published a column that stated that LTG Flynn phoned Ambassador Kislyak several times on December 29, 2016. After learning of the column, did you direct or suggest to anyone that LTG Flynn should deny that he discussed sanctions with Ambassador Kislyak? If yes, who did you make this suggestion or direction to, when, what did you say, and why did you take this step?
 - i. After learning of the column, did you have any conversations with LTG Flynn about his conversations with Ambassador Kislyak in December 2016? If yes, describe when those discussions occurred and the content of the discussions.
- f. Were you told about a meeting between Jared Kushner and Sergei Gorkov that took place in December 2016?
 - i. If yes, describe who you spoke with, when, the substance of the discussion(s), and what you understood was the purpose of the meeting.
- g. Were you told about a meeting or meetings between Erik Prince and Kirill Dmitriev or any other representative from the Russian government that took place in January 2017?
 - i. If yes, describe who you spoke with, when, the substance of the discussion(s), and what you understood was the purpose of the meeting(s).
- h. Prior to January 20, 2017, did you talk to Steve Bannon, Jared Kushner, or any other individual associated with the transition regarding establishing an unofficial line of communication with Russia? If yes, describe who you spoke with, when, the substance of the discussion(s), and what you understood was the purpose of such an unofficial line of communication.

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

RESPONSES OF PRESIDENT DONALD J. TRUMP

I. June 9, 2016 Meeting at Trump Tower

- a. When did you first learn that Donald Trump, Jr., Paul Manafort, or Jared Kushner was considering participating in a meeting in June 2016 concerning potentially negative information about Hillary Clinton? Describe who you learned the information from and the substance of the discussion.
- b. Attached to this document as Exhibit A is a series of emails from June 2016 between, among others, Donald Trump, Jr. and Rob Goldstone. In addition to the emails reflected in Exhibit A, Donald Trump, Jr. had other communications with Rob Goldstone and Emin Agalarov between June 3, 2016, and June 9, 2016.
 - i. Did Mr. Trump, Jr. or anyone else tell you about or show you any of these communications? If yes, describe who discussed the communications with you, when, and the substance of the discussion(s).
 - ii. When did you first see or learn about all or any part of the emails reflected in Exhibit A?
 - iii. When did you first learn that the proposed meeting involved or was described as being part of Russia and its government's support for your candidacy?
 - iv. Did you suggest to or direct anyone not to discuss or release publicly all or any portion of the emails reflected in Exhibit A? If yes, describe who you communicated with, when, the substance of the communication(s), and why you took that action.
- c. On June 9, 2016, Donald Trump, Jr., Paul Manafort, and Jared Kushner attended a meeting at Trump Tower with several individuals, including a Russian lawyer, Natalia Veselnitskaya (the "June 9 meeting").
 - i. Other than as set forth in your answers to I.a and I.b, what, if anything, were you told about the possibility of this meeting taking place, or the scheduling of such a meeting? Describe who you discussed this with, when, and what you were informed about the meeting.
 - ii. When did you learn that some of the individuals attending the June 9 meeting were Russian or had any affiliation with any part of the Russian government? Describe who you learned this information from and the substance of the discussion(s).

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

- iii. What were you told about what was discussed at the June 9 meeting? Describe each conversation in which you were told about what was discussed at the meeting, who the conversation was with, when it occurred, and the substance of the statements they made about the meeting.
 - iv. Were you told that the June 9 meeting was about, in whole or in part, adoption and/or the Magnitsky Act? If yes, describe who you had that discussion with, when, and the substance of the discussion.
- d. For the period June 6, 2016 through June 9, 2016, for what portion of each day were you in Trump Tower?
- i. Did you speak or meet with Donald Trump, Jr., Paul Manafort, or Jared Kushner on June 9, 2016? If yes, did any portion of any of those conversations or meetings include any reference to any aspect of the June 9 meeting? If yes, describe who you spoke with and the substance of the conversation.
- e. Did you communicate directly or indirectly with any member or representative of the Agalarov family after June 3, 2016? If yes, describe who you spoke with, when, and the substance of the communication.
- f. Did you learn of any communications between Donald Trump, Jr., Paul Manafort, or Jared Kushner and any member or representative of the Agalarov family, Natalia Veselnitskaya, Rob Goldstone, or any Russian official or contact that took place after June 9, 2016 and concerned the June 9 meeting or efforts by Russia to assist the campaign? If yes, describe who you learned this information from, when, and the substance of what you learned.
- g. On June 7, 2016, you gave a speech in which you said, in part, "I am going to give a major speech on probably Monday of next week and we're going to be discussing all of the things that have taken place with the Clintons."
- i. Why did you make that statement?
 - ii. What information did you plan to share with respect to the Clintons?
 - iii. What did you believe the source(s) of that information would be?
 - iv. Did you expect any of the information to have come from the June 9 meeting?
 - v. Did anyone help draft the speech that you were referring to? If so, who?
 - vi. Why did you ultimately not give the speech you referenced on June 7, 2016?
- h. Did any person or entity inform you during the campaign that Vladimir Putin or the Russian

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

government supported your candidacy or opposed the candidacy of Hillary Clinton? If yes, describe the source(s) of the information, when you were informed, and the content of such discussion(s).

- i. Did any person or entity inform you during the campaign that any foreign government or foreign leader, other than Russia or Vladimir Putin, had provided, wished to provide, or offered to provide tangible support to your campaign, including by way of offering to provide negative information on Hillary Clinton? If yes, describe the source(s) of the information, when you were informed, and the content of such discussion(s).

Response to Question I, Parts (a) through (c)

I have no recollection of learning at the time that Donald Trump, Jr., Paul Manafort, or Jared Kushner was considering participating in a meeting in June 2016 concerning potentially negative information about Hillary Clinton. Nor do I recall learning during the campaign that the June 9, 2016 meeting had taken place, that the referenced emails existed, or that Donald J. Trump, Jr., had other communications with Emin Agalarov or Robert Goldstone between June 3, 2016 and June 9, 2016.

Response to Question I, Part (d)

I have no independent recollection of what portion of these four days in June of 2016 I spent in Trump Tower. This was one of many busy months during a fast-paced campaign, as the primary season was ending and we were preparing for the general election campaign.

I am now aware that my Campaign's calendar indicates that I was in New York City from June 6 – 9, 2016. Calendars kept in my Trump Tower office reflect that I had various calls and meetings scheduled for each of these days. While those calls and meetings may or may not actually have taken place, they do indicate that I was in Trump Tower during a portion of each of these working days, and I have no reason to doubt that I was. When I was in New York City, I stayed at my Trump Tower apartment.

My Trump Organization desk calendar also reflects that I was outside Trump Tower during portions of these days. The June 7, 2016 calendar indicates I was scheduled to leave Trump Tower in the early evening for Westchester where I gave remarks after winning the California, New Jersey, New Mexico, Montana, and South Dakota Republican primaries held that day. The June 8, 2016 calendar indicates a scheduled departure in late afternoon to attend a ceremony at my son's school. The June 9, 2016 calendar indicates I was scheduled to attend midday meetings and a fundraising luncheon at the Four Seasons Hotel. At this point, I do not remember on what dates these events occurred, but I do not currently have a reason to doubt that they took place as scheduled on my calendar.

Widely available media reports, including television footage, also shed light on my activities during these days. For example, I am aware that my June 7, 2016 victory remarks at the Trump

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

National Golf Club in Briarcliff Manor, New York, were recorded and published by the media. I remember winning those primaries and generally recall delivering remarks that evening.

At this point in time, I do not remember whether I spoke or met with Donald Trump, Jr., Paul Manafort, or Jared Kushner on June 9, 2016. My desk calendar indicates I was scheduled to meet with Paul Manafort on the morning of June 9, but I do not recall if that meeting took place. It was more than two years ago, at a time when I had many calls and interactions daily.

Response to Question I, Part (e)

I have no independent recollection of any communications I had with the Agalarov family or anyone I understood to be a representative of the Agalarov family after June 3, 2016 and before the end of the campaign. While preparing to respond to these questions, I have become aware of written communications with the Agalarovs during the campaign that were sent, received, and largely authored by my staff and which I understand have already been produced to you.

In general, the documents include congratulatory letters on my campaign victories, emails about a painting Emin and Aras Agalarov arranged to have delivered to Trump Tower as a birthday present, and emails regarding delivery of a book written by Aras Agalarov. The documents reflect that the deliveries were screened by the Secret Service.

Response to Question I, Part (f)

I do not recall being aware during the campaign of communications between Donald Trump, Jr., Paul Manafort, or Jared Kushner and any member or representative of the Agalarov family, Robert Goldstone, Natalia Veselnitskaya (whose name I was not familiar with), or anyone I understood to be a Russian official.

Response to Question I, Part (g)

In remarks I delivered the night I won the California, New Jersey, New Mexico, Montana, and South Dakota Republican primaries, I said, "I am going to give a major speech on probably Monday of next week and we're going to be discussing all of the things that have taken place with the Clintons." In general, I expected to give a speech referencing the publicly available, negative information about the Clintons, including, for example, Mrs. Clinton's failed policies, the Clintons' use of the State Department to further their interests and the interests of the Clinton Foundation, Mrs. Clinton's improper use of a private server for State Department business, the destruction of 33,000 emails on that server, and Mrs. Clinton's temperamental unsuitability for the office of President.

In the course of preparing to respond to your questions, I have become aware that the Campaign documents already produced to you reflect the drafting, evolution, and sources of information for the speech I expected to give "probably" on the Monday following my June 7, 2016 comments. These documents generally show that the text of the speech was initially drafted by Campaign staff

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

with input from various outside advisors and was based on publicly available material, including, in particular, information from the book *Clinton Cash* by Peter Schweizer.

The Pulse Nightclub terrorist attack took place in the early morning hours of Sunday, June 12, 2016. In light of that tragedy, I gave a speech directed more specifically to national security and terrorism than to the Clintons. That speech was delivered at the Saint Anselm College Institute of Politics in Manchester, New Hampshire, and, as reported, opened with the following:

This was going to be a speech on Hillary Clinton and how bad a President, especially in these times of Radical Islamic Terrorism, she would be. Even her former Secret Service Agent, who has seen her under pressure and in times of stress, has stated that she lacks the temperament and integrity to be president. There will be plenty of opportunity to discuss these important issues at a later time, and I will deliver that speech soon. But today there is only one thing to discuss: the growing threat of terrorism inside of our borders.

I continued to speak about Mrs. Clinton's failings throughout the campaign, using the information prepared for inclusion in the speech to which I referred on June 7, 2016.

Response to Question I, Part (h)

I have no recollection of being told during the campaign that Vladimir Putin or the Russian government "supported" my candidacy or "opposed" the candidacy of Hillary Clinton. However, I was aware of some reports indicating that President Putin had made complimentary statements about me.

Response to Question I, Part (i)

I have no recollection of being told during the campaign that any foreign government or foreign leader had provided, wished to provide, or offered to provide tangible support to my campaign.

II. Russian Hacking / Russian Efforts Using Social Media / WikiLeaks

- a. On June 14, 2016, it was publicly reported that computer hackers had penetrated the computer network of the Democratic National Committee (DNC) and that Russian intelligence was behind the unauthorized access, or hack. Prior to June 14, 2016, were you provided any information about any potential or actual hacking of the computer systems or email accounts of the DNC, the Democratic Congressional Campaign Committee (DCCC), the Clinton Campaign, Hillary Clinton, or individuals associated with the Clinton campaign? If yes, describe who provided this information, when, and the substance of the information.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

- b. On July 22, 2016, WikiLeaks released nearly 20,000 emails sent or received by Democratic party officials.
- i. Prior to the July 22, 2016 release, were you aware from any source that WikiLeaks, Guccifer 2.0, DCLeaks, or Russians had or potentially had possession of or planned to release emails or information that could help your campaign or hurt the Clinton campaign? If yes, describe who you discussed this issue with, when, and the substance of the discussion(s).
 - ii. After the release of emails by WikiLeaks on July 22, 2016, were you told that WikiLeaks possessed or might possess additional information that could be released during the campaign? If yes, describe who provided this information, when, and what you were told.
- c. Are you aware of any communications during the campaign, directly or indirectly, between Roger Stone, Donald Trump, Jr., Paul Manafort, or Rick Gates and (a) WikiLeaks, (b) Julian Assange, (c) other representatives of WikiLeaks, (d) Guccifer 2.0, (e) representatives of Guccifer 2.0, or (f) representatives of DCLeaks? If yes, describe who provided you with this information, when you learned of the communications, and what you know about those communications.
- d. On July 27, 2016, you stated at a press conference: "Russia, if you're listening, I hope you're able to find the 30,000 emails that are missing. I think you will probably be rewarded mightily by our press."
- i. Why did you make that request of Russia, as opposed to any other country, entity, or individual?
 - ii. In advance of making that statement, what discussions, if any, did you have with anyone else about the substance of the statement?
 - iii. Were you told at any time before or after you made that statement that Russia was attempting to infiltrate or hack computer systems or email accounts of Hillary Clinton or her campaign? If yes, describe who provided this information, when, and what you were told.
- e. On October 7, 2016, emails hacked from the account of John Podesta were released by WikiLeaks.
- i. Where were you on October 7, 2016?
 - ii. Were you told at any time in advance of, or on the day of, the October 7 release that WikiLeaks possessed or might possess emails related to John Podesta? If yes, describe who told you this, when, and what you were told.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

- iii. Are you aware of anyone associated with you or your campaign, including Roger Stone, reaching out to WikiLeaks, either directly or through an intermediary, on or about October 7, 2016? If yes, identify the person and describe the substance of the conversations or contacts.
- f. Were you told of anyone associated with you or your campaign, including Roger Stone, having any discussions, directly or indirectly, with WikiLeaks, Guccifer 2.0, or DCLeaks regarding the content or timing of release of hacked emails? If yes, describe who had such contacts, how you became aware of the contacts, when you became aware of the contacts, and the substance of the contacts.
- g. From June 1, 2016 through the end of the campaign, how frequently did you communicate with Roger Stone? Describe the nature of your communication(s) with Mr. Stone.
 - i. During that time period, what efforts did Mr. Stone tell you he was making to assist your campaign, and what requests, if any, did you make of Mr. Stone?
 - ii. Did Mr. Stone ever discuss WikiLeaks with you or, as far as you were aware, with anyone else associated with the campaign? If yes, describe what you were told, from whom, and when.
 - iii. Did Mr. Stone at anytime inform you about contacts he had with WikiLeaks or any intermediary of WikiLeaks, or about forthcoming releases of information? If yes, describe what Stone told you and when.
- h. Did you have any discussions prior to January 20, 2017, regarding a potential pardon or other action to benefit Julian Assange? If yes, describe who you had the discussion(s) with, when, and the content of the discussion(s).
- i. Were you aware of any efforts by foreign individuals or companies, including those in Russia, to assist your campaign through the use of social media postings or the organization of rallies? If yes, identify who you discussed such assistance with, when, and the content of the discussion(s).

Response to Question II, Part (a)

I do not remember the date on which it was publicly reported that the DNC had been hacked, but my best recollection is that I learned of the hacking at or shortly after the time it became the subject of media reporting. I do not recall being provided any information during the campaign about the hacking of any of the named entities or individuals before it became the subject of media reporting.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Response to Question II, Part (b)

I recall that in the months leading up to the election there was considerable media reporting about the possible hacking and release of campaign-related information and there was a lot of talk about this matter. At the time, I was generally aware of these media reports and may have discussed these issues with my campaign staff or others, but at this point in time – more than two years later – I have no recollection of any particular conversation, when it occurred, or who the participants were.

Response to Question II, Part (c)

I do not recall being aware during the campaign of any communications between the individuals named in Question II (c) and anyone I understood to be a representative of WikiLeaks or any of the other individuals or entities referred to in the question.

Response to Question II, Part (d)

I made the statement quoted in Question II (d) in jest and sarcastically, as was apparent to any objective observer. The context of the statement is evident in the full reading or viewing of the July 27, 2016 press conference, and I refer you to the publicly available transcript and video of that press conference. I do not recall having any discussion about the substance of the statement in advance of the press conference. I do not recall being told during the campaign of any efforts by Russia to infiltrate or hack the computer systems or email accounts of Hillary Clinton or her campaign prior to them becoming the subject of media reporting and I have no recollection of any particular conversation in that regard.

Response to Question II, Part (e)

I was in Trump Tower in New York City on October 7, 2016. I have no recollection of being told that WikiLeaks possessed or might possess emails related to John Podesta before the release of Mr. Podesta's emails was reported by the media. Likewise, I have no recollection of being told that Roger Stone, anyone acting as an intermediary for Roger Stone, or anyone associated with my campaign had communicated with WikiLeaks on October 7, 2016.

Response to Question II, Part (f)

I do not recall being told during the campaign that Roger Stone or anyone associated with my campaign had discussions with any of the entities named in the question regarding the content or timing of release of hacked emails.

Response to Question II, Part (g)

I spoke by telephone with Roger Stone from time to time during the campaign. I have no recollection of the specifics of any conversations I had with Mr. Stone between June 1, 2016 and

U.S. DEPARTMENT OF JUSTICE

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

November 8, 2016. I do not recall discussing WikiLeaks with him, nor do I recall being aware of Mr. Stone having discussed WikiLeaks with individuals associated with my campaign, although I was aware that WikiLeaks was the subject of media reporting and campaign-related discussion at the time.

Response to Question II, Part (h)

I do not recall having had any discussion during the campaign regarding a pardon or action to benefit Julian Assange.

Response to Question II, Part (i)

I do not recall being aware during the campaign of specific efforts by foreign individuals or companies to assist my campaign through the use of social media postings or the organization of rallies.

III. The Trump Organization Moscow Project

- a. In October 2015, a "Letter of Intent," a copy of which is attached as Exhibit B, was signed for a proposed Trump Organization project in Moscow (the "Trump Moscow project").
 - i. When were you first informed of discussions about the Trump Moscow project? By whom? What were you told about the project?
 - ii. Did you sign the letter of intent?
- b. In a statement provided to Congress, attached as Exhibit C, Michael Cohen stated: "To the best of my knowledge, Mr. Trump was never in contact with anyone about this proposal other than me on three occasions, including signing a non-binding letter of intent in 2015." Describe all discussions you had with Mr. Cohen, or anyone else associated with the Trump Organization, about the Trump Moscow project, including who you spoke with, when, and the substance of the discussion(s).
- c. Did you learn of any communications between Michael Cohen or Felix Sater and any Russian government officials, including officials in the office of Dmitry Peskov, regarding the Trump Moscow project? If so, identify who provided this information to you, when, and the substance of what you learned.
- d. Did you have any discussions between June 2015 and June 2016 regarding a potential trip to Russia by you and/or Michael Cohen for reasons related to the Trump Moscow project? If yes, describe who you spoke with, when, and the substance of the discussion(s).
- e. Did you at any time direct or suggest that discussions about the Trump Moscow project

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

should cease, or were you informed at any time that the project had been abandoned? If yes, describe who you spoke with, when, the substance of the discussion(s), and why that decision was made.

- f. Did you have any discussions regarding what information would be provided publicly or in response to investigative inquiries about potential or actual investments or business deals the Trump Organization had in Russia, including the Trump Moscow project? If yes, describe who you spoke with, when, and the substance of the discussion(s).
- g. Aside from the Trump Moscow project, did you or the Trump Organization have any other prospective or actual business interests, investments, or arrangements with Russia or any Russian interest or Russian individual during the campaign? If yes, describe the business interests, investments, or arrangements.

Response to Question III, Parts (a) through (g)

Sometime in 2015, Michael Cohen suggested to me the possibility of a Trump Organization project in Moscow. As I recall, Mr. Cohen described this as a proposed project of a general type we have done in the past in a variety of locations. I signed the non-binding Letter of Intent attached to your questions as Exhibit B which required no equity or expenditure on our end and was consistent with our ongoing efforts to expand into significant markets around the world.

I had few conversations with Mr. Cohen on this subject. As I recall, they were brief, and they were not memorable. I was not enthused about the proposal, and I do not recall any discussion of travel to Russia in connection with it. I do not remember discussing it with anyone else at the Trump Organization, although it is possible. I do not recall being aware at the time of any communications between Mr. Cohen or Felix Sater and any Russian government official regarding the Letter of Intent. In the course of preparing to respond to your questions, I have become aware that Mr. Cohen sent an email regarding the Letter of Intent to "Mr. Peskov" at a general, public email account, which should show there was no meaningful relationship with people in power in Russia. I understand those documents already have been provided to you.

I vaguely remember press inquiries and media reporting during the campaign about whether the Trump Organization had business dealings in Russia. I may have spoken with campaign staff or Trump Organization employees regarding responses to requests for information, but I have no current recollection of any particular conversation, with whom I may have spoken, when, or the substance of any conversation. As I recall, neither I nor the Trump Organization had any projects or proposed projects in Russia during the campaign other than the Letter of Intent.

IV. Contacts with Russia and Russia-Related Issues During the Campaign

- a. Prior to mid-August 2016, did you become aware that Paul Manafort had ties to the Ukrainian government? If yes, describe who you learned this information from, when, and the substance of what you were told. Did Mr. Manafort's connections to the Ukrainian or

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

- Russian governments play any role in your decision to have him join your campaign? If yes, describe that role.
- b. Were you aware that Paul Manafort offered briefings on the progress of your campaign to Oleg Deripaska? If yes, describe who you learned this information from, when, the substance of what you were told, what you understood the purpose was of sharing such information with Mr. Deripaska, and how you responded to learning this information.
 - c. Were you aware of whether Paul Manafort or anyone else associated with your campaign sent or directed others to send internal Trump campaign information to any person located in Ukraine or Russia or associated with the Ukrainian or Russian governments? If yes, identify who provided you with this information, when, the substance of the discussion(s), what you understood the purpose was of sharing the internal campaign information, and how you responded to learning this information.
 - d. Did Paul Manafort communicate to you, directly or indirectly, any positions Ukraine or Russia would want the U.S. to support? If yes, describe when he communicated those positions to you and the substance of those communications.
 - e. During the campaign, were you told about efforts by Russian officials to meet with you or senior members of your campaign? If yes, describe who you had conversations with on this topic, when, and what you were told.
 - f. What role, if any, did you have in changing the Republican Party platform regarding arming Ukraine during the Republican National Convention? Prior to the convention, what information did you have about this platform provision? After the platform provision was changed, who told you about the change, when did they tell you, what were you told about why it was changed, and who was involved?
 - g. On July 27, 2016, in response to a question about whether you would recognize Crimea as Russian territory and lift sanctions on Russia, you said: "We'll be looking at that. Yeah, we'll be looking." Did you intend to communicate by that statement or at any other time during the campaign a willingness to lift sanctions and/or recognize Russia's annexation of Crimea if you were elected?
 - i. What consideration did you give to lifting sanctions and/or recognizing Russia's annexation of Crimea if you were elected? Describe who you spoke with about this topic, when, the substance of the discussion(s).

Response to Question IV, Parts (a) through (d)

Mr. Manafort was hired primarily because of his delegate work for prior presidential candidates, including Gerald Ford, Ronald Reagan, George H.W. Bush, and Bob Dole. I knew that Mr. Manafort had done international consulting work and, at some time before Mr. Manafort left the

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

campaign, I learned that he was somehow involved with individuals concerning Ukraine, but I do not remember the specifics of what I knew at the time.

I had no knowledge of Mr. Manafort offering briefings on the progress of my campaign to an individual named Oleg Deripaska, nor do I remember being aware of Mr. Manafort or anyone else associated with my campaign sending or directing others to send internal Trump Campaign information to anyone I knew to be in Ukraine or Russia at the time or to anyone I understood to be a Ukrainian or Russian government employee or official. I do not remember Mr. Manafort communicating to me any particular positions Ukraine or Russia would want the United States to support.

Response to Question IV, Part (e)

I do not recall being told during the campaign of efforts by Russian officials to meet with me or with senior members of my campaign. In the process of preparing to respond to these questions, I became aware that on March 17, 2016, my assistant at the Trump Organization, Rhona Graff, received an email from a Sergei Prikhodko, who identified himself as Deputy Prime Minister of the Russian Federation, Foundation Roscongress, inviting me to participate in the St. Petersburg International Economic Forum to be held in June 2016. The documents show that Ms. Graff prepared for my signature a brief response declining the invitation. I understand these documents already have been produced to you.

Response to Question IV, Part (f)

I have no recollection of the details of what, when, or from what source I first learned about the change to the platform amendment regarding arming Ukraine, but I generally recall learning of the issue as part of media reporting. I do not recall being involved in changing the language to the amendment.

Response to Question IV, Part (g)

My statement did not communicate any position.

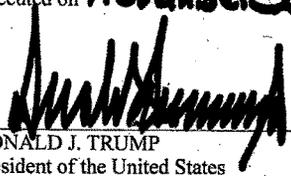
V. Contacts with Russia and Russia-Related Issues During the Transition

- a. Were you asked to attend the World Chess Championship gala on November 10, 2016? If yes, who asked you to attend, when were you asked, and what were you told about about [sic] why your presence was requested?
 - i. Did you attend any part of the event? If yes, describe any interactions you had with any Russians or representatives of the Russian government at the event.

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~**Response to Question V, Part (a)**

I do not remember having been asked to attend the World Chess Championship gala, and I did not attend the event. During the course of preparing to respond to these questions, I have become aware of documents indicating that in March of 2016, the president of the World Chess Federation invited the Trump Organization to host, at Trump Tower, the 2016 World Chess Championship Match to be held in New York in November 2016. I have also become aware that in November 2016, there were press inquiries to my staff regarding whether I had plans to attend the tournament, which was not being held at Trump Tower. I understand these documents have already been provided to you.

Executed on **November 20**, 2018

DONALD J. TRUMP
President of the United States

19639

438

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

19640

439

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Appendix D

19641

440

U.S. Department of Justice
~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

APPENDIX D

SPECIAL COUNSEL'S OFFICE TRANSFERRED, REFERRED, AND COMPLETED CASES

This appendix identifies matters transferred or referred by the Special Counsel's Office, as well as cases prosecuted by the Office that are now completed.

A. Transfers

The Special Counsel's Office has concluded its investigation into links and coordination between the Russian government and individuals associated with the Trump Campaign. Certain matters assigned to the Office by the Acting Attorney General have not fully concluded as of the date of this report. After consultation with the Office of the Deputy Attorney General, the Office has transferred responsibility for those matters to other components of the Department of Justice and the FBI. Those transfers include:

1. United States v. Bijan Rafiekian and Kamil Ekim Alptekin

U.S. Attorney's Office for the Eastern District of Virginia
(Awaiting trial)

The Acting Attorney General authorized the Special Counsel to investigate, among other things, possible criminal conduct by Michael Flynn in acting as an unregistered agent for the Government of Turkey. See August 2, 2017 Memorandum from Rod J. Rosenstein to Robert S. Mueller, III. The Acting Attorney General later confirmed the Special Counsel's authority to investigate Rafiekian and Alptekin because they "may have been jointly involved" with Flynn in FARA-related crimes. See October 20, 2017 Memorandum from Associate Deputy Attorney General Scott Schools to Deputy Attorney General Rod J. Rosenstein.

On December 1, 2017, Flynn pleaded guilty to an Information charging him with making false statements to the FBI about his contacts with the Russian ambassador to the United States. As part of that plea, Flynn agreed to a Statement of the Offense in which he acknowledged that the Foreign Agents Registration Act (FARA) documents he filed on March 7, 2017 "contained materially false statements and omissions." Flynn's plea occurred before the Special Counsel had made a final decision on whether to charge Rafiekian or Alptekin. On March 27, 2018, after consultation with the Office of the Deputy Attorney General, the Special Counsel's Office referred the investigation of Rafiekian and Alptekin to the National Security Division (NSD) for any action it deemed appropriate. The Special Counsel's Office determined the referral was appropriate because the investigation of Flynn had been completed, and that investigation had provided the rationale for the Office's investigation of Rafiekian and Alptekin. At NSD's request, the Eastern District of Virginia continued the investigation of Rafiekian and Alptekin.

2. United States v. Michael Flynn

U.S. Attorney's Office for the District of Columbia
(Awaiting sentencing)

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~3. United States v. Richard Gates

U.S. Attorney's Office for the District of Columbia
(Awaiting sentencing)

4. United States v. Internet Research Agency, et al. (Russian Social Media Campaign)

U.S. Attorney's Office for the District of Columbia
National Security Division
(Post-indictment, pre-arrest & pre-trial¹)

5. United States v. Konstantin Kilimnik

U.S. Attorney's Office for the District of Columbia
(Post-indictment, pre-arrest)

6. United States v. Paul Manafort

U.S. Attorney's Office for the District of Columbia
U.S. Attorney's Office for the Eastern District of Virginia
(Post-conviction)

7. United States v. Viktor Netyksho, et al. (Russian Hacking Operations)

U.S. Attorney's Office for the Western District of Pennsylvania
National Security Division
(Post-indictment, pre-arrest)

8. United States v. William Samuel Patten

U.S. Attorney's Office for the District of Columbia
(Awaiting sentencing)

The Acting Attorney General authorized the Special Counsel to investigate aspects of Patten's conduct that related to another matter that was under investigation by the Office. The investigation uncovered evidence of a crime; the U.S. Attorney's Office for the District of Columbia handled the prosecution of Patten.

9. Harm to Ongoing Matter


(Investigation ongoing)

The Acting Attorney General authorized the Special Counsel to investigate, among other things, crime or crimes arising out of payments Paul Manafort received from the Ukrainian government before and during the tenure of President Viktor Yanukovich. See August 2, 2017 Memorandum from Rod J. Rosenstein to Robert S. Mueller, III. The Acting Attorney General

¹ One defendant, Concord Management & Consulting LLC, appeared through counsel and is in pre-trial litigation.

U.S. Department of Justice

Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

later confirmed the Special Counsel's authority to investigate **Harm to Ongoing Matter**

On October 27, 2017, Paul Manafort and Richard Gates were charged in the District of Columbia with various crimes (including FARA) in connection with work they performed for Russia-backed political entities in Ukraine. On February 22, 2018, Manafort and Gates were charged in the Eastern District of Virginia with various other crimes in connection with the payments they received for work performed for Russia-backed political entities in Ukraine. During the course of its **HOM**, the Special Counsel's Office developed substantial evidence with respect to individuals and entities that were **Investigative Technique**

² On February 23, 2018, Gates pleaded guilty in the District of Columbia to a multi-object conspiracy and to making false statements; the remaining charges against Gates were dismissed.³ Thereafter, in consultation with the Office of the Deputy Attorney General, the Special Counsel's Office closed the **Harm to Ongoing Matter** and referred them **HOM** for further investigation as it deemed appropriate. The Office based its decision to close those matters on its mandate, the indictments of Manafort, Gates's plea, and its determination as to how best to allocate its resources, among other reasons; **Harm to Ongoing Matter** continued the investigation of those closed matters.

10. United States v. Roger Stone

U.S. Attorney's Office for the District of Columbia
(Awaiting trial)

11. **Harm to Ongoing Matter**

(Investigation ongoing)

B. Referrals

During the course of the investigation, the Office periodically identified evidence of potential criminal activity that was outside the scope of the Special Counsel's jurisdiction established by the Acting Attorney General. After consultation with the Office of the Deputy Attorney General, the Office referred that evidence to appropriate law enforcement authorities, principally other components of the Department of Justice and the FBI. Those referrals, listed

²**Harm to Ongoing Matter**

³ Manafort was ultimately convicted at trial in the Eastern District of Virginia and pleaded guilty in the District of Columbia. See Vol. I, Section IV.A.8. The trial and plea happened after the transfer decision described here.

U.S. Department of Justice
 Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

alphabetically by subject, are summarized below.

1. HOM

Harm to Ongoing Matter

2. Michael Cohen

During the course of the investigation, the Special Counsel's Office uncovered evidence of potential wire fraud and FECA violations pertaining to Michael Cohen. That evidence was referred to the U.S. Attorney's Office for the Southern District of New York and the FBI's New York Field Office.

3. HOM

Harm to Ongoing Matter

4. HOM

Harm to Ongoing Matter

5. Gregory Craig HOM Skadden, Arps, Slate, Meagher & Flom LLP

During the course of the FARA investigation of Paul Manafort and Rick Gates, the Special Counsel's Office uncovered evidence of potential FARA violations pertaining to HOM Gregory Craig, Skadden, Arps, Slate, Meagher & Flom LLP (Skadden), and their work on behalf of the government of Ukraine.

After consultation with the NSD, the evidence regarding Craig HOM was referred to NSD, and NSD elected to partner with the U.S. Attorney's Office for the Southern District of New York and the FBI's New York Field Office. NSD later elected to partner on the Craig matter with the U.S. Attorney's Office for the District of Columbia. NSD retained and handled issues relating to Skadden itself.

6. HOM

Harm to Ongoing Matter

U.S. Department of Justice

~~Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)~~

Harm to Ongoing Matter

[Redacted]

7. HOM [Redacted]

Harm to Ongoing Matter

[Redacted]

8. HOM [Redacted]

Harm to Ongoing Matter

[Redacted]

9. HOM [Redacted]

Harm to Ongoing Matter

[Redacted]

10. HOM [Redacted]

Harm to Ongoing Matter

[Redacted]

11. HOM [Redacted]

Harm to Ongoing Matter

[Redacted]

12. HOM [Redacted]

Harm to Ongoing Matter

[Redacted]

13. HOM [Redacted]

Harm to Ongoing Matter

[Redacted]

U.S. Department of Justice
Attorney Work Product // May Contain Material Protected Under Fed. R. Crim. P. 6(e)

Harm to Ongoing Matter

14. HOM

Harm to Ongoing Matter

Harm to Ongoing Matter

C. Completed Prosecutions

In three cases prosecuted by the Special Counsel's Office, the defendants have completed or are about to complete their terms of imprisonment. Because no further proceedings are likely in any case, responsibility for them has not been transferred to any other office or component.

1. United States v. George Papadopoulos

Post-conviction, Completed term of imprisonment (December 7, 2018)

2. United States v. Alex van der Zwaan

Post-conviction, Completed term of imprisonment (June 4, 2018)

3. United States v. Richard Pinedo

Post-conviction, Currently in Residential Reentry Center (release date May 13, 2019)

19648

447

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

116TH CONGRESS
1st Session

SENATE

REPORT
116-XX

REPORT
OF THE
SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE
ON
RUSSIAN ACTIVE MEASURES CAMPAIGNS AND INTERFERENCE
IN THE 2016 U.S. ELECTION
VOLUME 1: RUSSIAN EFFORTS AGAINST ELECTION
INFRASTRUCTURE
WITH ADDITIONAL VIEWS

1

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY
[REDACTED]

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

CONTENTS

I. (U) INTRODUCTION 3

II. (U) FINDINGS 3

III. (U) THE ARC OF RUSSIAN ACTIVITIES 5

IV. (U) ELEMENTS OF RUSSIAN ACTIVITIES .. 10

 A. (U) Targeting Activity 10

 B. (U) Russian Access to Election Infrastructure 21

 1. (U) Russian Access to Election Infrastructure: Illinois 22

 2. [REDACTED] Russian Access to Election Infrastructure: [REDACTED] 24

 C. [REDACTED] Russian Efforts to Research U.S. Voting Systems, Processes, and Other Elements of Voting Infrastructure 28

 D. [REDACTED] Russian Activity Directed at Voting Machine Companies 29

 E. [REDACTED] Russian Efforts to Observe Polling Places 30

 F. [REDACTED] 32

 G. [REDACTED] Russian Activity Possibly Related to a Misinformation Campaign on Vote [REDACTED] 32

 H. (U) Two Unexplained Events 33

 1. (U) Cyber Activity in State 22 33

 2. (U) Cyber Activity in State 4 34

V. (U) RUSSIAN INTENTIONS 35

VI. (U) NO EVIDENCE OF CHANGED VOTES OR MANIPULATED VOTE TALLIES. 38

VII. (U) SECURITY OF VOTING MACHINES 40

VIII. (U) THE ROLE OF DHS AND INTERACTIONS WITH THE STATES 46

 A. (U) DHS's Evolution 46

 B. (U) The View From the States 49

 C. (U) Taking Advantage of DHS Resources 52

IX. (U) RECOMMENDATIONS 54

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

[REDACTED]

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

Russian Efforts Against Election Infrastructure

I. (U) INTRODUCTION

(U) From 2017 to 2019, the Committee held hearings, conducted interviews, and reviewed intelligence related to Russian attempts in 2016 to access election infrastructure. The Committee sought to determine the extent of Russian activities, identify the response of the U S Government at the state, local, and federal level to the threat, and make recommendations on how to better prepare for such threats in the future. The Committee received testimony from state election officials, Obama administration officials, and those in the Intelligence Community and elsewhere in the U S. Government responsible for evaluating threats to elections.

II. (U) FINDINGS

1. [REDACTED] The Russian government directed extensive activity, beginning in at least 2014 and carrying into at least 2017, against U.S. election infrastructure¹ at the state and local level.

[REDACTED]

[REDACTED] The Committee has seen no evidence that any votes were changed or that any voting machines were manipulated.²

2. [REDACTED]

¹ (U) The Department of Homeland Security (DHS) defines *election infrastructure* as “storage facilities, polling places, and centralized vote tabulation locations used to support the election process, and information and communications technology to include voter registration databases, voting machines, and other systems to manage the election process and report and display results on behalf of state and local governments.” according to the January 6, 2017 statement issued by Secretary of Homeland Security Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector, available at <https://www.dhs.gov/news/2017/10/06/statement-secretary-johnson-designation-election-infrastructure-critical>. Similarly, the Help America Vote Act (HAVA), Pub L. No. 107-252, Section 301(b)(1) refers to a functionally similar set of equipment as “voting systems,” although the definition excludes physical polling places themselves, among other differences, 52 U.S.C. §21081(b). This report uses the term *election infrastructure* broadly, to refer to the equipment, processes, and systems related to voting, tabulating, reporting, and registration.

² [REDACTED] The Committee has reviewed the intelligence reporting underlying the Department of Homeland Security (DHS) assessment from early 2017 [REDACTED]

[REDACTED] The Committee finds it credible [REDACTED]

³ (U) The names of the states the Committee spoke to have been replaced with numbers. DHS and some states asked the Committee to protect state names before providing the Committee with information. The Committee’s goal was to get the most information possible, so state names are anonymized throughout this report. Where the report refers to public testimony by Illinois state election officials, that state is identified.

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

[REDACTED]

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

3. (U) While the Committee does not know with confidence what Moscow's intentions were, Russia may have been probing vulnerabilities in voting systems to exploit later. Alternatively, Moscow may have sought to undermine confidence in the 2016 U S elections simply through the discovery of their activity
4. (U) Russian efforts exploited the seams between federal authorities and capabilities, and protections for the states. The U.S. intelligence apparatus is, by design, foreign-facing, with limited domestic cybersecurity authorities except where the Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) can work with state and local partners. State election officials, who have primacy in running elections, were not sufficiently warned or prepared to handle an attack from a hostile nation-state actor
5. (U) DHS and FBI alerted states to the threat of cyber attacks in the late summer and fall of 2016, but the warnings did not provide enough information or go to the right people. Alerts were actionable, in that they provided malicious Internet Protocol (IP) addresses to information technology (IT) professionals, but they provided no clear reason for states to take this threat more seriously than any other alert received.
6. (U) In 2016, officials at all levels of government debated whether publicly acknowledging this foreign activity was the right course. Some were deeply concerned that public warnings might promote the very impression they were trying to dispel—that the voting systems were insecure.
7. (U) Russian activities demand renewed attention to vulnerabilities in U.S. voting infrastructure. In 2016, cybersecurity for electoral infrastructure at the state and local level was sorely lacking, for example, voter registration databases were not as secure as they could have been. Aging voting equipment, particularly voting machines that had no paper record of votes, were vulnerable to exploitation by a committed adversary. Despite the focus on this issue since 2016, some of these vulnerabilities remain.
8. (U) In the face of this threat and these security gaps, DHS has redoubled its efforts to build trust with states and deploy resources to assist in securing elections. Since 2016, DHS has made great strides in learning how election procedures vary across states and how federal entities can be of most help to states. The U.S. Election Assistance Commission (EAC), the National Association of Secretaries of State (NASS), the National Association of State Election Directors (NASED), and other groups have helped DHS in this effort. DHS's work to bolster states' cybersecurity has likely been effective, in particular for those states that have leveraged DHS's cybersecurity assessments for election infrastructure, but much more needs to be done to coordinate state, local, and federal knowledge and efforts in order to harden states' electoral infrastructure against foreign meddling.
9. (U) To assist in addressing these vulnerabilities, Congress in 2018 appropriated \$380 million in grant money for the states to bolster cybersecurity and replace vulnerable

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY
[REDACTED]

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

voting machines.⁴ When those funds are spent, Congress should evaluate the results and consider an additional appropriation to address remaining insecure voting machines and systems

10. (U) DHS and other federal government entities remain respectful of the limits of federal involvement in state election systems. States should be firmly in the lead for running elections. The country's decentralized election system can be a strength from a cybersecurity perspective, but each operator should be keenly aware of the limitations of their cybersecurity capabilities and know how to quickly and properly obtain assistance.

III. (U) THE ARC OF RUSSIAN ACTIVITIES

[REDACTED] In its review of the 2016 elections, the Committee found no evidence that vote tallies were altered or that voter registry files were deleted or modified, though the Committee and IC's insight into this is limited. Russian government-affiliated cyber actors conducted an unprecedented level of activity against state election infrastructure in the run-up to the 2016 U S elections.

[REDACTED] Throughout 2016 and for several years before, Russian intelligence services and government personnel conducted a number of intelligence-related activities targeting the voting process.

[REDACTED] the Committee found ample evidence to suggest that the Russian government was developing and implementing capabilities to interfere in the 2016 elections, including undermining confidence in U S. democratic institutions and voting processes.⁵

[REDACTED]

• [REDACTED]

⁴ (U) Consolidated Appropriations Act, 2018, Pub L No 115-141, 132 Stat 348, 561-562

⁵ (U) The Committee has limited information on the extent to which state and local election authorities carried out forensic evaluation of registration databases. These activities are routinely carried out in the context of private sector breaches.

6 FBI LHM, [REDACTED]
7 FBI LHM, [REDACTED]
8 DHS Homeland Intelligence Brief, [REDACTED]
9 FBI LHM, [REDACTED]

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY
[REDACTED]

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

- [REDACTED]
- [REDACTED]

[REDACTED] Evidence of scanning of state election systems first appeared in the summer prior to the 2016 election. In mid-July 2016, Illinois discovered anomalous network activity, specifically a large increase in outbound data, on a Illinois Board of Elections' voter registry website.¹² Working with Illinois, the FBI commenced an investigation.¹³ [REDACTED]

[REDACTED] The attack resulted in data exfiltration from the voter registration database.¹⁶

(U) On August 18, 2016, FBI issued an unclassified FLASH¹⁷ to state technical-level experts on a set of [REDACTED] suspect IP addresses identified from the attack on Illinois's voter registration databases.¹⁸ [REDACTED]

[REDACTED] The FLASH product did not attribute the attack to Russia or any other particular actor²¹

¹⁰ (U) [REDACTED] FBI Electronic Communication, [REDACTED]
¹¹ [REDACTED] FBI LHM, [REDACTED]
¹² (U) DHS briefing for SSCI staff, March 5, 2018.
¹³ (U) SSCI Transcript of the Open Hearing on Russian Interference in the 2016 U S Elections, held on Wednesday, June 21, 2017, p 113.
¹⁴ (U) [REDACTED] According to the United States Computer Emergency Readiness Team (US-CERT), an SQL injection is "an [REDACTED] technique that attempts to subvert the relationship between a webpage and its supporting database, typically in order to trick the database into executing malicious code"
¹⁵ (U) DHS IIR 4 0050006 17, *An IP Address Targeted Multiple U S State Government's to Include Election Systems*, October 4, 2016
¹⁶ (U) [REDACTED] DHS briefing for SSCI staff, March 5, 2018
¹⁷ (U) FBI FLASH alerts are notifications of potential cyber threats sent to local law enforcement and private industry so that administrators are able to guard their systems against the described threat. FLASHs marked TLP AMBER are considered sharable with members of the recipients own organization and those with direct need to know
¹⁸ [REDACTED] Number T-LD1004-TT, TLP-AMBER, [REDACTED]
¹⁹ (U) *Ibid*

²⁰ (U) *Ibid*
²¹ R [REDACTED] wned

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

(U [REDACTED]) After the issuance of the August FLASH, the Department of Homeland Security (DHS) and the Multi-State-Information Sharing & Analysis Center (MS-ISAC)²² asked states to review their log files to determine if the IP addresses described in the FLASH had touched their infrastructure. This request for voluntary self-reporting, in conjunction with DHS analysis of NetFlow activity on MS-ISAC internet sensors, identified another 20 states whose networks had made connections to at least one IP address listed on the FLASH.²³ DHS was almost entirely reliant on states to self-report scanning activity.

[REDACTED]
[REDACTED] Former Special Assistant to the President and Cybersecurity Coordinator Michael Daniel said, “eventually we get enough of a picture that we become confident over the course of August of 2016 that we’re seeing the Russians probe a whole bunch of different state election infrastructure, voter registration databases, and other related infrastructure on a regular basis.”²⁵ Dr. Samuel Liles, Acting Director of the Cyber Analysis Division within DHS’s Office of Intelligence and Analysis (I&A), testified to the Committee on June 21, 2017, that “by late September, we determined that internet-connected election-related networks in 21 states were potentially targeted by Russian government cyber actors.”²⁶

[REDACTED]

²² (U) The MS-ISAC is a DHS-supported group dedicated to sharing information between state, local, tribal, and territorial (SLTT) government entities. It serves as the central cybersecurity resource for SLTT governments. Entities join to receive cybersecurity advisories and alerts, vulnerability assessments, incident response assistance, and other services.

²³ (U [REDACTED]) DHS IIR 4 005 0006, *An IP Address Targeted Multiple U.S. State Governments to Include Election Systems*, October 4, 2016, DHS briefing for SSCI staff, March 5, 2018.

²⁴ (U) SSCI Transcript of the Interview with John Brennan, Former Director, CIA, held on Friday, June 23, 2017, p. 41.

²⁵ (U) SSCI Transcript of the Interview with Michael Daniel, Former Special Assistant to the President and Cybersecurity Coordinator, National Security Council, held on August 31, 2017, p. 39.

²⁶ (U) SSCI Transcript of the Open Hearing on Russian Interference in the 2016 U.S. Elections, held on Wednesday, June 21, 2017, p. 12.

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

(U) DHS and FBI issued a second FI ASH and a Joint Analysis Report in October that flagged [REDACTED] suspect IP addresses, many unrelated to Russia.²⁷ DHS briefers told the Committee that they were intentionally over-reporting out of an abundance of caution, given their concern about the seriousness of the threat. DHS representatives told the Committee, “We were very much at that point in a sort of duty-to-warn type of attitude where maybe a specific incident like this, which was unattributed at the time, wouldn’t have necessarily risen to that level. But . . . we were seeing concurrent targeting of other election-related and political figures and political institutions . . . [which] led to what would probably be more sharing than we would normally think to do.”²⁸

[REDACTED]

[REDACTED] DHS assessed that the searches, done alphabetically, probably included all 50 states, and consisted of research on “general election-related web pages, voter ID information, election system software, and election service companies.”³¹

[REDACTED]

[REDACTED]

²⁷ (U) [REDACTED] FBI FLASH, Alert Number T-LD1005-TT, TLP-AMBER, [REDACTED], DHS/FBI JAR-16-20223, *Threats to Federal, State, and Local Government Systems*, October 14, 2016.

²⁸ (U) SSCI interview with DHS and CTIC, February 27, 2018, p. 9-10

²⁹ [REDACTED] FBI LHM, [REDACTED]

³⁰ [REDACTED] DHS Homeland Intelligence Brief, *Update* [REDACTED]

³¹ [REDACTED] NSA [REDACTED] DIRNSA, May 5, 2017. This information was not available to the U.S. government until April 2017.

³² (U) NSA [REDACTED] DIRNSA, May 5, 2017

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

[REDACTED]

The Russian Embassy placed a formal request to observe the elections with the Department of State, but also reached outside diplomatic channels in an attempt to secure permission directly from state and local election officials³⁷ In objecting to these tactics, then-Assistant Secretary of State for European and Eurasian Affairs Victoria Nuland reminded the Russian Ambassador that Russia had refused invitations to participate in the official OSCE mission that was to observe the U S elections³⁸

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁵ (U) FBI IIR [REDACTED], FBI IIR [REDACTED]

³⁶ (U) *Ibid*

³⁷ (U) DTS 2018-2152, SSCI Interview with Andrew McCabe, Formr Deputy Director of the FBI, February 14, 2018, pp 221-222

³⁸ [REDACTED] Email, sent November 4, 2016, from [REDACTED], to [REDACTED], [REDACTED]

³⁹ (U) NSA [REDACTED] Subject Kislyak Protest of FBI Tactics
DIRNSA, May 5, 2017

⁴⁰ (U) *Ibid*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

(U) The Committee found no evidence of Russian actors attempting to manipulate vote tallies on Election Day, though again the Committee and IC's insight into this is limited.

(U) [REDACTED] In the years since the 2016 election, awareness of the threat, activity by DHS, and measures at the state and local level to better secure election infrastructure have all shown considerable improvement. The threat, however, remains imperfectly understood. In a briefing before Senators on August 22, 2018, DNI Daniel Coats, FBI Director Christopher Wray, then-DHS Secretary Kirstjen Nielsen, and then-DHS Undersecretary for the National Protection and Programs Division Christopher Krebs told Senators that there were no known threats to election infrastructure. However, Mr. Krebs also said that top election vulnerabilities remain, including the administration of the voter databases and the tabulation of the data, with the latter being a much more difficult target to attack.⁴⁴ Relatedly, several weeks prior to the 2018 mid-term election, DHS assessed that "numerous actors are regularly targeting election infrastructure, likely for different purposes, including to cause disruptive effects, steal sensitive data, and undermine confidence in the election."⁴⁵

IV. (U) ELEMENTS OF RUSSIAN ACTIVITIES

A. (U) Targeting Activity

[REDACTED] Scanning of election-related state infrastructure by Moscow was the most widespread activity the IC and DHS elements observed in the run up to the 2016 election.⁴⁸

- [REDACTED] In an interview with the Committee, Mr. Daniel stated, "What it mostly looked like to us was reconnaissance. I would have characterized it at the time as sort of conducting the reconnaissance to do the network mapping, to do the topology mapping so

⁴⁴ (U) DTS 2018-3275, Summary of 8/22/2018 All Senators Election Security Briefing, August 28, 2018

⁴⁵ (U) [REDACTED] Homeland Security Intelligence Assessment: Cyber Actors Continue to Engage in Influence Activities and Targeting of Election Infrastructure, October 11, 2018

⁴⁶ (U) DTS 2019-1368, NIC 2019-01, Intelligence Community Assessment: A Summary of the Intelligence Community Report on Foreign Interference as Directed by Executive Order 13848, March 29, 2019, p. 2-3

⁴⁷ (U) *Ibid*

⁴⁸ (U) SSC1 interview of representatives from DHS and CTRIC, February 27, 2018, p. 12

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

that you could actually understand the network, establish a presence so you could come back later and actually execute an operation.”⁴⁹

- (U) Testifying before the Committee, Dr Liles characterized the activity as “simple scanning for vulnerabilities, analogous to somebody walking down the street and looking to see if you are home. A small number of systems were unsuccessfully exploited, as though somebody had rattled the doorknob but was unable to get in . . . [however] a small number of the networks were successfully exploited. They made it through the door.”⁵⁰

[REDACTED] DHS and FBI assessments on the number of affected states evolved since 2016. In a joint FBI/DHS intelligence product published in March 2018, and coordinated with the Central Intelligence Agency (CIA), the Defense Intelligence Agency (DIA), the Department of State, the National Intelligence Council, the National Security Agency (NSA), and the Department of Treasury, DHS and FBI assessed [REDACTED] that Russian intelligence services conducted activity [REDACTED].⁵¹

[REDACTED]

- [REDACTED] DHS arrived at their initial assessment by evaluating whether the tactics, techniques, and procedures (TTPs) observed were consistent with previously observed Russian TTPs, whether the actors used known Russian-affiliated malicious infrastructure, and whether a state or local election system was the target.⁵³
- (U) The majority of information examined by DHS was provided by the states themselves. The MS-ISAC gathered information from states that noticed the suspect IPs pinged their systems. In addition, FBI was working with some states in local field offices and reporting back FBI’s findings.
- (U) If some states evaluated their logs incompletely or inaccurately, then DHS might have no indication of whether they were scanned or attacked. As former-Homeland Security Adviser Lisa Monaco told the Committee, “Of course, the law enforcement and the intelligence community is going to be significantly reliant on what the holders and

⁴⁹ (U) SSCI Transcript of the Interview of Michael Daniel, Former Assistant to the President and Cybersecurity Coordinator, National Security Council, August 31, 2017, p. 44

⁵⁰ (U) SSCI Transcript of the Open Hearing on Russian Interference in the 2016 U.S. Elections, held on Wednesday, June 21, 2017, p. 13

⁵¹ [REDACTED] DHS/FBI Homeland Intelligence Brief, [REDACTED]

⁵² (U) See chart, *infra*, for information on successful breaches

⁵³ (U) DHS did not count attacks on political parties, political organizations, or NGOs. For example, the compromise of an email affiliated with a partisan State 13 voter registration organization was not included in DHS’s count

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

owners and operators of the infrastructure sees on its system [sic] and decides to raise their hand”⁵⁴

[REDACTED] However, both the IC and the Committee in its own review were unable to discern a pattern in the affected states, [REDACTED]

(U) Mr. Daniel told the Committee that by late August 2016, he had already personally concluded that the Russians had attempted to intrude in all 50 states, based on the extent of the activity and the apparent randomness of the attempts “My professional judgment was we have to work under the assumption that they’ve tried to go everywhere, because they’re thorough, they’re competent, they’re good.”⁵⁵

[REDACTED] Intelligence developed later in 2018 bolstered Mr. Daniel’s assessment that all 50 states were targeted [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵⁴ (U) SSCI Transcript of the Interview with of Lisa Monaco, Former Homeland Security Advisor, August 10, 2017, p. 38

⁵⁵ (U) SSCI Transcript of the Interview with Michael Daniel, Former Assistant to the President and Cybersecurity Coordinator, National Security Council, August 31, 2017, p. 40

⁵⁶ [REDACTED] DHS/FBI Homeland Intelligence Bulletin, [REDACTED]

⁵⁷ (U) *Ibid*

⁵⁸ (U) DHS briefing for SSCI staff, March 5, 2018

⁵⁹ (U) SSCI interview of representatives from DHS and CTIIC, February 27, 2018, pp. 11-12

⁶⁰ (U) DHS briefing for SSCI staff, March 5, 2018

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY
[REDACTED]

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

- [REDACTED]

- [REDACTED]

[REDACTED]

(U) However, IP addresses associated with the August 18, 2016 FLASH provided some indications the activity might be attributable to the Russian government, particularly the GRU

- [REDACTED]

- [REDACTED]

- (U) [REDACTED] One of the Netherlands-based [REDACTED] "exhibited the same behavior from the same node over a period of time. It was behaving like the same user or group of users was using this to direct activity against the same type of targets," according to DHS staff⁶⁹

⁶¹ (U) *Ibid*

⁶² (U) *Ibid*

⁶³ (U) *Ibid*

⁶⁴ (U) *Ibid*

⁶⁵ [REDACTED]

⁶⁶ [REDACTED] FBI IIR [REDACTED]

⁶⁷ (U) Cyber Threat Intelligence Integration Center (CTIIC) Cyber Threat Intelligence Summary, October 7, 2016

⁶⁸ (U) *Ibid*

⁶⁹ (U) SSCI interview of representatives from DHS and CTIIC, February 27, 2018, p 13

[REDACTED]

[REDACTED] [REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

- [REDACTED]

[REDACTED] The IC's confidence level about the attribution of the attacks evolved over 2017 and into 2018

[REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED] The Committee reached out to the 21 states that DHS first identified as targets of scanning activity to learn about their experiences. Election officials provided the Committee

⁷⁰ (U) DHS Electronic Communication, December 19, 2016, email from DHS/NCCIC, to CIA

⁷¹ [REDACTED]

⁷² [REDACTED]

⁷³ [REDACTED] DHS Intelligence Assessment, *Hostile Russian Cyber Targeting of Election Infrastructure in 2016 Probable Non-State Actor's Attempt Disruption*, May 3, 2017

⁷⁴ (U) *Ibid*

⁷⁵ (U) SSCI interview of representatives from DHS and CTIIC, February 27, 2018, p. 13

⁷⁶ [REDACTED] DHS arrived at their initial assessment of 21 states affected by adding the eleven plus seven states, plus the three where scanning activity appeared directed at less specifically election-focused infrastructure

⁷⁷ (U) SSCI conference call with DHS and FBI, March 29, 2018

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

[REDACTED] [REDACTED]

[REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

details about the activity they saw on their networks, and the Committee compared that accounting to DHS's reporting of events.⁷⁸ Where those accounts differed is noted below. The scanning activity took place from approximately June through September 2016.

STATE	OBSERVED ACTIVITY ⁷⁹
Illinois	(U) <i>See infra</i> , "Russian Access to Election-Related Infrastructure" for a detailed description.
State 2	(U) <i>See infra</i> , "Russian Access to Election-Related Infrastructure" for a detailed description.
State 3	(U) According to State 3 officials, cyber actors using infrastructure identified in the August FLASH conducted scanning activity. ⁸⁰ State 3 officials noticed "abnormal behavior" and took action to block the related IP addresses. ⁸¹ [REDACTED] DHS reported GRU scanning attempts against two separate domains related to election infrastructure. ⁸²
State 4	(U) <i>See infra</i> , "Two Unexplained Events" for a detailed description.
State 5	(U) Cyber actors using infrastructure identified in the August FLASH scanned "an old website and non-relevant archives," according to the State 5 Secretary of State's office. ⁸³ The following day, State 5 took action to block the IP address. ⁸⁴ [REDACTED] DHS, however, reported GRU scanning activity on two separate State 5 Secretary of State websites, plus targeting of a District Attorney's office ⁸⁵ in a particular city. ⁸⁶ Both the websites appear to be current addresses for the State 5 Secretary of State's office.
State 6	(U) According to State 6 officials, cyber actors using infrastructure identified in the August FLASH scanned ⁸⁷ the entire state IT infrastructure, including by using the Acunetix tool, but the "affected systems" were the Secretary of State's

⁷⁸ (U) DHS briefed Committee staff three times on the attacks, and staff reviewed hundreds of pages of intelligence assessments.

⁷⁹ (U) Slight variation between what states and DHS reported to the Committee is an indication of one of the challenges in election cybersecurity. The system owners—in this case, state and local administrators—are in the best position to carry out comprehensive cyber reviews, but they often lack the expertise or resources to do so. The federal government has resources and expertise, but the IC can see only limited information about inbound attacks because of legal restrictions on operations inside the United States.

⁸⁰ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 3], December 8, 2017.

⁸¹ (U) *Ibid*.

⁸² (U) DHS briefing for Committee staff on March 5, 2018.

⁸³ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 5], December 1, 2017.

⁸⁴ (U) *Ibid*.

⁸⁵ (U) [REDACTED] Briefers suggested the "most wanted" list housed on the District Attorney's website may have in some way been connected to voter registration. The exact nature of this connection, including whether it was a technical network connection or whether databases of individuals with felony convictions held by the District Attorney's office had voting registration implications, is unclear.

⁸⁶ (U) DHS briefing for Committee staff on March 5, 2018.

⁸⁷ (U) State 6 officials did not specify, but in light of the DHS assessment, they likely meant SQL injection.

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

	<p>web application and the election results website⁸⁸ If the penetration had been successful, actors could have manipulated the unofficial display of the election tallies.⁸⁹ State officials believed they would have caught any inconsistency quickly⁹⁰ State 6 became aware of this malicious activity and alerted partners⁹¹</p> <p>[REDACTED] DHS reported that GRU actors scanned State 6, then unsuccessfully attempted many SQL injection attacks State 6 saw the highest number of SQL attempts of any state</p>
State 7	<p>(U) According to State 7 officials, cyber actors using infrastructure identified in the August FLASH scanned public-facing websites, including the "state" election site⁹² It seemed the actors were "cataloging holes to come back later," according to state election officials⁹³ State 7 became aware of this malicious activity after receiving an FBI alert⁹⁴</p> <p>[REDACTED] DHS reported GRU scanning attempts against two separate domains related to election infrastructure⁹⁵</p>
State 8	<p>(U) According to State 8 officials, cyber actors using infrastructure identified in the August FLASH scanned a State 8 public election website on one day⁹⁶ State 8 officials described the activity as heightened but not particularly out of the ordinary.⁹⁷ State 8 became aware of this malicious activity after receiving an alert⁹⁸</p> <p>[REDACTED]</p>
State 9	<p>(U) According to State 9 officials, cyber actors using infrastructure identified in an October MS-ISAC advisory¹⁰¹ scanned the statewide voter registration</p>

⁸⁸ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 6], November 17, 2017

⁸⁹ (U) *Ibid*

⁹⁰ (U) *Ibid*

⁹¹ (U) *Ibid*

⁹² (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 7], January 25, 2018

⁹³ (U) *Ibid*

⁹⁴ (U) *Ibid*

⁹⁵ (U) DHS briefing for Committee staff on March 5, 2018

⁹⁶ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 8], February 2, 2018

⁹⁷ (U) *Ibid*

⁹⁸ (U) *Ibid*

⁹⁹ (U) DHS briefing for Committee staff on March 5, 2018

¹⁰⁰ (U) *Ibid*

¹⁰¹ (U) While the Committee was unable to review the specific indicators shared with State 9 by the MS-ISAC in October, the Committee believes at least one of the relevant IPs was originally named in the August FLASH because of technical data held by DHS which was briefed to the Committee

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

	<p>system.¹⁰² Officials used the analogy of a thief casing a parking lot they said the car thief “didn’t go in, but we don’t know why.”¹⁰³ State 9 became aware of this malicious activity after receiving an alert¹⁰⁴</p> <p>[REDACTED] DHS reported GRU scanning activity on the Secretary of State domain¹⁰⁵</p>
State 10	<p>(U) According to State 10 officials, cyber actors using infrastructure identified in the August FLASH conducted activity that was “very loud,” with a three-pronged attack a Netherlands-based IP address attempted SQL injection on all fields 1,500 times, a U.S.-based IP address attempted SQL injection on several fields, and a Poland-based IP address attempted SQL injection on one field 6-7 times.¹⁰⁶ State 10 received relevant cybersecurity indicators from MS-ISAC in early August, around the same time that the attacks occurred.¹⁰⁷ State 10’s IT contractor attributed the attack to Russia and suggested that the activity was reminiscent of other attacks where attackers distract with lots of noise and then “sneak in the back.”¹⁰⁸</p> <p>(U) State 10, through its firewall, blocked attempted malicious activity against the online voter registration system and provided logs to the National Cybersecurity and Communications Integration Center (NCCIC)¹⁰⁹ and the U.S. Computer Emergency Readiness Team (US-CERT).¹¹⁰ State 10 also brought in an outside contractor to assist.¹¹¹</p> <p>[REDACTED] DHS confirmed GRU SQL injection attempts against State 10’s voter services website on August 5 and said that the attack was blocked after one day by State 10’s firewall¹¹²</p>
State 11	<p>(U) According to State 11 officials, they have seen no evidence of scanning or attack attempts related to election infrastructure in 2016¹¹³ While State 11 officials noted an IP address “probing” state systems, activity which was “broader than state election systems,” State 11 election officials did not provide specifics on which systems¹¹⁴</p>

¹⁰² (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 9], November 17, 2017

¹⁰³ (U) *Ibid*

¹⁰⁴ (U) *Ibid*

¹⁰⁵ (U) DHS briefing for Committee staff on March 5, 2018

¹⁰⁶ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 10], November 29, 2017

¹⁰⁷ (U) *Ibid*

¹⁰⁸ (U) *Ibid*

¹⁰⁹ (U) NCCIC is DHS’s cyber watch center

¹¹⁰ (U) *Ibid*

¹¹¹ (U) *Ibid*

¹¹² (U) DHS briefing for Committee staff on March 5, 2018

¹¹³ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 11], December 8, 2017

¹¹⁴ (U) *Ibid*

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

	<p>[REDACTED] DHS reported GRU scanning activity on the Secretary of State domain ¹¹⁵</p>
<p>State 12</p>	<p>(U) Cyber actors using infrastructure identified in the August FLASH conducted scanning activity that “lasted less than a second and no security breach occurred,” according to State 12 officials ¹¹⁶ State 12 became aware of this malicious activity after being alerted to it ¹¹⁷</p> <p>[REDACTED] DHS reported that because of a lack of sensor data related to this incident, they relied on NetFlow data, which provided less granular information ¹¹⁸ DHS’s only clear indication of GRU scanning on State 12’s Secretary of State website came from State 12 self-reporting information to MS-ISAC after the issuance of the August FLASH notification ¹¹⁹</p>
<p>State 13</p>	<p>(U) According to State 13 officials, they have seen no evidence of scanning or attack attempts related to state-wide election infrastructure in 2016. ¹²⁰</p> <p>[REDACTED]</p>
<p>State 14</p>	<p>[REDACTED] MS-ISAC passed DHS reports of communications between a suspect IP address used by the GRU at the time and the State 14 election commission webpage, but no indication of a compromise ¹²³ In addition, DHS was informed of activity relating to separate IP addresses in the August FLASH,</p>

¹¹⁵ (U) DHS briefing for Committee staff on March 5, 2018

¹¹⁶ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 12], December 1, 2017

¹¹⁷ (U) *Ibid*

¹¹⁸ (U) DHS briefing for Committee staff on March 5, 2018

¹¹⁹ (U) *Ibid*

¹²⁰ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 13], December 1, 2017

¹²¹ (U) FBI IIR [REDACTED] DHS briefing for Committee staff on March 5, 2018

¹²²

[REDACTED], DHS briefing for Committee staff on March 5, 2018 For more information on decisions by DHS to exclude certain activity in its count of 21 states, see text box, *infra*, “DHS Methodology for Identifying States Touched by Russian Cyber Actors”

¹²³ DHS/FBI Homeland Intelligence Brief, [REDACTED]

[REDACTED], DHS briefing for Committee staff on March 5, 2018

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

	including attempted Domain Name System (DNS) lookups and potentially malicious emails, some dating back to January 2016. ¹²⁴
State 15	(U) State 15 officials were not aware that the state was among those targeted until they were notified. ¹²⁵ State 15's current lead election official was not in place during the 2016 election so they had little insight into any scanning or attempted intrusion on their systems. State 15 officials said that generally they viewed 2016 as a success story because the attempted infiltration never got past the state's four layers of security. [REDACTED] DHS reported broad GRU scanning activity on State 15 government domains. ¹²⁶
State 16	(U) According to State 16 officials, cyber actors using infrastructure identified in the October FLASH conducted scanning activity against a state government network. ¹²⁷ [REDACTED] DHS reported information on GRU scanning activity based on a self-report from State 16 after the issuance of the October FLASH. ¹²⁸
State 17	(U) State 17 officials reported nothing "irregular, inconsistent, or suspicious" leading up to the election. ¹²⁹ While State 17 IT staff received an MS-ISAC notification, that notification was not shared within the state government. ¹³⁰ [REDACTED] DHS reported GRU scanning activity on an election-related domain. ¹³¹
State 18	(U) State 18 election officials said they observed no connection from the IP addresses listed in the election-related notifications. ¹³² [REDACTED] DHS reported indications of GRU scanning activity on a State 18 government domain. ¹³³
State 19	(U) According to State 19 officials, cyber actors using infrastructure identified in October by MS-ISAC conducted scanning activity. State 19 claimed this activity was "blocked," but did not elaborate on why or how it was blocked. ¹³⁴

¹²⁴ (U) [REDACTED] DHS IIR 4 019 0012 17, *Cyber Activity Targeting [State 14] Government Networks from Internet Protocol Addresses Associated with Targeting State Elections Systems*, October 21, 2016

¹²⁵ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 15], March 12, 2018

¹²⁶ (U) DHS briefing for Committee staff on March 5, 2018

¹²⁷ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 16], December 1, 2017

¹²⁸ (U) DHS briefing for Committee staff on March 5, 2018

¹²⁹ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 17], January 25, 2018

¹³⁰ (U) *Ibid*

¹³¹ (U) DHS briefing for Committee staff on March 5, 2018

¹³² (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 18], December 8, 2017

¹³³ (U) DHS briefing for Committee staff on March 5, 2018

¹³⁴ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 19], December 1, 2017

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

	<p>[REDACTED] DHS reported indications of GRU scanning activity on two separate State 19 government domains ¹³⁵</p>
State 20	<p>(U) According to State 20 officials, cyber actors using infrastructure identified in October by MS-ISAC were “knocking” on the state’s network, but no successful intrusion occurred ¹³⁶</p> <p>[REDACTED] DHS reported GRU scanning activity on the Secretary of State domain. ¹³⁷</p>
State 21	<p>(U) State 21 officials received indicators from MS-ISAC in October 2016. They said they were not aware the state was among those targeted until notified ¹³⁸</p> <p>[REDACTED] DHS reported GRU scanning activity on an election-related domain as well as at least one other government system connected to the voter registration system. ¹³⁹</p>

[REDACTED] Neither DHS nor the Committee can ascertain a pattern to the states targeted, lending credence to DHS’s later assessment that all 50 states probably were scanned. DHS representatives told the Committee that “there wasn’t a clear red state-blue state-purple state, more electoral votes, less electoral votes” pattern to the attacks. DHS acknowledged that the U.S. Government does not have perfect insight, and it is possible the IC missed some activity or that states did not notice intrusion attempts or report them. ¹⁴⁰

[REDACTED]

[REDACTED]

¹³⁵ (U) DHS briefing for Committee staff on March 5, 2018

¹³⁶ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 20], November 17, 2017

¹³⁷ (U) DHS briefing for Committee staff on March 5, 2018

¹³⁸ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 21], November 17, 2017

¹³⁹ (U) DHS briefing for Committee staff on March 5, 2018

¹⁴⁰ (U) SSCI interview with DHS and CTIIC, February 27, 2018, p. 25

[REDACTED]

¹⁴² (U) SSCI interview with DHS and CTIIC, February 27, 2018, p. 21

[REDACTED]

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

(U/[REDACTED]) As of October 2018, the IC and DHS were looking for evidence of threats to election systems, [REDACTED]. An October 11, 2018 DHS Intelligence Assessment reported the following.

We judge that numerous actors are regularly targeting election infrastructure, likely for different purposes, including to cause disruptive effects, steal sensitive data, and undermine confidence in the election. We are aware of a growing volume of malicious activity targeting election infrastructure in 2018, although we do not have a complete baseline of prior years to determine relative scale of the activity. Much of our understanding of cyber threats to election infrastructure is due to proactive sharing by state and local election officials, as well as more robust intelligence and information sharing relationships amongst the election community and within the Department. The observed activity has leveraged common tactics—the types of tactics that are available to nation-state and non-state cyber actors, alike—with limited success in compromising networks and accounts. We have not attributed the activity to any foreign adversaries, and we continue to work to identify the actors behind these operations. At this time, all these activities were either prevented or have been mitigated.

(U/[REDACTED]) Specifically.

Unidentified cyber actors since at least April 2018 and as recently as early October continue to engage in a range of potential elections-related cyber incidents targeting election infrastructure using spear-phishing, database exploitation techniques, and denial of service attacks, possibly indicating continued interest in compromising the availability, confidentiality, and integrity of these systems. For example, on 24 August 2018, cybersecurity officials detected multiple attempts to illegally access the State of Vermont's Online Voter Registration Application (OLVR), which serves as the state's resident voter registration database, according to DHS reporting. The malicious activity included one Cross Site Scripting attempt, seven Structured Query Language (SQL) injection attempts, and one attempted Denial of Service (DoS) attack. All attempts were unsuccessful.¹⁴³

(U/[REDACTED]) In summarizing the ongoing threat to U.S. election systems, DHS further said in the same product, "We continue to assess multiple elements of U.S. election infrastructure are potentially vulnerable to cyber intrusions."¹⁴⁴

B. (U) Russian Access to Election Infrastructure

¹⁴³ (U/[REDACTED]) DHS, Homeland Security Intelligence Assessment, *Cyber Actors Continue to Engage in Influence Activities and Targeting of Election Infrastructure*, October 11, 2018

¹⁴⁴ (U) *Ibid*

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

(U) The January 6, 2017 Intelligence Community Assessment (ICA), "Assessing Russian Activities and Intentions in Recent U S Elections," states

*Russian intelligence obtained and maintained access to elements of multiple U S state or local electoral boards. DHS assesses that the types of systems Russian actors targeted or compromised were not involved in vote tallying.*¹⁴⁵

[REDACTED] Based on the Committee's review of the ICA, the Committee concurs with this assessment. The Committee found that Russian-affiliated cyber actors gained access to election infrastructure systems across two states, including successful extraction of voter data. However, none of these systems were involved in vote tallying.

1. (U) Russian Access to Election Infrastructure: Illinois

(U) In June 2016, Illinois experienced the first known breach by Russian actors of state election infrastructure during the 2016 election.¹⁴⁶ As of the end of 2018, the Russian cyber actors had successfully penetrated Illinois's voter registration database, viewed multiple database tables, and accessed up to 200,000 voter registration records.¹⁴⁷ The compromise resulted in the exfiltration of an unknown quantity of voter registration data.¹⁴⁸ Russian cyber actors were in a position to delete or change voter data, but the Committee is not aware of any evidence that they did so.¹⁴⁹

- [REDACTED] DHS assesses with high confidence that the penetration was carried out by Russian actors.¹⁵⁰
- (U/[REDACTED]) The compromised voter registration database held records relating to 14 million registered voters, [REDACTED]. The records exfiltrated included information on each voter's name, address, partial social security number, date of birth, and either a driver's license number or state identification number.¹⁵¹

¹⁴⁵ (U) Intelligence Community Assessment, *Assessing Russian Activities and Intentions in Recent U S Elections*, January 6, 2017, p. iii.

¹⁴⁶ (U/[REDACTED]) DHS IIR 4 005 0006, *An IP Address Targeted Multiple U S State Government's to Include Election Systems*, October 4, 2016, DHS briefing for SSCI staff, March 5, 2018.

¹⁴⁷ (U) "Illinois election officials say hack yielded information on 200,000 voters," [Local Newspaper], August 29, 2016.

¹⁴⁸ (U) DHS IIR [REDACTED] SSCI Open Hearing on June 21, 2017, p. 110.

¹⁴⁹ (U) State Board of Elections, *Illinois Voter Registration System Records Breached*, August 31, 2016. As reflected elsewhere in this report, the Committee did not undertake its own forensic analysis of the Illinois server logs to corroborate this statement, SSCI interview with DHS and CTIC, February 27, 2018, p. 24.

¹⁵⁰ (U) See *infra*, "Russian Scanning and Attempted Access to Election-Related Infrastructure" for a complete discussion on attribution related to the set of cyber activity linked to the infrastructure used in the Illinois breach.

¹⁵¹ (U/[REDACTED]) FBI IIR [REDACTED]

[REDACTED] DHS Intelligence Assessment, May 3, 2017, 0144-17,

[REDACTED]

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

- [REDACTED] DHS staff further recounted to the Committee that “Russia would have had the ability to potentially manipulate some of that data, but we didn’t see that.”¹⁵² Further, DHS staff noted that “the level of access that they gained, they almost certainly could have done more. Why they didn’t . . . is sort of an open-ended question. I think it fits under the larger umbrella of undermining confidence in the election by tipping their hand that they had this level of access or showing that they were capable of getting it.”¹⁵³
- (U) According to a Cyber Threat Intelligence Integration Center (CTIIC) product, Illinois officials “disclosed that the database has been targeted frequently by hackers, but this was the first instance known to state officials of success in accessing it.”¹⁵⁴

(U) In June 2017, the Executive Director of the Illinois State Board of Elections (SBE), Steve Sandvoss, testified before the Committee about Illinois’s experience in the 2016 elections.¹⁵⁵ He laid out the following timeline:

- (U) On June 23, 2016, a foreign actor successfully penetrated Illinois’s databases through an SQL attack on the online voter registration website. “Because of the initial low-volume nature of the attack, the State Board of Election staff did not become aware of it at first.”¹⁵⁶
- (U) Three weeks later, on July 12, 2016, the IT staff discovered spikes in data flow across the voter registration database server. “Analysis of the server logs revealed that the heavy load was a result of rapidly repeated database queries on the application status page of our paperless online voter application website.”¹⁵⁷
- (U) On July 13, 2016, IT staff took the website and database offline, but continued to see activity from the malicious IP address.¹⁵⁸
- (U) “Firewall monitoring indicated that the attackers were hitting SBE IP addresses five times per second, 24 hours a day. These attacks continued until August 12th [2016], when they abruptly ceased.”¹⁵⁹

¹⁵² (U) SSCI interview with DHS and CTIIC, February 27, 2018, p 14

¹⁵³ (U) *Ibid*

¹⁵⁴ (U) CTIIC Cyber Threat Intelligence Summary, August 18, 2016.

¹⁵⁵ (U) SSCI Open Hearing on June 21, 2017. The Committee notes that, in his testimony, Mr Sandvoss said Illinois still had not been definitively told that Russia perpetrated the attack, despite DHS’s high confidence. The Committee also notes that DHS eventually provided a briefing to states during which DHS provided further information on this topic, including the DHS high-confidence attribution to Russia.

¹⁵⁶ (U) *Ibid*, p 110

¹⁵⁷ (U) *Ibid*

¹⁵⁸ (U) *Ibid*, p. 111

¹⁵⁹ (U) *Ibid*.

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

- (U) On July 19, 2016, the election staff notified the Illinois General Assembly and the Attorney General's office.
- (U) Approximately a week later, the FBI contacted Illinois ¹⁶⁰
- (U) On July 28, 2016, both the registration system and the online voter registration became fully functional again ¹⁶¹

2. (U) Russian Access to Election Infrastructure: State 2

[REDACTED]

[REDACTED] Separately, GRU cyber actors breached election infrastructure in State 2. [REDACTED]

- [REDACTED]

¹⁶⁰ (U) *Ibid*, p 113

¹⁶¹ (U) *Ibid*, p 112

¹⁶² (U) [REDACTED] FBI Electronic Communication, [REDACTED]

¹⁶³ (U) *Ibid*

¹⁶⁴ (U) FBI Briefing on [State 2] Election Systems, June 25, 2018

¹⁶⁶ (U) DHS briefing for SSCI staff, March 5, 2018

¹⁶⁷ (U) *Ibid*

¹⁶⁸ (U) *Ibid*

¹⁶⁹ (U) *Ibid*

¹⁷⁰ [REDACTED] DTS 2018-2416, FBI Briefing on [State 2] Election Systems, June 25, 2018, p 16

¹⁷¹ (U) SSCI interview with DHS and CTIC, February 27, 2018, compartmented session

[REDACTED]

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

[REDACTED]

[REDACTED]

(U) FBI and DHS Interactions with State 2 ¹⁷⁹	
August 18, 2016	(U) FBI FLASH notification identified IP addresses targeting election offices. ¹⁸⁰
August 24, 2016	(U) State 2 Department of State received the FLASH from National Association of Secretaries of State ¹⁸¹
August 26, 2016	(U) State 2 Department of State forwarded FLASH to counties and advised them to block the IP addresses ¹⁸² [REDACTED] Separately, [REDACTED] determined one of the listed IP addresses scanned its system. ¹⁸³ [REDACTED] subsequently discovered suspected intrusion activity and contacted the FBI. ¹⁸⁴

¹⁷² (U) *Ibid*

¹⁷³ (U) *Ibid*

¹⁷⁴ (U) *Ibid*

¹⁷⁵ [REDACTED] DTS 2018-2416; FBI Briefing on [State 2] Election Systems, June 25, 2018, pp 7

¹⁷⁶ (U) *Ibid*

¹⁷⁷ [REDACTED] *Ibid* See also EB-0004893-LED

¹⁷⁸ (U) SSCI interview with DHS and CTIIC, February 27, 2018, p 42

¹⁷⁹ [REDACTED] DTS 2018-2416; FBI Briefing on [State 2] Election Systems, June 25, 2018, pp 7

¹⁸⁰ (U) FBI FLASH, Alert Number T-LD1004-TT, TLP-AMBER, [REDACTED]

¹⁸¹ [REDACTED] DTS 2018-2416, FBI Briefing on [State 2] Election Systems, June 25, 2018, p 4

¹⁸² (U) *Ibid*, pp 4-5

¹⁸³ (U) *Ibid*, p 5

¹⁸⁴ (U) *Ibid*

[REDACTED]

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

August 31, 2016	[REDACTED] FBI opened its investigation on the [REDACTED] and "conducted outreach to State 2 county election officials to discuss individual security postures and any suspicious activity." ¹⁸⁵ FBI outreach reveals that one State 2 county—County A—was scanned. ¹⁸⁶
September 30, 2016	[REDACTED] FBI held a conference call with county election officials to advise of the attempt to probe County A. ¹⁸⁷ FBI also notified state and local officials of available DHS services. ¹⁸⁸
October 4, 2016	[REDACTED] County B's IT administrator contacted FBI regarding a potential intrusion. ¹⁸⁹ According to the FBI, "Of particular concern, the activity included a connection to a county voting, testing, and maintenance server used for poll worker classes." ¹⁹⁰
October 14, 2016	(U) FBI shared County B indicators by issuing a FLASH. ¹⁹¹
December 29, 2016	(U) DHS and FBI released a Joint Analysis Report (JAR) on the "GRIZZLY STEPPE" intrusion set, report represents the first IC attribution of state election-related systems to the Russians. ¹⁹²
[REDACTED]	[REDACTED]
June 2017	(U) DHS notified State 2 counties of a possible intrusion "as part of a broader notification to 122 entities identified as spearphishing victims in an intelligence report." ¹⁹⁴

¹⁸⁵ [REDACTED] DTS 2018-2416, FBI Briefing on [State 2] Election Systems, June 25, 2018, p 5

¹⁸⁶ (U) *Ibid*

¹⁸⁷ (U) *Ibid*, pp 5-6

¹⁸⁸ (U) *Ibid*, p 6

¹⁸⁹ (U) *Ibid*

¹⁹⁰ (U) *Ibid*

¹⁹¹ (U) [REDACTED] FBI FLASH, Alert Number T-LD1005-TT, TLP-AMBER, [REDACTED]

¹⁹² (U) DHS/FBI, Joint Analysis Report, JAR-16-20296A, GRIZZLY STEPPE - Russian Malicious Cyber Activity, December 29, 2016

¹⁹³ [REDACTED] DTS 2018-2416, FBI Briefing on [State 2] Election Systems, June 25, 2018, p 7

¹⁹⁴ (U) *Ibid*

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

July 2017	(U) FBI published a FLASH report warning of possible spearphishing ¹⁹⁵
November 2017	(U) FBI and DHS participated in the first meeting of the State 2 elections task force ¹⁹⁶
February 2018	(U) FBI requested direct engagement with Counties B, C, and D, including a reminder of available DHS services ¹⁹⁷
March 2018	(U) FBI reports that "our office engaged" the affected counties through the local FBI field office ¹⁹⁸ The FBI could not provide any further detail on the substance of these engagements to the Committee.
May 29, 2018	[REDACTED] FBI provided a SECRET Letterhead Memo to DHS "formally advising of our investigation into the intrusion [REDACTED] [REDACTED], the reported intrusion at County B, and suspected compromises of Counties C and D" ¹⁹⁹
June 11, 2018	(U) FBI reports that as of June 11, 2018, Counties A, B, C, and D had not accepted DHS services. ²⁰⁰

[REDACTED]

[REDACTED]

¹⁹⁵ (U) FBI FLASH, Alert Number EB-000083-LD, TLP-AMBER, [REDACTED]

See DTS 2018-3174

¹⁹⁶ [REDACTED] DTS 2018-2416, FBI Briefing on [State 2] Election Systems, June 25, 2018, p 7

¹⁹⁷ (U) *Ibid.*, p 6

¹⁹⁸ (U) *Ibid.*, p 34

¹⁹⁹ (U) *Ibid.*, pp 8-9

²⁰⁰ (U) *Ibid.*, p 20

²⁰¹ [REDACTED] DTS 2018-2416, FBI Briefing on [State 2] Election Systems, June 25, 2018, pp 20-21

²⁰² [REDACTED] DHS briefing for SSCI staff, March 5, 2018

[REDACTED] [REDACTED]

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

[REDACTED]

- [REDACTED]

- [REDACTED] It

is unknown if Tarantsov attended the events.

- [REDACTED]

- [REDACTED]

D. (U) Russian Activity Directed at Voting Machine Companies

210 [REDACTED] FBI LHM, [REDACTED]
211 [REDACTED] FBI LHM, [REDACTED]

212 (U) *Ibid*

213 (U) *Ibid*, p 3

214 (U) *Ibid*, p 4

215 (U) *Ibid*

216 (U) *Ibid*, p 5

217 [REDACTED]

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

[REDACTED]

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

[redacted] Russian government actors engaged in [redacted] attacks on election systems, [redacted].

- [redacted] FBI reported that "between December 2015 and June 2016, [redacted] [redacted] DHS further told the Committee that malicious cyber actors had scanned [redacted] a widely-used vendor of election systems ²¹⁹

- [redacted]

E. (U) Russian Efforts to Observe Polling Places

[redacted] Department of State were aware that Russia was attempting to send election observers to polling places in 2016. The true intention of these efforts is unknown.

- [redacted]

²¹⁸ [redacted] FBI Electronic Communication, [redacted]

²¹⁹ (U) DHS briefing for SSC1 staff, March 5, 2018
²²⁰ [redacted]

²²¹ (U) *Ibid*

²²² (U) *Ibid*

²²³ (U) NSA [redacted] DIRNSA May 5, 2017, p 3

²²⁴ (U) *Ibid*, pp 1-3.

²²⁵ (U) FBI IIR [redacted]

²²⁶ (U) *Ibid*

[redacted]

[REDACTED] [REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

F. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

G. (U) Russian Activity Possibly Related to a Misinformation Campaign on Voter

[REDACTED]

²³⁶ [REDACTED] DTS 2018-3952, MFR of Interview with Randy Coleman, December 5, 2018

²³⁷ (U) NSA [REDACTED] DIRNSA, May 5, 2017

²³⁸ (U) *Ibid*

²³⁹ (U) SSCI Interview with DHS and CTIIC, February 27, 2018, pp 47-48

²⁴⁰ [REDACTED] FBI IIR [REDACTED]

²⁴¹ (U) [REDACTED]) FBI LHM, [REDACTED]

²⁴² (U) *Ibid*

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

[REDACTED] [REDACTED]

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

[REDACTED]

(U) The declassified, January 6, 2017, Intelligence Community Assessment also highlighted preparations related to voter fraud, noting that Russian diplomats “were prepared to publicly call into question the validity of the results” and that “pro-Kremlin bloggers had prepared a Twitter campaign, #DemocracyRIP, on election night in anticipation of Secretary Clinton’s victory, judging from their social media activity”²⁴⁵

(U) During a 2017 election, State 17 saw bot activity on social media, including allegations of voter fraud, in particular on Reddit. State 17 had to try to prove later that there was no fraud.²⁴⁶

H. (U) Two Unexplained Events

1. (U) Cyber Activity in State 22

[REDACTED]

[REDACTED]

²⁴³ [REDACTED]
²⁴⁴ [REDACTED]

²⁴⁵ (U) Intelligence Community Assessment, *Assessing Russian Activities and Intentions in Recent U S Elections*, January 6, 2017, p. 2

²⁴⁶ (U) See Memorandum for the Record, SSCI Staff, Conference Call with State 17, January 25, 2018. The Committee notes it is conducting a related investigation into the use of social media by Russian-government affiliated entities.

²⁴⁷ (U) The Fusion Center model is a partnership between DHS and state, local, tribal, and territorial entities. They serve as a focal point for “the receipt, analysis, gathering, and sharing of threat-related information.”

²⁴⁸ (U) CTIC Cyber Threat Intelligence Summary/Cyber Threats in Focus, Malicious Cyber Activity on Election-Related Computer Networks Last Spring Possibly Linked to Russia, October 7, 2016, DHS, IIR 4 019 0147 16, September 28, 2016

²⁴⁹ (U) *Ibid*

²⁵⁰ (U) *Ibid*

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY
[REDACTED]

[REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY
 [REDACTED]

2. (U) Cyber Activity in State 4

(U [REDACTED]) State 4 officials, DHS, and FBI in the spring and summer of 2016, struggled to understand who was responsible for two rounds of cyber activity related to election infrastructure. Eventually, one set of cyber activity was attributed to Russia and one was not.

(U [REDACTED]) First, in April of 2016, a cyber actor successfully targeted State 4 with a phishing scam. After a county employee opened an infected email attachment, the cyber actor stole credentials, which were later posted online.²⁵¹ Those stolen credentials were used in June 2016 to penetrate State 4's voter registration database.²⁵² A CTIIC product reported the incident as follows: "An unknown actor viewed a statewide voter registration database after obtaining a state employee's credentials through phishing and keystroke logging malware, according to a private-sector DHS partner claiming secondhand access. The actor used the credentials to access the database and was in a position to modify county, but not statewide, data."²⁵³

(U [REDACTED]) DHS analysis of forensic data provided by a private sector partner discovered malware on the system, and State 4 shut down the voter registration system for about eight days to contain the attack.²⁵⁴ State 4 officials later told the Committee that while the cyber actor was able to successfully log in to a workstation connected to election related infrastructure, additional credentials would have been needed for the cyber actor to access the voter registration database on that system.²⁵⁵

(U) At first, FBI told State 4 officials that the attack may have originated from Russia, but the ties to the Russian government were unclear. "The Bureau described the threat as 'credible' and significant, a spokesman for State 4 Secretary of State said."²⁵⁶ State 4 officials also told press that the hacker had used a server in Russia, but that the FBI could not confirm the

²⁵¹ (U) [REDACTED]

²⁵² (U) SSCI interview with DHS and CTIIC, February 27, 2018, p. 38

²⁵³ [REDACTED] Cyber Threat Intelligence Integration Center (CTIIC), Compromised State Election Networks, November 2, 2016, p. 1

²⁵⁴ (U [REDACTED]) DHS IIR 4 005 0829 16, A [REDACTED] *U.S. State Government's Election System Targeted by Malicious Activity*, September 9, 2016, Memorandum for the Record, SSCI Staff, Conference Call with [State 4], December 1, 2017

²⁵⁵ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 4], December 1, 2017.

²⁵⁶ (U) [REDACTED]

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

attack was tied to the Russian government.²⁵⁷ DHS and FBI later assessed it to be criminal activity, with no definitive tie to the Russian government.²⁵⁸

[REDACTED] Subsequently, Russian actors engaged in the same scanning activity as seen in other states, but directed at a domain affiliated with a public library.²⁵⁹ Officials saw no effective penetration of the system. DHS has low confidence that this cyber activity is attributable to the Russian intelligence services because the target was unusual and not directly involved in elections.²⁶⁰ [REDACTED]

V. (U) RUSSIAN INTENTIONS

(U) Russian intentions regarding U.S. election infrastructure remain unclear. Russia might have intended to exploit vulnerabilities in election infrastructure during the 2016 elections and, for unknown reasons, decided not to execute those options. Alternatively, Russia might have sought to gather information in the conduct of traditional espionage activities. Lastly, Russia might have used its activity in 2016 to catalog options or clandestine actions, holding them for use at a later date. Based on what the IC knows about Russia's operating procedures and intentions more broadly, the IC assesses that Russia's activities against U.S. election infrastructure likely sought to further their overarching goal: undermining the integrity of elections and American confidence in democracy.

- (U) Former-Homeland Security Adviser Lisa Monaco told the Committee that "[t]here was agreement [in the IC] that one of the motives that Russia was trying to do with this active measures campaign was to sow distrust and discord and lack of confidence in the voting process and the democratic process."²⁶²
- [REDACTED] DHS representatives told the Committee that "[w]e see . . . Russians in particular obviously, gain access, learn about the environment, learn about what systems are interconnected, probing, the type of intelligence preparation of the environment that you would expect from an actor like the Russians. So certainly the context going forward

[REDACTED]
²⁵⁸ (U) SSCI interview with DHS and CTIIC, February 27, 2018, p. 40

²⁵⁹ (U) [REDACTED]

²⁶⁰ [REDACTED] DHS/FBI Homeland Intelligence Brief, [REDACTED]

²⁶¹ (U) *Ibid.*

²⁶² (U) SSCI Transcript of the Interview with of Lisa Monaco, Former Homeland Security Advisor, August 10, 2017, p. 30.

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

is a concern of what they might have learned and how much more they know about the systems.”²⁶³

- [REDACTED] Mr. McCabe told the Committee that it seemed to him like “classic Russian cyber espionage. . . [They will] scrape up all the information and the experience they possibly can,” and “they might not be effective the first time or the fifth time, but they are going to keep at it until they can come back and do it in an effective way.”²⁶⁴

- [REDACTED] Mr. Daniel told the Committee

*While any one voting machine is fairly vulnerable, as has been demonstrated over and over again publicly, the ability to actually do an operation to change the outcome of an election on the scale you would need to, and do it surreptitiously, is incredibly difficult. A much more achievable goal would be to undermine confidence in the results of the electoral process, and that could be done much more effectively and easily. A logical thing would be, if your goal is to undermine confidence in the U.S. electoral system—which the Russians have a long goal of wanting to put themselves on the same moral plane as the United States. . . one way would be to cause chaos on election day. How could you start to do that? Mess with the voter registration databases.*²⁶⁵

- [REDACTED] Ms. Monaco further echoed that concern:

Well, one of the things I was worried about—and I wasn't alone in this—is kind of worst-case scenarios, which would be things like the voter registration databases. So if you're a state and local entity and your voter registration database is housed in the secretary of state's office and it is not encrypted and it's not backed up, and it says Lisa Monaco lives at Smith Street and I show up at my [polling place] and they say 'Well we don't have Ms. Monaco at Smith Street, we have her at Green Street,' now there's difficulty in my voting. And if that were to happen on a large scale, I was worried about confusion at polling places, lack of confidence in the voting system, anger at a large scale in some areas, confusion, distrust. So there was a whole sliding scale of

²⁶³ (U) SSCI interview with DHS and CTIIC, February 27, 2018, p. 15

²⁶⁴ (U) DTS 2018-2152, SSCI Transcript of the Interview with Andrew McCabe, Former Deputy Director of the FBI, February 14, 2018, pp. 224-225

²⁶⁵ (U) SSCI Transcript of the Interview with Michael Daniel, Former Assistant to the President and Cybersecurity Coordinator, National Security Council, August 31, 2017, pp. 27, 34

[REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

*horribles just when you're talking about voter registration databases.*²⁶⁶

[REDACTED]

(U) Chaos on Election Day: Three Scenarios

[REDACTED] Mr. Daniel said that in the early fall of 2016, a policy working group was looking at three scenarios:

*One was, could the Russians do something to the voter registration databases that could cause problems on Election Day? An example of that would be, could you go in and flip the digits in everybody's address, so that when they show up with their photo ID it doesn't match what's in the poll book? It doesn't actually prevent people from voting. In most cases you'll still get a provisional ballot, but if this is happening in a whole bunch of precincts for just about everybody showing up, it gives the impression that there's chaos*²⁶⁸

*A second one was to do a variant of the penetrating voting machines, except this time what you do is you do a nice video of somebody conducting a hack on a voting machine and showing how you could do that hack and showing them changing a voting outcome, and then you post that on YouTube and you claim you've done this 100,000 times across the United States, even though you haven't actually done it at all*²⁶⁹

*Then the third scenario that we looked at was conducting a denial of service attack on the Associated Press on Election Day, because pretty much everybody, all those nice maps that everybody puts up on all the different news services, is in fact actually based on Associated Press stringers at all the different precincts and locations. It doesn't actually change anything, but it gives the impression that there's chaos*²⁷⁰

²⁶⁶ (U) SSCI Transcript of the Interview with Lisa Monaco, Former Homeland Security Advisor, August 10, 2017, p 28

²⁶⁷ [REDACTED]

²⁶⁸ (U) SSCI Transcript of the Interview with Michael Daniel, Former Assistant to the President and Cybersecurity Coordinator, National Security Council, August 31, 2017, p 33

²⁶⁹ (U) *Ibid.*, pp. 34-35.

²⁷⁰ (U) *Ibid.*, p. 35.

[REDACTED]

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

VI. (U) NO EVIDENCE OF CHANGED VOTES OR MANIPULATED VOTE TALLIES

(U) In its review, the Committee has seen no indications that votes were changed, vote-tallying systems were manipulated, or that any voter registration data was altered or deleted, although the Committee and IC's insight is limited. Poll workers and voting monitors did not report widespread suspicious activity surrounding the 2016 election. DHS Assistant Secretary Jeanette Manfra said in the Committee's open hearing in June 2017 that "I want to reiterate that we do have confidence in the overall integrity of our electoral system because our voting infrastructure is fundamentally resilient." Further, all three witnesses in that hearing—Ms. Manfra, Dr. Liles, and FBI Assistant Director for Counterintelligence Bill Priestap—agreed that they had no evidence that votes themselves were changed in any way in the 2016 election.²⁷¹

- (U) Dr. Liles said that DHS "assessed that multiple checks and redundancies in U.S. election infrastructure, including diversity of systems, non-internet connected voting machines, pre-election testing and processes for media, campaign and election officials to check, audit, and validate the results—all these made it likely that cyber manipulation of the U.S. election systems intended to change the outcome of the national election would be detected."²⁷² He later said "the level of effort and scale required to change the outcome of a national election would make it nearly impossible to avoid detection."²⁷³

- [REDACTED]

- (U) States did not report either an uptick in voters showing up at the polls and being unable to vote or a larger than normal quantity of provisional ballots

(U) The Committee notes that nationwide elections are often won or lost in a small number of precincts. A sophisticated actor could target efforts at districts where margins are already small, and disenfranchising only a small percentage of voters could have a disproportionate impact on an election's outcome.

(U) Many state election officials emphasized their concern that press coverage of, and increased attention to, election security could create the very impression the Russians were seeking to foster, namely undermining voters' confidence in election integrity. Several insisted that whenever any official speaks publicly on this issue, they should state clearly the difference between a "scan" and a "hack," and a few even went as far as to suggest that U.S. officials stop

²⁷¹ (U) SSCI Transcript of the Open Hearing on Russian Interference in the 2016 U S Elections, held on Wednesday, June 21, 2017

²⁷² (U) SSCI Transcript of the Open Hearing on Russian Interference in the 2016 U S Elections, held on Wednesday, June 21, 2017, p 13

²⁷³ (U) *Ibid.*, p 47

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

talking about the issue altogether. One state official said, “We need to walk a fine line between being forthcoming to the public and protecting voter confidence.”²⁷⁴

(U) Mr. Brennan described a similar concern in IC and policy discussions:

*We know that the Russians had already touched some of the electoral systems, and we know that they have capable cyber capabilities. So there was a real dilemma, even a conundrum, in terms of what do you do that's going to try to stave off worse action on the part of the Russians, and what do you do that is going to [give] the Russians what they were seeking, which was to really raise the specter that the election was not going to be fair and unaffected.*²⁷⁵

(U) Most state representatives interviewed by the Committee were confident that they met the threat effectively in 2016 and believed that they would continue to defeat threats in 2018 and 2020. Many had interpreted the events of 2016 as a success story. Firewalls deflected the hostile activity, as they were supposed to, so the threat was not an issue. One state official told the Committee, “I’m quite confident our state security systems are pretty sound.”²⁷⁶ Another state official stated, “We felt good [in 2016],” and that due to additional security upgrades, “we feel even better today.”²⁷⁷

(U) However, as of 2018, some states were still grappling with the severity of the threat. One official highlighted the stark contrast they experienced, when, at one moment, they thought elections were secure, but then suddenly were hearing about the threat.²⁷⁸ The official went on to conclude, “I don’t think any of us expected to be hacked by a foreign government.”²⁷⁹ Another official, paraphrasing a former governor, said, “If a nation-state is on the other side, it’s not a fair fight. You have to phone a friend.”²⁸⁰

(U) In the month before Election Day, DHS and other policymakers were planning for the worst-case scenario of efforts to disrupt the vote itself. Federal, state, and local governments created incident response plans to react to possible confusion at the polling places. Mr. Daniel said of the effort, “We’re most concerned about the Russians, but obviously we are also concerned about the possibility for just plain old hacktivism on Election Day. The incident response plan is actually designed . . . to help us [plan for] what is the federal government going to do if bad things start to happen on Election Day?”

[REDACTED] Mr. Daniel added that this was the first opportunity to exercise the process established under Presidential Policy Directive-41. “We asked the various agencies with lead

²⁷⁴ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 8], February 2, 2018

²⁷⁵ (U) SSCI Transcript of the Interview with John Brennan, Former Director, CIA, held on Friday, June 23, 2017, p. 54

²⁷⁶ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 6], November 17, 2017

²⁷⁷ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 8], February 2, 2018

²⁷⁸ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 20], November 17, 2017

²⁷⁹ (U) *Ibid*

²⁸⁰ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 9], November 17, 2017

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

responsibility, all right, give us your Election Day plan ” That led to the creation of an Election Day playbook; steps included enhanced watch floor procedures, connectivity between FBI field offices and FBI and DHS, and an “escalation path” if “we needed to get to Lisa [Monaco] or Susan [Rice] in a hurry” on Election Day.²⁸¹

VII. (U) SECURITY OF VOTING MACHINES

(U) The Committee review of Russian activity in 2016 highlighted potential vulnerabilities in many voting machines, with previous studies by security researchers taking on new urgency and receiving new scrutiny. Although researchers have repeatedly demonstrated it is possible to exploit vulnerabilities in electronic voting machines to alter votes,²⁸² some election officials dispute whether such attacks would be feasible in the context of an actual election.

- (U) Dr. Alex Halderman, Professor of Computer Science at the University of Michigan, testified before the Committee in June 2017 that “our highly computerized election infrastructure is vulnerable to sabotage and even to cyber attacks that could change votes.”²⁸³ Dr. Halderman concluded, “Voting machines are not as distant from the internet as they may seem.”²⁸⁴
- (U) When State 7 decommissioned its Direct-Recording Electronic (DRE) voting machines in 2017, the IT director led an exercise in attempting to break into a few of the machines using the access a “normal” voter would have in using the machines.²⁸⁵ The results were alarming: the programmed password on some of the machines was ABC123, and the testers were able to flip the machines to supervisor mode, disable them, and “do enough damage to call the results into question.”²⁸⁶ The IT director shared the results with State 21 and State 24, which were using similar machines.²⁸⁷
- (U) In 2017, DEFCON²⁸⁸ researchers were able to find and exploit vulnerabilities in five different electronic voting machines.²⁸⁹ The WinVote machines, those recently decertified by State 7, were most easily manipulated. One attendee said, “It just took us a couple of hours on Google to find passwords that let us unlock the administrative

²⁸¹ (U) *Ibid*, p. 82

²⁸² (U) *See also infra* “Direct-Recording Electronic (DRE) Voting Machine Vulnerabilities”

²⁸³ (U) SSCI Transcript of the Open Hearing on Russian Interference in the 2016 U.S. Elections, held on Wednesday, June 21, 2017, p. 117

²⁸⁴ (U) *Ibid*, p. 110

²⁸⁵ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 7], January 25, 2018

²⁸⁶ (U) *Ibid*. The machines used were WinVote voting machines

²⁸⁷ (U) *Ibid*

²⁸⁸ (U) DEFCON is an annual hacker conference held in Las Vegas, Nevada. In July 2017, at DEFCON 25, the conference featured a Voting Machine Hacking Village (“Voting Village”) which acquired and made available to conference participants over 25 pieces of election equipment, including voting machines and electronic poll books, for generally unrestricted examination for vulnerabilities

²⁸⁹ (U) Matt Blaze, et al., *DEFCON 25 Voting Machine Hacking Village Report on Cyber Vulnerabilities in U.S. Election Equipment, Databases, and Infrastructure*, September 2017, <https://www.defcon.org/images/defcon-25/DEF%20CON%2025%20voting%20report.pdf>, pp. 8-13.

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

functions on this machine.”²⁹⁰ A researcher was able to hack into the WinVote over WiFi within minutes using a vulnerability from 2003.²⁹¹ Once he had administrator-level access, he could change votes in the database. Researchers also discovered available USB ports in the machine that would allow a hacker to run software on the machine.²⁹² One said “with physical access to back [sic] of the machine for 15 seconds, an attacker can do anything.”²⁹³ Hackers were less successful with other types of machines, although each had recorded vulnerabilities.²⁹⁴

- (U) The 2018 DEFCON report found similar vulnerabilities, in particular when hackers had physical access to the machines. For example, hackers exploited an old vulnerability on one machine, using either a removable device purchasable on eBay or remote access, to modify vote counts.²⁹⁵
- (U) [REDACTED] DHS briefed the Committee in August 2018 that these results were in part because the hackers had extended physical access to the machines, which is not realistic for a true election system. Undersecretary Krebs also disagreed with reporting that a 17-year-old hacker had accessed voter tallies.²⁹⁶ Some election experts have called into question the DEFCON results for similar reasons and pointed out that any fraud requiring physical access would be, by necessity, small scale, unless a government were to deploy agents across thousands of localities.
- (U) ES&S Voting Systems disclosed that some of its equipment had a key security vulnerability. ES&S installed remote access software on machines it sold in the mid-2000s, which allowed the company to provide IT support more easily, but also created potential remote access into the machines. When pressed by Senator Ron Wyden of Oregon, the company admitted that around 300 voting jurisdictions had the software. ES&S says the software was not installed after 2007, and it was only installed on election-management systems, not voting machines.²⁹⁷ More than 50 percent of voters vote on ES&S equipment, and 41 states use its products.

²⁹⁰ (U) Elizabeth Wise, “Hackers at DefCon Conference Exploit Vulnerabilities in Voting Machines,” *USA Today*, July 30, 2017, <https://www.usatoday.com/story/tech/2017/07/30/hackers-defcon-conference-exploit-vulnerabilities-voting-machines/523639001/>

²⁹¹ (U) Matt Blaze, et al, *DEFCON 25 Voting Machine Hacking Village Report on Cyber Vulnerabilities in US Election Equipment, Databases, and Infrastructure*, September 2017, <https://www.defcon.org/images/defcon-25/DEF%20CON%2025%20voting%20report.pdf>, p. 4

²⁹² (U) *Ibid*, p. 9

²⁹³ (U) *Ibid*

²⁹⁴ (U) *Ibid*, pp 8-13

²⁹⁵ (U) Robert McMillan and Dustin Volz, “Voting Machine Used in Half of U S Is Vulnerable to Attack, Report Finds,” *Wall Street Journal*, September 27, 2018. The machine referenced is the ES&S Model 650, which ES&S stopped making in 2008 but is still available for sale.

²⁹⁶ (U) DTS 2018-3275, Summary of 8/22/2018 All Senators Election Security Briefing, August 28, 2018

²⁹⁷ (U) Hacks, Security Gaps And Oligarchs: The Business of Voting Comes Under Scrutiny Miles Parks, NPR, September 21, 2018

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

(U) Advocates of electronic voting point out the flaws in paper ballots, like the potential for the introduction of fraudulent ballots or invalidated votes due to stains or extra marks. The Committee believes that any election system should be protected end-to-end, including against fraud.

(U) Direct-Recording Electronic (DRE) Voting Machine Vulnerabilities

(U) While best practices dictate that electronic voting machines not be connected to the internet, some machines are internet-enabled. In addition, each machine has to be programmed before Election Day, a procedure often done either by connecting the machine to a local network to download software or by using removable media, such as a thumb drive. These functions are often carried out by local officials or contractors. If the computers responsible for writing and distributing the program are compromised, so too could all voting machines receiving a compromised update. Further, machines can be programmed to show one result to the voter while recording a different result in the tabulation. Without a paper backup, a "recount" would use the same faulty software to re-tabulate the same results, because the primary records of the vote are stored in computer memory.²⁹⁸

(U) Dr. Halderman said in his June 2017 testimony before SSCI:

I know America's voting machines are vulnerable because my colleagues and I have hacked them repeatedly as part of a decade of research studying the technology that operates elections and learning how to make it stronger. We've created attacks that can spread from machine to machine, like a computer virus, and silently change election outcomes. We've studied touchscreen and optical scan systems, and in every single case we found ways for attackers to sabotage machines and to steal votes. These capabilities are certainly within reach for America's enemies.

Ten years ago, I was part of the first academic team to conduct a comprehensive security analysis of a DRE voting machine. We examined what was at the time the most widely used touch-screen DRE in the country and spent several months probing it for vulnerabilities. What we found was disturbing: we could reprogram the machine to invisibly cause any candidate to win.²⁹⁹

²⁹⁸ (U) "Some DREs also produce a printed record of the vote and show it briefly to the voter, using a mechanism called a voter-verifiable paper audit trail, or VVPAT. While VVPAT records provide a physical record of the vote that is a valuable safeguard against cyberattacks, research has shown that VVPAT records are difficult to accurately audit and that voters often fail to notice if the printed record doesn't match their votes. For these reasons, most election security experts favor optical scan paper ballots." Written Statement by J. Alex Halderman, June 21, 2017, citing S. Goggin and M. Byrne, "An Examination of the Auditability of Voter Verified Paper Audit Trail (VVPAT) Ballots," *Proceedings of the 2007 USENIX/ACCURATE Electronic Voting Technology Workshop*, August 2007, B. Campbell and M. Byrne, "Now do Voters Notice Review Screen Anomalies?" *Proceedings of the 2009 USENIX/ACCURATE/IAVaSS Electronic Voting Technology Workshop*, August 2009.

²⁹⁹ (U) The machine was the Diebold AccuVote TS, which was still used statewide in at least one state as of 2017.

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

Cybersecurity experts have studied a wide range of U S voting machines—including both DREs and optical scanners—and in every single case, they've found severe vulnerabilities that would allow attackers to sabotage machines and to alter votes. That's why there is overwhelming consensus in the cybersecurity and election integrity research communities that our elections are at risk.³⁰⁰

(U) In speaking with the Committee, federal government officials revealed concerns about the security of voting machines and related infrastructure. Former Assistant Attorney General for National Security John Carlin told the Committee:

"I'm very concerned about our actual voting apparatus, and the attendant structures around it, and the cooperation between some states and the federal government."³⁰¹ Mr. Carlin further stated, "We've literally seen it already, so shame on us if we can't fix it heading into the next election cycles. And it's the assessment of every key intel professional, which I share, that Russia's going to do it again because they think this was successful. So we're in a bit of a race against time heading up to the two-year election. Some of the election machinery that's in place should not be."³⁰²

(U) Mr. McCabe echoed these concerns, and noted that, in the last months before the election, FBI identified holes in the security of election machines, saying "there's some potential there."³⁰³

(U) As of November 2016, five states were using exclusively DRE voting machines with no paper trail, according to open source information.³⁰⁴ An additional nine states used at least some DRE voting machines with no paper trail.³⁰⁵

- (U) State 20 has 21-year-old DRE machines. While the state is in the process of replacing its entire voting system, including these machines, State 20 is aiming to have the updates ready for the 2020 elections.
- (U) In State 21, 50 of 67 counties as of November 2017 used DRE voting machines.³⁰⁶

³⁰⁰ (U) SSCI Transcript of the Open Hearing on Russian Interference in the 2016 U S Elections, held on Wednesday, June 21, 2017, pp. 116-117.

³⁰¹ (U) SSCI Transcript of the Interview with John Carlin, Former Assistant Attorney General for National Security, held on Monday, September 25, 2017, p. 86.

³⁰² (U) *Ibid.*, pp. 86-87.

³⁰³ (U) DTS 2018-2152, SSCI Interview with Andrew McCabe, Former Deputy Director of the FBI, February 14, 2018, p. 221.

³⁰⁴ (U) BallotPedia, *Voting Methods and Equipment By State*, https://ballotpedia.org/Voting_methods_and_equipment_by_state

³⁰⁵ (U) *Ibid.*

³⁰⁶ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 21], November 17, 2017.

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

- (U) State 5 used paper-backed voting in only about half its machines and DRE voting machines without paper backup in the other half.³⁰⁷
- (U) Some states are moving to a hybrid model—an electronic voting machine with a paper backup, often in the form of a receipt that prints after the voter submits their vote. For example, State 12 uses some DREs, but all equipment is required to have a paper trail, and the paper ballot is the ballot of record.³⁰⁸ State 12 also conducts a mandatory state-wide audit.³⁰⁹ Similarly, State 13 uses some paper-based and some electronic machines, but all are required to have a paper trail.³¹⁰

(U) The number of vendors selling voting machines is shrinking, raising concerns about a vulnerable supply chain. A hostile actor could compromise one or two manufacturers of components and have an outsized effect on the security of the overall system.

- [REDACTED] “My job,” said Ms. Monaco when asked whether she was worried about voting machines themselves getting hacked, “was to worry about every parade of horrors. So I cannot tell you that that did not cross my mind. We were worried about who, how many makers. We were worried about the supply chain for the voting machines, who were the makers? . . . Turns out I think it’s just Diebold—and have we given them a defensive briefing? So to answer your question, we were worried about it all.”³¹¹
- [REDACTED] Mr. McCabe pointed out that a small number of companies have “90%” of the market for voting machines in the U.S. Before the 2016 election, [REDACTED] [REDACTED] briefed a few of the companies on vulnerabilities,³¹² but a more comprehensive campaign to educate vendors and their customers is warranted.

(U) Voluntary Voting System Guidelines

(U) Part of the voting reform implemented under The Help America Vote Act of 2002 was a requirement that the Election Assistance Commission create a set of specifications and requirements against which voting systems can be tested, called the Voluntary Voting System Guidelines (VVSG). The EAC adopted the first VVSG in December 2005. The EAC then tasked the Technical Guidelines Development Committee, chaired by the National Institute of Standards and Technology (NIST) and including members from NASED, with updating the guidelines. In March 2015, the EAC approved VVSG 1.1; in January 2016, the EAC adopted

³⁰⁷ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 5], December 1, 2017

³⁰⁸ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 12], December 1, 2017

³⁰⁹ (U) *Ibid*

³¹⁰ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 13], December 1, 2017

³¹¹ (U) SSCI Transcript of the Interview with Lisa Monaco, Former Homeland Security Advisor, held on Thursday, August 10, 2017, p. 31

³¹² (U) SSCI Transcript of the Interview with Andy McCabe, Deputy Director of the FBI, held on Wednesday, February 14, 2018, pp. 220-221

[REDACTED]

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

an implementation plan requiring that all new voting systems be tested against the VVSG 1.1 beginning in July 2017. VVSG 1.1 has since been succeeded by version 2.0, which was released for a 90-day public comment period on February 15, 2019. The EAC will compile the feedback for Commissioners to review shortly thereafter.³¹³ VVSG 2.0 includes the following minimum security guidelines.

- (U) An error or fault in the voting system software or hardware cannot cause an undetectable change in election results. (9.1)
- (U) The voting system produces readily available records that provide the ability to check whether the election outcome is correct and, to the extent possible, identify the root cause of any irregularities. (9.2)
- (U) Voting system records are resilient in the presence of intentional forms of tampering and accidental errors. (9.3)
- (U) The voting system supports strong, configurable authentication mechanisms to verify the identities of authorized users and includes multi-factor authentication mechanisms for critical operations. (11.3)
- (U) The voting system prevents unauthorized access to or manipulation of configuration data, cast vote records, transmitted data, or audit records. (13.1)
- (U) The voting system limits its attack surface by reducing unnecessary code, data paths, physical ports, and by using other technical controls. (14.2)
- (U) The voting system employs mechanisms to protect against malware. (15.3)
- (U) A voting system with networking capabilities employs appropriate, well-vetted modern defenses against network-based attacks, commensurate with current best practice. (15.4)

(U) As of March 2018, 35 states required that their machines be certified by EAC, but compliance with the VVSG standards is not mandatory. Secretary Nielsen testified before the Committee that the United States should “seek for all states” to use the VVSG standards.³¹⁴

³¹³ (U) EAC Commissioners Unanimously Vote to Publish VVSG 2.0 Principles and Guidelines for Public Comment <https://www.eac.gov/news/2019/02/15/eac-commissioners-unanimously-vote-to-publish-vvsg-20-principles-and-guidelines-for-public-comment/>; February 15, 2019

³¹⁴ (U) SSCI Transcript of the Open Hearing on Election Security, held on March 21, 2018, p. 47

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

VIII. (U) THE ROLE OF DHS AND INTERACTIONS WITH THE STATES

(U) The federal government's actions to address election security threats evolved significantly from the summer of 2016 through the summer of 2018. Contemporaneous with the Russian attacks, DHS and FBI were initially treating the situation as they would a typical notification of a cyber incident to a non-governmental victim. By the fall of 2016, however, DHS was attempting to do more extensive outreach to the states. Then in the fall of 2017, DHS undertook an effort to provide a menu of cyber support options to the states.

A. (U) DHS's Evolution

[REDACTED] For DHS and other agencies and departments tasked with intelligence collection or formulating policy options through the interagency process, the full scope of the threat began to emerge in the summer of 2016. Secretary Johnson told the Committee that "I know I had significant concerns by [summer of 2016] about doing all we could to ensure the cybersecurity of our election systems."³¹⁵ Mr. Daniel said in his interview that by the end of July, the interagency was focused on better protecting electoral infrastructure as part of a "DHS and FBI-led domestic effort."³¹⁶

[REDACTED] Policymakers quickly realized, however, that DHS was poorly positioned to provide the kind of support states needed. Mr. Daniel said that interagency discussions about the threat "start[ed] a process of us actually realizing that, frankly, we don't actually have very much in the way of capability that we can directly offer the states"³¹⁷—a fact that the states themselves would later echo³¹⁷

- [REDACTED] Ms. Monaco said that DHS initially found a "pretty alarming variance in the number of voting registration databases and lack of encryption and lack of backup for all of these things."³¹⁸ Ms. Monaco added that "[i]n light of what we were seeing, in light of the intelligence we were getting briefed on, this was a very specific direction and decision to say we need to really accelerate this, put a significant push on resources and engagement at the senior-most levels."³¹⁹
- [REDACTED] Mr. Daniel and the working group identified DHS's cyber teams as possible assistance to the states "DHS had teams that could go and provide that support to the private sector. We've been doing that. That's a program that existed for years for critical

³¹⁵ (U) SSCI Transcript of the Interview with Jeh Johnson, Former Secretary of Homeland Security, held on Monday, June 12, 2017, p. 10

³¹⁶ (U) SSCI Transcript of the Interview with Michael Daniel, Former Special Assistant to the President and Cybersecurity Coordinator, National Security Council, held on Wednesday, August 31, 2017, p. 28

³¹⁷ (U) *Ibid.*, p. 38

³¹⁸ (U) SSCI Transcript of the Interview with Lisa Monaco, Former Homeland Security Advisor, held on Thursday, August 10, 2017, SSCI interview of Lisa Monaco, August 10, 2017, p. 19

³¹⁹ (U) *Ibid.*, p. 21

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

infrastructure companies. And we realized that we could repurpose [some of those teams], but we don't have that many of them . . . four or five. It was not very many.”³²⁰

(U) DHS attempted a nuanced outreach to the states on the threat. Ms. Monaco highlighted a delicate balancing act with the interactions with states.

*I know we tried very hard to strike a balance between engaging state and local officials and federal officials in the importance of raising cyber defenses and raising cybersecurity and not sowing distrust in the system, both because, one, we believed it to be true that the system is in fact quite resilient because of what I mentioned earlier, which is the diffuse nature, and because we did not want to, as we described it, do the Russians' work for them by sowing panic about the vulnerability of the election*³²¹

(U) In an August 15, 2016, conference call with state election officials, then-Secretary Johnson told states, “we’re in a sort of a heightened state of alertness; it behooves everyone to do everything you can for your own cybersecurity leading up to the election.” He also said that there was “no specific or credible threat known around the election system itself. I do not recall—I don’t think, but I do not recall, that we knew about [State 4] and Illinois at that point.”³²² The Committee notes that this call was two months after State 4’s system was breached, and more than a month after Illinois was breached and the state shut down its systems to contain the problem. During this call, Secretary Johnson also broached the idea of designating election systems as critical infrastructure.

(U) A number of state officials reacted negatively to the call. Secretary Johnson said he was “surprised/disappointed that there was a certain level of pushback from at least those who spoke up. . . . The pushback was. . . This is our—I’m paraphrasing here: This is our responsibility and there should not be a federal takeover of the election system.”³²³

- (U) The call “does not go incredibly well,” said Mr. Daniel. “I was not on the call, no, but all of the reporting back and then all of the subsequent media reporting that is leaked about the call shows that it did not go well.” Mr. Daniel continued: “I was actually quite surprised. . . . in my head, there is this: yes, we have this extremely partisan election going on in the background; but the Russians are trying to mess with our election. To me, that’s a national security issue that’s not dependent on party or anything else.”³²⁴

³²⁰ (U) SSCI Transcript of the Interview with Michael Daniel, Former Special Assistant to the President and Cybersecurity Coordinator, National Security Council, held on Wednesday, August 31, 2017, p. 41

³²¹ (U) SSCI Transcript of the Interview with Lisa Monaco, Former Homeland Security Advisor, held on Thursday, August 10, 2017, p. 29

³²² (U) SSCI Transcript of the Interview with Jeh Johnson, Former Secretary of Homeland Security, held on Monday, June 12, 2017, p. 13

³²³ (U) *Ibid.*, pp. 13-14

³²⁴ (U) *Ibid.*, p. 48

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

- (U) Ms. Monaco also related how DHS received significant push back from the states and decided to “focus our efforts on really pushing states to voluntarily accept the assistance that DHS was trying to provide.”³²⁵
- (U) States also reported that the call did not go well. Several states told the Committee that the idea of a critical infrastructure designation surprised them and came without context of a particular threat. Some state officials also did not understand what a critical infrastructure designation meant, in practical terms, and whether it would give the federal government the power to run elections. DHS also did not anticipate a certain level of suspicion from the states toward the federal government. As a State 17 official told the Committee, “when someone says ‘we’re from the government and we’re here to help,’ it’s generally not a good thing.”³²⁶

(U) Critical Infrastructure Designation

(U) One of the most controversial elements of the relationship between DHS and the states was the decision to designate election systems as critical infrastructure. Most state officials relayed that they were surprised by the designation and did not understand what it meant; many also felt DHS was not open to input from the states on whether such a designation was beneficial.

(U) Secretary Johnson remembers the first time he aired the possibility of a designation was on August 3, 2016. He went to a reporters’ breakfast sponsored by the Christian Science Monitor and publicly “floated the idea of designating election infrastructure as critical infrastructure.”³²⁷ Then, on August 15, 2016, Secretary Johnson had a conference call with election officials from all 50 states. “I explained the nature of what it means to be designated critical infrastructure. It’s not a mandatory set of [regulations], it’s not a federal takeover, it’s not binding operational directives. And here are the advantages: priority in terms of our services and the benefit of the protection of the international cyber norm.”³²⁸ Secretary Johnson continued: “I stressed at the time that this is all voluntary and it prioritizes assistance if they seek it.”³²⁹

(U) Some states were vocal in objecting to the idea. In evaluating the states’ response, DHS came to the conclusion that it should put the designation on hold, deciding it would earn more state trust and cooperation if it held off on the designation as critical infrastructure and perhaps sought more buy-in from the states at a later date.³³⁰

³²⁵ (U) SSCI Transcript of the Interview with Lisa Monaco, Former Homeland Security Advisor, held on Thursday, August 10, 2017, SSCI interview of Lisa Monaco, August 10, 2017, p. 25.

³²⁶ (U) Memorandum for the Record, SSCI Staff, Conference Call with State 17, January 25, 2018.

³²⁷ (U) SSCI Transcript of the Interview with Jeh Johnson, Former Secretary of Homeland Security, held on Monday, June 12, 2017, p. 10.

³²⁸ (U) *Ibid.*, p. 14. For additional information on the definition of critical infrastructure in a cybersecurity context, see Executive Order 13636, *Improving Critical Infrastructure Cybersecurity*, February 12, 2013.

³²⁹ (U) SSCI Transcript of the Open Hearing on Election Security, March 21, 2018, p. 34.

³³⁰ (U) *Ibid.*, p. 115.

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

(U) After the election, Secretary Johnson decided the time had come to make the designation. He held a follow-up call with NASS on the critical infrastructure designation in January 2017: "I didn't tell them I'm doing this the next day, but I told them I was close to making a decision. I didn't hear anything further [along the lines of additional, articulated objections], so the same day we went public with the [unclassified] version of the report,³³¹ I also made the designation."³³²

(U) Mr. Daniel summed up the rationale for proceeding this way: "I do believe that we should think of the electoral infrastructure as critical infrastructure, and to me it's just as critical for democracy as communications, electricity, water. If that doesn't function, then your democracy doesn't function. . . . To me that is the definition of 'critical'."³³³

(U) In interviews with the Committee in late 2017 and early 2018, several states were supportive of the designation and saw the benefits of, for example, the creation of the Government Coordinating Council. Others were lukewarm, saying they had seen limited benefits for all the consternation officials said it had caused. Still others remained suspicious that the designation is a first step toward a federal takeover of elections

B. (U) The View From the States

(U) For most states, the story of Russian attempts to hack state infrastructure was one of confusion and a lack of information. It began with what states interpreted as an insignificant event: an FBI FLASH notification on August 18, 2016, [REDACTED].³³⁴ Then, in mid-October, the MS-ISAC reached out to state IT directors with an additional alert about specific IP addresses scanning websites.³³⁵ At no time did MS-ISAC or DHS identify the IP addresses as associated with a nation-state actor. Given the lack of context, state staff who received the notification did not ascribe any additional urgency to the warning; to them, it was a few more suspect IP addresses among the thousands that were constantly pinged state systems. Very few state IT directors informed state election officials about the alert.

³³¹ (U) Secretary Johnson was referring to the declassified version of the Intelligence Community Assessment, *Assessing Russian Activities and Intentions in Recent U.S. Elections*, January 6, 2017.

³³² (U) *Ibid.*, p. 46

³³³ (U) SSCI Transcript of the Interview with Michael Daniel, Former Special Assistant to the President and Cybersecurity Coordinator, National Security Council, held on Wednesday, August 31, 2017, p. 98

³³⁴ (U) FBI FLASH, Alert Number T-LD1004-TT, TLP-AMBER, [REDACTED]

³³⁵ (U) [REDACTED] FBI FLASH, Alert Number T-LD1005-TT, TLP-AMBER, [REDACTED]; DHS/FBI JAR-16-20223, *Threats to Federal, State, and Local Government Systems*, October 14, 2016

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

- (U) State 11 had a meeting with DHS officials, including the regional DHS cyber advisor, in August 2016, but according to State 11 officials, DHS did not mention any specific threat against election systems from a nation-state actor.³³⁶
- (U) State 13 reported that DHS contacted an affected county at one point, but never contacted the state-level officials.³³⁷
- (U) When they saw an IP address identified in the alerts had scanned their systems, State 6 and State 16 sent their logs to the MS-ISAC for analysis.³³⁸ State 16 said it never received a response.³³⁹

(U) DHS, conversely, saw its efforts as far more extensive and effective. Ms Manfra testified to SSCI that DHS “held a conference call where all 50 secretaries of state or an election director if the secretary of state didn’t have that responsibility [participated], in August, in September, and again in October [of 2016], both high-level engagement and network defense products [sic].”³⁴⁰ Mr. Daniel reported that “by the time Election Day rolls around, all but one state has taken us up on the offer to at least do scanning [,] so I want to give people credit for not necessarily sticking to initial partisan reactions and . . . taking steps to protect their electoral infrastructure.”³⁴¹

(U) States reported to the Committee that Election Day went off smoothly. For most state election officials, concerns about a possible threat against election systems dropped off the radar until the summer or fall of 2017. Many state election officials reported hearing for the first time that Russian actors were responsible for scanning election infrastructure in an estimated 21 states from the press or from the Committee’s open hearing on June 21, 2017. During that hearing, in response to a question from Vice Chairman Warner inquiring whether all affected states were aware they were attacked, Ms Manfra responded that “[a]ll of the system owners within those states are aware of the targeting, yes, sir.”³⁴² However, when pressed as to whether election officials in each state were aware, the answer was less clear.³⁴³

- (U) In that hearing, Dr Liles said DHS had “worked hand-in-hand with the state and local partners to share threat information related to their networks”³⁴⁴

³³⁶ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 11], December 8, 2017

³³⁷ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 13], December 1, 2017

³³⁸ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 6], November 17, 2017, Memorandum for the Record, SSCI Staff, Conference Call with [State 16], December 1, 2017

³³⁹ (U) *Ibid* State 6 did not indicate whether they received feedback from DHS

³⁴⁰ (U) SSCI Transcript of the Open Hearing on Russian Interference in the 2016 U S Elections, June 21, 2017, p 74

³⁴¹ (U) SSCI Transcript of the Interview with Michael Daniel, Former Special Assistant to the President and Cybersecurity Coordinator, National Security Council, held on Wednesday, August 31, 2017, p. 49.

³⁴² (U) SSCI Transcript of the Open Hearing on Russian Interference in the 2016 U S Elections, held on Wednesday, June 21, 2017, p 28

³⁴³ (U) *Ibid*, pp 62-63.

³⁴⁴ (U) *Ibid*, p 12

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

- (U) Ms. Manfra said, “The owners of the systems within those 21 states have been notified.” Senator King then asked, “How about the election officials in those states?” Ms. Manfra responded, “We are working to ensure that election officials as well understand. I’ll have to get back to you on whether all 21 states ...[crosstalk].”³⁴⁵
- (U) Given Ms. Manfra’s testimony and the fact that some election officials did not get a notification directly to their offices, election officials in many states assumed they were not one of the 21; some even issued press releases to that effect.³⁴⁶

(U) The disconnect between DHS and state election officials became clear during Committee interactions with the states throughout 2017. In many cases, DHS had notified state officials responsible for network security, but not election officials, of the threat. Further, the IT professionals contacted did not have the context to know that this threat was any different than any other scanning or hacking attempt, and they had not thought it necessary to elevate the warning to election officials.

(U) After the hearing, and in part to respond to confusion in the states, DHS held a conference call with representatives from 50 states in September 2017. In that call, DHS said they would contact affected states directly. State 8 state election officials noted that the call became “somewhat antagonistic.”³⁴⁷ State 17 officials reported that the phone call “just showed how little DHS knew about elections.”³⁴⁸ Several officials argued that all 50 states should be notified of who had been hacked. DHS followed up with one-to-one phone calls to states over the next several days.

- (U) Officials from some states reported being shocked that they were in fact one of the states, and further surprised that their states had supposedly been notified.
- (U) Most state officials found the conference calls lacking in information and were left wondering exactly what the threat might be. Several states said the DHS representatives could not answer any specific questions effectively.

(U) Following this series of difficult engagements, DHS set about trying to build relationships with the states, but it faced a significant trust deficit. Early follow-up interactions between state election officials and DHS were rocky. States reported that DHS seemed to have little to no familiarity with elections. For example, State 6 said that the DHS representatives they were assigned seemed to know nothing about State 6, and, when pressed, they admitted they were “just reading the spreadsheet in front of [them].”³⁴⁹ State 8 reported that “we are spending

³⁴⁵ (U) *Ibid*, pp. 62-63.

³⁴⁶ (U) State 8 said they put out a press release because DHS had said publicly that they had notified the 21 states, and “if you were one of the 21, you would know.”

³⁴⁷ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 8], February 2, 2018

³⁴⁸ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 17], January 25, 2018

³⁴⁹ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 6], November 17, 2017.

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

a ton of time educating outside groups on how elections are run.”³⁵⁰ State 3 officials said, “DHS didn’t recognize that securing an election process is not the same as securing a power grid.”³⁵¹

(U) By early 2018, State officials gave DHS credit for making significant progress over the next six months. States began to sign up for many of the resources that DHS had to offer, and DHS hosted the first meeting of the Government Coordinating Council required under the critical infrastructure designation. Those interactions often increased trust and communication between the federal and state entities. For example, DHS has identified a list of contacts to notify if they see a threat; that list includes both IT officials and election officials. State 9 described it as “quite a turnaround for DHS,” and further stated that the Secretaries of State had been disappointed with how slowly DHS got up to speed on election administration and how slowly the notifications happened, but DHS was “quick with the *mea culpas* and are getting much better.”³⁵²

(U) Not all of the engagements were positive, however. State 13 in early December 2017 still reported continued frustration with DHS, indicating to the Committee that it had not seen much change in terms of outreach and constructive engagement. As of summer 2017, according to State 13, “the lack of urgency [at DHS] was beyond frustrating.”³⁵³

C. (U) Taking Advantage of DHS Resources

(U) As DHS has pursued outreach to the states, more and more have opened their doors to DHS assistance. DHS told the Committee that its goal has been relationship building and:

*In the partnerships with the states and secretaries of states, state election directors, and at the local level, we’re trying to shift them to a culture of more information security management, where they can now account for the integrity of their system, or, if something did happen . . . they know the full extent of what happened on their system. We’re providing vulnerability assessments and trend analysis, in addition to connecting them to the threat intelligence that we can, in order to evolve their . . . cyber culture*³⁵⁴

(U) DHS’s assistance can be highly tailored to need, and falls into roughly two buckets: remote cyber hygiene scans, which provide up to weekly reports, and on-site risk and vulnerability assessments. DHS also offers a suite of other services, including phishing campaign assessments. All these efforts seek to provide the states with actionable information to improve cyber hygiene, but DHS has been keen to avoid what could be perceived by the states as

³⁵⁰ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 8], February 2, 2018

³⁵¹ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 3], December 8, 2017

³⁵² (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 9], November 17, 2017.

³⁵³ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 13], December 1, 2017.

³⁵⁴ (U) SSCI interview with DHS and CTIIC, February 27, 2018, pp 54-55.

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

unfunded mandates³⁵⁵ Some states requesting more intensive services have also experienced significant delays before DHS could send a team to assist.

- (U) By October 2018, DHS said 35 states, 91 local jurisdictions, and eight election system vendors had signed up for remote persistent scans³⁵⁶ All the requests for these scans have been fulfilled “They can be turned on basically within the week,” according to DHS³⁵⁷
- (U) DHS said that as of October 2018, it had completed 35 in-depth, on the ground vulnerability assessments: 21 states, 13 localities, and one election system vendor. These assessments are one week off-site remote scans followed by a second week on site.³⁵⁸
- (U) Two states who completed the in-depth assessments reported in late 2017 they had had a good experience. State 12 officials said the team was “extremely helpful and professional.”³⁵⁹ State 10 said the review was a good experience, although DHS was somewhat limited in what it could do³⁶⁰ For example, DHS did a phishing email test that showed the training for employees had worked.³⁶¹ DHS gave “good and actionable recommendations.” Although DHS “didn’t really understand election systems when they came,” they learned a lot³⁶²
- (U) As of November 2017, State 6 and State 9 requested an on-site scan, but those scans were on track to be delayed past the August 2018 primaries.³⁶³ State 7 was expecting a four-to-six month delay.³⁶⁴ State 8 signed up for a checkup in October 2017 and was due to get service the following February.³⁶⁵ As of January 2018, State 17 also had requested an on-site scan³⁶⁶

(U) In a sign of improving relations between the states and DHS, two states that had elections in 2017 attempted to include DHS in the process more extensively than in the past. In State 17, a two-person DHS team sat with election officials during the 2017 special election and monitored the networks. Even though “their presence was comforting,” they “really didn’t do much” State 17 signed DHS’s normal MOU, but also added its own clause to underscore the state’s independence. a formal sunset on DHS’s access to state systems, one week after the

³⁵⁵ (U) *Ibid.*, p 60

³⁵⁶ (U) *Ibid.*, p 57

³⁵⁷ (U) DHS phone call with SSCI, October 16, 2018

³⁵⁸ (U) *Ibid.*

³⁵⁹ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 12], December 1, 2017

³⁶⁰ (U) *Ibid.*

³⁶¹ (U) *Ibid.*

³⁶² (U) *Ibid.*

³⁶³ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 6], November 17, 2017, Memorandum for the Record, SSCI Staff, Conference Call with [State 9], November 17, 2017

³⁶⁴ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 7], January 25, 2018

³⁶⁵ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 8], February 2, 2018

³⁶⁶ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 17], January 25, 2018

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

election. State 7 reported their experience with DHS during the 2017 statewide election was quite good. DHS sat with election officials all day, which meant State 7 could pass messages quickly to NCCIC.

(U) In March 2018, Congress appropriated \$380 million in funding for election security improvements. The funding was distributed under the formula laid out in the Help American Vote Act (HAVA) and was intended to aid in replacing vulnerable voting machines and improving cybersecurity. As of July 2018, 13 states said they intended to use the funds to buy new voting machines, and 22 said they have “no plans to replace their machines before the election—including all five states that rely solely on paperless electronic voting devices,” according to a survey by Politico.³⁶⁷

IX. (U) RECOMMENDATIONS

1. (U) Reinforce States’ Primacy in Running Elections*

(U) States should remain firmly in the lead on running elections, and the federal government should ensure they receive the necessary resources and information.

2. (U) Build a Stronger Defense, Part I: Create Effective Deterrence

(U) The United States should communicate to adversaries that it will view an attack on its election infrastructure as a hostile act, and we will respond accordingly. The U.S. Government should not limit its response to cyber activity; rather, it should create a menu of potential responses that will send a clear message and create significant costs for the perpetrator.

[REDACTED] Ideally, this principle of deterrence should be included in an overarching cyber doctrine for the U.S. Government. That doctrine should clearly delineate cyberespionage, cybercrime, and cyber attacks. Further, a classified portion of the doctrine should establish what the U.S. Government believes to be its escalation ladder in the cyber realm—what tools does it have, what tools should it pursue, and what should the limits of cyber war be. The U.S. strategic approach tends to overmatch adversaries with superior technology, and policymakers should consider what steps the U.S. will need to take to outstrip the capabilities of Russia, China, Iran, North Korea, and other emerging hostile actors in the cyber domain.

(U) U.S. cyber doctrine should serve as the basis for a discussion with U.S. allies and others about new cyber norms. Just as the international community has established norms and treaties about the use of technologies and weapons systems, the U.S. should lead a conversation about cyber norms and the limits of cyber activity with allies and others.

*The Committee’s recommendation to “reinforce states’ primacy in running elections” should be understood in reference to states’ responsibility for election security, and not as pertaining to broader election issues, such as campaign finance laws or voting rights laws.

³⁶⁷ (U) States Slow to Prepare for Hacking Threats, Eric Geller, Politico, July 18, 2018

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

3. **(U) Build a Stronger Defense, Part II: Improve Information Gathering and Sharing on Threats**

[REDACTED]

[REDACTED] The U.S. government needs to build the cyber expertise and capacity of its domestic agencies, such as DHS and FBI, and reevaluate the current authorities that govern efforts to defend against foreign cyber threats. NSA and CIA collection is, by law, directed outside the United States. [REDACTED]

[REDACTED] The U.S. government should invest in capabilities for rapid attribution of cyber attacks, without sacrificing accuracy. [REDACTED]

[REDACTED] However, the IC needs to improve its ability to provide timely and actionable warning. Timely and accurate attribution is not only important to defensive information sharing, but will also underpin a credible deterrence and response strategy.

(U) The federal government and state governments need to create clear channels of communication two ways—down from the federal government to the state and local level, and up from the state and local officials on the front lines to federal entities. In 2016, DHS and FBI did not provide enough information or context to election officials about the threat they were facing, but states and DHS have made significant progress in this area in the last two years. For example, Secretary of Homeland Security Nielsen testified to the Committee in March 2018 that “today I can say with confidence that we know whom to contact in every state to share threat information. That capability did not exist in 2016.”³⁶⁹

(U) A key component of information sharing about elections is security clearances for appropriate officials at the state and local level. DHS and its partners can effectively strip classified information off of cyber indicators, which can then be passed to technical staff at the state level, but in order for those indicators to not get lost in the multitude of cyber threats those professionals see on a daily basis, senior officials at the state and local levels need to know the

³⁶⁸ [REDACTED]

³⁶⁹ (U) SSCI Transcript of the Open Hearing on Election Security, held on March 21, 2018, p. 16

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

context surrounding the indicators. State officials need to know why a particular threat is of significant concern, and should be prioritized. That context could come from classified information, or states could come to understand that threat information DHS passes them is more serious than that received through other sources. DHS's goal is to obtain clearances for up to three officials per state.³⁷⁰ As of August 2018, DHS had provided a clearance to 92 officials³⁷¹; as of late 2017 all state election officials had received interim secret clearances or one-day read-ins for secret-level briefings.³⁷² DHS, along with ODNI and FBI, also hosted state and local election officials for a SECRET-level briefing on the sidelines of the biannual NASS and NASS-ED conferences in Washington, DC in February 2018. In March, Amy Cohen, Executive Director of NASS-ED testified in front of the Committee that, "It would be naive to say that we received answers to all our questions, but the briefing was incredibly valuable and demonstrated how seriously DHS and others take their commitment to the elections community as well as to our concerns."³⁷³ The Committee recommends DHS continue providing such briefings and improve the quality of information shared.

(U) Fundamental to meaningful information sharing, however, is that state officials understand what they are getting. New inductees to the world of classified information are often disappointed—they expected to see everything laid out in black and white, when intelligence is often very gray, with a pattern discernable only to those who know where to look and what conclusions to draw. Those sharing the intelligence should manage expectations—at the SECRET level, officials are likely to see limited context about conclusions, but not much more.

(U) Federal officials should work to declassify information, for the purpose of providing warning to appropriate state and local officials, to the greatest extent possible. If key pieces of context could be provided at a lower classification level while still protecting classified information, DHS and its partners should strive to do so.

4. (U) Build a Stronger Defense, Part III: Secure Election-Related Cyber Systems

(U) **Despite the expense, cybersecurity needs to become a higher priority for election-related infrastructure.** The Committee found a wide range of cybersecurity practices across the states. Some states were highly focused on building a culture of cybersecurity; others were severely under-resourced and relying on part-time help.

(U) The Committee recommends State officials work with DHS to evaluate the security of their election systems end-to-end and prioritize implementing the following steps to secure voter registration systems, state records, and other pre-election activities. The Committee additionally recommends that State officials:

³⁷⁰ (U) SSCI Transcript of the Open Hearing on Election Security, held on March 21, 2018, p 15

³⁷¹ (U) DTS 2018-3275, Summary of 8/22/2018 All Senators Election Security Briefing, August 28, 2018

³⁷² (U) SSCI Transcript of the Open Hearing on Election Security, held on March 21, 2018, p 15, 26

³⁷³ (U) SSCI Transcript of the Open Hearing on Election Security, held on March 21, 2018, p 113

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

- (U) Identify the weak points in their networks, like under-resourced localities. State 7 said they are not worried about locations like larger counties when it comes to network security, but they are worried about “the part-time registrar who is also the town attorney and the town accountant and is working out of a 17th century jail ”³⁷⁴
- (U) Undertake security audits of state and local voter registration systems, ideally utilizing private sector entities capable of providing such assistance. State and local officials should pay particular attention to the presence of high severity vulnerabilities in relevant web applications, as well as highly exploitable vulnerabilities such as cross-site scripting and SQL injection.
- (U) Institute two-factor authentication for user access to state databases.
- (U) Install monitoring sensors on state systems. As of mid-2018, DHS’s ALBERT sensors covered up to 98% of voting infrastructure nationwide, according to Undersecretary Krebs.³⁷⁵
- (U) Include voter registration database recovery in state continuity of operations plans.
- (U) Update software in voter registration systems. One state mentioned that its voter registration system is more than ten years old, and its employees will “start to look for shortcuts” as it gets older and slower, further imperiling cybersecurity.
- (U) Create backups, including paper copies, of state voter registration databases.
- (U) Consider a voter education program to ensure voters check registration information well prior to an election.

(U) DHS in the past year has stepped up its ability to assist the states with some of these activities, but DHS needs to continue its focus on election infrastructure and pushing resources to the states.

(U) The Committee recommends DHS take the following steps:

- (U) Create an advisory panel to give DHS expert-level advice on how states and localities run elections. The Government Coordinating Council, created as part of the critical infrastructure designation, could serve as a venue for educating DHS on what states do and what they need.

³⁷⁴ (U) Memorandum for the Record, SSCI Staff, Conference Call with [State 7], January 25, 2018.

³⁷⁵ (U) DTS 2018-3275, Summary of 8/22/2018 All Senators Election Security Briefing, August 28, 2018

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

- (U) Create guidelines on cybersecurity best practices for elections and a public awareness campaign to promote election security awareness, working through EAC, NASS, and NASED, and with the advisory panel.
- (U) Develop procedures and processes to evaluate and routinely provide guidance on relevant vulnerabilities associated with voting systems in conjunction with election experts
- (U) DHS has already created a catalog of services they can provide to states to help secure states' systems. DHS should maintain the catalog and continue to update it as it refines its understanding of what states need
- (U) Expand capacity so wait times for services, like voluntary vulnerability assessments, are manageable and so that DHS can maintain coverage on other critical infrastructure sectors. Robbing resources from other critical infrastructure sectors will eventually create unacceptable new vulnerabilities.
- (U) Work with GSA to establish a list of approved private-sector vendors who can provide services similar to those DHS provides. States report being concerned about "vultures"—companies who show up selling dubious cyber solutions. That being said, some states will be more comfortable having a private sector entity evaluate their state systems than a federal agency.
- (U) Continue to build the resources of the newly established EI-ISAC. States have already found this information sharing service useful, and it could serve as a clearinghouse for urgent threat information. As of August 2018, the EI-ISAC had over 1,000 members with participants in all 50 states.³⁷⁶
- (U) Continue training for state and local officials, like the table-top exercise conducted in August of 2018 that brought together representatives from 44 states, localities, and the federal government to work through an election security crisis.³⁷⁷ The complexity of the scenario encouraged state and local officials to identify serious gaps in their preparations for Election Day.

5. (U) Build a Stronger Defense, Part IV: Take Steps to Secure the Vote Itself

(U) Given Russian intentions to undermine the credibility of the election process, states should take urgent steps to replace outdated and vulnerable voting systems. When safeguarding the integrity of U.S. elections, all relevant elements of the government—including at the federal, state, and local level—need to be forward looking and work to address vulnerabilities before they are exploited.

³⁷⁶ (U) DTS 2018-3275, Summary of 8/22/2018 All Senators Election Security Briefing, August 28, 2018

³⁷⁷ (U) DHS, Press release DHS Hosts National Exercise on Election Security, August 15, 2018

[REDACTED]

COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

- (U) As states look to replace HAVA-era machines that are now out of date, they should purchase more secure voting machines. Paper ballots and optical scanners are the least vulnerable to cyber attack; at minimum, any machine purchased going forward should have a voter-verified paper trail and remove (or render inert) any wireless networking capability.
- (U) States should require that machines purchased from this point forward are either EAC certified or comply with the VVSG standards. State purchasers should write contracts with vendors to ensure adherence to the highest security standards and to demand guarantees the supply chains for machines are secure.
- (U) In concert with the need for paper ballots comes the need to secure the chain of custody for those ballots. States should reexamine their safeguards against insertion of fraudulent paper ballots at the local level, for example time stamping when ballots are scanned.
- (U) Statistically sound audits may be the simplest and most direct way to ensure confidence in the integrity of the vote.³⁷⁸ States should begin to implement audits of election results. Logic and accuracy tests of machines are a common step, but do not speak to the integrity of the actual vote counting. Risk-limiting audits, or some similarly rigorous alternative, are the future of ensuring that votes cast are votes counted. State 8, State 12, State 21, State 9, State 2, State 16, and others already audit their results, and others are exploring additional pilot programs.³⁷⁹ However, as of August 2018, five states conducted no post-election audit and 14 states do not do a complete post-election audit.³⁸⁰ The Committee recognizes states' concern about the potential cost of such audits and the necessary changes to state laws and procedures; however, the Committee believes the benefit of having a provably accurate vote is worth the cost.
- (U) States should resist pushes for online voting. One main argument for voting online is to allow members of the military easier access to their fundamental right to vote while deployed. While the Committee agrees states should take great pains to ensure members

³⁷⁸ (U) Election experts point out, however, that audits could create a new vector for election-related lawsuits. Complainants could allege that the audit was done improperly, or that the audit process reflected bias

³⁷⁹ (U) State 8 passed a law to audit starting in 2018, with random precinct sampling. State 12 does state-wide audits. State 21 audits 2% of ballots, randomly selected. State 9 picks 210 of 4100 precincts at random for an audit. State 2 hand-counts ballots in randomly selected precincts and uses automated software to test. A States law on ballot storage can't accommodate risk-limiting audits. Instead, they use ClearBallot software. They upload images of ballots to an external hard drive and send it to ClearBallot. ClearBallot is blind to who won and independently evaluates the results. In addition, the company can identify problems with scanners, for example, when a fold in absentee ballots recorded as a vote. Cybersecurity experts still doubt, however, that this type of procedure is secure

³⁸⁰ (U) DTS 2018-3275, Summary of 8/22/2018 All Senators Election Security Briefing, August 28, 2018.

[REDACTED] [REDACTED]
 COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

of the military get to vote for their elected officials, no system of online voting has yet established itself as secure.³⁸¹

- (U) DHS should work with vendors of election equipment to educate them about the vulnerabilities in both the machines and the supply chains for the components of their machines. Idaho National Lab is already doing some independent work on the security of a select set of voting machines, developing a repeatable methodology for independently testing the security of such systems.
- (U) The Department of State should work with FBI and DHS to warn states about foreign efforts to access polling places outside normal channels in the future and remain vigilant about rejecting aberrant attempts.
- (U) The Associated Press is responsible for reporting unofficial, initial election results on election night and is a critical part of public confidence in the voting tally. States and DHS should work with the AP and other reporting entities to ensure they are both secure and reporting accurate results.
- (U) The Committee found that, often, election experts, national security experts, and cybersecurity experts are speaking different languages. Election officials focus on transparent processes and open access and are concerned about introducing uncertainty into the system, national security professionals tend to see the threat first. Both sides need to listen to each other better and to use more precise language.

6. (U) Assistance for the States

(U) State officials told the Committee the main obstacle to improving cybersecurity and purchasing more secure voting machines is cost. State budgets are stretched thin by priorities that seem more urgent on a daily basis and are far more visible to constituents.

(U) In March 2018, Congress appropriated \$380 million in funds under the HAVA formula for the states. As of August 2018, states had begun to allocate and spend that money for items such as cybersecurity improvements.

(U) The Committee recommends the EAC, which administers the grants, regularly report to Congress on how the states are using those funds, whether more funds are needed, and whether states have both replaced outdated voting equipment and improved

³⁸¹ (U) Dr. Halderman in his testimony before the Committee said, "I think that online voting, unfortunately, would be painting a bullseye on our election system. Today's technology just does not provide the level of security assurance for an online election that you would need in order for voters to have high confidence. And I say that having myself hacked an online voting system that was about to be used in real elections, having found vulnerabilities in online voting systems that are used in other countries. The technology just isn't ready for use." See SSCI Transcript of the Open Hearing on Russian Interference in the 2016 U.S. Elections, held on Wednesday, June 21, 2017, p. 152.

MINORITY VIEWS OF SENATOR WYDEN**(U) The role of the federal government**

(U) The Committee report describes Russian attacks on U.S. election infrastructure in 2016 and lays out many of the serious vulnerabilities that exist to this day. These vulnerabilities pose a direct and urgent threat to American democracy which demands immediate congressional action. The defense of U.S. national security against a highly sophisticated foreign government cannot be left to state and county officials. For that reason, I cannot support a report whose top recommendation is to “reinforce[] state’s primacy in running elections.”

(U) Congress’s constitutional role in regulating federal elections is well-established. In response to an inquiry from the bipartisan leadership of the U.S. Senate, the General Accounting Office (GAO) wrote that “[w]ith regard to the administration of federal elections, Congress has constitutional authority over both congressional and presidential elections.”¹ Indeed, pursuant to the Elections Clause of the U.S. Constitution,² Congress’s authority over congressional elections is “paramount to that of the states.” As the GAO report details, Congress has repeatedly passed legislation related to the administration of elections on topics such as the timing of federal elections, voter registration, absentee voting requirements, disability access, and voting rights.

(U) If there was ever a moment when Congress needed to exercise its clear constitutional authorities to regulate elections, this is it. America is facing a direct assault on the heart of our democracy by a determined adversary. We would not ask a local sheriff to go to war against the missiles, planes and tanks of the Russian Army. We shouldn’t ask a county election IT employee to fight a war against the full capabilities and vast resources of Russia’s cyber army. That approach failed in 2016 and it will fail again. The federal government’s response to this ongoing crisis cannot be limited offers to provide resources and information, the acceptance of which is voluntary. If the country’s elections are to be defended, Congress must also establish mandatory, nation-wide cybersecurity requirements.

(U) Security of voting machines

(U) Experts are clear about the measures necessary to protect U.S. elections from cyber manipulation.³ Absent an accessibility need, most voters should hand-mark paper ballots. For voters with some kind of need, ballot marking devices that print paper ballots should be available. Risk-limiting audits must be also be required. Currently, however, only Virginia, Colorado and Rhode Island meet these requirements.⁴ These critical reforms must be adopted

¹ “Elections. The Scope of Congressional Authority in Election Administration,” General Accounting Office, March 2001, prepared in response to a joint inquiry from Senator Trent Lott, Republican Leader; Senator Tom Daschle, Democratic Leader; Senator Mitch McConnell, Chairman, and Senator Christopher Dodd, Ranking Member, of the Senate Committee on Rules and Administration.

² Article I, Section 4, Clause 1

³ Securing the Vote; Protecting American Democracy; National Academy of Sciences, Engineering and Medicine, September 2018

⁴ National Conference of State Legislatures, Post-Election Audits, January 3, 2019. Verifiedvoter.org. The Verifier – Polling Place Equipment – November 2018. Oregon requires paper ballots and the Oregon State Senate has passed a bill requiring risk-limiting audits.

throughout the country, which is why, on June 27, 2019, the House of Representatives passed H.R. 2722, the Securing America's Federal Elections (SAFE) Act. The security of the country's voting machines depends on this legislation being signed into law.

(U) The Committee, in recommending basic security measures like paper ballots and audits, notes that there is currently “a wide range of cybersecurity practices across the states.” Indeed, the data is deeply concerning and highlights the need for mandatory, nation-wide standards. For example, the Committee rightly highlights the vulnerabilities of Direct-Recording Electronic (DRE) Voting Machines, noting that, without a paper trail, there would be no way to conduct a meaningful “recount” and compromises would remain undetected. As of November 2018, however, there were still four states in which every single county relied on DREs without voter verified paper audit trail printers (VVPAT) and, in an additional eight states, there were multiple counties that relied on DREs without a VVPAT.⁵ Gaps in the deployment of VVPATs, which are far less secure than hand-marked paper ballots, demonstrate that even bare minimum security best practices are not being met in many parts of the country.

(U) In addition, 16 states have no post-election audits of any kind, while many others have insufficient or perfunctory audits. Only four states have a statutory requirement for risk-limiting audits, while two states provide options for counties to run different kinds of audits, one of which is a risk-limiting audit.⁶ Next year, a third state will provide that option. In other words, the vast majority of states have made no moves whatsoever toward implementing minimum standards that experts agree are necessary to guarantee the integrity of elections.

(U) The Committee rightly identifies problems with vendors of voting machines, noting vulnerabilities in both the machines and the supply chains for machine components. Currently, however, the federal government has no regulatory authority that would require these vendors to adhere to basic security practices.⁷ Only general federal requirements that states and localities use paper ballots and conduct audits will ensure that the risk posed by voting machines provided by private vendors to states and localities can be contained. The stakes could not be more clear. As Homeland Security Secretary Kirstjen Nielsen testified to the Committee, “If there is no way to audit the election, that is absolutely a national security concern.”⁸

(U) Registration databases and election night reporting websites

(U) Two additional components of the U.S. election infrastructure require immediate, mandatory cybersecurity fixes. The first are voter registration databases. The Committee received testimony about successful Russian exfiltration of databases of tens of thousands of voters.⁹ Expert witnesses also described the chaos that manipulated voter registration data could cause should voters arrive at the polls and find that their names had been removed from the rolls.

⁵ Verifiedvoter.org The Verifier – Polling Place Equipment – November 2018.

⁶ The four states are Colorado, Nevada, Rhode Island, and Virginia. National Conference of State Legislatures, Post-Election Audits, January 3, 2019.

⁷ Testimony of Homeland Security Secretary Kirstjen Nielsen, March 21, 2018.

⁸ Testimony of Homeland Security Secretary Kirstjen Nielsen, March 21, 2018.

⁹ Testimony of Connie Lawson, President-elect, National Association of Secretaries of State, and Secretary of State, State of Indiana; testimony of Steve Sandvoss, Executive Director of Illinois State Board of Elections, June 21, 2017; Illinois Voter Registration System Database Breach Report.

As one expert testified, this form of interference “could be used to sabotage the election process on Election Day.”¹⁰

(U) The Committee report describes a range of cybersecurity measures needed to protect voter registration databases, yet there are currently no mandatory rules that require states to implement even minimum cybersecurity measures. There are not even any voluntary federal standards.

(U) An additional component of the U.S. election infrastructure that requires immediate, mandatory cybersecurity measures are the election night reporting websites run by the states. The Committee heard testimony about a Russian attack on Ukraine’s web page for announcing results. That attack allowed the Russians to use misinformation that left Ukraine in chaos for days after the election. As the Committee’s expert witness warned, “[w]e need to look at that playbook. They will do it to us.”¹¹ Like voter registration databases, election results websites are not subject to any mandatory standards. Both of these critical vulnerabilities, as well as vulnerabilities of voting machines, must be addressed by the U.S. Congress through the passage of S. 2238, the Senate version of the SAFE Act.

(U) Given the inconsistent, and at times non-existent adherence to basic cybersecurity among states and localities, I cannot agree with the Committee’s conclusion that “the country’s decentralized election system can be a strength from a cybersecurity perspective.” Until election security measures are required of every state and locality, there will be vulnerabilities to be exploited by our adversaries. The persistence of those vulnerabilities has national consequences. The manipulation of votes or voter registration databases in any county in the country can change the result of a national election. The security of the U.S. election system thus hinges on its weakest links – the least capable, least resourced local election offices in the country, many of which do not have a single full-time employee focused on cybersecurity.

(U) Every American has a direct stake in the cybersecurity of elections throughout the country. Congress has an obligation to protect the country’s election system everywhere. If there were gaps in the defense of our coastline or air space, members would ensure that the federal government close them. Vulnerabilities in the country’s election cybersecurity require the same level of national commitment.

(U) Cybersecurity vulnerabilities and influence campaigns

(U) The cybersecurity vulnerabilities of the U.S. election system cannot be separated from Russia’s efforts to influence American voters. As the January 2017 Intelligence Community Assessment (ICA) concluded, and as the Committee report notes, the Russians were “prepared to publicly call into question the validity of the results” and “pro-Kremlin bloggers had prepared a Twitter campaign, #DemocracyRIP, on election night in anticipation of Secretary Clinton’s victory.” This plan highlights an additional reason why nation-wide election cybersecurity standards are so critical. If Russia’s preferred candidate does not prevail in the 2020 election, the

¹⁰ Testimony of Alex J. Halderman, Professor of Computer Science and Engineering, University of Michigan, June 21, 2017.

¹¹ Testimony of Eric Rosenbach, Co-Director of the Belfer Center for Science and International Affairs, Harvard Kennedy School, March 21, 2018.

Russians may seek to delegitimize the election. The absence of any successful cyber intrusions, exfiltrations or manipulations would greatly benefit the U.S. public in resisting such a campaign.

(U) While not formally part of the U.S. election infrastructure, the devices and accounts of candidates and political parties represent an alarming vulnerability in the country's overall election system. Russia's campaign of hacking the emails of prominent political figures and releasing them through Wikileaks, Gucifer 2.0, and DCLeaks was probably its most effective means of influencing the 2016 election. The Committee has received extensive testimony about these operations, the vulnerabilities that allowed them to occur, and the threat those vulnerabilities pose to the integrity of American democracy.¹² Yet little has been done to prevent it from happening all over again. S. 1569, the Federal Campaign Cybersecurity Assistance Act of 2019, addresses these vulnerabilities head on by authorizing political committees to provide cybersecurity assistance to candidates, campaigns and state parties.

(U) These vulnerabilities extend to the U.S. Senate, most of whose members are or will be candidates for reelection or for other positions. As a November 2018 Senate report noted, there is "mounting evidence that Senators are being targeted for hacking, which could include exposure of personal data."¹³ Private communications and information reside on personal accounts and devices. Passage of S. 890, the Senate Cybersecurity Protection Act, will authorize the Senate Sergeant at Arms to protect the personal devices and accounts of Senators and their staff and help prevent the weaponization of their data in campaigns to influence elections.

(U) Assessments related to the 2016 election

(U) I have also submitted these Minority Views to address assessments related to Russian activities during the 2016 election. According to the January 2017 ICA, DHS assessed that "the types of systems we observed Russian actors targeting or compromising are not involved in vote tallying." An assessment based on observations is only as good as those observations and this assessment, in which DHS had only moderate confidence,¹⁴ suffered from a lack of observable data. As Acting Deputy Undersecretary of Homeland Security for National Protection and Programs Directorate, Jeannette Manfra, testified at the Committee's June 21, 2017, hearing, DHS did not conduct any forensic analysis of voting machines.

(U) DHS's prepared testimony at that hearing included the statement that it is "likely that cyber manipulation of U.S. election systems intended to change the outcome of a national election would be detected." The language of this assessment raises questions, however, about DHS's ability to identify cyber manipulation that could have affected a very close national election, particularly given DHS's acknowledgment of the "possibility that individual or isolated cyber

¹² See, for example, Committee hearing, March 30, 2017

¹³ Senators' Personal Cybersecurity Working Group Report, submitted by the Senators' Personal Cybersecurity Working Group, November 2018.

¹⁴ Responses to Questions for the Record from Dr. Samuel Liles, Acting Director of Cyber Division, Office of Intelligence and Analysis; and Jeannette Manfra, Acting Deputy Undersecretary, National Protection and Programs Directorate, following Committee hearing, June 21, 2017

intrusions into U.S. election infrastructure could go undetected, especially at local levels.”¹⁵ Moreover, DHS has acknowledged that its assessment with regard to the detection of outcome-changing cyber manipulation did not apply to state-wide or local elections.¹⁶

(U) Assessments about manipulations of voter registration databases are equally hampered by the absence of data. As the Committee acknowledges, it “has limited information on the extent to which state and local election authorities carried out forensic evaluation of registration databases.” Assessments about Russian attacks on the administration of elections are also complicated by newly public information about the infiltration of an election technology company. Moreover, as the Special Counsel reported, the GRU sent spear phishing emails to “Florida county officials responsible for administering the 2016 election” which “enabled the GRU to gain access to the network of at least one Florida county government.”¹⁷

(U) The Committee, in stating that it had found no evidence that vote tallies were altered or that voter registry files were deleted or modified, rightly noted that the Committee’s and the IC’s insight into this aspect of the 2016 election was limited. I believe that the lack of relevant data precludes attributing any significant weight to the Committee’s finding in this area.

(U) The Committee’s investigation into other aspects of Russia’s interference in the 2016 election will be included in subsequent chapters. I look forward to reviewing those chapters and hope that outstanding concerns about members’ Committee staff access to investigative material, including non-compartmented and unclassified information, will be resolved.

¹⁵ Responses to Questions for the Record from Dr. Samuel Liles, Acting Director of Cyber Division, Office of Intelligence and Analysis, and Jeanette Manfra, Acting Deputy Undersecretary, National Protection and Programs Directorate, following Committee hearing, June 21, 2017

¹⁶ Responses to Questions for the Record from Dr. Samuel Liles, Acting Director of Cyber Division, Office of Intelligence and Analysis; and Jeanette Manfra, Acting Deputy Undersecretary, National Protection and Programs Directorate, following Committee hearing, June 21, 2017.

¹⁷ Report on the Investigation Into Russian Interference In The 2016 Presidential Election, Special Counsel Robert S. Mueller III, March 2019

ADDITIONAL VIEWS OF SENATORS HARRIS, BENNET, AND HEINRICH

(U) The Russian government's attack on the 2016 election was the product of a deliberate, sustained, and sophisticated campaign to undermine American democracy. Russian military intelligence carried out a hacking operation targeting American political figures and institutions. The Internet Research Agency—an entity with ties to Russian President Vladimir Putin—used social media to sow disinformation and discord among the American electorate. And, as this report makes clear, individuals affiliated with the Russian government launched cyber operations that attempted to access our nation's election infrastructure, in some cases succeeding.

(U) The Russian objectives were clear: deepen distrust in our political leaders; exploit and widen divisions within American society; undermine confidence in the integrity of our elections; and, ultimately, weaken America's democratic institutions and damage our nation's standing in the world. The Committee did not discover evidence that Russia changed or manipulated vote tallies or voter registration information, however Russian operatives undoubtedly gained familiarity with our election systems and voter registration infrastructure—valuable intelligence that it may seek to exploit in the future.

(U) The Committee's report does not merely document the wide reach of the Russian operation; the report reveals vulnerabilities in our election infrastructure that we must collectively address. We do not endorse every recommendation in the Committee's report, and we share some of our colleagues' concerns about the vulnerability that we face, particularly at the state level, where counties with limited resources must defend themselves against sophisticated nation-state adversaries. Nevertheless, the report as a whole makes an important contribution to the public's understanding of how Russia interfered in 2016, and underscores the importance of working together to defend against the threat going forward.

(U) It is critical that state and local policymakers study the report's findings and work to secure election systems by prioritizing cybersecurity, replacing outdated systems and machines, and implementing audits to identify and limit risk. The Intelligence Community and other federal agencies must improve efforts to detect cyberattacks, enhance coordination with state and local officials, and develop strategies to mitigate threats. And, critically, Congress must take up and pass legislation to secure our elections. We must provide states the funding necessary to modernize and maintain election infrastructure, and we must take commonsense steps to safeguard the integrity of the vote, such as requiring paper ballots in all federal elections.

(U) Our adversaries will persist in their efforts to undermine our shared democratic values. In order to ensure that our democracy endures, it is imperative that we recognize the threat and make the investments necessary to withstand the next attack.

19715

514

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

116TH CONGRESS
1st Session

SENATE

REPORT
116-XX

(U) R E P O R T

OF THE

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

ON

RUSSIAN ACTIVE MEASURES CAMPAIGNS AND INTERFERENCE

IN THE 2016 U.S. ELECTION

VOLUME 2: RUSSIA'S USE OF SOCIAL MEDIA

WITH ADDITIONAL VIEWS

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

CONTENTS

- I. (U) INTRODUCTION 3
- II. (U) FINDINGS..... 4
- III. (U) THE REACH OF SOCIAL MEDIA 8
- IV. (U) RUSSIAN USE OF DISINFORMATION..... 11
 - A. (U) Russian Active Measures 12
 - B. (U) Russia’s Military and Information Warfare 13
 - C. (U) Russia’s Weaponization of Social Media 14
 - D. (U) Russian Social Media Tactics 15
 - E. (U) Features of Russian Active Measures 20
- V. (U) THE INTERNET RESEARCH AGENCY 22
 - A. (U) Yevgeniy Prigozhin and the Kremlin 23
 - B. (U) IRA Operations 24
 - C. (U) The Role of the IRA Troll 25
 - D. (U) Troll Narratives 28
- VI. (U) IRA ACTIVITIES AGAINST THE UNITED STATES IN 2016.. 29
 - A. (U) Origins of IRA Activity in the United States 29
 - B. (U) IRA Operations Explicitly Targeting the 2016 U.S. Election..... 32
 - C. (U) Other IRA Operations Targeting U.S. Politicians and Society. 37
 - D. (U) IRA Use of Paid Advertisements.. 40
 - E. (U) The IRA Information Warfare Campaign 41
 - F. (U) Ongoing IRA Activities..... 42
- VII. (U) IRA USE OF SOCIAL MEDIA BY PLATFORM 43
- VIII. (U) OTHER RUSSIAN SOCIAL MEDIA INFORMATION WARFARE EFFORTS 63
 - A. (U) Main Intelligence Directorate (GRU) 63
 - B. [REDACTED] 69
 - C. (U) Other Russian Government Activities 70
- IX. (U) U.S. GOVERNMENT RESPONSE..... 71
- X. (U) THE COMMITTEE’S REVIEW OF RUSSIA’S USE OF SOCIAL MEDIA 76
- XI. (U) RECOMMENDATIONS 78
 - A. (U) Industry Measures 78
 - B. (U) Congressional Measures 80
 - C. (U) Executive Branch Measures 81
 - D. (U) Other Measures 81
- XII. (U) Additional Views of Senator Wyden... 83

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

I. (U) INTRODUCTION

[REDACTED] In 2016, Russian operatives associated with the St. Petersburg-based Internet Research Agency (IRA) used social media to conduct an information warfare campaign designed to spread disinformation and societal division in the United States.¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Masquerading as Americans, these operatives used targeted advertisements, intentionally falsified news articles, self-generated content, and social media platform tools to interact with and attempt to deceive tens of millions of social media users in the United States. This campaign sought to polarize Americans on the basis of societal, ideological, and racial differences, provoked real world events, and was part of a foreign government's covert support of Russia's favored candidate in the U.S. presidential election [REDACTED]

[REDACTED]

(U) The Senate Select Committee on Intelligence undertook a study of these events, consistent with its congressional mandate to oversee and conduct oversight of the intelligence activities and programs of the United States Government, to include the effectiveness of the Intelligence Community's counterintelligence function. In addition to the work of the professional staff of the Committee, the Committee's findings drew from the input of cybersecurity professionals, social media companies, U S law enforcement and intelligence agencies, and researchers and experts in social network analysis, political content, disinformation, hate speech, algorithms, and automation, working under the auspices of the Committee's Technical Advisory Group (TAG).³ The efforts of these TAG researchers led to the release of two public reports on the IRA's information warfare campaign, based on data provided to the Committee by the social media companies.⁴ These reports provided the

¹ (U) For purposes of this Volume, "information warfare" refers to Russia's strategy for the use and management of information to pursue a competitive advantage. See Congressional Research Service, *Defense Primer: Information Operations*, December 18, 2018.

² [REDACTED]

³ (U) The TAG is an external group of experts the Committee consults for substantive technical advice on topics of importance to Committee activities and oversight. In this case, the Committee requested the assistance of two independent working groups, each with the technical capabilities and expertise required to analyze the data. The two working groups were led by three TAG members, with John Kelly, the founder and CEO of the social media analytics firm Graphika, and Phil Howard, an expert academic researcher at the Oxford Internet Institute, leading one working group, and Renee DiResta, the Director of Research at New Knowledge, a cybersecurity company dedicated to protecting the public sphere from disinformation attacks, leading the other.

⁴ (U) Renee DiResta, Dr. Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Dr. Jonathan Albright, and Ben Johnson, "The Tactics and Tropes of the Internet Research Agency," *New Knowledge*, December 17, 2018, <https://www.newknowledge.com/articles/the-disinformation-report/>, Phil Howard, Bharath Ganesh, Dimitra Liotsiou, John Kelly, and Camille Francois, "The IRA, Social Media and Political Polarization in the United States, 2012-2018," *Computational Propaganda Research Project, Oxford Internet Institute*, December 2018,

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

Committee, social media companies, U.S. law enforcement, international partners, fellow researchers and academics, and the American public with an enhanced understanding of how Russia-based actors, at the direction of the Russian government, effectuated a sustained campaign of information warfare against the United States aimed at influencing how this nation's citizens think about themselves, their government, and their fellow Americans. The Committee supports the findings therein.

(U) The Committee also engaged directly with a number of social media companies in the course of this study. The willingness of these companies to meet with Members and staff, share the results of internal investigations, and provide evidence of foreign influence activity collected from their platforms was indispensable to this study. Specifically, the Committee's ability to identify Russian activity on social media platforms was limited. As such, the Committee was largely reliant on social media companies to identify Russian activity and share that information with the Committee or with the broader public. Thus, while the Committee findings describe a substantial amount of Russian activity on social media platforms, the full scope of this activity remains unknown to the Committee, the social media companies, and the broader U.S. Government.

II. (U) FINDINGS

1. (U) The Committee found that the IRA sought to influence the 2016 U.S. presidential election by harming Hillary Clinton's chances of success and supporting Donald Trump at the direction of the Kremlin.

(U) The Committee found that the IRA's information warfare campaign was broad in scope and entailed objectives beyond the result of the 2016 presidential election. Further, the Committee's analysis of the IRA's activities on social media supports the key judgments of the January 6, 2017 Intelligence Community Assessment, "Assessing Russian Activities and Intentions in Recent US Elections," that "Russia's goals were to undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency."⁵ However, where the Intelligence Community assessed that the Russian government "aspired to help President-elect Trump's election chances when possible by discrediting Secretary Clinton and publicly contrasting her unfavorably to him," the Committee found that IRA social media activity was overtly and almost invariably supportive of then-candidate Trump, and to the detriment of Secretary Clinton's campaign.⁶

<https://int.nyt.com/data/documenthelper/534-oxford-russia-internet-research-agency/c6588b4a7b940c551c38/optimized/full.pdf>

⁵ (U) Office of the Director of National Intelligence (ODNI), "Assessing Russian Activities and Intentions in Recent US Elections," *Intelligence Community Assessment (Unclassified Version)*, January 6, 2017, https://www.dni.gov/files/documents/ICA_2017_01.pdf.

⁶ (U) *Ibid*

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) The Committee found that the Russian government tasked and supported the IRA’s interference in the 2016 U.S. election. This finding is consistent with the Committee’s understanding of the relationship between IRA owner Yevgeny Prigozhin and the Kremlin, the aim and scope of the interference by the IRA, and the correlation between the IRA’s actions and electoral interference by the Russian government in other contexts and by other means.⁷ Despite Moscow’s denials, the direction and financial involvement of Russian oligarch Yevgeny Prigozhin, as well as his close ties to high-level Russian government officials including President Vladimir Putin, point to significant Kremlin support, authorization, and direction of the IRA’s operations and goals.

[REDACTED]

- 2. (U) The Committee found that Russia’s targeting of the 2016 U.S. presidential election was part of a broader, sophisticated, and ongoing information warfare campaign designed to sow discord in American politics and society. Moreover, the IRA conducted a vastly more complex and strategic assault on the United States than was initially understood. The IRA’s actions in 2016 represent only the latest installment in an increasingly brazen interference by the Kremlin on the citizens and democratic institutions of the United States.

[REDACTED] Russia’s history of using social media as a lever for online influence operations predates the 2016 U.S. presidential election and involves more than the IRA. The IRA’s operational planning for the 2016 election goes back at least to 2014, when two IRA operatives were sent to the United States to gather intelligence in furtherance of the IRA’s objectives.⁹ [REDACTED]

[REDACTED]

⁷ (U) Indictment, *United States v Internet Research Agency, et al*, Case 1:18-cr-00032-DLF (D D C. Feb 16, 2018)

⁹ (U) Scott Shane and Mark Mazzetti, “The Plot to Subvert an Election – Unraveling the Russia Story So Far,” *The New York Times*, September 20, 2018

¹⁰ [REDACTED]

¹² (U) *Ibid*

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

[REDACTED]

(U) Analysis of the behavior of the IRA-associated social media accounts makes clear that while the Russian information warfare campaign exploited the context of the election and election-related issues in 2016, the preponderance of the operational focus, as reflected repeatedly in content, account names, and audiences targeted, was on socially divisive issues—such as race, immigration, and Second Amendment rights—in an attempt to pit Americans against one another and against their government. The Committee found that IRA influence operatives consistently used hot-button, societal divisions in the United States as fodder for the content they published through social media in order to stoke anger, provoke outrage and protest, push Americans further away from one another, and foment distrust in government institutions. The divisive 2016 U.S. presidential election was just an additional feature of a much more expansive, target-rich landscape of potential ideological and societal sensitivities.

3. (U) The Committee found that the IRA targeted not only Hillary Clinton, but also Republican candidates during the presidential primaries. For example, Senators Ted Cruz and Marco Rubio were targeted and denigrated, as was Jeb Bush.¹⁴ As Clint Watts, a former FBI Agent and expert in social media weaponization, testified to the Committee, “Russia’s overt media outlets and covert trolls sought to sideline opponents on both sides of the political spectrum with adversarial views towards the Kremlin.” IRA operators sought to impact primaries for both major parties and “may have helped sink the hopes of candidates more hostile to Russian interests long before the field narrowed.”¹⁵
4. (U) The Committee found that no single group of Americans was targeted by IRA information operatives more than African-Americans. By far, race and related issues were the preferred target of the information warfare campaign designed to divide the country in 2016. Evidence of the IRA’s overwhelming operational emphasis on race is evident in the IRA’s Facebook advertisement content (over 66 percent contained a term related to race) and targeting (locational targeting was principally aimed at African-Americans in key metropolitan areas with), its Facebook pages (one of the IRA’s top-performing pages, “Blacktivist,” generated 11.2 million engagements with Facebook users), its Instagram content (five of the top 10 Instagram accounts were focused on African-American issues and audiences), its Twitter content (heavily focused on hot-button issues with racial undertones, such as the NFL kneeling protests), and its YouTube

[REDACTED]

13 [REDACTED]

¹⁴ (U) Indictment, *United States v Internet Research Agency, et al*, Case 1:18-cr-00032-DLF (D D C Feb. 16, 2018), Renee DiResta, Dr. Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Dr Jonathan Albright, and Ben Johnson, “The Tactics and Tropes of the Internet Research Agency,” *New Knowledge*, December 17, 2018.

¹⁵ (U) Clint Watts, Hearing before the Senate Select Committee on Intelligence, March 30, 2017, available at <https://www.intelligence.senate.gov/hearings/open>

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

activity (96 percent of the IRA's YouTube content was targeted at racial issues and police brutality).

5. (U) The Committee found that paid advertisements were not key to the IRA's activity, and moreover, are not alone an accurate measure of the IRA's operational scope, scale, or objectives, despite this aspect of social media being a focus of early press reporting and public awareness.¹⁶ An emphasis on the relatively small number of advertisements, and the cost of those advertisements, has detracted focus from the more prevalent use of original, free content via multiple social media platforms. According to Facebook, the IRA spent a total of about \$100,000 over two years on advertisements—a minor amount, given the operational costs of the IRA were approximately \$1.25 million dollars a month.¹⁷ The nearly 3,400 Facebook and Instagram advertisements the IRA purchased are comparably minor in relation to the over 61,500 Facebook posts, 116,000 Instagram posts, and 10.4 million tweets that were the original creations of IRA influence operatives, disseminated under the guise of authentic user activity.

6. (U) The Committee found that the IRA coopted unwitting Americans to engage in offline activities in furtherance of their objectives. The IRA's online influence operations were not constrained to the unilateral dissemination of content in the virtual realm, and its operatives were not just focused on inciting anger and provoking division on the internet. Instead, the IRA also persuaded Americans to deepen their engagement with IRA operatives. For example, the IRA targeted African-Americans over social media and attempted and succeeded in some cases to influence their targets to sign petitions, share personal information, and teach self-defense training courses.¹⁸ In addition, posing as U.S. political activists, the IRA requested—and in some cases obtained—assistance from the Trump Campaign in procuring materials for rallies and in promoting and organizing the rallies.¹⁹

7. (U) The Committee found that the IRA was not Russia's only vector for attempting to influence the United States through social media in 2016. Publicly available information showing additional influence operations emanating from Russia unrelated to IRA activity make clear the Kremlin was not reliant exclusively on the IRA in 2016. Russia's intelligence services, including the Main Directorate of the General Staff of the Armed Forces of the Russian Federation (GRU), also exploited U.S. social media platforms as a

¹⁶ (U) Dan Keating, Kevin Schaul and Leslie Shapiro, "The Facebook ads Russians targeted at different groups," *Washington Post*, November 1, 2017.

¹⁷ (U) Indictment, *United States v. Internet Research Agency, et al.*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018).

¹⁸ (U) Shelby Holliday and Rob Barry, "Russian Influence Campaign Extracted Americans' Personal Data," *Wall Street Journal*, March 7, 2018.

¹⁹ (U) Indictment, *United States v. Internet Research Agency, et al.*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018).

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

vehicle for influence operations.²⁰ Information acquired by the Committee from intelligence oversight, social media companies, the Special Counsel’s investigative findings, and research by commercial cybersecurity companies all reflect the Russian government’s use of the GRU to carry out another core vector of attack on the 2016 election: the dissemination of hacked materials.

8. (U) The Committee found that IRA activity on social media did not cease, but rather increased after Election Day 2016. The data reveal increases in IRA activity across multiple social media platforms, post-Election Day 2016: Instagram activity increased 238 percent, Facebook increased 59 percent, Twitter increased 52 percent, and YouTube citations went up by 84 percent.²¹ As John Kelly noted: “After election day, the Russian government stepped on the gas. Accounts operated by the IRA troll farm became more active after the election, confirming again that the assault on our democratic process is much bigger than the attack on a single election.”²²

(U) Though all of the known IRA-related accounts from the Committee’s data set were suspended or taken down in the fall of 2017, outside researchers continue to uncover additional IRA social media accounts dedicated to spreading malicious content. According to an October 2018 study of more than 6.6 million tweets linking to publishers of intentionally false news and conspiracy stories, in the months before the 2016 U.S. election, “more than 80% of the disinformation accounts in our election maps are still active . . . [and] continue to publish more than a million tweets in a typical day.”²³

III. (U) THE REACH OF SOCIAL MEDIA

(U) Social media and its widespread adoption have changed the nature and practice of human interaction for much of the world. During the 2016 election campaign season, approximately 128 million Facebook users in the United States alone generated nearly nine billion interactions related to the 2016 U.S. presidential election.²⁴ In just the last month of the campaign, more than 67 million Facebook users in the United States generated over 1.1 billion likes, posts, comments, and shares related to Donald Trump. Over 59 million Facebook users in the United States generated over 934 million likes, posts, comments and shares related to Hillary Clinton. On Election Day, 115.3 million Facebook users in the United States generated 716.3

²⁰ (U) Adam Entous, Elizabeth Dwoskin, and Craig Timberg, “Obama tried to give Zuckerberg a wake-up call over fake news on Facebook,” *Washington Post*, September 24, 2017

²¹ (U) John Kelly, SSCI Transcript of the Closed Briefing on Social Media Manipulation in 2016 and Beyond, July 26, 2018.

²² (U) John Kelly, Hearing before the Senate Select Committee on Intelligence, August 1, 2018, available at <https://www.intelligence.senate.gov/hearings/open>

²³ (U) Matthew Hundman and Vlad Barash, “Disinformation, ‘Fake News’ and Influence Campaigns on Twitter,” Knight Foundation, October 4, 2018, <https://knightfoundation.org/articles/seven-ways-misinformation-spread-during-the-2016-election>.

²⁴ (U) Dana Feldman, “Election Day Dominated Facebook With Over 716M Election-Related Interactions,” *Forbes*, November 9, 2016

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

million interactions related to the election and viewed election-related videos over 640 million times.²⁵

(U) The Twitter platform also featured prominently across the arc of the 2016 campaign season. Americans sent roughly one billion tweets and retweets about the election between the first primary debates in August 2015 and Election Day 2016.²⁶ The U.S. Election Day 2016 was the most-Tweeted Election Day ever, with worldwide users generating more than 75 million election-related tweets.²⁷

(U) Political campaigns, in the ambition of harvesting this connectivity and speaking “directly” with as many voters as possible, have adapted and attempted to exploit this new media environment. Total digital advertisement spending related to the 2016 election cycle on social media reached \$1.4 billion—a 789 percent increase over 2012.²⁸

(U) Social media has created new virtual venues for American participation in the national political discourse, and offered a new channel for direct democratic engagement with elected officials, media representatives, and fellow citizens around the world. However, the same system of attributes that empowers these tools and their users to positively increase civic engagement and constructive dialogue lends itself to exploitation, which frequently materializes as the dissemination of intentionally false, misleading, and deliberately polarizing content.²⁹

(U) According to one November 2016 analysis, in the final three months leading up to Election Day, calculated by total number of shares, reactions, and comments, the top-performing intentionally false stories on Facebook actually outperformed the top news stories from the nineteen major news outlets.³⁰ That analysis found that in terms of user engagement, the top two intentionally false election stories on Facebook included articles alleging Pope Francis’ endorsement of Donald Trump for President (960,000 shares, reactions, and comments), and WikiLeaks’ confirmation of Hillary Clinton’s sale of weapons to ISIS (789,000 shares, reactions, and comments).³¹

²⁵ (U) Ivana Kottasova, “Trump’s Win Smashes Social Media Records,” *CNN*, November 9, 2016

²⁶ (U) Bridget Coyne, “How #Election2016 was Tweeted so far,” *Twitter Blog*, November 7, 2016

²⁷ (U) Twitter, “6.8 Million Viewers Watch Twitter Live Stream of BuzzFeed News’ Election Night Special,” November 10, 2016, <https://www.pnewswire.com/news-releases/68-million-viewers-watch-twitter-live-stream-of-buzzfeed-news-election-night-special-300360415.html>.

²⁸ (U) Kate Kaye, “Data-Driven Targeting Creates Huge 2016 Political Ad Shift Broadcast TV Down 20%, Cable and Digital Way Up,” *AdAge*, January 3, 2017.

²⁹ (U) The term “fake news” is not a useful construct for understanding the complexity of influence operations on social media in today’s online ecosystem. The term’s definition has evolved since the 2016 election and today, has been, at times, misappropriated to fit certain political and social perspectives.

³⁰ (U) Craig Silverman, “This Analysis Shows How Viral Fake Election News Stories Outperformed Real News on Facebook,” *Buzzfeed*, November 16, 2016, (“During these critical months of the campaign, 20 top-performing false election stories from hoax sites and hyper-partisan blogs generated 8,711,000 shares, reactions and comments on Facebook. Within the same time period, the 20 best performing election stories from 19 major news websites generated a total of 7,367,000 shares, reactions and comments on Facebook.”)

³¹ (U) *Ibid*

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) A September 2017 Oxford Internet Institute study of Twitter users found that, “users got more misinformation, polarizing, and conspiratorial content than professionally produced news.”³² According to the study, in the “swing state” of Michigan, professionally produced news was, by proportion, “consistently smaller than the amount of extremist, sensationalist, conspiratorial, masked commentary, fake news and other forms of junk news,” and the ratio was most disproportionate the day before the 2016 U.S. election.^{33,34} A National Bureau of Economic Research paper from January 2017 assessed that intentionally false content accounted for 38 million shares on Facebook in the last 3 months leading up to the election, which translates into 760 million clicks—or “about three stories read per American adult.”³⁵

(U) In conducting a broader analysis of false information dissemination, in what was described as “the largest ever study of fake news,” researchers at MIT tracked over 125,000 news stories on Twitter, which were shared by three million people over the course of 11 years.^{36,37} The research found that, “Falsehood diffused significantly farther, faster, deeper, and more broadly than the truth in all categories of information, and the effects were more pronounced for false political news than for false news about terrorism, natural disasters, science, urban legends, or financial information.” The study also determined that false news stories were 70 percent more likely to be retweeted than accurate news, and that true stories take about six times as long to reach 1,500 people on Twitter as false stories do. According to the lead researcher in the study, Soroush Vosoughi, “It seems pretty clear that false information outperforms true information.”³⁸

(U) The spread of intentionally false information on social media is often exacerbated by automated, or “bot” accounts. The 2016 U.S. election put on full display the impact that more sophisticated automation and the proliferation of bots have had on American political discourse. Researchers at the University of Southern California who evaluated nearly 20 million election-related tweets assessed that about one-fifth of the political discourse around the 2016 election on Twitter may have been automated and the result of bot activity. This research, however, does not make clear what country the bot activity originated from, or whether the activity was

³² (U) Phil Howard, et al., “Social Media, News and Political Information during the U.S. Election. Was Polarizing Content Concentrated in Swing States,” Oxford Internet Institute, Project on Computational Propaganda, September 29, 2017, <https://arxiv.org/ftp/arxiv/papers/1802/1802.03573.pdf>

³³ (U) A swing state is a U.S. state in which Republican and Democratic candidates have similar levels of support and which is likely to play a key role in the outcome of presidential elections.

³⁴ (U) Philip Howard, Gillian Bolsover, et al., “Junk News and Bots During the U.S. Election. What Were Michigan Voters Sharing Over Twitter?” Oxford Internet Institute, Project on Computational Propaganda, March 26, 2017, <http://comprop.ox.ac.uk/wp-content/uploads/sites/89/2017/03/What-Were-Michigan-Voters-Sharing-Over-Twitter-v2.pdf>.

³⁵ (U) Hunt Allcott and Matthew Gentzkow, “Social Media and Fake News in the 2016 election,” *Journal of Economic Perspectives*, Volume 31, Number 2, Spring 2017, 211-236, <http://www.nber.org/papers/w23089>.

³⁶ (U) Soroush Vosoughi, et al., “The spread of true and false news online,” *Science*, Volume 359, Issue 6380, March 9, 2018,

<http://dx.doi.org/10.1126/science.1257533>

³⁷ (U) Robinson Meyer, “The Grim Conclusions of the Largest Ever Study of Fake News,” *The Atlantic*, March 8, 2018: <https://www.theatlantic.com/technology/archive/2018/03/largest-study-ever-fake-news-mit-twitter/555104/>.

³⁸ (U) *Ibid*

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

necessarily malicious in nature. These researchers also concluded that “bots [were] pervasively present and active in the online political discussion about the 2016 U.S. presidential election,” adding that “the presence of social media bots can indeed negatively affect democratic political discussion rather than improving it.”³⁹ Arriving at a similar conclusion, an Oxford Internet Institute study of 17 million tweets posted during the 2016 election found that bots “reached positions of measurable influence,” and “did infiltrate the upper cores of influence and were thus in a position to significantly influence digital communications during the 2016 U.S. election.”⁴⁰

(U) In testimony to the Committee, social media researcher John Kelly suggested that automated accounts focused on fringe political positions are far more active than the voices of actual people holding politically centrist views: “In our estimate, today the automated accounts at the far left and far right extremes of the American political spectrum produce as many as 25 to 30 times the number of messages per day on average as genuine political accounts across the mainstream.” In other words, “the extremes are screaming while the majority whispers.”⁴¹ Taken as a whole, the attributes of social media platforms render them vulnerable for foreign influence operations intent on sowing discord throughout American society.

IV. (U) RUSSIAN USE OF DISINFORMATION

(U) Russia’s attack on the 2016 election was a calculated and brazen assault on the United States and its democratic institutions, but this was not the Kremlin’s first foray into asymmetric warfare against America. Russian interference in 2016 represents the latest and most sophisticated example of Russia’s effort to undermine the nation’s democracy through targeted operations. As the January 6, 2017, Intelligence Community Assessment states, Moscow’s provocations “demonstrated a significant escalation in directness, level of activity, and scope of effort.” However, the activities only “represent the most recent expression of Moscow’s longstanding desire to undermine the U.S.-led liberal democratic order.”⁴²

(U) Russia’s intelligence services have been focused for decades on conducting foreign influence campaigns, or “active measures,” and disinformation.^{43,44} The Russian intelligence services “pioneered *dezinformatsiya* [disinformation] in the early twentieth century,” and by the mid-1960’s, had significantly invested in disinformation and active measures.⁴⁵ According to

³⁹ (U) Alessandro Bessi and Emilio Ferrara, “Social Bots Distort the 2016 US Presidential Election Online Discussion,” *First Monday*, Volume 21, Number 11, 7 November 7, 2016, <https://ssrn.com/abstract=2982233>.

⁴⁰ (U) Samuel Woolley and Douglas-Guilbeault, “Computational Propaganda in the United States of America. Manufacturing Consensus Online,” Oxford Internet Institute Computational Propaganda Research Project, May 2017, <http://comprop.oii.ox.ac.uk/wp-content/uploads/sites/89/2017/06/Comprop-USA.pdf>.

⁴¹ (U) John Kelly, Hearing before the Senate Select Committee on Intelligence, August 1, 2018, available at <https://www.intelligence.senate.gov/hearings/open>

⁴² (U) ODNI, “Background to ‘Assessing Russian Activities and Intentions in Recent U.S. Elections’: The Analytic Process and Cyber Incident Attribution,” January 6, 2017, https://www.dni.gov/files/documents/ICA_2017_01.pdf.

⁴³ (U) “Active measures” is a Soviet-era term now called “measures of support” by the Russian government.

⁴⁴ (U) Disinformation is the intentional spread of false information to deceive.

⁴⁵ (U) “*Dezinformatsiya*” is a Russian word, defined in the 1952 Great Soviet Encyclopedia as the “dissemination (in the press, on the radio, etc.) of false reports intended to mislead public opinion.”

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

testimony Roy Godson and Thomas Rid provided to the Committee, over 10,000 individual disinformation operations were carried out during the Cold War involving approximately 15,000 personnel at its peak.^{46,47}

A. (U) Russian Active Measures

(U) For decades, Soviet active measures pushed conspiratorial and disinformation narratives about the United States around the world. The KGB authored and published false stories and forged letters concerning the Kennedy assassination, including accounts suggesting CIA involvement in the killing. Martin Luther King, Jr. was the target of manufactured KGB narratives, as was Ronald Reagan. Russian intelligence officers planted anti-Reagan articles in Denmark, France, and India during his unsuccessful 1976 bid for the Republican presidential nomination. A declassified U.S. State Department document from 1981 outlines a series of realized Russian active measures operations, including the spread of falsehoods concerning U.S. complicity in the 1979 seizure of the Grand Mosque of Mecca and responsibility for the 1981 death of Panamanian General Omar Torrijos, as well as an elaborate deception involving multiple forgeries and false stories designed to undermine the Camp David peace process and to exacerbate tensions between the United States and Egypt.⁴⁸ Among the most widely known and successful active measures operations conducted during the Cold War centered on a conspiracy that the AIDS virus was manufactured by the United States at a military facility at Fort Detrick in Maryland. This fictional account of the virus' origin received considerable news coverage, both in the United States and in over forty non-Cold War aligned countries around the world.⁴⁹

(U) In a 1998 CNN interview, retired KGB Major General Oleg Kalugin described active measures as “the heart and soul of Soviet intelligence”:

*Not intelligence collection, but subversion; active measures to weaken the West, to drive wedges in the Western community alliances of all sorts, particularly NATO; to sow discord among allies, to weaken the United States in the eyes of the people of Europe, Asia, Africa, Latin America, and thus to prepare ground in case the war really occurs*⁵⁰

(U) While this history of discrediting the United States with spurious rumors and disinformation is well-chronicled, Russia has continued the practice today.

⁴⁶ (U) Thomas Rid, Hearing before the Senate Select Committee on Intelligence, March 30, 2017, available at <https://www.intelligence.senate.gov/hearings/open>

⁴⁷ (U) Roy Godson, Hearing before the Senate Select Committee on Intelligence, March 30, 2017, available at <https://www.intelligence.senate.gov/hearings/open>

⁴⁸ (U) Department of State, “Soviet Active Measures: Forgery, Disinformation, Political Operations,” Special Report No. 88, October 1981, <https://www.cia.gov/library/readingroom/docs/CIA-RDP84B00049R001303150031-0.pdf>

⁴⁹ (U) Christopher M. Andrew and Vasili Mitrokhin, *The Sword and the Shield: The Mitrokhin Archive & the Secret History of the KGB*, Basic Books, 1985, p. 244

⁵⁰ (U) Oleg Kalugin, “Inside the KGB: An interview with retired KGB Maj. Gen. Oleg Kalugin,” *CNN*, January 1998.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) As Sergey Tretyakov, the former SVR (the foreign intelligence service of the Russian Federation, and a successor organization to the KGB) “rezident,” or station chief for Russian intelligence in New York, wrote in 2008, “Nothing has changed. . . . Russia is doing everything it can today to embarrass the U.S.”⁵¹

B. (U) Russia’s Military and Information Warfare

(U) While active measures have long been a tool of the Russian intelligence services, a shift toward developing and honing the tools of information warfare represents a more recent development for the Russian conventional military and larger national security establishment.

(U) The embrace of asymmetric information operations resulted from a number of factors, but chiefly from the Russian national security establishment’s belief that these operations are effective. Pavel Zolotarev, a retired major general in the Russian Army, explained, “We had come to the conclusion . . . that manipulation in the information sphere is a very effective tool.”⁵² That conclusion was reinforced by the perception that these operations are extremely difficult to defend against, particularly with multinational military alliances like NATO, which is built to deter and if necessary defeat a traditional, conventional military threat. Information warfare, in addition, is an extremely low-cost alternative to conventional military conflict.

(U) A lack of alternatives also motivates Russia’s reliance on asymmetric tactics. Russia’s national security establishment may have had no choice but to increase its asymmetric capabilities given its inability to compete with the West on a more traditional, military hard power basis. Former National Intelligence Officer for Russia and Eurasia Eugene Rumer stated in 2017 testimony to the Committee that Russia’s information warfare toolkit “performs the function of the equalizer that in the eyes of the Kremlin is intended to make up for Russia’s weakness vis-à-vis the West.”⁵³

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵¹ (U) See Evan Osnos, David Remnick, and Joshua Yaffa, “Trump, Putin, and the new Cold War,” *New Yorker*, March 6, 2017

⁵² (U) *Ibid*

⁵³ (U) Eugene Rumer, Hearing before the Senate Select Committee on Intelligence, March 30, 2017, available at <https://www.intelligence.senate.gov/hearings/open>

⁵⁴ [REDACTED]

[REDACTED]

[REDACTED]
COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

C. (U) Russia’s Weaponization of Social Media

(U) Portending what was to come in 2016, General Philip Breedlove assessed in his September 2014 remarks to the NATO Wales Summit that, regarding Ukraine, “Russia is waging

⁵⁵ (U) *Ibid*
⁵⁶ (U) *Ibid*

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

the most amazing information warfare blitzkrieg we have ever seen in the history of information warfare.”⁵⁷ Social media platforms enabled Russia’s Ukraine campaign, and aided materially in the realization of its military’s adoption of information warfare doctrine.

(U) Compared to more traditional methods for information warfare used in the Cold War, Watts described social media as providing Russia a “cheap, efficient, and highly effective access to foreign audiences with plausible deniability of their influence.”⁵⁸

(U) Russia’s aptitude for weaponizing internet-based social media platforms against the United States resulted from Moscow’s experience conducting online disinformation campaigns against its own citizens for over a decade. Russia’s online disinformation efforts are rooted in the early and mid-2000s, when the Kremlin sought to suppress opposition in the face of rapidly expanding internet-based communications.⁵⁹

(U) Studying the technology used by its political opponents, the Kremlin hijacked the capabilities and weaponized their use against Russia’s own people. Russia perfected the use of these tools and methods of information warfare over time, paving the way for its decision to similarly target the citizens of other countries. Russia has also continued its domestic deployment of these tools.

- [REDACTED]
- [REDACTED]

D. (U) Russian Social Media Tactics

(U) The Kremlin has honed and refined its social media disinformation tactics over the last decade. Lessons learned through information warfare campaigns directed both internally

⁵⁷ (U) See John Vandiver, “SACEUR: Allies must prepare for Russia ‘hybrid war,’” *Stars and Stripes*, September 4, 2014.

⁵⁸ (U) Clint Watts, Hearing before the Senate Select Committee on Intelligence, March 30, 2017, available at <https://www.intelligence.senate.gov/hearings/open>

⁵⁹ (U) Michael Connell and Sarah Vogler, “Russia’s Approach to Cyber Warfare,” CNA Analysis and Solutions, Occasional Paper Series, March 2017

⁶⁰ [REDACTED]

⁶¹ (U) *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, Special Counsel Robert S. Mueller, III, March 2019

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

and at the populations of regional neighbors provided Moscow valuable insights into how information and social media could be most effectively used against the West.

(U) Although the tactics employed by Russia vary from one campaign to the next, there are several consistent themes in the Russian disinformation playbook.

(U) **High Volume and Multiple Channels.** Russian disinformation efforts tend to be wide-ranging in nature, in that they utilize any available vector for messaging, and when they broadcast their messaging, they do so at an unremitting and constant tempo. Christopher Paul and Miriam Matthews from the RAND Corporation describe the Russian propaganda effort as a “firehose of falsehood,” because of its “incredibly large volumes,” its “high numbers of channels and messages,” and a “rapid, continuous, and repetitive” pace of activity. Russia disseminates the disinformation calculated to achieve its objectives across a wide variety of online vehicles: “text, video, audio, and still imagery propagated via the internet, social media, satellite television and traditional radio and television broadcasting.”⁶² One expert, Laura Rosenberger of the German Marshall Fund, told the Committee that “[t]he Russian government and its proxies have infiltrated and utilized nearly every social media and online information platform—including Instagram, Reddit, YouTube, Tumblr, 4chan, 9GAG, and Pinterest.”⁶³

(U) The desired effect behind the high volume and repetition of messaging is a flooding of the information zone that leaves the target audience overwhelmed. Academic research suggests that an individual is more likely to recall and internalize the *initial* information they are exposed to on a divisive topic. As RAND researchers have stated, “First impressions are very resilient.”⁶⁴ Because first impressions are so durable and resistant to replacement, being first to introduce narrative-shaping content into the information ecosystem is rewarded in the disinformation context.

(U) **Merging Overt and Covert Operations.** The modern Russian disinformation playbook calls for illicitly obtaining information that has been hacked or stolen, and then weaponizing it by disseminating it into the public sphere. The most successful Russian operations blend covert hacking and dissemination operations, social media operations, and fake personas with more overt influence platforms like state-funded online media, including RT and Sputnik.

(U) According to FBI

[REDACTED]

⁶² (U) Christopher Paul and Miriam Matthews, “The Russian ‘Firehose of Falsehood,’ Propaganda Model,” *RAND Corporation*, 2016, https://www.rand.org/content/dam/rand/pubs/perspectives/PE100/PE198/RAND_PE198.pdf

⁶³ (U) Laura Rosenberger, Written Testimony, Hearing before the Senate Select Committee on Intelligence, August 1, 2018, available at <https://www.intelligence.senate.gov/hearings/open>

⁶⁴ (U) Christopher Paul and Miriam Matthews, “The Russian ‘Firehose of Falsehood,’ Propaganda Model,” *RAND Corporation*, 2016, https://www.rand.org/content/dam/rand/pubs/perspectives/PE100/PE198/RAND_PE198.pdf.

[REDACTED]
 COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]

(U) Another notable example of Russia using social media platforms and news media to advance disinformation objectives occurred in Germany in 2016. At the center of the operation was a report that falsely accused Arab migrants of sexually assaulting a Russian-German girl. The incident originates with Lisa, a 13-year-old girl from Berlin, who was reported missing by her parents after failing to show up for school. Initially claiming to have been attacked by men of Middle Eastern or North African appearance, Lisa eventually admitted to having fabricated the entire story. Despite Lisa's admission to the police that her story was made up, her original account of kidnapping and rape catapulted across social media. While German law enforcement officials formally debunked the initial report, Russian state-controlled news media, including Channel One and later RT, promoted the social media-inspired and ardently anti-migrant fervor among the Russian-German populations, in particular on YouTube.

(U) Far-right political parties, some of whom are supported by the Kremlin, reacted to these false stories by protesting in Berlin, protests which were covered by RT cameras. Sputnik then claimed there was a potential police cover-up, citing reporting of its own claim as its only evidence. A few days later, as protests spread, Russian Foreign Minister Lavrov publicly disputed that Lisa's 30-hour disappearance was voluntary. Germany, he said, was "covering up reality in a politically correct manner for the sake of domestic politics"⁶⁶ The office of Chancellor Merkel was forced to respond, and the episode added to the confusion and fear surrounding the politically roiling migrant crisis in Germany.

(U) **Speed.** Speed is critical to Russia's use of disinformation. Online, themes and narratives can be adapted and trained toward a target audience very quickly. This allows Russia

⁶⁵ (U) FBI, Written response to SSCI inquiry of January 3, 2019, March 1, 2019

⁶⁶ (U) Jim Rutenberg, "RT, Sputnik and Russia's New Theory of War," *The New York Times Magazine*, September 13, 2017

[REDACTED]
 COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

to formulate and execute information operations with a velocity that far outpaces the responsibility of a formal decision-making loop in NATO, the United States, or any other western democracy. For example, within hours of the downing of Malaysian Airlines Flight 17 over Ukraine, Russian media had introduced a menu of conspiracy theories and false narratives to account for the plane's destruction, including an alleged assassination attempt against President Putin, a CIA plot, an onboard explosive, and the presence of a Ukrainian fighter jet in the area.^{67,68} Dutch investigators with the Joint Investigation Team determined later the plane was shot down by a surface-to-air missile fired from a Russia-provided weapon system used in separatist-held territory in Ukraine.

(U) Use of Automated Accounts and Bots. The use of automated accounts on social media has allowed social media users to artificially amplify and increase the spread, or “virulence,” of online content. Russia-backed operatives exploited this automated accounts feature and worked to develop and refine their own bot capabilities for spreading disinformation faster and further across the social media landscape. In January 2018, Twitter disclosed its security personnel assess that over 50,000 automated accounts linked to Russia were tweeting election-related content during the U.S. presidential campaign.⁶⁹

(U) Russian actors are prolific users of automated accounts and bots. Phil Howard, citing the findings of a study done by the Oxford Internet Institute, concluded that Russian Twitter networks “are almost completely bounded by highly automated accounts, with a high degree of overall automation.” His study assessed that “some 45 percent of Twitter activity in Russia is managed by highly automated accounts,” and that Ukraine remains “the frontline of experimentation in computational propaganda with active campaigns of engagement” between Russian and Ukrainian botnets.⁷⁰ Early automation was fairly primitive and easier to detect and disrupt, but malicious bot activity has continued to grow in sophistication.

(U) Use of Paid Internet “Trolls.” The act of “trolling” online has been a feature of the internet eco-system since the development of online chat rooms, blogs, internet forums, and other early communications platforms. An internet “troll” is a real person sitting behind a keyboard who posts inflammatory, aggressive, harassing, or misleading messages online in an attempt to provoke a response from other users of social media.⁷¹ Kremlin-backed entities have spent years professionalizing a cadre of paid trolls, investing in large-scale, industrialized “troll

⁶⁷ (U) Joel Gunter and Olga Robinson, “Sergei Skripal and the Russian disinformation game,” *BBC News*, September 9, 2018.

⁶⁸ (U) Margaret Hartmann, “Russia’s ‘Conspiracy Theory’. MH17 Shot Down by Ukrainian Fighter Jet or Missile,” *New York Magazine*, July 22, 2014

⁶⁹ (U) Twitter Public Policy Blog, “Update on Twitter’s review of the 2016 US election,” January 19, 2018

⁷⁰ (U) Samuel Woolley and Phil Howard, “Computational Propaganda Worldwide: Executive Summary,” Computational Propaganda Research Project, Oxford Internet Institute, University of Oxford, November 2017, <http://comprop.oi.ox.ac.uk/wp-content/uploads/sites/89/2017/06/Casestudies-ExecutiveSummary.pdf>

⁷¹ (U) The concept of a “troll” online is subjective and can encompass a range of differing motivations, tactics, and objectives. For the purposes of this paper, the Committee is focused on professional “trolls” who are paid to engage in dialogue online and provide commentary and content on various social media and news channels.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

farms,” in order to obscure Moscow’s hand and advance the aims of Russia’s information operations both domestically and abroad.

(U) While Russia’s use of trolls has been more widely exposed in recent years, one of the first public exposures came through WikiLeaks in early 2012 and subsequent reporting by *The Guardian*. According to data and documents provided to WikiLeaks by a group operating under the moniker “Anonymous,” the Kremlin-backed youth group Nashi was paying a network of bloggers and trolls to support President Putin and undermine his political opposition online. These Putin-supported commentators were paid to comment on articles, “dislike” anti-Putin YouTube videos, and support smear campaigns against opposition leaders.⁷²

(U) In 2015, NATO’s Strategic Communications Center of Excellence commissioned research on the use of trolling in hybrid warfare, publishing its conclusions in the spring of 2016. The study, which was largely focused on discussions surrounding the Ukraine-Russia conflict, outlined a variety of influence techniques employed by trolls online, including the aggressive use of offensive slurs and attacks; utilization of irony and sarcasm; peddling conspiracy theories; employing profile pictures of young, attractive men and women; diverting discourse to other problems; posting misleading information on information sources like *Wikipedia*; emphasizing social divisions; and presenting indigestible amounts of data without sources or verification.⁷³

(U) In addition to the aggressive and persistent pushing of Kremlin-narrated themes and content, a principal objective of the Russian internet troll appears to be stifling the democratic debate entirely.

(U) As journalist Adrian Chen of *The New Yorker* reported, the objectives for Russia’s troll army are primarily “to overwhelm social media with a flood of fake content, seeding doubt and paranoia, and destroying the possibility of using the Internet as a democratic space.”⁷⁴ Leonid Volkov, a Russian politician and supporter of opposition leader Alexei Navalny, told Chen, “The point [of Russian disinformation] is to create the atmosphere of hate, to make it so stinky that normal people won’t want to touch it.” He stressed, “Russia’s information war might be thought of as the biggest trolling operation in history, and its target is nothing less than the utility of the Internet as a democratic space.”⁷⁵ Exemplifying the assertion, a 2015 analysis by the Finnish public broadcasting company concluded that many Finns elect to simply disengage from online discussions due to trolling, as “they did not see the use of fighting with masses of aggressive comments or threatening messages.”⁷⁶

⁷² (U) Miriam Elder, “Hacked emails allege Russian youth group Nashi paying bloggers,” *The Guardian*, February 7, 2012.

⁷³ (U) Sanda Svetoka, et al., “Social Media as a Tool of Hybrid Warfare,” NATO Strategic Communications Centre of Excellence, May 2016, <https://www.stratcomcoe.org/social-media-tool-hybrid-warfare>.

⁷⁴ (U) Adrian Chen, “The Real Paranoia-Inducing Purpose of Russian Hacks,” *The New Yorker*, July 27, 2016.

⁷⁵ (U) *Ibid*

⁷⁶ (U) Sanda Svetoka, et al., “Social Media as a Tool of Hybrid Warfare,” NATO Strategic Communications Centre of Excellence, May 2016, <https://www.stratcomcoe.org/social-media-tool-hybrid-warfare>

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) Manipulating Real People and Events. Russian-backed trolls pushing disinformation have also sought to connect with and potentially coopt individuals to take action in the real world. From influencing unwitting Americans to retweet or spread propaganda, to convincing someone to host a real world protest, Russian disinformation agents employ online methods to attract and exploit a wide range of real people.

(U) In testifying to the Committee in 2017, Clint Watts outlined three different types of potential real-world targets for Russian influence operators.⁷⁷ A class of “useful idiots” refers to unwitting Americans who are exploited to further amplify Russian propaganda, unbeknownst to them; “fellow travelers” are individuals ideologically sympathetic to Russia’s anti-western viewpoints who take action on their own accord; and “agent provocateurs” are individuals who are actively manipulated to commit illegal or clandestine acts on behalf of the Russian government. As Watts explains, “Some people are paid for. Some are coerced. Some are influenced. Some agree. Some don’t know what they’re doing. . . . Where they fall on that spectrum may not matter ultimately.” What matters most, he argues, is the message they are carrying and whether its reach is growing.⁷⁸

E. (U) Features of Russian Active Measures

(U) Although information warfare can target an opposing government, its officials, or its combat forces, Russian information warfare on social media is often aimed squarely at attacking a society and its relationship to its own democratic institutions. Modern Russian active measures on social media exhibit several notable features.

(U) Attacking the Media. Information warfare, at its core, is a struggle over information and truth. A free and open press—a defining attribute of democratic society—is a principal strategic target for Russian disinformation. As Soviet-born author Peter Pomerantsev notes, “The Kremlin successfully erodes the integrity of investigative and political journalism, producing a lack of faith in traditional media.” He concludes, “The aim of this new propaganda is not to convince or persuade, but to keep the viewer hooked and distracted, passive and paranoid, rather than agitated to action.”⁷⁹

(U) Jakub Kalensky, a former official with the European Union’s rapid response team created to counter Russian disinformation, similarly argues, “It’s not the purpose to persuade someone with one version of events. The goal for Russia is to achieve a state in which the

⁷⁷ (U) Clint Watts, Hearing before the Senate Armed Services Committee, April 27, 2017, available at <https://www.fpri.org/wp-content/uploads/2017/04/Watts-Testimony-Senate-Armed-Services-email-distro-Final.pdf>.

⁷⁸ (U) Denise Clifton, “A Murder Plot, a Twitter Mob and the Strange Unmasking of a Pro-Kremlin Troll,” *Mother Jones*, June 5, 2018.

⁷⁹ (U) Peter Pomerantsev and Michael Weiss, “The Menace of Unreality: How the Kremlin Weaponizes Information, Culture and Money,” *Institute of Modern Russia*, 2014, https://imrussia.org/media/pdf/Research/Michael_Weiss_and_Peter_Pomerantsev_The_Menace_of_Unreality.pdf.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

average media consumer says, ‘There are too many versions of events, and I’ll never know the truth.’”⁸⁰

(U) Fluid Ideology. Because the Kremlin’s information warfare objectives are not necessarily focused on any particular, objective truth, Russian disinformation is unconstrained by support for any specific political viewpoint and continually shifts to serve its own self-interest. Provided the information space is rendered confused and clouded, Russia’s information operatives are unencumbered and can support any and all perspectives.

(U) An August 2018 report on information manipulation commissioned by the French government notes that the Kremlin “can simultaneously support far right and far left movements, so long as they are in competition with one another.” As examples, the report cites the downing of Malaysian Airlines Flight 17, the chemical attacks in the Syrian town of Douma, and the poisoning of Sergei and Yulia Skripal in Salisbury, England, as instances in which Kremlin-backed disinformation amplified far-fetched and mutually exclusive conspiracy theories on both sides of the political spectrum.⁸¹ This key characteristic distinguishes modern day Russian operations from former Soviet Union-era active measures campaigns. Speaking to the resultant operational flexibility, Pomerantsev describes the transition. “Unlike in the Cold War, when Soviets largely supported leftist groups, a fluid approach to ideology now allows the Kremlin to simultaneously back far-left and far-right movements, greens, anti-globalists, and financial elites. The aim is to exacerbate divides and create an echo chamber of Kremlin support.”⁸²

(U) In sum, the modern-day Russian information warfare campaign combines the advantages of social media information delivery and the operational freedom of being ideologically agnostic.

(U) Exploiting Existing Fissures. Successful Russian active measures attempt to exploit societal divisions that already exist, rather than attempt to create new ruptures. Alexander Sharavin, the head of a military research institute and a member of the Academy of Military Sciences in Moscow, provides an illustrative example in relation to the Queen’s popular appeal in the England: “If you go to Great Britain, for example, and tell them the Queen is bad, nothing will happen, there will be no revolution; because the necessary conditions are absent—there is no existing background for this operation.” As Thomas Rid noted in his 2017 testimony to the Committee, “The tried and tested way of active measures is to use an adversary’s existing weaknesses against himself, to drive wedges into pre-existing cracks: the more polarized a

⁸⁰ (U) See Joby Warrick and Anton Troianovski, “Agents of doubt,” *Washington Post*, December 10, 2018

⁸¹ (U) Jean-Baptiste Jeangene Vilmer, et al., “Information Manipulation: A Challenge for our Democracies,” Policy Planning Staff (CAPS) of the Ministry for Europe and Foreign Affairs and the Institute for Strategic Research (IRSEM) of the Ministry for the Armed Forces, Paris, August 2018, https://www.diplomatie.gouv.fr/IMG/pdf/information_manipulation_rvb_cle838736.pdf.

⁸² (U) Peter Pomerantsev and Michael Weiss, “The Menace of Unreality. How the Kremlin Weaponizes Information, Culture and Money,” *Institute of Modern Russia*, 2014, https://imrussia.org/media/pdf/Research/Michael_Weiss_and_Peter_Pomerantsev_The_Menace_of_Unreality.pdf.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

society, the more vulnerable it is.”⁸³ Institutions and norms that define western liberal democracies—open and competitive elections, free flow of information, vibrant press freedoms, freedom of speech, and diverse societies—are conducive to exploitation by anti-Western propagandists.

(U) Indirect Objectives. As western governments grapple with addressing an internet operating environment that at present favors Russia, democratic institutions and constituencies must also weigh the potential indirect objectives of Russian active measures. As the August 2018 French disinformation report points out, the desired objectives of disinformation on a population can be two-fold. The direct objective, discussed earlier in this Volume, uses information manipulation to push the target audience in a preferred direction. The indirect objective entices overreach by the targeted country’s government—in essence, baiting governments to respond in a heavy-handed or improper fashion that is irreconcilable with the nation’s principles and civil liberties. The *indirect* objective, is, according to the French report, “not so much to convince a population of this or that story as to lead governments to take measures that are contrary to their democratic, liberal values, which, in turn, will provoke a reaction”⁸⁴

(U) Similarly, even the fear of active measures being unleashed on a society risks societal damage, whether the foreign capability exists or not. Democratic governments and populations must balance the need for calling out and shining light on Russian activities with remaining realistic and sober about Moscow’s actual capabilities and their effectiveness.

(U) The public needs to be made aware of the tactics being directed at them, but there also needs to be appreciation for the limitations of those tactics. As Massimo Calabresi reports in his 2017 *Time* article on Russia’s social media war on America, “the fear of Russian influence operations can be more damaging than the operations themselves. Eager to appear more powerful than they are, the Russians would consider it a success if you questioned the truth of your news sources, knowing that Moscow might be lurking in your Facebook or Twitter feed.”⁸⁵

V. (U) THE INTERNET RESEARCH AGENCY

(U) The IRA is an entity headquartered in St. Petersburg, Russia, which since at least 2013 has undertaken a variety of Russian active measures campaigns at the behest of the Kremlin. The IRA has conducted virtual and physical influence operations in Russia, the United States, and dozens of other countries. The IRA conducted a multi-million dollar, coordinated

⁸³ (U) Thomas Rid, Hearing before the Senate Select Committee on Intelligence, March 30, 2017, available at <https://www.intelligence.senate.gov/hearings/open>.

⁸⁴ (U) Jean-Baptiste Jeangene Vilmer, et al., “Information Manipulation: A Challenge for our Democracies,” Policy Planning Staff (CAPS) of the Ministry for Europe and Foreign Affairs and the Institute for Strategic Research (IRSEM) of the Ministry for the Armed Forces, Paris, August 2018, https://www.diplomatie.gouv.fr/IMG/pdf/information_manipulation_rvb_cle838736.pdf

⁸⁵ (U) Massimo Calabresi, “Inside Russia’s Social Media War on America,” *Time*, May 18, 2017

[REDACTED]
COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

effort to influence the 2016 U.S. election as part of a broader information campaign to harm the United States and fracture its society.⁸⁶

A. (U) Yevgeniy Prigozhin and the Kremlin

(U) The IRA is funded and directed by Yevgeniy Prigozhin, a Russia oligarch who works to conduct intelligence operations, military activities, and influence operations globally on behalf of the Kremlin. The IRA is one of several companies Prigozhin owns. He has also been linked to the financing and direction of the Wagner Group, a contract security organization that provides unofficial paramilitary support for Russian military operations.

[REDACTED]

(U) Prigozhin is a businessman and restaurateur who acquired the nickname “Putin’s Chef,” in part for the numerous catering contracts his company was awarded by the Russian government, including one for President Putin’s 2012 inauguration. Prigozhin’s companies have branched into areas including online propaganda, harassment of opposition leaders, and contracting a privatized military force to fight in Ukraine and Syria. *Fontanka*, a leading St. Petersburg news website, has also reported that Prigozhin’s companies have secured oil revenues from Syrian oil fields in exchange for providing soldiers to protect those fields.⁸⁸

[REDACTED]

⁸⁶ (U) Indictment, *United States v. Internet Research Agency, et al.*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018)

⁸⁷ [REDACTED]

⁸⁸ (U) Neil MacFarquhar, “Meet Yevgeniy Prigozhin, the Russian Oligarch Indicted in U.S. Election Interference,” *New York Times*, February 16, 2018

⁸⁹ [REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) Prigozhin was publicly exposed as the main financial supporter of the IRA as early as 2014,⁹⁰ and his close relationship with Putin has been reported in numerous media sources, with the two appearing together in public photographs.⁹¹

(U) Prigozhin and companies he controlled, along with nine other employees, were indicted in the District of Columbia for a number of criminal violations, including acting as unregistered foreign agents inside the United States.⁹² Further, Prigozhin and his companies have been targeted by the U.S. Department of Treasury with sanctions for “interfering with or undermining election processes and institutions,” with specific respect to the 2016 U.S. presidential election.⁹³ Demonstrating that IRA operations were related to the broader scope of the Kremlin’s objectives, these sanctions were announced alongside additional designations against the FSB and the Russian military intelligence organization, the GRU. Both entities were also designated for their online efforts to target the U.S. Government and undermine the election.

(U) Despite these public connections to the Russian government, President Putin denies any knowledge of Prigozhin’s trolling operation. The Committee finds this denial to be false

[REDACTED]

B. (U) IRA Operations

[REDACTED]

⁹⁰ (U) Max Seddon, “Documents Show How Russia’s Troll Army Hit America,” *BuzzFeed*, June 2, 2014

⁹¹ (U) Neil MacFarquhar, “Yevgeny Prigozhin, Russian Oligarch Indicted by U.S., Is Known as Putin’s Cook,” *New York Times*, February 16, 2018

⁹² (U) Indictment, *United States v. Internet Research Agency, et al.*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018)

⁹³ (U) Department of Treasury, “Treasury Sanctions Russian Cyber Actors for Interference with the 2016 U.S. Elections and Malicious Cyber-Attacks,” March 15, 2018, <https://home.treasury.gov/news/press-releases/sm0312>

⁹⁴ [REDACTED]

⁹⁵ (U) *Ibid*

⁹⁶ (U) *Ibid*

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

posts, clicks, and traffic. One IRA employee, Ludmila Savchuk, described work shifts during which she was required to meet a quota of five political posts, 10 nonpolitical posts, and 150 to 200 comments on other trolls' postings.¹⁰⁴

(U) The first thing employees did upon arriving at their desks was to switch on an Internet proxy service, which hid their I.P. addresses from the places they posted, those digital addresses can sometimes be used to reveal the real identity of the poster Savchuk would be given a list of the opinions she was responsible for promulgating that day Workers received a constant stream of 'technical tasks' —point-by-point exegeses of the themes they were to address, all pegged to the latest news¹⁰⁵

(U) Savchuk's description largely matches similar depictions outlined in a series of leaked documents from an unidentified Russian hacker organization in June 2014. The leaked documents, purported to be attached to internal emails from within the IRA, describe the responsibilities of the IRA teams. As reported by *BuzzFeed* at the time:

On an average working day, the Russians are to post on news articles 50 times. Each blogger is to maintain six Facebook accounts publishing at least three posts a day and discussing the news in groups at least twice a day. By the end of the first month, they are expected to have won 500 subscribers and get at least five posts on each item a day. On Twitter, the bloggers are expected to manage 10 accounts with up to 2,000 followers and tweet 50 times a day¹⁰⁶

(U) As a member of the Special Projects department of the IRA, Savchuk was responsible for creating and maintaining believable, fake personas online that would eventually seed pro-Kremlin narratives into their otherwise normal-looking online activities. One former employee said: "We had to write 'ordinary posts,' about making cakes or music tracks we liked, but then every now and then throw in a political post about how the Kiev government is fascist, or that sort of thing." Instructions for those political posts would come to the bloggers every morning as "technical tasks," which would have a "news line, some information about it, and a 'conclusion' that the commenters should reach."¹⁰⁷ As described by Chen, "The point was to weave propaganda seamlessly into what appeared to be the nonpolitical musings of an everyday person."¹⁰⁸

(U) According to two former employees who spoke to *The Guardian*, trolls were paid based on their capabilities and the expertise required to maintain their particular fake personas. One employee who signed a non-disclosure agreement was paid around 45,000 rubles a month (roughly \$700), while others could make up to 65,000 rubles (roughly \$1,000) monthly if they

¹⁰⁴ (U) Adrian Chen, "The Agency," *The New York Times Magazine*, June 2, 2015.

¹⁰⁵ (U) *Ibid*

¹⁰⁶ (U) Max Seddon, "Documents Show How Russia's Troll Army Hit America," *BuzzFeed*, June 2, 2014.

¹⁰⁷ (U) Shaun Walker, "Salutin' Putin Inside a Russian troll House," *The Guardian*, April 2, 2015

¹⁰⁸ (U) Adrian Chen, "The Agency," *The New York Times Magazine*, June 2, 2015.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

were able to join the most prestigious wing of the IRA, the English-language trolls. Penalties were instituted for employees who failed to reach their quota or were caught copying previous posts as opposed to creating new content. The trolls worked “round the clock to flood Russian internet forums, social networks and the comments sections of western publications with remarks praising the President, Vladimir Putin, and raging at the depravity and injustice of the west.”¹⁰⁹

(U) One former employee’s description of his work at the IRA is notable:

I arrived there, and I immediately felt like a character in the book ‘1984’ by George Orwell—a place where you have to write that white is black and black is white. Your first feeling, when you ended up there, was that you were in some kind of factory that turned lying, telling untruths, into an industrial assembly line. The volumes were colossal—there were huge numbers of people, 300 to 400, and they were all writing absolute untruths. It was like being in Orwell’s world.¹¹⁰

(U) The Special Counsel’s Office description of the IRA’s activities is consistent with much of the reporting derived from interviews of former employees. As an example, the IRA indictment alleges in detail how IRA employees, referred to as “specialists,” were tasked with creating fake social media accounts that purported to be U.S. citizens engaged on social media.

The specialists were divided into day-shift and night-shift hours and instructed to make posts in accordance with the appropriate U.S. time zone. The [IRA] also circulated lists of U.S. holidays so that specialists could develop and post appropriate account activity. Specialists were instructed to write about topics germane to the United States such as U.S. foreign policy and U.S. economic issues. Specialists were directed to create “political intensity through supporting radical groups, users dissatisfied with [the] social and economic situation and oppositional social movements.”¹¹¹

(U) The indictment indicates that IRA management made efforts to monitor and track the impact of its online efforts, through measurables such as comments, likes, reposts, changes in audience size, and other metrics.¹¹²

[REDACTED]

¹⁰⁹ (U) Shaun Walker, “Salutin’ Putin: Inside a Russian troll House,” *The Guardian*, April 2, 2015

¹¹⁰ (U) Anton Trojanovski, “A former Russian troll speaks. ‘It was like being in Orwell’s world,’” *Washington Post*, February 17, 2018

¹¹¹ (U) Indictment, *United States v. Internet Research Agency, et al*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018)

¹¹² (U) *Ibid*

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

[REDACTED]

D. (U) Troll Narratives

(U) The IRA’s trolls monitored societal divisions and were poised to pounce when new events provoked societal discord. For example, a former IRA troll interviewed by the *Guardian* in 2015 described his focus on race-related issues: “When there were black people rioting in the U.S. we had to write that U.S. policy on the black community had failed, Obama’s administration couldn’t cope with the problem, the situation is getting tenser. The negroes are rising up.”¹¹⁵

[REDACTED]

(U) Leaked IRA documents from 2014 reveal a sophisticated approach to the various social media platforms aimed at ensuring trolls could evade online monitors. IRA employees were taught how to comment on each of the different websites so as to avoid being blocked or removed. As an example, one author outlined how to write for the fringe site WorldNetDaily: “Direct offense of Americans as a race are not published (‘Your nation is a nation of complete idiots’) . . . nor are vulgar reactions to the political work of Barack Obama.”¹¹⁷

¹¹³ [REDACTED]

¹¹⁴ (U) *Ibid*

¹¹⁵ (U) Shaun Walker, “Salutin’ Putin Inside a Russian troll House,” *The Guardian*, April 2, 2015

¹¹⁶ [REDACTED]

¹¹⁷ (U) Max Seddon, “Documents Show How Russia’s Troll Army Hit America,” *BuzzFeed*, June 2, 2014

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) Developing and applying a familiarity with the American political space was also a critical function of the IRA trolling operation. According to a former employee interviewed by the news outlet *Dozhd*, IRA personnel were required to study and monitor tens of thousands of comments in order to better understand the language and trends of internet users in the United States. The ex-troll indicated that they were taught to avoid crude and offensive language that would be off-putting to the typical online reader.¹¹⁸ According to the former employee, the IRA office dedicated to inflaming sentiments in the United States was prohibited from promoting anything about Russia or President Putin—primarily because, in the IRA’s assessment, Americans do not normally talk about Russia. “Our goal wasn’t to turn the Americans toward Russia Our task was to set Americans against their own government: to provoke unrest and discontent, and to lower Obama’s support ratings.”¹¹⁹ IRA employees were trained to understand and exploit the nuances of politically sensitive issues in America, including taxes, LGBT rights, and the Second Amendment. Once IRA employees better understood the political fault lines and how Americans naturally argued online, their job was to incite them further and try to “rock the boat.”¹²⁰

(U) More recent open source reporting has provided fresh insight into the inner workings and goals of the IRA operation. Marat Mindiyarov, a former IRA troll, outlined for the *Washington Post* in 2018 how important Facebook became to the IRA. Mindiyarov described how workers in the Facebook Department of the IRA were paid twice as much and included a younger, more pop culturally literate crowd. In order to graduate to the Facebook Department, these trolls had to take a test to prove their English language skills, their ability to comment on American political nuance, and to confirm they had the necessary opposition to the United States.¹²¹

VI. (U) IRA ACTIVITIES AGAINST THE UNITED STATES IN 2016

A. (U) Origins of IRA Activity in the United States

(U) The IRA’s foray into influence operations targeting the 2016 election began with a 2014 intelligence-gathering mission to the United States undertaken by two female employees: Anna Bogacheva and Aleksandra Krylova.

(U) Bogacheva worked for the IRA from the spring of 2014 to the fall of 2016.¹²² Krylova, who began her employment in St Petersburg in the fall of 2013 at the latest, rose to

¹¹⁸ (U) Meduza, “An ex-St. Petersburg ‘troll’ speaks out,” October 15, 2017 (summarizing an interview with “Maxim” by *Dozhd*)

¹¹⁹ (U) *Ibid*

¹²⁰ (U) *Ibid*

¹²¹ (U) Anton Troianovski, “A former Russian troll speaks ‘It was like being in Orwell’s world,’” *Washington Post*, February 17, 2018.

¹²² (U) Scott Shane and Mark Mazzeffi, “The Plot to Subvert an Election – Unraveling the Russia Story So Far,” *The New York Times*, September 20, 2018: <https://www.nytimes.com/interactive/2018/09/20/us/politics/russia-interference-election-trump-clinton.html?ref=collection%2Fsectioncollection%2Fpolitics>.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

become the IRA's third-highest ranking employee by the spring of 2014. Both secured visas to visit the United States in June 2014, and the two made stops in "Nevada, California, New Mexico, Colorado, Illinois, Michigan, Louisiana, Texas, and New York," according to the IRA indictment.¹²³

[REDACTED] Operating as a reconnaissance team for the IRA, the two were sent to collect intelligence to be used in the organization's information warfare against the United States. Prior to the trip, they had worked with their colleagues to plan itineraries and purchase equipment, including "cameras, SIM cards, and drop phones." They also worked on various "evacuation scenarios" and other security measures for their trip.¹²⁴ Their visit likely helped the IRA refine tactics to be used on social media, but the trip represents only a small part of the wider operational effort to track and study Americans' online activities, understand U.S. political and social divisions, impersonate U.S. citizens online, and ultimately engage in information warfare against the United States. [REDACTED]

[REDACTED]

[REDACTED]

(U) According to the Special Counsel's Office, by April 2014, the IRA had formed a new department inside the larger organization that was focused solely on the U.S. population. Referred to as the "translator project," and alternately as the "Translator Department," the American department of the operation would grow to over 80 employees by July 2016.¹²⁶ By the summer of 2016, at the height of the U.S. campaign season, the "translator project" employees were posting more than 1,000 pieces of content per week, reaching between 20 and 30 million people in the month of September alone.¹²⁷ In addition, the IRA employees began contacting unwitting U.S. persons to better refine their tactics and targets. In one communication, an IRA operative posed as an American and spoke with a Texas-based grassroots organization, learning from the conversation that they should focus their activities on "purple states like Colorado, Virginia & Florida."¹²⁸

¹²³ (U) Indictment, *United States v. Internet Research Agency, et al*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018).

¹²⁴ (U) *Ibid*

¹²⁵ [REDACTED]

¹²⁶ (U) Indictment, *United States v. Internet Research Agency, et al*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018), Special Counsel Robert S. Mueller, III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, March 2019, Volume I, p. 26.

¹²⁷ (U) See Hannah Levintova, "Russian Journalists Just Published a Bombshell Investigation About a Kremlin-Linked 'Troll Factory,'" *Mother Jones*, October 18, 2017. Original report in Russian available at <https://www.rbc.ru/magazine/2017/11/15/59e0c17d9a79470e05a9e6c1>

¹²⁸ (U) Indictment, *United States v. Internet Research Agency, et al*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018).

[REDACTED]
COMMITTEE SENSITIVE - RUSSIA INVESTIGATION ONLY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

129 [REDACTED]
[REDACTED]
[REDACTED]

130 (U) *Ibid*

131 [REDACTED]
[REDACTED]

132 (U) *Ibid*

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) The IRA built a wide-ranging information operation designed to complement these other Russian influence activities directed toward interfering with and undermining U.S. democracy in 2016. The expanse and depth of this effort would only be understood in the aftermath of that campaign.

B. (U) IRA Operations Explicitly Targeting the 2016 U.S. Election

(U) At the direction of the Kremlin, the IRA sought to influence the 2016 U.S. presidential election by harming Hillary Clinton's chances of success and supporting Donald Trump.¹³³

(U) The overwhelming majority of the content disseminated by the IRA did not express clear support for one presidential candidate or another. Instead, and often within the context of the election or in reference to a candidate, most IRA content discreetly messaged narratives of disunity, discontent, hopelessness, and contempt of others, all aimed at sowing societal division. Nevertheless, a significant body of IRA content dealt with the election, and specifically the Republican and Democrat candidates. The TAG study led by Renee DiResta concluded that for all data analyzed, which included data captured before and after the 2016 U.S. election, roughly 6 percent of tweets, 18 percent of Instagram posts, and 7 percent of Facebook posts from IRA accounts mentioned Donald Trump or Hillary Clinton by name. On Facebook, that percentage translated to 1,777 posts that specifically mention Hillary Clinton (or a derivative moniker), which in turn generated over 1.7 million user interactions or engagements.¹³⁴

(U) Numbers of posts are an imperfect and potentially misleading evidentiary base for drawing conclusions about motivations and objectives. The relatively low number of IRA Facebook and Twitter account posts that specifically mention either candidate is not dispositive of the IRA's intent to influence voters. In practice, the IRA's influence operatives dedicated the balance of their effort to establishing the credibility of their online personas, such as by posting innocuous content designed to appeal to like-minded users. This innocuous content allowed IRA influence operatives to build character details for their fake personas, such as a conservative Southerner or a liberal activist, until the opportune moment arrived when the account was used to deliver tailored "payload content" designed to influence the targeted user. By this concept of operations, the volume and content of posts can obscure the actual objective behind the influence operation "If you're running a propaganda outfit, most of what you publish is factual so that

¹³³ (U) ODNI, "Assessing Russian Activities and Intentions in Recent US Elections," Intelligence Community Assessment (Declassified Version), January 6, 2017, https://www.dni.gov/files/documents/ICA_2017_01.pdf; Report On The Investigation Into Russian Interference In The 2016 Presidential Election, Special Counsel Robert S Mueller, III, March 2019

¹³⁴ (U) Renee DiResta, Dr. Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Dr. Jonathan Albright, and Ben Johnson, "The Tactics and Tropes of the Internet Research Agency," *New Knowledge*, December 17, 2018, <https://www.newknowledge.com/articles/the-disinformation-report/>

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

you're taken seriously," Graphika CEO and TAG researcher John Kelly described to the Committee, "[T]hen you can slip in the wrong thing at exactly the right time."¹³⁵

(U) The tactic of using select payload messages among a large volume of innocuous content to attract and cultivate an online following is reflected in the posts made to the IRA's "Army of Jesus" Facebook page. The page, which had attracted over 216,000 followers by the time it was taken down by Facebook for violating the platform's terms of service, purported to be devoted to Christian themes and Bible passages. The page's content was largely consistent with this façade. The following series of posts from the "Army of Jesus" page illustrates the use of this tactic, with the majority of posts largely consistent with the page's theme, excepting the November 1, 2016 post that represents the IRA's payload content:

- October 26, 2016. "There has never been a day when people did not need to walk with Jesus."
- October 29, 2016: "I've got Jesus in my soul. It's the only way I know. . . . Watching every move I make, guiding every step I take!"
- October 31, 2016: "Rise and shine—realize His blessing!"
- October 31, 2016: "Jesus will always be by your side. Just reach out to Him and you'll see!"
- November 1, 2016: "HILLARY APPROVES REMOVAL OF GOD FROM THE PLEDGE OF ALLEGIANCE."
- November 2, 2016: "Never hold on anything [sic] tighter than you holding unto God!"

(U) This pattern of character development, followed by confidence building and audience cultivation, punctuated by deployment of payload content is discernable throughout the IRA's content history

(U) The IRA's ideologically left-leaning and right-leaning social media accounts posted content that was political in nature and made reference to specific candidates for President. Hillary Clinton, however, was the only candidate for President whose IRA-posted content references were uniformly negative. Clinton's candidacy was targeted by both the IRA's left and right personas, and both ideological representations were focused on denigrating her. As Renee DiResta notes, the political content of the IRA, "was unified on both sides in negativity towards Secretary Clinton."¹³⁶ The IRA's left-leaning accounts focused their efforts on denigrating

¹³⁵ (U) John Kelly, Hearing before the Senate Select Committee on Intelligence, August 1, 2018, available at <https://www.intelligence.senate.gov/hearings/open>

¹³⁶ (U) Renee DiResta, Written Statement, Hearing before the Senate Select Committee on Intelligence, August 1, 2018, available at <https://www.intelligence.senate.gov/hearings/open>

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

Clinton and supporting the candidacy of either fellow Democrat candidate Bernie Sanders or Green Party candidate Jill Stein, at the expense of Hillary Clinton. Posts from the IRA's right-leaning accounts were unvaryingly opposed to Clinton's candidacy.

(U) In contrast to the consistent denigration of Hillary Clinton, Donald Trump's candidacy received mostly positive attention from the IRA's influence operatives, though it is important to note that this assessment specifically applies to pre-election content. The Committee's analysis indicates that post-election IRA activity shifted to emphasize and provoke anti-Trump sentiment on the left. DiResta's team assesses that in relation to pre-election content: "The majority of the political content was anti-Hillary Clinton; there appeared to be a consistent preference for then-candidate Donald Trump, beginning in the early primaries. . . . There was no pro-Clinton content."¹³⁷

(U) Evidence of an overarching pro-Trump and anti-Clinton bias leading up to Election Day 2016 is also found in information obtained by Special Counsel's Office. For instance, IRA employees were directed to focus on U.S. politics and to "use any opportunity to criticize Hillary and the rest (except Sanders and Trump—we support them)."¹³⁸ Another IRA employee was criticized internally for having a "low number of posts dedicated to criticizing Hillary Clinton" and was told "it is imperative to intensify criticizing Hillary Clinton" in future posts.¹³⁹ Content and hashtags produced by IRA employees included "#Trump2016," "#TrumpTrain," "#MAGA," "#IWontProtectHillary," and "#Hillary4Prison."¹⁴⁰

(U) One communication obtained by the Committee details an IRA employee's description of Election Day 2016, from the vantage of an information warfare operative: "On November 9, 2016, a sleepless night was ahead of us. And when around 8 a.m. the most important result of our work arrived, we uncorked a tiny bottle of champagne . . . took one gulp each and looked into each other's eyes. . . . We uttered almost in unison: 'We made America great.'"¹⁴¹

(U) Further, the IRA's attempts to engage political activists by using false U.S. personas to "communicate with unwitting members, volunteers, and supporters of the Trump Campaign involved in local community outreach, as well as grassroots groups that supported then-candidate Trump."¹⁴²

¹³⁷ (U) Renee DiResta, SSCI Transcript of the Closed Briefing on Social Media Manipulation in 2016 and Beyond, July 26, 2018.

¹³⁸ (U) Indictment, *United States v. Internet Research Agency, et al.*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018).

¹³⁹ (U) *Ibid.*

¹⁴⁰ (U) *Ibid.*

¹⁴¹ [REDACTED]

¹⁴² (U) Indictment, *United States v. Internet Research Agency, et al.*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018).

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) In addition to denigrating Hillary Clinton, voter suppression among left-leaning audiences appears to have been another political goal of the IRA's influence operatives. Young Mie Kim, a digital advertisement research expert from the University of Wisconsin, has closely analyzed the IRA's Facebook advertisements. On the basis of Kim's analysis, three types of voter suppression campaigns on Facebook and Instagram emerge, including: "a) turnout suppression/election boycott; b) third-candidate promotion; and c) candidate attack, all targeting nonwhites or likely Clinton voters."¹⁴³ Kim found no evidence of a comparable voter suppression effort that targeted U.S. voters on the ideological right.

(U) Renee DiResta found similar evidence:

*Voter suppression narratives were in [the data], both on Twitter (some of the text-to-vote content) and within Facebook, where it was specifically targeting the Black audiences. So the groups that they made to reach out to Black people were specifically targeted with 'Don't Vote for Hillary Clinton,' 'Don't Vote At All,' 'Why Would We Be Voting,' 'Our Votes Don't Matter,' [and] 'A Vote for Jill Stem is Not a Wasted Vote.'*¹⁴⁴

(U) TAG researcher Phil Howard's findings support DiResta's assessment. Howard found that while both the ideological right and left in America were targeted:

*The main difference is that where Conservative and right-wing voters were actively encouraged to get behind Trump's campaign, other voters were encouraged to boycott the election, vote for someone other than Clinton, and become cynical of the political process in general.*¹⁴⁵

(U) Underscoring the insidiousness of the IRA's information warfare campaign, influence operations were conducted in cognizance of the U.S. political schedule and political events. Modifying their tactics and strategy to reflect real-life occurrences, the IRA's operatives would increase their activity around events relevant to the campaign schedule. This included pre-election events, like "candidate debates, [the] Republican convention, [and] Trump crossing the delegate threshold."¹⁴⁶ For example, "significant bursts of IRA activity" coincided with the third Democratic primary debate in January 2016, the sixth Republican primary debate in January 2016, the presidential debates between Clinton and Trump in the fall of 2016, and on

¹⁴³ (U) Young Mie Kim, "Uncover Strategies and Tactics of Russian Interference in US Elections," Project DATA, University of Wisconsin, Madison, September 4, 2018, https://journalism.wisc.edu/wp-content/blogs.dir/41/files/2018/09/Uncover_Kim_v.5.0905181.pdf.

¹⁴⁴ (U) Renee DiResta, SSCI Transcript of the Closed Briefing on Social Media Manipulation in 2016 and Beyond, July 26, 2018.

¹⁴⁵ (U) Phil Howard, SSCI Transcript of the Closed Briefing on Social Media Manipulation in 2016 and Beyond, July 26, 2018.

¹⁴⁶ (U) Renee DiResta, SSCI Transcript of the Closed Briefing on Social Media Manipulation in 2016 and Beyond, July 26, 2018.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

Election Day 2016.¹⁴⁷ More broadly, the volume of posts originating from IRA accounts on Facebook and Instagram increased over the period between the national political conventions in July 2016 and Election Day.¹⁴⁸

(U) The IRA's information warfare campaign also responded to real-world political events. For example, the IRA promoted multiple stories and narratives calling into question the state of Hillary Clinton's health after she fell ill at a September 11 memorial service in New York City in September 2016. IRA influence operatives posted phrased content on Twitter using hashtags that made the content easily discoverable to other Twitter users searching for content related to Clinton's health, including #HillarySickAtGroundZero, #ClintonCollapse, #ZombieHillary, and #SickHillary. According to researchers at Clemson University, IRA accounts tweeted these hashtags hundreds of times. As one of those researchers, Darren Linvill, points out:

*You can see the peak times they tweet. You can see that they shift from hour to hour. One hour, they'll tweet their left-wing accounts, and the next hour they'll tweet their right-wing accounts. . . . You can see very clearly that it is one organization, and it has applied human capital as is needed, depending on what's happening politically, what current events are.*¹⁴⁹

[REDACTED] A particular spike in IRA activity on October 6, 2016, stands out as an anomaly deserving further scrutiny. As reported by the *Washington Post* and noted by the Clemson research team, IRA influence operatives posted, at a pace of about a dozen tweets per minute, nearly 18,000 messages from their Twitter accounts on October 6, 2016. This spike in activity came a day prior to WikiLeaks's publication of emails stolen by the Russian GRU from the account of Hillary Clinton's campaign chairman, John Podesta. According to the researchers, on October 6 and 7, IRA Twitter accounts—particularly those accounts emulating ideologically left-leaning personas—significantly increased the volume of their content posting, with 93 of the “Left Troll” accounts posting content that could have directly reached other Twitter accounts 20 million times on those two days.¹⁵⁰ While no clear connection between the spike in IRA Twitter activity and WikiLeaks' release of the emails has been established, the Clemson researchers speculate that the timing was not coincidental: “We think that they [the IRA] were trying to activate and energize the left wing of the Democratic Party, the Bernie wing basically, before the WikiLeaks release that implicated Hillary in stealing the Democratic primary.”¹⁵¹ [REDACTED]

¹⁴⁷ (U) Phil Howard, Bharath Ganesh, Dimitra Liotiou, John Kelly, and Camille Francois, “The IRA, Social Media and Political Polarization in the United States, 2012-2018,” *Computational Propaganda Research Project, Oxford Internet Institute*, December 2018, <https://int.nyt.com/data/documenthelp/534-oxford-russia-internet-research-agency/c6588b4a7b940c551c38/optimized/full.pdf>.

¹⁴⁸ (U) *Ibid*

¹⁴⁹ (U) Jim Galloway, “Clemson researchers crack open a Russian troll factory,” *Associated Press*, August 7, 2018.

¹⁵⁰ (U) Craig Timberg and Shane Harris, “Russian operatives blasted 18,000 tweets ahead of a huge news day during the 2016 presidential campaign. Did they know what was coming?” *Washington Post*, July 20, 2018.

¹⁵¹ (U) *Ibid*

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

[REDACTED]

(U) As detailed by the Special Counsel’s Office, IRA operations to support Trump also involved activities inside the United States. For example, IRA operatives were able to organize and execute a series of coordinated political rallies titled, “Florida Goes Trump,” using the Facebook group “Being Patriotic,” the Twitter account @March_for_Trump, and other fabricated social media personas. Masquerading as Americans, IRA operatives communicated with Trump Campaign staff, purchased advertisements promoting these rallies on Facebook and Instagram, contacted grassroots supporters of then-candidate Trump, solicited U.S. citizens to participate in these events, and even paid select participants to portray Hillary Clinton imprisoned in a cage that had been constructed on a flatbed truck for this purpose.¹⁵³

C. (U) Other IRA Operations Targeting U.S. Politicians and Society

(U) The IRA targeted not only Hillary Clinton, but also Republican candidates during the presidential primaries. For example, Senators Ted Cruz and Marco Rubio were targeted and denigrated, as was Jeb Bush.¹⁵⁴ Even after the 2016 election, Mitt Romney—historically critical of Russia and who memorably characterized the country as the United States’ “number one geopolitical foe” during a 2012 presidential debate—was targeted by IRA influence operatives while being considered for Secretary of State in the Trump administration. Content posted from IRA social media pages and accounts referred to Romney as a “two headed snake” and a “globalist puppet,” and IRA operatives posted the hashtag “#NeverRomney,” in an effort to undermine his potential nomination.¹⁵⁵ On November 28, 2016, over 216,000 followers of the IRA’s “Being Patriotic” Facebook page received the following post in their News Feed: “Romney was one of the first men who started the NeverTrump movement. It will be a terrible mistake if Trump sets him as the next secretary of state.”

(U) In addition, the IRA “had a strategic goal to sow discord in the U.S. political system,” which included—but was not limited to—targeting the 2016 U.S. presidential election.¹⁵⁶ John Kelly found that “[i]t’s a far more sophisticated an attack than just caring about an election. And it’s not just one election they care about. They care about the electoral system.”¹⁵⁷ Darren Linvill echoed this point, concluding “[i]n general, there’s been too much

¹⁵² [REDACTED]

¹⁵³ (U) Indictment, *United States v. Internet Research Agency, et al.*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018).

¹⁵⁴ (U) *Ibid.*, Renee DiResta, Dr. Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Dr. Jonathan Albright, and Ben Johnson, “The Tactics and Tropes of the Internet Research Agency,” *New Knowledge*, December 17, 2018. <https://www.newknowledge.com/articles/the-disinformation-report/>.

¹⁵⁵ (U) Rob Barry and Shelby Holliday, “Russian Trolls Tried to Torpedo Mitt Romney’s Shot at Secretary of State,” *Wall Street Journal*, March 8, 2018.

¹⁵⁶ (U) Indictment, *United States v. Internet Research Agency, et al.*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018).

¹⁵⁷ (U) John Kelly, SSCI Transcript of the Closed Briefing on Social Media Manipulation in 2016 and Beyond, July 26, 2018.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

focus on Russian interference in the election. It's much more than that. It's interference in our society, in our culture, in our political conversation."¹⁵⁸

[REDACTED]

[REDACTED]

(U) No single group of Americans was targeted by IRA information operatives more than African-Americans. By far, race and related issues were the preferred target of the information warfare campaign designed to divide the country in 2016. Evidence of the IRA's overwhelming operational emphasis on race is evident in the IRA's Facebook advertisement content (over 66 percent contained a term related to race) and targeting (locational targeting was principally aimed at "African-Americans in key metropolitan areas with well-established black communities and flashpoints in the Black Lives Matter movement"), as well as its Facebook pages (one of the IRA's top-performing pages, "Blacktivist," generated 11.2 million engagements with Facebook users), its Instagram content (five of the top 10 Instagram accounts were focused on African-American issues and audiences), its Twitter content (heavily focused on hot-button issues with racial undertones such as the NFL kneeling protests), and its YouTube

¹⁵⁸ (U) Jim Galloway, "Clemson researchers crack open a Russian troll factory," *Associated Press*, August 7, 2018

¹⁵⁹ [REDACTED]

¹⁶⁰ (U) *Ibid*

¹⁶¹ (U) *Ibid*

¹⁶² (U) *Ibid*

¹⁶³ (U) *Ibid*

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) Although the specific objectives behind the IRA's efforts to animate American social media users to organize around political and cultural identification is not entirely evident from the available data, the general intent to foment and promote divisiveness and discord amongst the American populace is strongly evidenced, as are the desire and capability of the IRA to effectively coopt unwitting Americans.

D. (U) IRA Use of Paid Advertisements

(U) Paid advertisements were not key to the IRA's activity, and moreover, are not alone an accurate measure of the IRA's operational scope, scale, or objectives, despite this aspect of social media being a focus of early press reporting and public awareness. According to Facebook, the IRA spent a total of about \$100,000 over two years on advertisements—a minor amount, given the operational costs of the IRA are estimated to have been around \$1.25 million dollars a month. The nearly 3,400 Facebook and Instagram advertisements the IRA purchased are comparably minor in relation to the over 61,500 Facebook posts, 116,000 Instagram posts, and 10.4 million tweets that were the original creations of IRA influence operatives, disseminated under the guise of authentic user activity. Further, numerous high-profile U.S. persons, such as Roger Stone, Michael McFaul, and Sean Hannity, unwittingly spread IRA content by liking IRA tweets or engaging with other IRA social media content, enhancing the potential audience for IRA content by millions of Americans.

(U) An analysis of the audiences targeted for receipt of those advertisements on Facebook nonetheless indicates that the IRA's use of advertising was consistent with its overall approach to social media. In particular, the IRA targeted some election swing states with advertisements that leveraged socially incendiary and divisive subjects. According to the report produced by the TAG working group led by Phil Howard and John Kelly, Facebook users in swing states were targeted 543 times, out of 1,673 instances of location targeting by the IRA. Additionally, in 342 instances, areas with significant African-American populations were targeted by the IRA with Facebook advertisements. TAG researchers believe that the targeting had more to do with race than a state's role in the Electoral College or status as a swing state:

*We found from the data that location targeting of ads was not used extensively by the IRA, with only 1,673 different instances of location targeting, by 760 ads. These ads were usually used to target African Americans in key metropolitan areas with well-established black communities and flashpoints in the Black Lives Matter movement. Some make reference, for example, to Ferguson, MO, and a smaller group of ads that marketed rallies and demonstrations to users living in particular places*¹⁶⁸

¹⁶⁸ (U) Phil Howard, Bharath Ganesh, Dimitra Liotsoiu, John Kelly, and Camille Francois, "The IRA, Social Media and Political Polarization in the United States, 2012-2018," *Computational Propaganda Research Project, Oxford Internet Institute*, December 2018 <https://int.nyt.com/data/documenthelper/534-oxford-russia-internet-research-agency/c6588b4a7b940c551c38/optimized/full.pdf>.

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) The parameters and key terms the IRA employed in targeting its Facebook advertisements suggests a sophisticated understanding of where the rawest social sensitivities lie beneath the surface of the American political debate. Darren Linvill noted that the IRA had a “keen understanding of American psychology,” they knew “exactly what buttons to press,” and operated with “industrial efficiency”¹⁶⁹ Even so, the IRA failed to take advantage of more sophisticated targeting capabilities available to Facebook advertising customers. For example, IRA operatives did not utilize the “Custom Audiences” feature which would have allowed them to upload outside data and contact information, and permitted more advanced micro-targeting of their advertisements.¹⁷⁰

[REDACTED]

E. (U) The IRA Information Warfare Campaign

[REDACTED]

¹⁶⁹ (U) Scott Shane and Mark Mazzetti, “The Plot to Subvert an Election – Unraveling the Russia Story So Far,” *New York Times*, September 20, 2018

¹⁷⁰ (U) Colin Stretch, Responses by Facebook to SSCI Questions for the Record from hearing on November 1, 2017, submitted January 8, 2018, available at <https://www.intelligence.senate.gov/sites/default/files/documents/Facebook%20Response%20to%20Committee%20QFRs.pdf> (“The targeting for the IRA ads that we have identified and provided to the Committee was relatively rudimentary, targeting broad locations and interests, and did not use a tool known as Contact List Custom Audiences”)

¹⁷¹ [REDACTED]

¹⁷² (U) *Ibid*

¹⁷³ [REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) Disinformation experts agree with Prigozhin’s assessment. Clint Watts, in March 2017 testimony to the Committee: “Over the past three years, Russia has implemented and run the most effective and efficient influence campaign in world history.”¹⁷⁴

(U) Eugene Rumer elaborated on Watts’ point in offering this summary in March 2017 testimony to the Committee:

*Russian meddling in the 2016 U.S. Presidential election is likely to be seen by the Kremlin as a major success regardless of whether its initial goal was to help advance the Trump candidacy. The payoff includes, but is not limited to a major political disruption in the United States, which has been distracted from many strategic pursuits; the standing of the United States and its leadership in the world have been damaged, it has become a common theme in the narrative of many leading commentators that from the pillar of stability of the international liberal order the United States has been transformed into its biggest source of instability, U.S. commitments to key allies in Europe and Asia have been questioned on both sides of the Atlantic and the Pacific. And last, but not least, the Kremlin has demonstrated what it can do to the world’s sole remaining global superpower.*¹⁷⁵

(U) Thomas Rid echoed this conclusion before the Committee: “The great Active Measures campaign of 2016 will be studied in intelligence schools for decades to come, not just in Russia of course but in other countries as well.”¹⁷⁶

F. (U) Ongoing IRA Activities

(U) IRA activity on social media did not cease, but rather increased after Election Day 2016. Evidence from well-known IRA accounts confirms that Russia-based operatives continued to be actively exploiting divisive social issues in the United States well after the 2016 election. After Election Day, Left-leaning IRA accounts were promoting hashtags such as “#Impeach45,” “#Resist,” and “#GunReformNow.” Complementary right-leaning IRA accounts were focused on the NFL kneeling controversy, as well as hashtags critical of the FBI, such as the “#ReleaseTheMemo” meme. After the election, IRA operatives orchestrated disparate political rallies in the United States both supporting president-elect Trump, and protesting the results of the election. A mid-November 2016 rally in New York was organized around the theme, “show your support for President-Elect Donald Trump,” while a separate rally titled, “Trump is NOT my President,” was also held in New York, in roughly the same timeframe.¹⁷⁷

¹⁷⁴ (U) Clint Watts, Hearing before the Senate Select Committee on Intelligence, March 30, 2017, available at <https://www.intelligence.senate.gov/hearings/open>.

¹⁷⁵ (U) Eugene Rumer, Hearing before the Senate Select Committee on Intelligence, March 30, 2017, available at <https://www.intelligence.senate.gov/hearings/open>.

¹⁷⁶ (U) *Ibid*

¹⁷⁷ (U) Indictment, *United States v. Internet Research Agency, et al.*, Case 1:18-cr-00032-DLF (D D C Feb 16, 2018).

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) More recent social media activity attendant to the 2018 midterm elections indicates ongoing influence operations emanating from Russia. A September 2018 criminal complaint brought by the U.S. Attorney’s Office for the Eastern District of Virginia against Elena Alekseevna Khusyaynova, an employee of the IRA who allegedly served as the chief accountant for the IRA, alleges that Khusyaynova sought to “interfere with U.S. political and electoral processes, including the 2018 U.S. elections.”¹⁷⁸

[REDACTED]

VII. (U) IRA USE OF SOCIAL MEDIA BY PLATFORM

(U) **Facebook.** Russia’s influence operatives have found appeal in the cost-effectiveness of Facebook pages as a targeted communications medium. Data provided to the Committee by Facebook indicates that the IRA used to its advantage many of Facebook’s features, beyond purchased advertising and pages, including the “events,” messenger,” and “stickers” features. The IRA also exploited Instagram—a photo- and video-sharing social networking service owned by Facebook.

(U) The first specific public warning about Russian activity on the Facebook platform came in September 2017, when Facebook announced the discovery of “approximately \$100,000 in ad spending from June of 2015 to May of 2017—associated with roughly 3,000 ads—that was

¹⁷⁸ (U) Indictment, *United States v Elena Alekseevna Khusyaynova*, Case 1 18-MJ-464 (E.D. Va. Sept. 28, 2018)

¹⁷⁹ [REDACTED]

¹⁸⁰ (U) *Ibid.*

¹⁸¹ [REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

connected to about 470 inauthentic accounts and pages in violation of [Facebook’s] policies.”¹⁸² Though not explicitly identified by Facebook at the time, the platform later attributed the subject accounts, pages, and advertisements to the IRA. Ongoing scrutiny of activity on its platform eventually led Facebook to a significantly larger body of non-advertisement content (“organic activity”) that originated from these same IRA accounts. This content had been engineered to appear American. Facebook’s initial discovery of the IRA-purchased advertisements was an essential first step in uncovering the IRA’s 2016 information warfare campaign.

(U) Facebook Advertisements

(U) The Committee’s analysis of the IRA-purchased advertisements indicates that the vast majority neither mention expressly the U.S. presidential election, nor explicitly advocate voting for or against a particular presidential candidate. Roughly five percent of the advertisements viewed prior to the election (77 of 1,519) included text referencing Hillary Clinton or Donald Trump. Forty of the post-election advertisements tied to the IRA referenced one of these candidates. The Committee found the content of these advertisements to be substantially consistent with Facebook’s public statements that the advertisements overwhelmingly pertained to divisive and inflammatory U.S. social issues. The subject of these advertisements spanned the ideological and political spectrum, ranging from race, sexuality, and gender identity, to immigration and Second Amendment rights. A number of the advertisements encouraged Facebook users to follow IRA-created pages dedicated to these issues, from which the IRA could manufacture and disseminate organic content on any number of politically charged subjects directly to their page followers. According to Committee analysis of materials provided by Facebook, almost all the advertisements were purchased with Russian rubles.

(U) Facebook estimates that 11.4 million people in the United States saw at least one of the 3,393 advertisements ultimately determined to have been purchased by the IRA.¹⁸³ Modelling conducted by Facebook indicates that 44 percent of the total user views of these advertisements (“impressions”) occurred before the election on November 8, 2016, with 56 percent of the impressions taking place after the election. Roughly 25 percent of the ads were never seen by anyone.¹⁸⁴

(U) The IRA used Facebook’s geographic targeting feature to channel advertisements to intended audiences in specific U.S. locations. About 25 percent of the advertisements purchased by the IRA were targeted down to the state, city, or in some instances, university level. Specific content narratives emerge in connection with targeted locations. For instance, Michigan and Wisconsin (32 and 55 pre-election advertisements, respectively) were targeted with

¹⁸² (U) Alex Stamos, “An Update on Information Operations on Facebook,” Facebook, September 6, 2017, <https://newsroom.fb.com/news/2017/09/information-operations-update/>.

¹⁸³ (U) Colin Stretch, Responses by Facebook to SSCI Questions for the Record from hearing on November 1, 2017, submitted January 8, 2018, available at

<https://www.intelligence.senate.gov/sites/default/files/documents/Facebook%20Response%20to%20Committee%20QFRs.pdf>.

¹⁸⁴ (U) *Ibid*

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

advertisements overwhelmingly focused on the subject of police brutality. Facebook indicates that the IRA did not leverage the platform's Custom Audiences tool, which would have entailed uploading or importing an externally held list of advertisement targets or contact data, revealing the IRA's efforts were not as sophisticated or potentially effective as they could have been.¹⁸⁵

(U) IRA-Generated Facebook Content

(U) While early media reporting on the IRA's Facebook activity focused on purchased advertising, the organic content generated by IRA influence operatives on their Facebook pages far surpassed the volume of targeted advertisements. That IRA organic content reached a significantly larger U.S. audience.

(U) Facebook's initial public disclosures about IRA activity identified 470 pages and accounts as originating with the IRA. The dataset furnished to the Committee includes over 60,000 unique organic posts from 81 of the pages Facebook associated with the IRA. An estimated 3.3 million Facebook users followed IRA-backed pages, and these pages are the predicate for 76.5 million user interactions, or "engagements," including 30.4 million shares, 37.6 million likes, 3.3 million comments, and 5.2 million reactions. Facebook estimates that as many as 126 million Americans on the social media platform came into contact with content manufactured and disseminated by the IRA, via its Facebook pages, at some point between 2015 and 2017. Using contrived personas and organizations, IRA page administrators masqueraded as proponents and advocates for positions on an array of sensitive social issues. The IRA's Facebook effort countenanced the full spectrum of American politics, and included content and pages directed at politically right-leaning perspectives on immigration policy, the Second Amendment, and Southern culture, as well as content and pages directed at left-leaning perspectives on police brutality, race, and sexual identity.

(U) Demonstrative of the range of themes the IRA targeted on its Facebook pages, the 10 most active IRA-administered Facebook pages include: "Stop A.I." (an abbreviation for "Stop All Invaders," the page was focused on illegal immigration); "Being Patriotic" (right-leaning themes, including Second Amendment rights); "Blacktivist" (targeted at African-Americans, and focused on African-American cultural issues and police brutality); "Heart of Texas" (right-leaning themes and Texas secession); "United Muslims of America" (targeted at refugee rights and religious freedom); "Brown Power" (targeted at Latino heritage and immigrant rights); "South United" (focused on Southern culture, conservative issues); "BM" (racial equality and police brutality); "LGBT United" (sexual and gender identity rights); and "Army of Jesus" (conservative, Christian themes). "BM" was a replacement page for the IRA's "Black Matters US" page, which Facebook took down in 2016. The IRA used the BM Facebook page to direct users to the Black Matters US website.¹⁸⁶

¹⁸⁵ (U) *Ibid*

¹⁸⁶ (U) Craig Timberg and Tony Romm, "New report of Russian disinformation prepared for the Senate, shows the operation's scale and sweep," *Washington Post*, December 17, 2018.

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) The IRA influence operatives responsible for these pages created fake online personas with a specific, readily discernible social agendas in order to attract similarly minded Facebook users. The operatives then used divisive content to anger and enrage the curated audience. The findings of the TAG study lead by Phil Howard and John Kelly explain the strategy behind the IRA’s Facebook pages:

*The IRA messaging [had] two strategies. The first involved appealing to the narratives common within a specific group, such as supporting veterans and police, or pride in race and heritage, as a clickbait strategy to drive traffic to the Facebook and Instagram pages the IRA set up. . . . Then the pages posted content that intended to elicit outrage from these groups.*¹⁸⁷

(U) The IRA’s development of Facebook pages and cultivation of followers was painstaking and deliberate. This resulted in the IRA creating top-performing pages that enabled sustained, long-term interaction with Americans on the very issues that drive Americans apart. The “Stop A.I.” page eventually attracted nearly 12.5 million engagements, while the “Blacktivist” page garnered almost 11.2 million.

(U) The IRA’s Facebook pages were not just channels for disseminating content across the social media platform. The IRA also used its Facebook presence to provoke real world events, including protests, rallies, and spontaneous public gatherings or “flashmobs.” Facebook identified at least 130 events that were promoted on its platform as a result of IRA activity. These events were promoted by, and attributed to, 13 of the IRA’s Facebook pages. Approximately 338,300 genuine Facebook user accounts engaged with content promoting these events. 62,500 Facebook users indicated their intention to attend the event, while another 25,800 users evinced interest in the event.¹⁸⁸

(U) An early example of the IRA’s experimentation with social media and real world events occurred in the spring of 2015, when IRA operatives attempted to induce a mass gathering in New York City by offering free hot dogs. According to the findings of an investigation into the IRA by Russian media outlet RosBiznesKonsalting (RBC), the success in attracting unwitting Americans to the IRA’s promotion of the “event” on Facebook prompted the IRA’s operatives to begin using the social media platform’s “events” feature much more proactively. The RBC report concluded, “From this day, almost a year and a half before the election of the

¹⁸⁷ (U) Phil Howard, Bharath Ganesh, Dimitra Liotsiou, John Kelly, and Camille Francois, “The IRA, Social Media and Political Polarization in the United States, 2012-2018,” *Computational Propaganda Research Project, Oxford Internet Institute*, December 2018, <https://int.nyt.com/data/documenthelper/534-oxford-russia-internet-research-agency/c6588b4a7b940c551c38/optimized/full.pdf>

¹⁸⁸ (U) Colin Stretch, Responses by Facebook to SSCI Questions for the Record from hearing on November 1, 2017, submitted January 8, 2018, available at <https://www.intelligence.senate.gov/sites/default/files/documents/Facebook%20Response%20to%20Committee%20QFRs.pdf>

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

US President, the ‘trolls’ began full-fledged work in American society.”¹⁸⁹ The RBC investigation assesses that the IRA eventually spent about \$80,000 to support 100 U.S. activists, who organized 40 different protests across the United States.¹⁹⁰

(U) Over the course of 2016, IRA influence operatives trained particular focus on agitating political events and protests in the United States. One August 20, 2016, event promoted by the “Being Patriotic” page (over 216,000 followers) attempted to instigate flashmobs across Florida in support of Republican candidate for president, Donald Trump. Actual events promoted as “Florida Goes Trump” gatherings took place in Ft. Lauderdale and Coral Springs, Florida.¹⁹¹

(U) A May 2016, real world event that took place in Texas illustrates the IRA’s ideological flexibility, command of American politics, and willingness to exploit the country’s most divisive fault lines. As publicly detailed by the Committee during a November 1, 2017 hearing, IRA influence operatives used the Facebook page, “Heart of Texas” to promote a protest in opposition to Islam, to occur in front of the Islamic Da’wah Center in Houston, Texas. “Heart of Texas,” which eventually attracted over 250,000 followers, used targeted advertisements to implore its supporters to attend a “Stop Islamization of Texas” event, slated for noon, May 21, 2016. Simultaneously, IRA operatives used the IRA’s “United Muslims for America” Facebook page and its connection to over 325,000 followers to promote a second event, to be held at the same time, at exactly the same Islamic Da’wah Center in Houston. Again, using purchased advertisements, the IRA influence operatives behind the “United Muslims for America” page beseeched its supporters to demonstrate in front of the Islamic Da’wah Center—this time, in order to “Save Islamic Knowledge.” In neither instance was the existence of a counter-protest mentioned in the content of the purchased advertisement.

(U) The competing events were covered live by local news agencies, and according to the Texas Tribune, interactions between the two protests escalated into confrontation and verbal attacks. The total cost for the IRA’s campaign to advertise and promote the concomitant events was \$200, and the entire operation was conducted from the confines of the IRA’s headquarters in Saint Petersburg. Social media researcher John Kelly characterized the IRA’s operational intent as “kind of like arming two sides in a civil war so you can get them to fight themselves before you go and have to worry about them.”¹⁹²

(U) Analysis of the dataset made available to the Committee indicates that IRA operatives also took advantage of the Facebook recommendation algorithm, an assessment

¹⁸⁹ (U) See Hannah Levintova, “Russian Journalists Just Published a Bombshell Investigation About a Kremlin-Linked ‘Troll Factory,’” *Mother Jones*, October 18, 2017. Original report in Russian available at <https://www.rbc.ru/magazine/2017/11/59e0c17d9a79470e05a9e6c1>.

¹⁹⁰ (U) *Ibid*

¹⁹¹ (U) Ben Collins, Gideon Resnick, et al., “Exclusive: Russians Appear to Use Facebook to Push Trump Rallies in 17 U.S. Cities,” *The Daily Beast*, September 20, 2017.

¹⁹² (U) John Kelly, Hearing before the Senate Select Committee on Intelligence, August 1, 2018, available at <https://www.intelligence.senate.gov/hearings/open>.

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

Facebook officials have corroborated. When asked by Senator Susan Collins whether Facebook’s recommendation engine ever suggested content created by IRA operatives to Facebook users, Facebook officials admitted that “This happened in some cases,” adding that IRA content was “sometimes recommended when people followed similar pages.”¹⁹³

(U) In order to maximize the speed and scale of Russia’s information warfare campaign, IRA operatives utilized the Facebook platform, and almost the entirety of its suite of features and capabilities, exactly as it was engineered to be used.

(U) **Instagram.** The use of Instagram by the IRA, and Instagram’s centrality as a channel for disseminating disinformation and societally divisive content, has escaped much of the media and public attention that has focused on other social media platforms.

(U) IRA influence operatives in St. Petersburg, Russia, first posted on Instagram in January 2015—at the same time as their first posts on Facebook. Ultimately, IRA activity and engagement with Americans through Instagram accounts dramatically eclipsed the comparable interaction achieved through Facebook pages.¹⁹⁴

(U) Data provided to the Committee indicates that the IRA used 133 Instagram accounts to publish over 116,000 posts. By comparison, the IRA used Facebook pages to publish over 60,000 posts. Engagement with fellow platform users was also significantly greater on Instagram, where IRA accounts accumulated 3.3 million followers and generated 187 million total engagements. By comparison, the IRA’s Facebook page audience of 3.3 million produced 76 million virtual interactions. As Renee DiResta assessed in testimony to the Committee, “Instagram dramatically outperformed Facebook in terms of reach and in terms of likes and in terms of engagement, on a per-post [basis].”¹⁹⁵

(U) The tactics IRA operatives used on the Instagram platform were consistent with those employed on the Facebook platform. The IRA’s Instagram accounts focused on both the political left and right in America, and exploited the social, political, and cultural issues most likely to incite impassioned response across the ideological spectrum. Significantly, a discernible emphasis on targeting African-Americans emerges from analysis of the IRA’s Instagram activity.¹⁹⁶

¹⁹³ (U) Colin Stretch, Responses by Facebook to SSCI Questions for the Record from hearing on November 1, 2017, submitted January 8, 2018, available at <https://www.intelligence.senate.gov/sites/default/files/documents/Facebook%20Response%20to%20Committee%20QFRs.pdf>

¹⁹⁴ (U) Renee DiResta, Dr. Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Dr. Jonathan Albright, and Ben Johnson, “The Tactics and Tropes of the Internet Research Agency,” *New Knowledge*, December 17, 2018, <https://www.newknowledge.com/articles/the-disinformation-report/>.

¹⁹⁵ (U) Renee DiResta, SSCI Transcript of the Closed Briefing on Social Media Manipulation in 2016 and Beyond, July 26, 2018

¹⁹⁶ (U) Renee DiResta, Dr. Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Dr. Jonathan Albright, and Ben Johnson, “The Tactics and Tropes of the Internet Research Agency,” *New Knowledge*, December 17, 2018, <https://www.newknowledge.com/articles/the-disinformation-report/>

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) The size, scope, and intended U.S. audience of the IRA’s Instagram activity is reflected in the account names of the top 10 IRA Instagram accounts by follower numbers:

- “@Blackstagram_” targeted African-American cultural issues, amassed over 300,000 followers, and generated over 28 million interactions on the Instagram platform.
- “@american.veterans” was aimed at patriotic, conservative audiences, collected 215,680 followers, and generated nearly 18.5 million engagements.
- “@sincerely_black_” built a following of 196,754 Instagram users.
- “@rainbow_nation_us” emphasized sexual and gender identity rights and built a following of 156,465 users.
- “@afrokingdom_” had 150,511 followers on Instagram.
- “@_american.made” focused on conservative and politically right-leaning issues, including Second Amendment freedoms, and built a following of 135,008.
- “@pray4police” amassed 127,853 followers.
- “@feminism_tag” had 126,605 followers.
- “@_black_business” built a following of 121,861 Instagram users.
- “@cop_block_us” was followed by 109,648 Instagram users.

(U) In total, over the course of more than two years spent as an instrument for foreign influence operations, 12 of the IRA’s Instagram accounts amassed over 100,000 followers, and nearly half of the IRA’s 133 Instagram accounts each had more than 10,000 followers. On the basis of engagement and audience following measures, the Instagram social media platform was the most effective tool used by the IRA to conduct its information operations campaign.¹⁹⁷

(U) Despite the high Instagram engagement numbers reported to the Committee through the TAG social media research effort, in testimony to the Committee, Facebook representatives indicated that Instagram content reached just 20 million users. In relation to the Facebook estimate, the published findings of the working group led by TAG researcher Renee DiResta contest that “the Instagram number is likely lower than it should be” and advocate for additional

¹⁹⁷ (U) The IRA also purchased targeted advertisements on Instagram. The data associated with these purchases was included in the total Facebook advertisements production to the Committee in the fall of 2017. The 3,393 advertisements purchased by the IRA included both Facebook and Instagram buys. Because the Facebook and Instagram buys were produced together, the Committee’s analysis has also grouped them together, and these advertisements are collectively-addressed in the above treatment of the IRA’s use of Facebook advertisements.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

research on Instagram content and activities¹⁹⁸ Additional data and analysis concerning IRA activity on Instagram are required to resolve this discrepancy.

(U) Twitter. Though Twitter has fewer U.S. users than Facebook (68 million monthly active users on Twitter in the United States compared to 214 million Facebook users), Twitter is an extremely attractive platform for malicious influence operations like those carried out by the IRA due to its speed and reach. In 2017 testimony to the Committee, disinformation expert Thomas Rid identified Twitter as one of the more influential “unwitting agents” of Russian active measures.¹⁹⁹ Available data on the IRA’s activity on the Twitter platform reinforces this assessment. As of September 2018, Twitter had uncovered over 3,800 accounts tied to the IRA.²⁰⁰ According to data provided to the Committee by Twitter, those accounts generated nearly 8.5 million tweets, resulting in 72 million engagements on the basis of that original content.^{201,202} More than half (57 percent) of the IRA’s posts on Twitter were in Russian, while over one-third (36 percent) were in English.²⁰³ Twitter estimates that in total, 1.4 million users engaged with tweets originating with the IRA.

(U) The activity of IRA influence operatives on Twitter outpaced the IRA’s use of Facebook and Instagram. TAG members Phil Howard and John Kelly noted in their publicly released analysis of IRA activity:

The volume of Twitter posts made available to us is much larger than the volume of Facebook ads, Facebook posts, and Instagram posts The average monthly

¹⁹⁸ **(U)** Renee DiResta, Dr Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Dr Jonathan Albright, and Ben Johnson, “The Tactics and Tropes of the Internet Research Agency,” *New Knowledge*, December 17, 2018, <https://www.newknowledge.com/articles/the-disinformation-report/>

¹⁹⁹ **(U)** Thomas Rid, Hearing before the Senate Select Committee on Intelligence, March 30, 2017, available at <https://www.intelligence.senate.gov/hearings/open>.

²⁰⁰ **(U)** Twitter provided the Committee with a significant amount of data (including tweet content, handle names, engagement activity, and other metadata) for each of the over 3,800 accounts they identified as being linked to the IRA. That unique dataset was provided in installments that began in the fall of 2017. In October 2018, Twitter published a large archive of this information for the public to examine, including all tweets from the IRA-linked accounts. The Committee commends Twitter for its decision to publicize the data from these accounts and urges Twitter leadership to continue to make available to the public any future influence operation activities. The Committee urges other social media companies to take comparable steps to increase transparency and allow the public, outside researchers, investigators, and media to more fully examine the scope and scale of these types of influence operations as a matter of corporate responsibility and public service.

²⁰¹ **(U)** Phil Howard, Bharath Ganesh, Dimitra Liotsiou, John Kelly, and Camille Francois, “The IRA, Social Media and Political Polarization in the United States, 2012-2018,” *Computational Propaganda Research Project, Oxford Internet Institute*, December 2018, <https://int.nyt.com/data/documenthelper/534-oxford-russia-internet-research-agency/c6588b4a7b940c551e38/optimized/full.pdf>

²⁰² **(U)** Renee DiResta, Dr Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Dr Jonathan Albright, and Ben Johnson, “The Tactics and Tropes of the Internet Research Agency,” *New Knowledge*, December 17, 2018, <https://www.newknowledge.com/articles/the-disinformation-report/>.

²⁰³ **(U)** Phil Howard, Bharath Ganesh, Dimitra Liotsiou, John Kelly, and Camille Francois, “The IRA, Social Media and Political Polarization in the United States, 2012-2018,” *Computational Propaganda Research Project, Oxford Internet Institute*, December 2018, <https://int.nyt.com/data/documenthelper/534-oxford-russia-internet-research-agency/c6588b4a7b940c551e38/optimized/full.pdf>.

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

Twitter post volume is over fifty thousand tweets per month, while the average monthly volume of Facebook ads, Facebook posts, and Instagram posts is in the hundreds to low thousands, never exceeding the six thousand mark²⁰⁴

(U) It appears from the data that the IRA, or a predecessor of the organization, began posting on Twitter in 2009, mostly in the Russian language and with a focus on the domestic Russian audience. These accounts continued to target Russia-internal issues and audiences until they were closed down in 2017.²⁰⁵ It wasn't until 2013 that accounts tied to the IRA began to target a U.S. audience, with English language tweets.²⁰⁶

(U) According to Phil Howard and John Kelly, the activity on Twitter constitutes the IRA's first use of a social media platform to conduct information warfare against the United States. The IRA effort shortly thereafter incorporated additional social media platforms including YouTube, Instagram, and Facebook:

It appears that the IRA initially targeted the US public using Twitter, which it had used domestically in Russia for several years. But as the IRA ramped up US operations toward the end of 2014, this dataset suggests that the IRA began leveraging other platforms in sequence: YouTube (here measured via Twitter citations of YouTube content), Instagram, and lastly Facebook.²⁰⁷

(U) Initially, the IRA's Twitter activity targeting a U.S. audience was constrained to a relatively low operational tempo, approximating an initial test phase. By 2014 and 2015, however, the IRA's U.S.-focused efforts had significantly intensified. The elevated level of activity was sustained all the way through the 2016 presidential election campaign period, and spiked with an anomalous peak in activity immediately following the election, in November 2016. By mid-2017, U.S.-focused IRA activity on Twitter surpassed the IRA's domestic, Russia-focused information operations on the platform.²⁰⁸ All Twitter accounts known to be associated with the IRA were suspended by the company by late 2017, and data associated with these accounts was turned over to the Committee.

(U) The data furnished to the Committee suggests IRA influence operatives probably used automated accounts to amplify payload content by tweeting and retweeting selected Twitter messaging. DiResta elaborated on the IRA's use of automated bots: "In the course of a similarity analysis we discovered still-active bots that were likely part of a commercially acquired or repurposed botnet."²⁰⁹

²⁰⁴ (U) *Ibid.*

²⁰⁵ (U) *Ibid.*

²⁰⁶ (U) *Ibid.*

²⁰⁷ (U) *Ibid.*

²⁰⁸ (U) *Ibid.*

²⁰⁹ (U) Renee DiResta, Dr. Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Dr. Jonathan Albright, and Ben Johnson, "The Tactics and Tropes of the Internet Research Agency," *New Knowledge*, December 17, 2018, <https://www.newknowledge.com/articles/the-disinformation-report/>

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) In addition to the Twitter accounts identified by the company as tied to the IRA, Twitter uncovered 50,258 automated accounts that they believe to be tied to Russia. These bot accounts were issuing tweets containing election-related content during the 2016 U.S. presidential election campaign period.²¹⁰ Although Twitter could not definitively link these bot accounts directly to the IRA, they illustrate the vulnerability of U.S. democratic processes to automated influence attacks, and the scale of the effort emanating from Russia to exploit that vulnerability. The coordinated activity of multiple bot accounts on social media represents an additional element of the foreign influence threat. According to platform monitoring reports prepared for officials in the United Kingdom, an estimated 2,800 automated accounts believed linked to Russia posted content concerning the 2018 poison attack on Sergei Skripal and his daughter in Salisbury, England, in an effort to provoke uncertainty over culpability for the attack.²¹¹

(U) The IRA's influence operatives dedicated significant effort to repurposing existing fake Twitter accounts, and creating new ones, that appeared to be owned by Americans. These accounts were used to build American audiences, accrue account followers, and amplify and spread content produced by the IRA. An analysis of the IRA's Twitter accounts illuminates the strategy and objectives behind its Twitter activity. Clemson researchers, led by Darren Linvill and Patrick Warren, collected all of the tweets from all the IRA-linked accounts between June 19, 2015, and December 31, 2017.²¹² After removing from the sample all non-English accounts and those that did not tweet at all, the team was left with 1.875 million tweets associated with 1,311 IRA usernames.

(U) After conducting an analysis of all the content that IRA influence operatives manufactured, the Clemson researchers separated the IRA-affiliated accounts into five categories of social media platform activity. According to this analysis, "Within each type, accounts were used consistently, but the behavior across types was radically different." Characterizing the IRA Twitter effort as "industrial," the researchers described the campaign as "mass produced from a system of interchangeable parts, where each class of part fulfilled a specialized function."²¹³ The researchers named the account types: Right Troll, Left Troll, Newsfeed, Hashtag Gamer, and Fearmonger.

- (U) **Right Troll.** This was the largest and most active group of IRA-affiliated accounts. The 617 Right Troll Twitter accounts tweeted 663,740 times and cultivated nearly a million total followers. Clemson researchers characterized these accounts as focused on spreading "nativist and right-leaning populist messages." They strongly supported the

²¹⁰ (U) Jack Dorsey, Hearing before the Senate Select Committee on Intelligence, September 5, 2018, available at <https://www.intelligence.senate.gov/hearings/open>

²¹¹ (U) Deborah Haynes, "Skripal attack. 2,800 Russian bots 'sowed confusion after poison attacks,'" *The Times UK*, March 24, 2018

²¹² (U) Darren Linvill and John Walker, "Troll Factories. The Internet Research Agency and State-Sponsored Agenda Building," Clemson University, <https://www.rcmediafreedom.eu/Publications/Academic-sources/Troll-Factories-The-Internet-Research-Agency-and-State-Sponsored-Agenda-Building>

²¹³ (U) *Ibid*

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

candidacy of Donald Trump, employed the #MAGA hashtag, and attacked Democrats. Although nominally “conservative,” Clemson researchers found that the IRA accounts rarely promoted characteristically conservative positions on issues such as taxes, regulation, and abortion, and instead focused on messaging derisive of Republicans deemed “too moderate” (including at the time Senators John McCain and Lindsey Graham).²¹⁴ The accounts generally featured very little in the way of identifying information, but frequently used profile pictures of “attractive, young women.”

- **(U) Left Troll.** The second largest classification of IRA-affiliated Twitter accounts, consisting of around 230 Twitter profiles that generated 405,549 tweets, was Left Troll. The focus of the Left Troll Twitter accounts was primarily issues relating to cultural identity, including gender, sexual, and religious identity. Left Troll accounts, however, were acutely focused on racial identity and targeting African-Americans with messaging and narratives that mimicked the substance of prominent U.S. activist movements like Black Lives Matter. Left Troll accounts directed derisive content toward moderate Democrat politicians. These accounts targeted Hillary Clinton with content designed to undermine her presidential campaign and erode her support on the U.S. political left
- **(U) News Feed.** Designed to appear to be local news aggregators in the United States, News Feed Twitter accounts would post links to legitimate news sources and tweet about issues of local interest. Examples of the IRA’s news-oriented influence operative accounts on Twitter include @OnlineMemphis and @TodayPittsburgh. About 54 IRA accounts share the characteristics of this classification of Twitter profile, and they were responsible for 567,846 tweets.
- **(U) Hashtag Gamer.** More than 100 of the IRA’s Twitter accounts were focused almost exclusively on playing “hashtag games,” a word game popular among Twitter users. At times, these games were overtly political and engineered to incite reactions on divisive social issues from both the left and the right ends of the ideological spectrum.
- **(U) Fearmonger.** Finally, the IRA’s 122 Fearmonger Twitter accounts were specifically dedicated to furthering the spread of a hoax concerning poisoned turkeys during the Thanksgiving holiday of 2014. The Fearmonger Twitter accounts tweeted over 10,000 times.

(U) The IRA’s influence operatives coordinated across these Twitter account classifications to attack and defend both sides of socially divisive issues, particularly with respect to race relations and cultural divisions. An example of the IRA’s ability to capitalize on both sides of a public debate can be found in the issue of NFL players kneeling in protest of police brutality and racism. Twitter accounts tied to the IRA from both the left and right side of the ideological spectrum used the topic to channel inflammatory content toward targeted, and ideologically like-minded, audiences. A Left Troll account, @wokeluisa, tweeted in support of

²¹⁴ **(U)** Jim Galloway, “Clemson researchers crack open a Russian troll factory,” *Associated Press*, August 7, 2018

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

Colin Kaepernick and the NFL protests on March 13, 2018, prompting 37,000 forwarded retweets. Simultaneous to this, and in the direction of the ideologically opposite audience, @BarbaraForTrump, a Right Troll account, was tweeting content hostile to the protests.²¹⁵

(U) The Twitter data provided to the Committee shows that the IRA's influence operatives used multiple false personas to incite division and antipathy along a host of ideological fissures, simultaneously taking and attacking all sides of the arguments, all from the same internet protocol (IP) address. As TAG consultant John Kelly uncovered:

*It was literally the same computer that was registering and operating the America accounts, pretending to be right and pretending to be left. So imagine it's the same guy, and the same people, and they got their two little marionette things with their puppets dancing on either end of a string. And they are playing them together. They are inhabiting both sides and figuring out ways to play them off against each other.*²¹⁶

(U) As was the case with IRA activity on Facebook and Instagram, influence operatives based in Russia spent months developing fake Twitter personas and cultivating networks of supporters and followers among sympathetic and agreeable Americans. For example, 118 accounts secured more than 10,000 followers, and six accounts built followings of over 100,000 Twitter users.

(U) One of the IRA's most successful fake Twitter profiles was the @TEN_GOP account. By the time Twitter shut down the @TEN_GOP account in August 2017, it had amassed over 150,000 followers. By contrast, the legitimate Twitter account for the Tennessee Republican Party (@tngop) had 13,400 followers. Despite three separate requests by the actual Tennessee Republican Party organization to take down the account, @TEN_GOP was successful in deceptively injecting its inflammatory content into the political mainstream throughout 2016 and 2017.²¹⁷ Quotes and content from IRA influence operatives using the @TEN_GOP Twitter account were widely cited in press articles and mainstream media, and retweeted by celebrities and politicians, including several Trump campaign affiliates, including Donald Trump Jr., Kellyanne Conway, and Lieutenant General Michael Flynn (U.S. Army, retired).²¹⁸

(U) As Clint Watts has described, influence operations like the @TEN_GOP effort can be extremely successful once the content filters into the mainstream press: "If you can get

²¹⁵ (U) Laura Rosenberger, Written Statement, Hearing before the Senate Select Committee on Intelligence, August 1, 2018, available at <https://www.intelligence.senate.gov/hearings/open>

²¹⁶ (U) John Kelly, SSCI Transcript of the Closed Briefing on Social Media Manipulation in 2016 and Beyond, July 26, 2018.

²¹⁷ (U) Kevin Collier, "Twitter Was Warned Repeatedly About This Fake Account Run By a Russian Troll Farm and Refused to Take it Down," *BuzzFeed News*, October 18, 2017.

²¹⁸ (U) Philip Bump, "At least five people close to Trump engaged with Russian Twitter trolls from 2015 to 2017," *Washington Post*, November 2, 2017.

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

indigenous content, turn that into a conspiracy, and filter that into the mainstream media, that's a textbook case . . . As an information warfare missile, that was a direct hit."²¹⁹

(U) Another example of an effective IRA influence operation carried out on Twitter was conducted using the @Jenn_Abrams account. The persona associated with @Jenn_Abrams had accounts on multiple platforms, but most notably amassed over 80,000 followers on Twitter. This persona would tweet about everything from segregation to the futility of political correctness, and she would eventually be cited by more than 40 U.S. journalists before being taken down by Twitter in late 2017. John Kelly was among those following @Jenn_Abrams on Twitter. In testimony during a closed Committee hearing, Kelly described the ability of IRA influence operatives to infiltrate entire swaths of the political ecosystem on Twitter, of either ideological persuasion, using the persona:

Now . . . we're lighting up Jenn Abrams' account and all of the people following her are lit up . . . So she had almost the entirety of the activist right, a good bit of the activist left, because remember the IRA has puppets on both sides – they are actually the same people running the machines – building her credibility. And then down below she's managed to make inroads and followership among the mainstream conservative part of that network, and she's even got a few of the mainstream liberal folks following her."²²⁰

(U) The IRA was also successful using Twitter accounts feigning left-leaning ideological sentiment. An example cited by Laura Rosenberger in testimony to the Committee, @wokeluisa – which was still active in 2018 and had over 50,000 followers – claimed to be an African-American political science major in New York. Content produced under the guise of this persona would eventually appear “in more than two dozen news stories from outlets such as BBC, USA Today, Time, Wired, Huffington Post, and BET.”²²¹

(U) While original content creation was a preoccupation largely reserved for IRA operatives on Facebook and Instagram, the IRA's Twitter accounts were used to amplify events and promote the dissemination of content already existing on social media. This distinction notwithstanding, the Twitter platform was an integral tool for IRA operatives. As Renee DiResta detailed in her team's report:

Our impression of the IRA's Twitter operation is that it was largely opportunistic real-time chatter; a collection of accounts, for example, regularly played hashtag games. There was a substantial amount of retweeting. By contrast, Facebook and Instagram were used to develop deeper relationships, to create a collection of

²¹⁹ (U) Brandy Zadrozny and Ben Collins, “How a right-wing troll and a Russian Twitter account created 2016's biggest voter fraud story,” *NBC News*, October 30, 2018.

²²⁰ (U) John Kelly, SSCI Transcript of the Closed Briefing on Social Media Manipulation in 2016 and Beyond, July 26, 2018.

²²¹ (U) Laura Rosenberger, Written Statement, Hearing before the Senate Select Committee on Intelligence, August 1, 2018, available at <https://www.intelligence.senate.gov/hearings/open>.

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

*substantive cultural media pages dedicated to continual reinforcement of in-group and out-group ideals for targeted audiences. Twitter was, however, a part of the cross-platform brand building tactic; several of the Facebook, Instagram, Tumblr, and Reddit pages had associated Twitter accounts*²²²

(U) In a similar conclusion outlining the importance of Twitter to the IRA's effort to influence the thinking of Americans, Phil Howard and John Kelly found the following:

*...the IRA Twitter data shows a long and successful campaign that resulted in false accounts being effectively woven into the fabric of online US political conversations right up until their suspension. These embedded assets each targeted specific audiences they sought to manipulate and radicalize, with some gaining meaningful influence in online communities after months of behavior designed to blend their activities with those of authentic and highly engaged US users.*²²³

(U) **Google.** To a lesser but still critically important extent, Google and its numerous subsidiary platforms were also utilized and exploited by the IRA to the same end, in distinct ways. According to data provided to the Committee by Google, and additional public disclosures, numerous Google-affiliated platforms were utilized by IRA operatives, including YouTube, Google+, Gmail, Google's various advertisement platforms, Search, and Google Voice.

(U) There is little evidence that the IRA's operational efforts were as reliant on Google's products as they were on Facebook, Instagram, or Twitter to execute the most outwardly visible aspects of their information warfare campaign. The design, nature, and intended use of most Google products probably lies at the heart of this imbalance. Although Gmail accounts were used by IRA operatives to establish account profiles on other social media platforms, Google's products are generally not conducive to the rapid, expansive public dissemination of content that makes Facebook and Twitter attractive to influence operatives. Google's then-Senior Vice President and General Counsel, Kent Walker, testified to the Committee in November 2017, "Google's products didn't lend themselves to the kind of micro-targeting or viral dissemination that these [IRA] actors seemed to prefer."²²⁴

²²² (U) Renee DiResta, Dr. Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Dr. Jonathan Albright, and Ben Johnson, "The Tactics and Tropes of the Internet Research Agency," *New Knowledge*, December 17, 2018, <https://www.newknowledge.com/articles/the-disinformation-report/>.

²²³ (U) Phil Howard, Bharath Ganesh, Dimitra Lotosiou, John Kelly, and Camille Francois, "The IRA, Social Media and Political Polarization in the United States, 2012-2018," *Computational Propaganda Research Project, Oxford Internet Institute*, December 2018, <https://int.nyt.com/data/documenthelper/534-oxford-russia-internet-research-agency/c6588b4a7b940c551c38/optimized/full.pdf>

²²⁴ (U) Kent Walker, Hearing before the Senate Select Committee on Intelligence November 1, 2017, available at <https://www.intelligence.senate.gov/hearings/open>

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) IRA operatives were not, however, entirely absent from Google and its subsidiaries. Among the Google products that contributed to the wide-ranging character of the IRA's information warfare campaign, YouTube was by far the most utilized by operatives. In addition to IRA activity on YouTube, Google also uncovered evidence that Russian operatives utilized some of the company's advertisement products and services during the 2016 election campaign period. Using Gmail accounts connected to the IRA, influence operatives reportedly purchased \$4,700 worth of search advertisements and more traditional display advertisements in relation to the 2016 presidential election.²²⁵

(U) Americans also engaged with a separate \$53,000 worth of politically themed advertisements that either had a connection to a Russian internet or physical building address, or had been purchased with Russian rubles. It is unclear, however, whether these ads are tied to the Russian government. The content of these ads spans the political spectrum, and features messages alternately disparaging and supporting candidates from both major political parties, as well as the then incumbent U.S. President. The total amount of advertisement spending related to the election on Google AdWords was about \$270 million, making the Russia-linked purchases on the Google platform minuscule by comparison. Gmail addresses and other Google applications were also utilized to establish accounts on both Facebook and Twitter. According to Renee DiResta, "YouTube, G+, and other properties were leveraged to either host content or to support personas."²²⁶

(U) As a tool of information warfare, the Google "Search" application presents a distinct method for broadly disseminating disinformation. Google's search engine is by far the most utilized on the internet, however Google has been criticized for its failure to address issues with its PageRank algorithm. Periodically, particularly in the context of fast breaking news, Google's algorithm can elevate extremist content or disinformation to the top of certain searches. Days after the 2016 presidential election, a falsified media account of President-elect Donald Trump having won the popular vote briefly ranked higher than stories that accurately reflected the U.S. popular vote result.²²⁷

(U) Google was quick in responding to and addressing the misleading 2016 popular vote search results, but the example illustrates that the Google platform's search results feature is not impervious to manipulation designed to spread deceptive and misleading information. Public statements by Google representatives emphasize that the company realizes no business interest or advantage in the selective promotion of falsified news stories, extremist content, and conspiracy theories.

(U) As Laura Rosenberger testified to the Committee, "Another way the Russian government distorts the information space is through manipulating search results. Just Google

²²⁵ (U) *Ibid*

²²⁶ (U) Renee DiResta, Written Statement, Hearing before the Senate Select Committee on Intelligence, August 1, 2018, available at <https://www.intelligence.senate.gov/hearings/open>.

²²⁷ (U) Philip Bump, "Google's top news link for 'final election results' goes to a fake news site with false numbers," *Washington Post*, November 14, 2016.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

any geopolitical issue of significance to Moscow—MH-17, the White Helmets, the Novichok poisonings in the UK—and you will be served up a set of top results consisting of outlandish conspiracy theories emanating from Russia.”²²⁸

(U) Private sector entities around the world dedicate sustained effort to manipulating the Google Search algorithm for commercial benefit. “Search-engine optimization,” which entails maximizing the likelihood of favored content appearing among the highest ranked query results, is a standard marketing firm capability routinely used in the promotion of businesses and products. The IRA’s 2016 information warfare campaign featured some of the same capabilities. According to the Department of Justice indictment, the IRA devoted an entire department to search-engine optimization, the objective of which was the elevation of the IRA’s content in the search results of Americans, in furtherance of the IRA’s 2016 information warfare campaign.²²⁹

(U) **YouTube.** Distinct from Facebook and Twitter, the YouTube platform is not independently conducive to rapid and expansive content sharing. Achieving the “viral” spread of YouTube videos generally entails capitalizing on the reach and magnitude of Facebook and Twitter networks to spread links to the video hosted on YouTube.

(U) Data provided to the Committee by YouTube concerning IRA-associated content and accounts indicates that IRA influence operatives began posting videos to YouTube as early as September 2015. More than 1,100 videos, or 43 hours of content, were eventually posted on 17 YouTube channels the IRA established. Two of these channels were overtly political in character, and focused on the 2016 U.S. presidential election.²³⁰

(U) The overwhelming preponderance of the video content posted to the IRA’s YouTube channels was aimed directly at the African-American population. Most of the videos pertained to police brutality and the activist efforts of the Black Lives Matter organization. Posted to 10 of the IRA’s YouTube channels, were 1,063 videos—or roughly 96 percent of the IRA content—dedicated to issues of race and police brutality. The names of the IRA’s YouTube channels were consistent with the posted video content and included “Black Matters,” “BlackToLive,” “Cop Block US,” “Don’t Shoot,” and “PoliceState.” The content of the videos posted to those channels exploits issues of extraordinary sensitivity inside the African-American community. It is difficult to reconcile this fact with public testimony to the Committee by a Google representative that, “The videos were not targeted to any particular sector of the US population as that’s not feasible on YouTube.”²³¹

²²⁸ (U) Laura Rosenberger, Written Statement, Hearing before the Senate Select Committee on Intelligence, August 1, 2018, available at <https://www.intelligence.senate.gov/hearings/open>.

²²⁹ (U) Indictment, *United States v. Internet Research Agency, et al.*, Case 1:18-cr-00032-DLF (D.D.C. Feb. 16, 2018).

²³⁰ (U) Renee DiResta, Dr. Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Dr. Jonathan Albright, and Ben Johnson, “The Tactics and Tropes of the Internet Research Agency,” *New Knowledge*, December 17, 2018, <https://www.newknowledge.com/articles/the-disinformation-report/>.

²³¹ (U) Kent Walker, Hearing before the Senate Select Committee on Intelligence November 1, 2017, available at <https://www.intelligence.senate.gov/hearings/open>.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) Only 25 videos posted to the IRA's YouTube channels featured election-related keywords in the title. All of the IRA's politically-oriented videos were thematically opposed to the Democrat candidate for president, Hillary Clinton. Some of the videos featured expressly voter suppressive content intended to dissuade African-American voters from participating in the 2016 presidential election, while others encouraged African-Americans to vote for Jill Stein.

(U) YouTube continues to be the propaganda vehicle of choice for Russia's state-sponsored news organization, RT (formerly Russia Today). As of February 2019, RT had nearly 3.3 million global subscribers on its YouTube channel. In 2013, RT was the first self-described "news channel" to break 1 billion views on YouTube, and in 2017, RT's YouTube channel accumulated its five billionth view. RT's social media presence and activities were outlined in the January 6, 2017 Intelligence Community Assessment, in an annex to the unclassified version of the report.²³²

(U) **Reddit.** IRA influence operatives were active on the Reddit platform during the 2016 presidential election campaign period, in part it appears, to test audience reaction to disinformation and influence campaign content before its dissemination through other social media platform channels.

(U) Motivated by the fall 2017 revelations of significant IRA activity on the Facebook and Twitter platforms, Reddit conducted an internal investigation into whether IRA activity had taken place on its platform. The results of Reddit's internal investigation, which were shared with the Committee, indicate that IRA influence operatives were active on the platform and attempted to engage with American Reddit users. Internal investigators characterized 944 Reddit accounts as "suspicious," imparting that investigators judged there was a "high probability" that the accounts were linked to the IRA.²³³ Analysis of the accounts indicates that nearly three-quarters (662 accounts) achieved zero karma points, indicative of minimal engagement by the broader Reddit user base.

(U) According to Reddit, the 944 evaluated accounts were responsible for around 14,000 posts. Of those posts that contained socially or politically divisive content, most were thematically focused on police brutality, issues of race, and the disparagement of Hillary Clinton. A Reddit account with the username Rubnjer, the most popular of the accounts Reddit investigators assessed as probably linked to the IRA, posted a video that falsely claimed to depict Hillary Clinton engaged in a sex act. The video, which was ultimately posted on a separate website dedicated to pornographic content and viewed more than 250,000 times, was created by the IRA's influence operatives.²³⁴ The same Reddit account was used to promote a videogame titled *Hiltendo*, in which players maneuver an animated Hillary Clinton as the avatar deletes emails and evades FBI agents. IRA influence operatives attempted to achieve viral

²³² (U) ODNI, "Assessing Russian Activities and Intentions in Recent US Elections," *Intelligence Community Assessment (Unclassified Version)*, January 6, 2017, https://www.dni.gov/files/documents/ICA_2017_01.pdf.

²³³ (U) Reddit, Submission to SSCI, April 10, 2018

²³⁴ (U) Ben Collins, "Russia-Linked Account Pushed Fake Hillary Clinton Sex Video," *NBC News*, April 10, 2018.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

dissemination of the video game across social media, weeks prior to the 2016 election.²³⁵ IRA influence operatives also used Reddit as a platform for Russia-friendly narratives. As Laura Rosenberger testified to the Committee: “On Reddit, multiple IRA-generated memes posted to the ‘r/funny’ sub-reddit were targeted at discouraging United States support for Montenegro’s accession to NATO, attempting to portray Montenegrins either as free riders or as protestors resisting this move.”²³⁶

(U) In Reddit’s assessment, IRA information warfare activity on its platform was largely “unsuccessful in getting any traction.” The company judges that most Russian-origin disinformation and influence content was either filtered out by the platform’s moderators, or met with indifference by the broader Reddit user base. In an April 2018 statement, Reddit CEO, Steve Huffman, stated that the investigations had “shown that the efforts of [Reddit’s] Trust and Safety Team and Anti-Evil teams are working,” and that the “work of [Reddit] moderators and the healthy skepticism of [Reddit] communities” made Reddit a “difficult platform to manipulate.”²³⁷ Nevertheless, the largely anonymous and self-regulated nature of the Reddit platform makes it extremely difficult to diagnose and attribute foreign influence operations. This relative user autonomy and the dearth of information Reddit collects on its users make it probable that Reddit remains a testbed for foreign disinformation and influence campaigns.

(U) **Tumblr.** Following Facebook’s September 2017 disclosures about IRA activity on the platform, Tumblr conducted an internal investigation to determine whether Russia-based operatives had also been active on Tumblr.²³⁸ The ensuing investigation uncovered 84 accounts determined to be associated with the IRA. Most of the accounts were created in 2014 or 2015, and did not exhibit indications of automation. The IRA-associated Tumblr accounts generated about 100,000 posts, and were engaged significantly with authentic (non-IRA) user accounts on Tumblr. Tumblr estimates that IRA influence operatives used the platform to interact with 11.7 million unique U.S. users, and nearly 30 million unique users globally. Tumblr did not find any indication that IRA operatives purchased advertisements through the platform’s advertising feature.²³⁹

(U) Tumblr’s investigative findings indicate that content posted to the IRA’s accounts was focused primarily on politics and divisive social issues. A discernible effort to focus content delivery toward African-Americans is evident in the Tumblr account names the IRA chose, and the content those accounts posted. Among the IRA’s Tumblr profile names were:

²³⁵ (U) Jose Pagliery and Donie O’Sullivan, “Russians released anti-Clinton video game weeks before election,” *CNN Business*, March 8, 2018.

²³⁶ (U) Laura Rosenberger, Written Statement, Hearing before the Senate Select Committee on Intelligence, August 1, 2018, available at <https://www.intelligence.senate.gov/hearings/open>

²³⁷ (U) Steve Huffman, “Reddit’s 2017 transparency report and suspect account findings,” Reddit, April 10, 2018, https://www.reddit.com/r/announcements/comments/8bb85p/reddits_2017_transparency_report_and_suspect/

²³⁸ (U) Tumblr is a New York-based social networking and micro-blogging site that was created in 2007, and eventually acquired by Verizon and placed under the umbrella subsidiary, Oath, Inc. (later, renamed Verizon Media)

²³⁹ (U) SSCI staff interview with Oath/Tumblr on Russian influence, April 20, 2018.

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

“addictedtoblackk,” “black-to-the-bones,” “blackness-by-your-side,” “blacknproud,” and “bleepthepolice.”²⁴⁰ Jonathan Albright, a researcher at the Tow Center for Digital Journalism at Columbia University, is unequivocal in concluding that on Tumblr, the IRA’s influence operatives deliberately focused on messaging young African-American with narratives and payload content: “The evidence we’ve collected shows a highly engaged and far-reaching Tumblr propaganda-op targeting mostly teenage and twenty-something African-Americans.”²⁴¹

(U) As was the case on other social media platforms, IRA influence operatives used Tumblr accounts to build audiences of like-minded Americans, into which they would sow socially and politically divisive content. As reported in *BuzzFeed*, a Tumblr account named “4mysquad,” which was later revealed by Tumblr to be operated by the IRA, dealt almost exclusively with issues of sensitivity to the African-American community. On occasion, political content promoting the presidential campaign of Bernie Sanders, or criticizing Hillary Clinton was posted to this account. As an example, “4mysquad” posted a video of Clinton calling young black gang members “superpredators,” which generated more 50,000 engagements with authentic Tumblr users.²⁴² Over time, however, the IRA’s influence operatives took the messaging broadcast via the “4mysquad” Tumblr account further than the credulity of some users would allow. As one former follower of the account was quoted, after “4mysquad” began posting content promoting the presidential campaign of Donald Trump, “I unfollowed him and the thing that was a red flag was that it was supposedly a black liberal blog that at some point started rooting for Trump to win.”²⁴³

(U) Tumblr shared the results of the 2017 internal investigation with federal law enforcement. In the fall of 2018, law enforcement reciprocally alerted Tumblr to potential IRA operational activity tied to the U.S. 2018 mid-term elections taking place on the platform. On the basis of this insight, Tumblr identified 112 accounts tied to what was identified as an influence operation, indicating that Russia-based influence operatives continue to exploit the Tumblr platform targeting the United States.²⁴⁴

(U) In addition to the internal investigation into IRA activities on Tumblr, Oath’s security team also searched the company’s other digitally-based platforms, uncovering 484 Yahoo email accounts associated with other publicly identified IRA account information. Most of the Yahoo email accounts were used to establish profiles and enable commenting on other social media platforms.²⁴⁵ Oath’s internal security investigation also uncovered a small number

²⁴⁰ (U) Tumblr, “Public record of usernames linked to state-sponsored disinformation campaigns,” March 23, 2018, <https://staff.tumblr.com/post/180179385310/keeping-our-promise-to-be-transparent-about>.

²⁴¹ (U) Craig Silverman, “Russian Trolls Ran Wild on Tumblr and the Company Refuses to Say Anything About It,” *BuzzFeed News*, February 6, 2018.

²⁴² (U) *Ibid*

²⁴³ (U) *Ibid*

²⁴⁴ (U) Tumblr Staff, “Keeping our promise to be transparent about state-sponsored disinformation campaigns,” Tumblr, November 16, 2018, <https://staff.tumblr.com/post/180179385310/keeping-our-promise-to-be-transparent-about>.

²⁴⁵ (U) SSCI staff interview with Oath/Tumblr on Russian influence, April 20, 2018.

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

of accounts with some indications of association with the IRA on Flickr, a photo and video hosting service. Only four of the seven Flickr accounts investigators found associated with the IRA had posted images.²⁴⁶

(U) **LinkedIn.** LinkedIn discovered that IRA-linked activity occurred on the platform during the period of the 2016 presidential election. In the course of an internal investigation initiated after the fall 2017 Facebook disclosures, LinkedIn uncovered 91 accounts and five fake company pages believed to be tied to the IRA. Most of the accounts were established in 2015. About 24 of the accounts never posted content to the platform. Eighty percent of the content posted from these accounts generated no engagement from any other LinkedIn users. None of the accounts is known to have purchased ads or any promoted content on the platform.²⁴⁷ However a common IRA approach involved establishing credibility by creating multiple social media accounts across an array of platforms, under the same falsified American persona.

(U) Though foreign influence operational activity on LinkedIn appears to be limited, the platform and its users are a significant target for foreign intelligence services. LinkedIn users submit, and make publicly accessible, significant personal and professional data in the pursuit of networking opportunities and to attract potential employers. This renders the platform a valuable source of information on an array of sensitive intelligence targets—including the identities of government employees, active duty military personnel, cleared defense contractors, and others. As Director of the U.S. National Counterintelligence and Security Center William Evanina has stated, LinkedIn “makes for a great venue for foreign adversaries to target not only individuals in the government, formers, former CIA folks, but academics, scientists, engineers, anything they want. It’s the ultimate playground for (intelligence) collection.”²⁴⁸

(U) **Other Platforms.** Medium, a popular online publishing platform, and Pinterest, a photo- and image-focused social media platform with over 250 million active users, both publicly acknowledged the discovery of IRA influence operative activity on their platforms. The Committee’s TAG researchers also discovered IRA activity on other popular internet sites, including Vine, Gab, Meetup, VKontakte, and LiveJournal. Even browser extensions, music applications, and games, like Pokémon Go were incorporated into the IRA’s influence operation.²⁴⁹ As Renee DiResta notes, the widespread use of numerous applications and platforms illustrates “the fluid, evolving, and innovative tactical approach the IRA leveraged to interfere in US politics and culture.”²⁵⁰

²⁴⁶ (U) *Ibid*

²⁴⁷ (U) Blake Lawit, General Counsel, LinkedIn, *Letter to SSCI*, December 21, 2018.

²⁴⁸ (U) Jonathan Landay and Warren Strobel, “Exclusive U.S. Accuses China of “Super Aggressive” Spycampaign on LinkedIn,” *Reuters*, August 31, 2018.

²⁴⁹ (U) Renee DiResta, Dr. Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Dr. Jonathan Albright, and Ben Johnson, “The Tactics and Tropes of the Internet Research Agency,” *New Knowledge*, December 17, 2018, <https://www.newknowledge.com/articles/the-disinformation-report/>.

²⁵⁰ (U) *Ibid*

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

VIII. (U) OTHER RUSSIAN SOCIAL MEDIA INFORMATION WARFARE EFFORTS

A. (U) Main Intelligence Directorate (GRU)

(U) Other Russian government-funded and -directed entities, particularly the Russian intelligence services, also conducted social media efforts directed at the 2016 U.S. election. The Russian GRU conducted a wide variety of activities on social media. In January 2018 written responses to Committee inquiries, Facebook confirmed the presence of activity attributed to the GRU (also known as Fancy Bear or APT28) on its platform: “We have also tracked activity from a cluster of accounts we have assessed to belong to a group, APT28, that the U.S. government has publicly linked to Russian military intelligence services and the ‘DCLeaks’ organization.”²⁵¹

(U) Much of the activity related to APT28 found by Facebook in 2016 appeared to Facebook security experts as consistent with more typical offensive cyber activities, generally attributed to foreign intelligence services, including the targeting and attempted hacking of “employees of major U.S. political campaigns.” However, Facebook later detected the APT28 group’s engagement in what they described as “a new kind of behavior” later in the summer of 2016. Facebook uncovered GRU attempts to engage in influence activities, namely, “the creation of fake personas that were then used to seed stolen information to journalists.” As Facebook notes, “These fake personas were organized under the banner of an organization that called itself ‘DCLeaks.’”²⁵²

(U) The GRU’s direct role in the 2016 information warfare campaign was publicly exposed in yet another indictment obtained in July 2018 by the Special Counsel’s Office. This indictment against the GRU (“the GRU indictment”) outlined very specific details about the GRU’s online influence operations.

(U) The GRU indictment charged a number of GRU operatives, including Aleksandr Vladimirovich Osadchuk, a colonel in the Russian military and the commanding officer of the GRU’s unit 74455. The Special Counsel’s Office described Unit 74455’s role in the GRU’s influence operation: “Unit 74455 assisted in the release of stolen documents through the DCLeaks and Guccifer 2.0 personas, the promotion of those releases, and the publication of anti-Clinton content on social media accounts operated by the GRU.”

(U) The public accounting from the Special Counsel’s Office also reveals the cross-platform character of these information operations, which involved several of the social media companies, including Facebook and Twitter.²⁵³

²⁵¹ (U) Colin Stretch, Responses by Facebook to SSCI Questions for the Record from hearing on November 1, 2017, submitted January 8, 2018, available at <https://www.intelligence.senate.gov/sites/default/files/documents/Facebook%20Response%20to%20Committee%20QFRs.pdf>

²⁵² (U) *Ibid*

²⁵³ (U) Indictment, *United States v. Viktor Borisovich Netyksho, et al.*, Case 1:18-cr-00215-ABJ (D.D.C. July 13, 2018)

[REDACTED]
COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) On or about June 8, 2016, and at approximately the same time that the dcleaks.com website was launched, the Conspirators created a DCLeaks Facebook page using a preexisting social media account under the fictitious name “Alice Donovan.” In addition to the DCLeaks Facebook page, the Conspirators used other social media accounts in the names of fictitious U.S. persons such as “Jason Scott” and “Richard Gingrey” to promote the DCLeaks website.²⁵⁴

(U) On or about June 8, 2016, the Conspirators created the Twitter account @dcleaks. The Conspirators operated the @dcleaks Twitter account from the same computer used for other efforts to interfere with the 2016 U.S. presidential election. For example, the Conspirators used the same computer to operate the Twitter account @BaltimoreIsWhr, through which they encouraged U.S. audiences to “[j]oin our flash mob” opposing Clinton and to post images with the hashtag #BlacksAgainstHillary.²⁵⁵

[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

²⁵⁴ (U) *Ibid*

²⁵⁵ (U) *Ibid*

[REDACTED]
COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

- [REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

256

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

[REDACTED]
COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

[REDACTED]
COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(U) According to FBI.

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

COMMITTEE SENSITIVE -- RUSSIA INVESTIGATION ONLY

[REDACTED]

(U) A 2017 analysis by cybersecurity company FireEye outlined additional personas assessed to be associated with Kremlin-linked organizations. From FireEye's report: "We assess, with varying respective degrees of confidence, that Russian state-sponsored actors leveraged at least six false 'hacktivist' personas over the course of 2016 to conduct a series of information operations designed to further Russian political interests."²⁵⁸ Personas attributed to Russian state sponsors included Guccifer 2.0, DCLeaks, @anpoland (Anonymous Poland), Fancy Bears' Hack Team, @pravsector (Pravvy Sektor), and Bozkurt Hackers.²⁵⁹

(U) According to the 2017 analysis by FireEye: "Personas engaged in highly organized, systematized, and in some cases semi-automated social media dissemination campaigns to promote leaks and associated political narratives to media outlets and other influencers, in order to generate mainstream coverage and public attention." The activities included "cadres of Twitter accounts repetitively publishing identical tweets promoting threat activity. [The accounts were] [d]esigned to further spread awareness of incidents and boost the credibility of the personas by creating a grassroots impression that more genuine Twitter users are talking about incidents than is accurate."²⁶⁰

(U) Even as late as the fall of 2018, Facebook continued to find activity attributed to the GRU. In August 2018, Facebook announced additional actions against "Pages, groups and accounts that can be linked to sources the US government has previously identified as Russian military intelligence services."²⁶¹ As detailed by this enforcement of Facebook's terms of service, Russian-backed influence operations did not stop after the 2016 U.S. election.

²⁵⁷ (U) FBI, Written response to SSCI inquiry of January 3, 2019, March 1, 2019

²⁵⁸ (U) FireEye, "Anatomy of Russia's 2016 Influence Operations: Hacks, leaks, and the manipulation of political opinion," FireEye, Inc., October 2017

²⁵⁹ (U) The *New York Times* reported in September 2017 about activity sponsored by Anonymous Poland Twitter accounts that were involved in spreading political disinformation during the 2016 U.S. election. Their article noted "last October [2016], hundreds of Anonymous Poland Twitter accounts posted a forged letter on the stationery of the conservative Bradley Foundation . . . purporting to show that it had donated \$150 million to the Clinton campaign. The foundation denied any such contribution, which would have been illegal and highly unlikely."

²⁶⁰ (U) FireEye, "Anatomy of Russia's 2016 Influence Operations: Hacks, leaks, and the manipulation of political opinion," FireEye, Inc., October 2017.

²⁶¹ (U) Facebook Newsroom, "Taking Down More Coordinated Inauthentic Behavior," Facebook, August 21, 2018, <https://newsroom.fb.com/news/2018/08/more-coordinated-inauthentic-behavior/>

[REDACTED]

COMMITTEE SENSITIVE -- RUSSIA INVESTIGATION ONLY

[REDACTED]
COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

B. [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

²⁶² [REDACTED]

²⁶³ (U) *Ibid*

²⁶⁴ (U) *Ibid*

²⁶⁵ [REDACTED]

²⁶⁶ (U) *Ibid*

²⁶⁷ (U) *Ibid*

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

- [REDACTED]
- [REDACTED]

C. (U) Other Russian Government Activities

(U) In fall 2016, an FBI contractor analyzed a pro-Russian network of 13 Twitter accounts. The account @TeamTrumpRussia was the central node in this network. According to FBI:

(U) @TeamTrumpRussia and the other 12 accounts had a total of 1,504,511 followers at the time the contractor collected its data (17 to 19 October 2016). Four of the 13 accounts had a reciprocal relationship with Sergey Nalobin, an employee of Russia's Ministry of Foreign Affairs (MFA), whose Twitter profile states he is responsible for "digital diplomacy and social media." In August 2015, the United Kingdom refused to extend Nalobin's visa because of his involvement with a UK political group called "Conservative Friends of Russia," according to open source reporting.

(U) The FBI contractor found over 70 percent of the network's Tweets contained links to Websites "outside of the mainstream US press, and are known to be

²⁶⁸ [REDACTED]

²⁶⁹ [REDACTED]

²⁷⁰ (U) Ibid)

²⁷¹ [REDACTED]

²⁷² (U) Ibid

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

highly supportive of the Trump campaign. Of those sites, a number are also known to overtly draw content from Russian disinformation sites or are suspected of more covert connections to the Kremlin.”

A second report produced by the contractor examined the network’s efforts to promote allegations of voter fraud in advance of the election,

[REDACTED]

IX. (U) U.S. GOVERNMENT RESPONSE

(U) Throughout the 2016 U.S. presidential election campaign period, the IRA was a largely obscure entity operating far from America’s borders inside a stand-alone building in St Petersburg, Russia. Despite the fact that the IRA began planning and implementing its electoral interference as early as 2014, its existence and activities were not well known to the wider American public and the U.S. Government until well after the election had passed. Even the January 6, 2017 Intelligence Community Assessment, authored as the Intelligence Community’s comprehensive account of Russia’s attack on the U.S. election, made no more than a passing reference to the cadre of professional trolls housed in the IRA.²⁷⁵ In early September 2017, Facebook—under significant pressure from this Committee and the broader United States Congress—disclosed a collection of accounts linked to the IRA, beginning to bring the scope of

²⁷³ (U) FBI, Written response to SSCI inquiry of January 3, 2019, March 1, 2019

²⁷⁴ [REDACTED]

²⁷⁵ [REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

the IRA's electoral activities into focus.²⁷⁶ The criminal nature of the IRA's interference crystallized with the Special Counsel's public indictment in February 2018.²⁷⁷

(U) Some of the starkest early insights into IRA activities for western audiences were reported by *The Guardian's* Shaun Walker in his April 2015 report, "Salutin' Putin," and by Adrian Chen in *The New York Times Magazine* investigative report on the IRA, "The Agency."²⁷⁸ These investigative reports take on new significance in light of the Committee's work.

(U) The U.S. Intelligence Community's ability to identify and combat foreign influence operations carried out via social media channels has improved since the 2016 U.S. presidential election. Communication and information sharing between government agencies and the social media companies has been a particular point of emphasis, and the Committee strongly supports these efforts. Characterizing the company's present relationship with Federal law enforcement, Twitter representatives have informed the Committee, "We now have well-established relationships with law enforcement agencies active in this arena, including the Federal Bureau of Investigation Foreign Influence Task Force and the U.S. Department of Homeland Security's Election Security Task Force."²⁷⁹ Facebook has made similar representations to the Committee:

*After the election, when the public discussion of 'fake news' rapidly accelerated, we continued to investigate and learn more about the new threat of using fake accounts to amplify divisive material and deceptively influence civic discourse. We shared what we learned with government officials and others in the tech industry. Since then, we also have been coordinating with the FBI's Counterintelligence Division and the DOJ's National Security Division. We are also actively engaged with the Department of Homeland Security, the FBI's Foreign Influence Task Force, and Secretaries of State across the US on our efforts to detect and stop information operations, including those that target elections.*²⁸⁰

(U) This progress notwithstanding, it is important to memorialize the state of information sharing between law enforcement and the social media companies in fall 2016. The FBI was examining social media content for its potential as a means of effectuating foreign influence operations in 2016, but mostly through contractors:

²⁷⁶ (U) Alex Stamos, Facebook, "An Update on Information Operations on Facebook," September 6, 2017: <https://newsroom.fb.com/news/2017/09/information-operations-update/>

²⁷⁷ (U) The first publicly available insight into the IRA, however, came several years prior as a result of the efforts of a small number of diligent and prescient reporters. By 2015, Russian reporters, including Andrei Soshnikov who went undercover as a troll in the IRA in 2013, had begun to expose the inner workings of the IRA.

²⁷⁸ (U) Shaun Walker, "Salutin' Putin: Inside a Russian troll House." *The Guardian*, April 2, 2015; Adrian Chen, "The Agency," *The New York Times Magazine*, June 2, 2015.

²⁷⁹ (U) Sean Edgett, Letter to SSCI Chairman Richard Burr and Vice Chairman Mark Warner, January 25, 2019.

²⁸⁰ (U) Facebook, Letter to SSCI Chairman Richard Burr and Vice Chairman Mark Warner, February 26, 2019.

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) In October 2016, the Counterintelligence Division tasked a contractor to identify Russian influence activity on Twitter. The FBI contractor collected and analyzed a sample of Twitter activity conducted by an overtly pro-Russian network of 13 Twitter accounts and their followers, including automated accounts, which promoted US election-related news and leaked Democratic party emails published by WikiLeaks ²⁸¹

(U) The apparently outsourced nature of this work is troubling: it suggests FBI either lacked resources or viewed work in this vein as not warranting more institutionalized consideration. None of the resulting analysis or even notice of the underlying activity appears to have been communicated to the social media company in question prior to the election. Twitter's General Counsel told the Committee in January 2019: "To the best of our knowledge, Twitter received no information from the U.S. government in advance of the 2016 election about state sponsored information operations" ²⁸²

(U) Facebook, however, had more robust information exchange with law enforcement in 2016: "In several instances before the 2016 U.S. election, our threat intelligence team detected and mitigated threats from actors with ties to Russia and reported them to US law enforcement officials, and they subsequently shared useful feedback with us." ²⁸³ Still, it was incumbent on Facebook to initiate the dialogue with law enforcement, and the exchange of information was predicated on Facebook bringing foreign influence activity directed at Americans to the attention of the FBI.

[REDACTED]

[REDACTED] Reflecting on the U.S. Government's handling of social media in the context of Russia's influence operations, former Deputy National Security Advisor for Strategic Communications Ben Rhodes commented [REDACTED]

²⁸¹ (U) FBI, Written response to SSCI inquiry of January 3, 2019, March 1, 2019

²⁸² (U) Sean Edgett, Letter to SSCI Chairman Richard Burr and Vice Chairman Mark Warner, January 25, 2019

²⁸³ (U) Facebook, Letter to SSCI Chairman Richard Burr and Vice Chairman Mark Warner, February 26, 2019

²⁸⁴ (U) [REDACTED] Committee transcript of September 15, 2017 interview of [REDACTED]
[REDACTED] CIA

[REDACTED]
 COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

[REDACTED]
 [REDACTED]
 [REDACTED] Commenting on the [REDACTED]
 [REDACTED] Former Homeland
 Security Advisor Lisa Monaco offered a [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

(U) Further increasing this challenge, detecting foreign influence operations on social media becomes more difficult as enabling technologies improve. In addition to the growing number of actors engaged in social media-facilitated, online manipulation efforts, the technology that aids in developing more realistic and convincing propaganda material also continues to advance

(U) The ongoing development of artificial intelligence and improvements to false video and image “Deepfake” techniques are making it more difficult to spot fake content, manipulated videos, and forged recordings online. “Deepfakes” entail using artificial intelligence-based technology to create or alter video content so that it appears to present something that did not actually occur. Although these capabilities are relatively nascent, they are being perfected at a pace that eclipses the effort to create the technology for detecting and mitigating fraudulent media content

(U) Advanced micro-targeting in the commercial sector is also rapidly becoming more effective. Propagandists will be able to continue to utilize increasingly advanced off-the-shelf capabilities to target specific individuals with highly targeted messaging campaigns.

²⁸⁵ (U) SSCI Transcript of the Interview with Benjamin J Rhodes, Former Deputy National Security Adviser for Strategic Communications, July 25, 2017

²⁸⁶ (U) *Ibid*

²⁸⁷ (U) SSCI transcript of the Closed Hearing on White House Awareness of and Response to Russian Active Measures, July 17, 2018

²⁸⁸ (U) SSCI Transcript of the Interview with John Carlin, Former Assistant Attorney General for National Security, September 25, 2017

[REDACTED]

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) Automation is also getting better. Bots—already advanced in sophistication relative to predecessor generations—are becoming harder and harder to detect. Researchers, including Emilio Ferrara and his team from the University of Southern California and the University of Indiana, have studied the increasing sophistication of automated accounts. Their research suggests a detection “arms race,” between the purveyors of automated activity and those intent on its reliable identification, similar to the fight against the indiscriminate dissemination of commercial content to vast unsoliciting audiences, or “spam,” in the past.²⁸⁹

(U) In addition, as the larger social media platforms begin to increase their detection capabilities, disinformation tactics have begun to shift to accommodate those changes. Influence operatives have begun to move away from targeting Facebook and Twitter newsfeeds, transitioning to messaging platforms like WhatsApp, Telegram, and WeChat. These direct interactions are much harder to detect and if these tactics are scaled, they could have a significant effect on target audiences.

(U) The evolution and proliferation of the core influence techniques used by the IRA could jeopardize facets of American society that have yet to be attacked by influence operatives. The same bots, trolls, click-farms, fake pages and groups, advertisements, and algorithm-gaming the IRA used to conduct an information warfare campaign can be repurposed to execute financial fraud, stock-pumping schemes, digital advertising manipulation, industrialized marketing of counterfeit prescription drugs, and scaled deceptions that spread malware.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Facebook CEO Sheryl Sandberg testified to the Committee in 2018 that, “Our focus is on inauthenticity, so if something is inauthentic, whether it’s trying to influence domestically or trying to influence on a foreign basis—and actually a lot more of the activity is domestic—we take it down.”²⁹¹ But as the IRA’s approach suggests, the current constructs for removing influence operation content from social media are being surpassed by foreign influence operatives, who adapt their tactics to either make their inauthenticity indiscernible, their automated propagation too rapid to control, or their operations compliant with terms of service.

(U) An October 2018 report provided to the Committee by social media analytics firm Graphika indicates that Russian disinformation efforts may be focused on gathering information and data points in support of an active measures campaign targeted at the 2020 U.S. presidential

²⁸⁹ (U) Emilio Ferrara, et al., “The Rise of Social Bots,” *Communications of the ACM*, July 2016, Volume 59, Number 7, 96-104, <https://cacm.acm.org/magazines/2016/7/204021-the-rise-of-social-bots/fulltext#R22>.

²⁹⁰

²⁹¹ (U) Sheryl Sandberg, Hearing before the Senate Select Committee on Intelligence, September 5, 2018, available at <https://www.intelligence.senate.gov/hearings/open>

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

election. The USA Really website and its affiliated social media channels, which have been linked to the IRA on the basis of technical findings, have “engaged in a number of campaigns seemingly focused on gathering personal information (emails, phone numbers, and bank details) of US-based audiences sympathetic to Russian disinformation topics.”²⁹²

X. (U) THE COMMITTEE’S REVIEW OF RUSSIA’S USE OF SOCIAL MEDIA

(U) Throughout 2017, 2018, and 2019, in addition to its review of classified information on the topic, the Committee worked to elevate public awareness of the threat posed by Russia online, an effort that included applying pressure on social media companies to more fully examine their platforms for suspected Russian government activities.

(U) On March 30, 2017, the Committee held a public hearing for the purpose of discussing Russian malign influence efforts. The hearing, entitled “Disinformation: A Primer in Russian Active Measures and Influence Campaigns,” included testimony from a number of expert witnesses who provided insights into the mechanics of Russian influence operations and warned that Russian social media manipulation “has not stopped since the election in November and continues fomenting chaos amongst the American populace.”²⁹³ Committee Members joined witnesses in calling on social media companies to do more to uncover the Russian active measures activities occurring on their platforms. In the wake of the hearing, the Committee publicly and privately pressed social media companies to release more information about the activity of Russian actors on social media in the lead-up to the 2016 election.

(U) On April 27, 2017, Facebook released a white paper detailing an array of malicious information operations by organized actors on the Facebook social media platform.²⁹⁴ Though the paper implicitly attributed the operations to Russian intelligence actors, the company had yet to uncover the substantial operational activity of the IRA.²⁹⁵ Finally, in late summer 2017, Facebook notified the Committee of its findings from an internal information security investigation which uncovered 470 accounts, groups, and pages linked to the IRA.²⁹⁶

²⁹² (U) Graphika Strategic Assessment, *USA Really Shows a New Face of Russian Disinformation Efforts Against the US*, October 10, 2018.

²⁹³ (U) Clint Watts, Written Testimony, Hearing before the Senate Select Committee on Intelligence, March 30, 2017, available at <https://www.intelligence.senate.gov/hearings/open>.

²⁹⁴ (U) Jen Weedon, William Nuland, and Alex Stamos, “Information Operations and Facebook,” Facebook Newsroom, April 27, 2017, <https://fbnewsroom.us.files.wordpress.com/2017/04/facebook-and-information-operations-v1.pdf>

²⁹⁵ (U) The Facebook white paper specifically stated that Facebook was not in a position to make “definitive attribution” to the actors sponsoring this activity. However, it was willing to publicly say that the data it uncovered “does not contradict the attribution provided by the U S Director of National Intelligence in the report dated January 6, 2017.” This is a clear reference to Russian-linked activity. Alex Stamos, one of the authors of the white paper, also made clear to SSCI staff in a briefing around that time that indicators pointed to Russian-linked intelligence activity.

²⁹⁶ (U) Facebook briefed Committee staff on its findings on September 6, 2017, and publicized those same findings later that day.

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) The subsequent September 2017 release of IRA-linked account information by Facebook publicly confirmed the existence of IRA-purchased advertisements. This precipitated audits at Twitter, Google, YouTube, Reddit, and other social media companies, which uncovered additional accounts and activity originating with the IRA. As more and more information became public, the wide-ranging and cross-platform nature of the attack emerged. The Committee made formal requests to multiple social media companies for any data associated with these operations, in order to better assess Russia's tactics and objectives. On the basis of negotiations with the Committee, several companies—including Facebook, Twitter, and Google—furnished varying quantities of data not previously released.

(U) Beginning with an initial delivery of metadata and content in late 2017, Facebook, Twitter, and Google provided the Committee with information relating to a number of IRA-affiliated social media accounts, including advertisements purchased in connection with those accounts, consisting of:

- Metadata and content associated with 81 Facebook Pages, including approximately 61,500 unique Facebook organic posts and 3,393 paid advertisements;
- Similar information from nearly 116,000 Instagram posts across 133 Instagram accounts;
- Metadata and content of approximately 10.4 million tweets across 3,841 Twitter accounts, as well as unique account information; and,
- Approximately 1,100 YouTube videos (43 hours of video) across 17 account channels.

(U) Each of these accounts and their associated activities were determined to be connected to the IRA by the social media companies themselves, based on the companies' internal investigations.²⁹⁷ This cooperation by the social media companies secured for the Committee a significant and unique dataset on which to base further study into IRA activities. Much of the analysis in this report derives from that initial dataset.²⁹⁸ The datasets provided to the Committee demonstrate the IRA's tactics and capabilities, and add depth to the public's understanding of how the IRA conducted its information warfare campaign against the United States in 2016.

(U) In order to thoroughly examine this sizeable aggregation of technical data, the Committee sought assistance from the TAG. At the Committee's request, the two TAG working

²⁹⁷ (U) The Committee has not attempted to make an independent determination as to the accuracy of the social media companies' internal investigations or the true provenance of the accounts themselves, though the Committee does believe that the data provided is almost certainly not the entirety of the IRA's activity on these platforms. Subsequent reporting and additional research from outside analysts have corroborated much of the original attribution from the companies.

²⁹⁸ (U) Twitter has since published its entire dataset on IRA-linked activity. On October 17, 2018, Twitter publicly released all the accounts and related content it has identified so far as associated with the activities of the IRA, dating back to 2009.

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

groups each conducted an independent, expert analysis of the social media company-provided dataset. Combining this dataset with the TAG's own internal research and data analytic capabilities, the TAG working groups studied U.S. social media platforms for indications of additional and undiscovered Russian foreign influence activity. Ultimately, the three TAG working group leads provided their findings and analysis to the Committee in a series of presentations that included staff briefings, a closed Member briefing, and a full Committee public hearing held on August 1, 2018.

(U) The TAG working groups each published their findings in two public reports that were released on December 17, 2018. The efforts of the TAG working groups, and the team leads specifically, resulted in two valuable publications that have significantly informed the Committee's understanding of Russia's social media-predicated attack against our democracy. The Committee supports the general findings of the TAG working groups, and notes that much of this Volume's analysis is derived from their work. The two reports are attached as addendums to this Volume.

XI. (U) RECOMMENDATIONS

(U) This challenge requires an integrated approach that brings together the public and private sectors. This approach must be rooted in protecting democratic values, including freedom of speech and the right to privacy. The Federal government, civil society, and the private sector, including social media and technology companies, each have an important role to play in deterring and defending against foreign influence operations that target the United States.

A. (U) Industry Measures

(U) The Committee recommends that social media companies work to facilitate greater information sharing between the public and private sector, and among the social companies themselves about malicious activity and platform vulnerabilities that are exploited to spread disinformation. Formalized mechanisms for collaboration that facilitate content sharing among the social media platforms in order to defend against foreign disinformation, as occurred with violent extremist content online, should be fostered. As researchers have concluded: "Many disinformation campaigns and cyber threats do not just manipulate one platform; the information moves across various platforms or a cyber-attack threatens multiple companies' network security and data integrity. There must be greater cooperation within the tech sector and between the tech sector and other stakeholders to address these issues."²⁹⁹ The Committee agrees.

(U) This should not be a difficult step. Models for cooperation already exist and can be developed further:

²⁹⁹ (U) *Harmful Content: The Role of Internet Platform Companies in Fighting Terrorist Incitement and Politically Motivated Disinformation*, Stern Center for Business and Human Rights, New York University, November 3, 2017, <http://www.stern.nyu.edu/experience-stern/faculty-research/harmful-content-role-internet-platform-companies-fighting-terrorist-incitement-and-politically>.

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

- (U) Google, Facebook, Twitter, and Microsoft already maintain a common database of digital fingerprints identifying violent extremist videos. These four companies also participate in a Cyberhate Problem-Solving Lab run by the Anti-Defamation League's Center for Technology and Society.
- (U) Dozens of tech companies participate in the Global Network Initiative, a tech policy forum devoted to protecting digital rights globally.
- (U) Other examples include the Global Internet Forum to Counter Terrorism, whose goal is to substantially disrupt terrorists' ability to disseminate violent extremist propaganda, and glorify real-world acts of violence; and the National Cyber Forensics and Training Alliance, a nonprofit partnership between industry, government, and academia that enables cooperation to disrupt cyber-crime.
- (U) Two models from the world of financial intelligence are the UK's Joint Money Laundering Intelligence Taskforce and the United States' Financial Crimes Enforcement Exchange.

(U) At the urging of the Committee, social media companies have begun to share indicators, albeit on an ad hoc basis.

(U) The Committee further recommends that social media companies provide users with:

- (U) Greater transparency about activity occurring on their platforms, including disclosure of automated accounts (i.e., bots);
- (U) Greater context for users about why they see certain content;
- (U) The locational origin of content; and,
- (U) Complete and timely public exposure of malign information operations.

(U) Social media platforms are not consistent in proactively, clearly, and conspicuously notifying users that they have been exposed to these efforts, leaving those who have been exposed to the false information or accounts without the knowledge they need to better evaluate future social media content that they encounter. Notifications to individual users should be clearly stated, device neutral, and provide users all the information necessary to understanding the malicious nature of the social media content or accounts they were exposed to.

(U) Finally, the analytic and computational capabilities of outside researchers should be put to greater use by the social media companies. Although social media companies have released some data about the manipulation of their platforms by foreign actors, the Committee recommends that social media companies be more open to facilitating third-party research

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

designed to assist them in defending their platforms from disinformation campaigns. The results of collaboration with outside researchers should be shared with users who have been exposed to disinformation.

B. (U) Congressional Measures

(U) The Committee recommends that Congress consider ways to facilitate productive coordination and cooperation between U.S. social media companies and the pertinent government agencies and departments, with respect to curtailing foreign influence operations that target Americans—to include examining laws that may impede that coordination and cooperation. Information sharing between the social media companies and law enforcement must improve, and in both directions. Data must be shared more quickly and in a more useful manner. This will improve the ability of social media companies to quickly identify and disclose malign foreign influence operations to the appropriate authorities, and it will improve the ability of law enforcement agencies to respond in a timely manner.

(U) Informal channels of communication may not be sufficient to accomplish this goal. As part of its examination, Congress must assess whether formalized information sharing between law enforcement and social media companies is useful and appropriate. Certain statutory models already exist, such as U.S. Code, Title 18, Section 2258A (Reporting requirements of providers). That section requires social media companies to report any apparent violations of laws relating to child sexual exploitation to the National Center for Missing and Exploited Children (NCMEC). NCMEC is a private, non-profit entity that serves a statutorily authorized clearinghouse role: it receives the providers' reports, assesses the reports for criminality and threats to children, and refers them to the appropriate law enforcement authorities for action. Formalizing a relationship between social media companies and the government does present some legal considerations,³⁰⁰ but these should not be prohibitive.

(U) Further, the Committee recommends that Congress examine legislative approaches to ensuring Americans know the sources of online political advertisements. The Federal Election Campaign Act of 1971 requires political advertisements on television, radio and satellite to disclose the sponsor of the advertisement. The same requirements should apply online. This will also help to ensure that the IRA or any similarly situated actors cannot use paid advertisements for purposes of foreign interference.

(U) Finally, Congress should continue to examine the full panoply of issues surrounding social media, particularly those items that may have some impact on the ability of users to masquerade as others and provide inauthentic content. Issues such as privacy rules, identity

³⁰⁰ (U) For example, courts have considered whether NCMEC and providers should be considered state actors and therefore subject to Constitutional requirements such as the Fourth Amendment when identifying and sharing child exploitation material with law enforcement. See, e.g., *United States v. Reddick*, 900 F.3d 636 (5th Cir. 2018) (holding that provider acted in a private capacity when identifying and reporting child exploitation images to NCMEC); *United States v. Ackerman*, 831 F.3d 1292 (10th Cir. 2016) (holding that NCMEC was a state actor when reviewing and reporting child exploitation material to law enforcement).

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

validation, transparency in how data is collected and used, and monitoring for inauthentic or malign content, among others, deserve continued examination. In addition, Congress should monitor the extent to which social media companies provide users with the information laid out in section A and, if necessary, take remedial steps.

C. (U) Executive Branch Measures

(U) The Committee recommends that the Executive Branch should, in the run up to the 2020 election, reinforce with the public the danger of attempted foreign interference in the 2020 election.

(U) Addressing the challenge of disinformation in the long-term will ultimately need to be tackled by an informed and discerning population of citizens who are both alert to the threat and armed with the critical thinking skills necessary to protect against malicious influence. A public initiative—propelled by federal funding but led in large part by state and local education institutions—focused on building media literacy from an early age would help build long-term resilience to foreign manipulation of our democracy. Such an effort could benefit from the resources and knowledge of private sector technology companies.

(U) Additionally, and in concert with initiatives that heighten public awareness about disinformation, media organizations should establish guidelines for using social media accounts as sources, to guard against quoting falsified accounts or state-sponsored disinformation.

(U) The Committee further recommends that the Executive Branch stand up an interagency task force to continually monitor and assess foreign country's use of social media platforms for democratic interference. The task force should periodically advise the public and Congress on its findings and issue annual reports providing recommendations to key actors, including executive branch departments and agencies, industry, and civil society. The task force should also develop a deterrence framework to inform U.S. Government responses to foreign influence efforts using social media.

(U) The Committee further recommends that the Executive Branch develop a clear plan for notifying candidates, parties, or others associated with elections when those individuals or groups have been the victim of a foreign country's use of social media platforms to interfere in an election. The plan should provide standards for deciding who to notify and when, and should clearly delineate which agencies are responsible for making the notifications and to whom.

D. (U) Other Measures

(U) The Committee recommends that candidates, campaigns, surrogates for campaigns, and other public figures engaged in political discourse on social media be judicious in scrutinizing the sources of information that they choose to share or promote online. Such public figures, precisely because of the reach of their networks, are valuable targets for adversaries, and can quickly be co-opted into inadvertently promoting a foreign influence operation.

COMMITTEE SENSITIVE – RUSSIA INVESTIGATION ONLY

(U) Amplification of foreign content, intentional or otherwise, is celebrated by those like the IRA, who wish to enflame our differences in order to advance their own interests. The Committee recommends that all Americans, and particularly those with a public platform, take on the responsibility of doing due diligence in their use of social media, so as to not give greater reach to those who seek to do our country harm.

(U) The Committee recommends the implementation of a Public Service Announcement (PSA) campaign, potentially by the social media industry or by government actors, that promotes informed social media behavior and raises awareness about various types of foreign influence and interference activity that is targeting American citizens, businesses, and institutions. Foreign influence campaigns that target social media users in the United States should receive similar attention to the dangers of smoking and the environmental risks of pollution. Broader exposure of specific foreign government linkages to social media content and influence activities would handicap the effectiveness of information operations.

XII. (U) Additional Views of Senator Wyden

(U) If American democracy is going to withstand the onslaught of foreign government influence campaigns targeting U.S. elections, our government must address the problem of targeted ads and other content tailored to consumers' demographic and political profiles. Targeted influence campaigns can weaponize personal information about Americans, not just to manipulate how, or whether they vote, but to identify and use real individuals to amplify content and influence like-minded followers. Targeted influence campaigns are far more effective and cost-efficient than blanket dissemination of propaganda. They are also more deceptive and substantially harder to identify and expose.

(U) While the Committee's description of Russia's 2016 influence campaign is deeply troubling, even more sophisticated and effective options are available to adversaries who buy, steal, or otherwise obtain information about the Americans they are seeking to influence. This threat is increased due to the availability of ad micro-targeting services offered by social media and online advertising companies, particularly those that deliver ads to specific Americans based on a list of email addresses or telephone numbers provided by an advertiser. Such ad targeting systems are highly prone to abuse when coupled with private information about Americans, which is widely available because of weak corporate data security and privacy practices, the absence of strong privacy laws, and the booming market for commercial data brokers, whose practices are largely unregulated. Each of these problems demands an effective response.

(U) The Committee report states that, in 2016, IRA operators did not take advantage of all of Facebook's targeting capabilities, including "Custom Audiences," which would have allowed the Russians to use outside data and contact information to conduct "advanced micro-targeting."¹ The danger posed by these services is magnified by the ease with which personal data can be purchased or stolen by a foreign adversary with advanced cyber capabilities. Indeed, as the Department of Justice's indictment against the IRA revealed, the IRA used stolen identities of real Americans to create accounts and post content, purchase advertising on social media sites and finance their influence activities through PayPal.²

(U) In the wake of the 2016 influence campaign by Russia, the social media companies announced transparency measures that allow the recipients of targeted ads to understand how they were selected to see the ads. However, these transparency measures only apply when the tech companies are doing the targeting on behalf of the advertiser, for example when an advertiser asks Facebook to deliver its ads to a particular age and gender demographic. The companies' ad transparency systems do not apply to services like Custom Audiences through which the platform merely serves as a messenger for ads directed according to a list of targets obtained by the malign influencer from a data broker or a hacked database. I have already publicly called on the social media platforms to voluntarily suspend the use of Custom Audiences and other micro-targeting services for political and issue ads, and I repeat that call

¹ (U) Facebook has acknowledged that the IRA used custom audiences based on user engagement with certain IRA pages. See Responses by Facebook to Questions for the Record from Senator Wyden from hearing on September 5, 2018, submitted October 26, 2018, p. 45.

² (U) Indictment, *United States of America v. Internet Research Agency et al.*, Case 1:18-cr-00032-DLF (D.D.C. February 16, 2018).

here.³ Until Facebook, Google, and Twitter have developed effective defenses to ensure that their ad micro-targeting systems cannot be exploited by foreign governments to influence American elections, these companies must put the integrity of American democracy over their profits.

(U) At the Committee's September 5, 2018, hearing, I asked Facebook's Chief Operating Officer Sheryl Sandberg and Twitter's Chief Executive Officer Jack Dorsey whether increased protections and controls to defend personal privacy should be a national security priority. Both witnesses answered in the affirmative. Weak data privacy policies increase the ability of foreign adversaries to micro-target Americans for purposes of election interference. Facebook's total failure to prevent Cambridge Analytica and Aleksandr Kogan from obtaining sensitive personal data about Facebook users, as well as Facebook's troubling data-sharing partnerships with Chinese smart phone manufacturers, demonstrate clear gaps in federal data privacy laws and highlight obvious weaknesses that could be exploited in future influence campaigns.⁴

(U) Broad, effective data security and privacy policies, implemented across the platforms and enforced by a tough, competent government regulator, are necessary to prevent the loss of consumers' data and the abuse of that data in election influence campaigns. Congress should pass legislation that addresses this concern in three respects. First, the Federal Trade Commission must be given the power to set baseline data security and privacy rules for companies that store or share Americans' data, as well as the authority and resources to fine companies that violate those rules. Second, companies should be obligated to disclose how consumer information is collected and shared and provide consumers the names of every individual or institution with whom their data has been shared. Third, consumers must be given the ability to easily opt out of commercial data sharing.

(U) Companies that hold private information on Americans also must do far more to protect that information from hacking. That includes telecommunications companies that hold information about customers' communications, web browsing, app usage and location. Too much of this information is held for too long, increasing the risk that it will be hacked. Besides strengthening their cyber security practices, companies can take steps to delete consumer information as soon as it is not absolutely necessary for business purposes.

(U) Increased transparency is another critical priority if the United States is to defend itself against foreign election influence campaigns. A clear lesson from 2016 is that the U.S. public needs information about influence campaigns prior to the election itself. That includes information about U.S. adversaries' attempts to undermine some candidates while assisting others. In 2016, the specific intent of the Russians was not made public during the election. Intelligence related to Russian intent was not even made available to the full Committee until after the election, at which point I and other members called for its declassification. And it was not until the publication of the Intelligence Community Assessment in January 2017 that the public was finally provided this information.

³ (U) Donie O'Sullivan, "Senator calls on Facebook and Google to ban political ad targeting," *CNN*, August 14, 2019.

⁴ (U) See Responses by Facebook to Questions for the Record from Senator Wyden from hearing on September 5, 2018, submitted October 26, 2018, pp. 46-55.

[REDACTED]

[REDACTED]

[REDACTED] Between now and the 2020 election, the Intelligence Community must find ways to keep the U.S. public informed not only of individual influence operations, but the Community's assessment of the goals and intent of Russia and other foreign adversaries.

⁵ [REDACTED] National Intelligence Council, Sense of the Community Memorandum, [REDACTED]
[REDACTED] September 13, 2019.

[REDACTED]

Senate Select Committee on Intelligence**July 3, 2018**

The Senate Select Committee on Intelligence (SSCI) is conducting a bipartisan investigation into a wide range of Russian activities relating to the 2016 U.S. presidential election. While elements of the investigation are ongoing, the Committee is releasing initial, unclassified findings on a rolling basis as distinct pieces of the investigation conclude.

The Committee has concluded an in-depth review of the Intelligence Community Assessment (ICA) produced by CIA, NSA, and FBI in January of 2017 on Russian interference in the 2016 U.S. presidential election (*Assessing Russian Activities and Intentions in Recent U.S. Elections*; declassified version released January 6, 2017) and have initial findings to share with the American people.

- The ICA was a seminal intelligence product with significant policy implications. In line with its historical role, the Committee had a responsibility to conduct an in-depth review of the document.
- In conducting its examination, the Committee reviewed thousands of pages of source documents and conducted interviews with all the relevant parties – including agency heads, managers, and line analysts - who were involved in developing the analysis and drafting the assessment.
- The Committee is preparing a comprehensive, classified report detailing our conclusions regarding the ICA on Russian activities. That report, when complete, will be submitted for a classification review, and the unclassified version will be released to the public.

The Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent U.S. Elections

Summary of Initial Findings

The Intelligence Community Assessment (ICA) released in January 2017 assessed that Russian activities in the run-up to the 2016 presidential election represented a significant escalation in a long history of Russian attempts to interfere in U.S. domestic politics. This escalation was made possible by cyber-espionage and cyber-driven covert influence operations, conducted as part of a broader "active measures" campaign that included overt messaging through Russian-controlled propaganda platforms. The ICA revealed key elements of a comprehensive and multifaceted Russian campaign against the United States as it was understood by the U.S. Intelligence Community at the end of 2016.

President Obama in early December 2016 tasked the Intelligence Community with writing an assessment that would capture the existing intelligence on Russian interference in U.S. elections. By early January, the CIA, NSA, and FBI produced a joint assessment under the auspices of the ODNI, titled *Assessing Russian Activities and Intentions in Recent U.S. Elections*, which included both classified and unclassified versions. Only three agencies were represented in the drafting process because of the extreme sensitivity of the sources and methods involved.

Initial Findings

Summary

The Committee finds that the Intelligence Community met President Obama's tasking and that the ICA is a sound intelligence product. While the Committee had to rely on agencies that the sensitive information and accesses had been accurately reported, as part of our inquiry the Committee reviewed analytic procedures, interviewed senior intelligence officers well-versed with the information, and based our findings on the entire body of intelligence reporting included in the ICA.

The Committee finds the difference in confidence levels between the NSA and the CIA and FBI on the assessment that "Putin and the Russian Government aspired to help President-elect Trump's election chances" appropriately represents analytic differences and was reached in a professional and transparent manner.

In all the interviews of those who drafted and prepared the ICA, the Committee heard consistently that analysts were under no politically motivated pressure to reach any conclusions. All analysts expressed that they were free to debate, object to content, and assess confidence levels, as is normal and proper for the analytic process.

As the inquiry has progressed since January 2017, the Committee has seen additional examples of Russia's attempts to sow discord, undermine democratic institutions, and interfere in U.S. elections and those of our allies.

Russian Efforts to Influence the 2016 Election

The ICA states that:

Russian efforts to influence the 2016 U.S. presidential election represent the most recent expression of Moscow's longstanding desire to undermine the U.S.-led liberal democratic order, but these activities demonstrated a significant escalation in directness, level of activity, and scope of effort compared to previous operations¹.

- The Committee found that this judgment was supported by the evidence presented in the ICA. Since its publication, further details have come to light that bolster the assessment.
- The ICA pointed to initial evidence of Russian activities against multiple U.S. state or local electoral boards. Since the ICA was published, the Committee has learned more about Russian attempts to infiltrate state election infrastructure, as outlined in the findings and recommendations the Committee issued in March 2018.
- While the ICA briefly discussed the activities of the Internet Research Agency, the Committee's investigation has exposed a far more extensive

¹Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent U.S. Elections, 6 January 2017. P.ii. (NOTE: all page numbers referenced are from the Unclassified ICA)

Russian effort to manipulate social media outlets to sow discord and to interfere in the 2016 election and American society.

Russian Leadership Intentions

The ICA states that:

We assess Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the U.S. presidential election. Russia's goals were to undermine public faith in the U.S. democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency. We further assess Putin and the Russian Government developed a clear preference for President-elect Trump².

- The Committee found that the ICA provided a range of all-source reporting to support these assessments.
- The Committee concurs with intelligence and open-source assessments that this influence campaign was approved by President Putin.
- Further, a body of reporting, to include different intelligence disciplines, open source reporting on Russian leadership policy preferences, and Russian media content, showed that Moscow sought to denigrate Secretary Clinton.
- The ICA relies on public Russian leadership commentary, Russian state media reports, public examples of where Russian interests would have aligned with candidates' policy statements, and a body of intelligence reporting to support the assessment that Putin and the Russian Government developed a clear preference for Trump.

The ICA also states that:

We also assess Putin and the Russian Government aspired to help President-elect Trump's election chances when possible by discrediting Secretary Clinton and publicly contrasting her unfavorably to him³.

² Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent U.S. Elections, 6 January 2017. P.ii.

³ Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent U.S. Elections, 6 January 2017. P.ii.

- The Committee found that the ICA provided intelligence and open source reporting to support this assessment, and information obtained subsequent to publication of the ICA provides further support.
- This is the only assessment in the ICA that had different confidence levels between the participating agencies -the CIA and FBI assessed with "high confidence" and the NSA assessed with "moderate confidence"-so the Committee gave this section additional attention.

The Committee found that the analytical disagreement was reasonable, transparent, and openly debated among the agencies and analysts, with analysts, managers, and agency heads on both sides of the confidence level articulately justifying their positions.

Russian Cyber Operations

The ICA states that:

Russia's intelligence services conducted cyber operations against targets associated with the 2016 U.S. presidential election, including targets associated with both major U.S. political parties. We assess Russian intelligence services collected against the U.S. primary campaigns, think tanks, and lobbying groups they viewed as likely to shape future U.S. policies. In July 2015, Russian intelligence gained access to Democratic National Committee (DNC) networks and maintained that access until at least June 2016.⁴

- The Committee found this judgment supported by intelligence and further supported by our own investigation. Separate from the ICA, the Committee has conducted interviews of key individuals who have provided additional insights into these incidents.

Russian Propaganda

The ICA states that:

Russia's state-run propaganda machine-comprised of its domestic media apparatus, outlets targeting global audiences such as RT and Sputnik, and a

⁴ Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent U.S. Elections, 6 January 2017. P.2.

*network of quasi-governmental trolls-contributed to the influence campaign by serving as a platform for Kremlin messaging to Russian and international audiences.*⁵

- The ICA provides a summary of Russian state media operations in 2012 and notes that RT (formerly Russia Today) and Sputnik are coordinated Russian-state platforms. The ICA fails to provide an updated assessment of this capability in 2016, which the Committee finds to be a shortcoming in the ICA, as this information was available in open source.
- The Committee notes that the ICA does not comment on the potential effectiveness of this propaganda campaign, because the U.S. Intelligence Community makes no assessments on U.S. domestic political processes.

Historical Context

The ICA states that:

*During the Cold War, the Soviet Union used intelligence officers, influence agents, forgeries, and press placements to disparage candidates perceived as hostile to the Kremlin, according to a former KGB archivist...For decades, Russian and Soviet intelligence services have sought to collect insider information from U.S. political parties that could help Russian leaders understand a new U.S. administration's plans and priorities*⁶.

- The Committee found the ICA's treatment of the historical context of Russian interference in U.S. domestic politics perfunctory.
- The unclassified ICA cites efforts to collect on the 2008 election and the Soviet recruitment of an activist who reported on Jimmy Carter's campaign in the 1970s, demonstrating two examples of Russian interest in U.S. elections. The ICA failed entirely to summarize historic collection by U.S. agencies as well as extensive open-source reporting – significant elements of which are derived from Russian intelligence archives – to present a more relevant historical context.

⁵ Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent U.S. Elections, 6 January 2017. P.3.

⁶ Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent U.S. Elections, 6 January 2017. P.S.

Counterintelligence Investigations

The ICA did not attempt to address potential counterintelligence investigations- for example, whether Russian intelligence services attempted to recruit sources with access to any campaign. The FBI had a collection of reports a former foreign intelligence officer was hired to compile as opposition research for the U.S. election, referred to as the "dossier," when the ICA was drafted. However, those reports remained separate from the conclusions of the ICA. All individuals the Committee interviewed verified that the dossier did not in any way inform the analysis in the ICA- including the key findings - because it was unverified information and had not been disseminated as serialized intelligence reporting.

- The Committee will address the contents of the reports and their handling by the United States Government in a separate part of its report.

Conclusion

Finally, the Committee notes that, as is the case with all intelligence questions, information continues to be gathered and analyzed. The Committee believes the conclusions of the ICA are sound, and notes that collection and analysis subsequent to the ICA's publication continue to reinforce its assessments. The Committee will remain vigilant in its oversight of the ongoing challenges presented by foreign nations attempting to secretly influence U.S. affairs.

1/3/2020

OHCHR | Conflict in Ukraine enters its fourth year with no end in sight – UN report

[Go to navigation](#) | [Go to content](#)[English](#) | [Français](#) | [Español](#) | [русский](#) | [العربية](#) | [中文](#)

a

[WHAT ARE HUMAN RIGHTS?](#)[DONATE](#)[HOME](#)[ABOUT US](#)[ISSUES](#)[HUMAN RIGHTS
BY COUNTRY](#)[WHERE WE
WORK](#)[HUMAN RIGHTS
BODIES](#)[NEWS AND
EVENTS](#)[PUBLICATIONS AND
RESOURCES](#)[English > News and Events > DisplayNews](#)

Conflict in Ukraine enters its fourth year with no end in sight – UN report

[Russian](#) | [Ukrainian](#)

KYIV/GENEVA (13 June 2017) – Parties to the armed conflict in eastern Ukraine have repeatedly failed to implement ceasefire agreements, allowing hostilities to escalate and claim more lives as the conflict moved into its fourth year, a UN report published today says.

The report covers the period from 16 February to 15 May 2017, during which the UN Human Rights Monitoring Mission in Ukraine (HRMMU) recorded 36 conflict-related civilian deaths and 157 injuries – a 48 per cent increase on the previous reporting period from 16 November 2016 to 15 February 2017.

There were daily ceasefire violations and routine use of small arms and light and heavy weapons in the conflict zone. Such attacks and the resulting damage to critical infrastructure, including schools, hospitals and water facilities, raise serious concerns for the protection of civilians, the report notes. The report warns that, as summer approaches, there is a risk of further escalation in hostilities, as in previous years.

From the start of the conflict in mid-April 2014 up to 15 May 2017, at least 10,090 people, including 2,777 civilians, have been killed, and at least 23,966 injured. This is a conservative estimate based on available data, and the actual figures are likely to be higher. More than 1.6 million people fled their homes and became internally displaced, while some three million remained in territory controlled by armed groups. Among these people, there is growing despair and uncertainty.

Among the issues highlighted in the report:

The socio-economic deprivation in the east of the country has been deepening. Among the causes, a cumbersome verification procedure introduced in 2016 deprived more than 400,000 citizens of Ukraine of their pensions. The report recommends abolishing the requirement that pensioners from armed-group controlled territory should register as internally displaced persons to receive their pension. This is key to ensure the equal treatment of all citizens of Ukraine wherever they reside as this will contribute to future reconciliation.

The contact line continues to divide families and communities, infringing daily the right to freedom of movement. Long queues at the checkpoints reached a record peak in March and April, with over 900,000 crossings each month, compared with 550,000 in February.

The Ukrainian Government's ban on transportation of cargo, including coal and metal products, across the contact line, as well as the seizure of some 54 enterprises by the armed groups in areas under their control, may have a significant impact on human rights. A number of enterprises, including power thermal plants, halted or reduced operations, resulting in increased uncertainty for thousands of people regarding their employment, income, and livelihoods. In addition, armed groups forced a major

1/3/2020

OHCHR | Conflict in Ukraine enters its fourth year with no end in sight – UN report

private organization providing humanitarian assistance to 500,000 people to halt operations in the self-proclaimed 'Donetsk people's republic', increasing the suffering of the most vulnerable people with scarce economic means.

The report contains new cases of individuals unlawfully or arbitrarily deprived of their liberty or subjected to enforced disappearances and abductions, particularly in the territory controlled by armed groups. In a number of cases, the victims' families did not have access to those detained and had no information on their whereabouts.

The practice of torture has persisted, with new incidents recorded on both sides of the contact line. There are concerns that ineffective investigations of torture are fuelling a sense of impunity.

Access to places of deprivation of liberty in territory controlled by armed groups by the UN Human Rights Monitoring Mission and other independent international monitors, is still sought to guarantee protection for detainees and ensure they can exercise their rights. In territory controlled by the Government of Ukraine, the Human Rights Monitoring Mission continued to have effective access to official places of detention.

The report notes that 14 pre-conflict prisoners were transferred from territory controlled by the 'Donetsk people's republic' to Government-controlled territory during the period under review, bringing the total number transferred since 2015 to 147. With an estimated 9,500 pre-conflict prisoners still in detention beyond the contact line, the transfers that have taken place highlight how dialogue between the parties can produce concrete results. The report encourages the parties to continue to pursue the means for dialogue on a range of issues with a view to furthering human rights protection.

For the first time since the annexation of Crimea, 12 pre-conflict prisoners were transferred to mainland Ukraine, following direct negotiations between the Ombudspersons of Ukraine and the Russian Federation. The UN Human Rights Monitoring Mission interviewed all transferred individuals, documenting gross violations of the right to physical and mental integrity they suffered in prisons in Crimea as well as in the Russian Federation, where they had been transferred in violation of international humanitarian law. In addition, the report highlights violations of fair trial guarantees for members of Crimean Tatar community, decisions affecting property rights, and diminishing space for Ukrainian as a language of instruction in education.

The UN Human Rights Monitoring Mission in Ukraine observed systemic violations of the right to a fair trial on conflict-related charges. In addition, there appears to be a selective approach to investigations and prosecutions in high-profile cases, such as the killings of protestors at Maidan and the 2 May 2014 violence in Odesa. To date, three years on, none of the senior officials responsible for killings or violent deaths during those events has been brought to account.

The report raises concern about continued development of parallel structures in armed-group controlled territory. The Human Rights Monitoring Mission documented instances when these structures did not comply with basic principles and standards of fair trial and the right to liberty and security of person, and failed to provide effective remedy.

The report also tracks the progress in the selection and appointment of the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson), since the term of the incumbent has expired. The UN Human Rights Office recalls that the existing procedure has to be revised, ensuring transparent, merit based and participatory selection. This will guarantee the independence of, and public confidence in, the national human rights institution.

ENDS

BACKGROUND: The report contains findings based on in-depth interviews with 252 victims and witnesses of human rights violations, as well as site visits to both sides of the contact line. In relation to the human rights situation in Crimea, the monitoring was conducted in accordance with the two General Assembly Resolutions - Resolution 68/262 on the "Territorial integrity of Ukraine" of 27 March 2014 and Resolution 71/205 on the "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol" of 19 December 2016.

To read the full report in English, please visit:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21730&LangID=E>

1/3/2020

OHCHR | Conflict in Ukraine enters its fourth year with no end in sight – UN report

http://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf

In Ukrainian:

http://www.ohchr.org/Documents/Countries/UA/UAReport18th_UKR.pdf

In Russian:

http://www.ohchr.org/Documents/Countries/UA/UAReport18th_RU.pdf

For more information or media enquiries, please contact Iryna Yakovlieva at +380503868069 or e-mail iyakovlieva@ohchr.org

[Home](#)

[Frequently Asked Questions](#)

[OHCHR on Social Media](#)

[OHCHR Memorial](#)

[Employment](#)

[Mobile App](#)

[Site Map](#)

© OHCHR 1996-2019

[CONTACT US](#)

19810

609

**Office of the United Nations High Commissioner
for Human Rights**

**Report on the human rights situation in Ukraine
16 August to 15 November 2017**



**UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER**

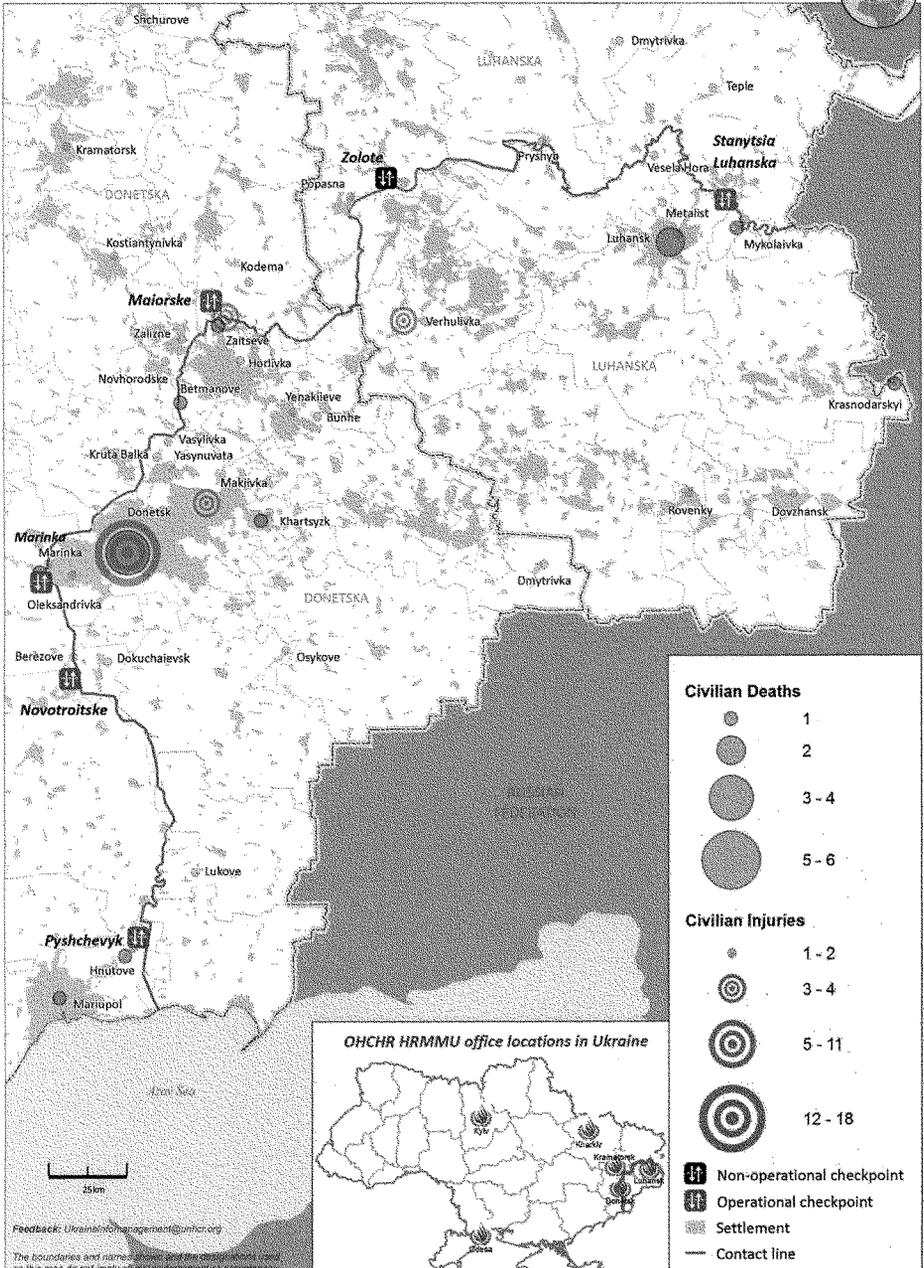
Please recycle 

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Executive summary.....	1-19	1
II. Rights to life, liberty, security and physical integrity.....	20-66	4
A. International humanitarian law in the conduct of hostilities.....	20-25	4
B. Civilian casualties.....	26-30	6
C. Missing persons and recovery of human remains.....	31-33	9
D. Summary executions, killings, deprivation of liberty, enforced disappearances, torture and ill-treatment, and conflict-related sexual violence.....	34-66	9
1. <i>Summary executions and killings</i>	34-35	9
2. <i>Unlawful/arbitrary deprivation of liberty, enforced disappearances and abductions</i>	36-46	10
3. <i>Torture and ill-treatment</i>	47-54	12
4. <i>Conflict-related sexual violence</i>	55-58	14
5. <i>Access to places of detention</i>	59-60	15
6. <i>Conditions of detention</i>	61-66	15
III. Accountability and administration of justice.....	67-91	17
A. Accountability for human rights violations and abuses in the east.....	67-74	17
B. Fair trial rights.....	75-78	19
C. Territory controlled by armed groups.....	79-83	20
D. High-profile cases of violence related to riots and public disturbances.....	84-91	22
1. <i>Accountability for the killings of protesters at Maidan</i>	85-88	22
2. <i>Accountability for the 2 May 2014 violence in Odesa</i>	89-91	22
IV. Fundamental freedoms.....	92-110	23
A. Freedom of movement.....	92-100	23
B. Freedoms of opinion and expression.....	101-107	25
C. Freedom of religion or belief.....	108-110	27
V. Economic and social rights.....	111-129	28
A. Right to an adequate standard of living.....	111-117	28
B. Right to social security and social protection.....	118-124	30
C. Housing, land and property rights.....	125-129	31
VI. Discrimination against persons belonging to minority groups.....	130-131	32
VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol.....	132-147	33
A. Rule of law and administration of justice.....	133-134	34
B. Right to liberty and security.....	135-137	34
C. Right to physical and mental integrity.....	138	35
D. Freedom of opinion and expression.....	139-141	35
E. Freedom of religion or belief.....	142-143	35
F. Freedom of peaceful assembly.....	144-146	36
G. Military conscription.....	147	36
VIII. Legal developments and institutional reforms.....	148-160	37
A. Legal framework concerning territory not controlled by the Government in Certain areas of Donetsk and Luhansk regions.....	148-154	37
B. Law on education.....	155-160	38
IX. Technical cooperation and capacity-building.....	161-165	39
X. Conclusions and recommendations.....	166-175	40



 **Ukraine: Civilian casualties along the contact line, 16 August - 15 November 2017**



I. Executive summary

"It is now worse than in 2014 because we cannot continue to bear it any longer."

- Resident of a village near the contact line.

1. This twentieth report on the situation of human rights in Ukraine by the Office of the United Nations High Commissioner for Human Rights (OHCHR) is based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU)¹, and covers the period from 16 August to 15 November 2017.

2. The findings presented in this report are grounded on data collected by HRMMU through 290 in-depth interviews with witnesses and victims of human rights violations and abuses, as well as site visits in both government-controlled and armed group-controlled territory. HRMMU also carried out 423 specific follow-up activities to facilitate the protection of human rights connected with the cases documented, including trial monitoring, detention visits, referrals to State institutions, humanitarian organizations and non-governmental organizations (NGOs), and cooperation with United Nations human rights mechanisms.²

3. While May through September saw a steady decline in hostilities, which levelled off in October, November commenced with a sudden surge in keeping with the unpredictable dynamics of the armed conflict in eastern Ukraine. Much of the character of the conflict, however, remained the same as previously reported – with daily ceasefire violations and frequent use of heavy weapons, some with indiscriminate effects, threatening the lives and well-being of the civilian population while damaging property and critical infrastructure. As the fourth winter of the conflict approaches, fluctuations in the armed hostilities maintained a tense environment of general insecurity. The situation has been exacerbated since the beginning of the conflict by the presence of foreign fighters and the supply of ammunition and heavy weaponry reportedly from the Russian Federation.³

4. OHCHR recorded 87 conflict-related civilian casualties in eastern Ukraine (15 deaths and 72 injuries) between 16 August and 15 November 2017, a 48 per cent decrease compared to the previous reporting period of 16 May to 15 August. The leading causes of casualties were mines, explosive remnants of war (ERW), booby traps and improvised explosive devices (IEDs) which accounted for 59.8 per cent of all civilian casualties recorded, while shelling was responsible for 23 per cent, and fire from small arms and light weapons for 17.2 per cent. Recalling, however, that the conflict is still in an active phase, after three months of lower civilian fatalities and injuries, as of 15 November, hostilities appear to be on the rise, which could lead to a corresponding increase in civilian casualties.

5. Shelling of critical civilian water infrastructure continued to endanger not only the staff but all persons in the vicinity of such facilities, in addition to disrupting public supply of water and posing serious risk to the environment. Repeated shelling of the Donetsk Filtration Station⁴

¹ HRMMU was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address human rights concerns. For more details, see paras. 7–8 of the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

² United Nations Human Rights Council Special Procedures mandate holders and Human Rights Treaty Bodies.

³ OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2015, paras. 2 and 6; OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2015, paras. 2, 58–59; OHCHR Report on the human rights situation in Ukraine, 16 August to 15 November 2015, paras. 2 and 22 (see also fn. 128); OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2016, para. 2.

⁴ The Donetsk Filtration Station, located in "no man's land" approximately 15 km north of Donetsk city, between government-controlled Avdiivka and armed-group-controlled Yasynuvata, processes water for approximately 345,000 people on both sides of the contact line.

between 3 and 4 November damaged a backup chlorine pipeline, which could have led to an environmental disaster if toxic chlorine gas had leaked. A direct hit to the main pipeline or any of the 900-kg bottles storing chlorine at the facility could have resulted in the deaths of any person within a 200-metre radius.⁵ The following day, the Verkhnoalmiуска Filtration Station,⁶ which stores 100 tons of chlorine gas, was shelled and sustained multiple hits.

6. OHCHR repeats its call for all parties to the conflict to immediately adhere to the ceasefire and to implement all other obligations committed to in the Minsk agreements, including the withdrawal of heavy weapons and disengagement of forces and hardware.⁷ OHCHR recalls that during the last reporting period, a renewed ceasefire commitment (the “harvest ceasefire”) resulted in a decrease in ceasefire violations, and a notable decrease in civilian casualties.⁸

7. OHCHR continued to document cases of summary executions, enforced disappearances, arbitrary detention, torture and ill-treatment, and conflict-related sexual violence. While many cases recorded date back to prior years of the conflict, new incidents also occurred within the reporting period.

8. In government-controlled territory, OHCHR – in general – continue to enjoy unimpeded access to conflict-related detainees, with the exception of several individuals in Kharkiv, Kyiv and Dnipro who are under investigation of the Security Service of Ukraine. In territory controlled by armed groups, OHCHR was denied access places where people are deprived of their liberty and to hold confidential interviews. As enforced disappearances, torture and conflict-related sexual violence often take place in the context of detention, this denial of access raises serious concerns that human rights abuses may be occurring.

9. Accountability for grave human rights violations in conflict-related cases remained elusive. Legal proceedings were plagued by ineffective investigations, politicization of cases with the involvement of high level officials and infringements on the independence of the judiciary. OHCHR documented substantial pressure exerted on judges in numerous cases.

10. No significant progress was achieved in criminal proceedings related to the killing of protestors in Maidan in 2014. Due to the length of proceedings, defendants have remained in detention for several years.⁹ With regard to the 2 May 2014 violence in Odesa, the trial of 19 persons accused of organizing and participating in the mass disturbances which led to six deaths concluded in an acquittal. To date, no one has been held responsible for the violence that day, or for any of the resulting 48 deaths.

⁵ Press release, Ukraine: UN experts warn of chemical disaster and water safety risk as conflict escalates in East, United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and Special Rapporteur on the human rights to safe drinking water and sanitation, 10 November 2017.

⁶ The Verkhnoalmiуска Filtration Station, located in armed-group-controlled territory approximately 17 km northeast of Donetsk, supplies water to 800,000 people.

⁷ The Package of Measures for the Implementation of the Minsk Agreements calls for: an immediate and comprehensive ceasefire; withdrawal of all heavy weapons from the contact line by both sides; commencement of a dialogue on modalities of local elections; legislation establishing pardon and amnesty in connection with events in certain areas of Donetsk and Luhansk regions; release and exchange of all hostages and unlawfully detained persons; safe access, delivery, storage, and distribution of humanitarian assistance on the basis of an international mechanism; defining of modalities for full resumption of socioeconomic ties; reinstatement of full control of the state border by the Government of Ukraine throughout the conflict area; withdrawal of all foreign armed groups, military equipment, and mercenaries from Ukraine; constitutional reforms providing for decentralization as a key element; and local elections in certain areas of Donetsk and Luhansk regions. United Nations Security Council Resolution 2202 (2015), available at <http://www.un.org/press/en/2015/sc11785.doc.htm>. See also Protocol on the Results of the Consultations of the Trilateral Contact Group regarding Joint Measures Aimed at the Implementation of the Peace Plan of the President of Ukraine P.

Poroshenko and Initiatives of the President of the Russian Federation V Putin, available at <http://www.osce.org/home/123257>; Memorandum on the Implementation of the Protocol on the Results of the Consultations of the Trilateral Contact Group regarding Joint Measures Aimed at the Implementation of the Peace Plan of the President of Ukraine P. Poroshenko and Initiatives of the President of the Russian Federation V. Putin, available at <http://www.osce.org/home/123806>.

⁸ The “harvest ceasefire” ran from 24 June to the end of August, and while it never fully took hold, it contributed to an overall reduction in the number of daily ceasefire violations, and consequently, the number of civilian casualties. See OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, paras. 22-23, 32-33.

⁹ Two defendants have remained in detention for over three years while three have been detained for over two years.

11. Within structures in territory controlled by armed groups, arbitrary detentions and 'prosecutions' were compounded by the lack of recourse to effective remedy. This is of particular concern given the 'pronouncement' of a second 'death penalty' by the 'supreme court' of the 'Donetsk people's republic' in November. The practice of *incommunicado* detentions, which often amounted to enforced disappearance, also persisted.

12. As in previous reporting periods, infringements on freedom of movement continued to isolate residents in villages located close to the contact line, cut off access to basic goods, services and humanitarian aid, and intensified general hardship for the population. The shortening of entry-exit checkpoint operational hours after summer, together with high numbers of persons traveling resulted in longer queues to cross the contact line. A total of 1.2 million crossings were recorded at the five crossing routes in the month of August, and 1.1 million each in September and October.

13. Freedom of opinion and expression continued to face mounting challenges. OHCHR noted with concern the broad interpretation and application of terrorism-related provisions of the Criminal Code in cases where SBU initiated criminal investigations against Ukrainian media professionals, journalists and bloggers. In territory controlled by armed groups, freedom of expression remained severely curtailed, with no room for critical publications or elements of dissent.

14. Many of the human rights violations and abuses and infringements on fundamental freedoms described above persisted at similar or slightly heightened degrees as reported by OHCHR in previous quarters. However, members of the conflict-affected population expressed to HRMMU that the cumulative effect of the resulting harms and hardship they have endured as the conflict continues in its fourth year is reaching an unbearable level. This was exacerbated by the worsening socio-economic situation, policies which deprive citizens of their pensions, and the lack of access to restitution of or compensation for property damaged or destroyed by the conflict. These conditions deepen the divide, jeopardize social cohesion and complicate prospects and efforts for future reconciliation.

15. Along with an increasing sentiment of despair of people directly affected by the armed conflict in the east, OHCHR noted increasing manifestations of intolerance, including threats of violence, by extreme right-wing groups, which served to stifle public expressions and events by individuals holding alternative, minority social or political opinions. Violent acts which occurred remained largely unsanctioned.

16. Having no access to Crimea, HRMMU continued to analyse the human rights situation on the peninsula from mainland Ukraine on the basis of United Nations General Assembly resolution 68/262 on the territorial integrity of Ukraine and resolution 71/205 referring to Crimea as under occupation by the Russian Federation. The Russian Federation continued to apply its laws, in violation of international humanitarian law applicable to an Occupying Power. Practices by the authorities which resulted in serious human rights violations, and which disproportionately affected Crimean Tatars, persisted this reporting period. Further, the exercise of freedoms of opinion and expression, religion or belief and peaceful assembly also continued to be curtailed through verdicts criminalizing criticism and dissent.

17. Two developments during the Parliament's session within the reporting period are of particular importance. Parliament began consideration and adoption of a new legal framework concerning territory not under the control of the Government, with the aim of restoring state sovereignty over certain areas of Donetsk and Luhansk regions. It is viewed to be implemented in the context of an armed aggression and temporary occupation by the Russian Federation. OHCHR cautions that, at this stage, the draft law lacks clarity as to the framework for the protection of rights and freedoms, thus failing to satisfy the legal certainty requirement.

18. Parliament also adopted a new Law on Education which instates the Ukrainian language as the main language of instruction in secondary and higher education. OHCHR cautions that strengthening of the Ukrainian language should not come at the expense of minority languages,

and calls on the Government to ensure that the rights of minorities are respected without discrimination among different minority groups.

19. OHCHR continued to engage in technical cooperation and capacity-building activities with the Government of Ukraine and civil society in order to strengthen the protection and promotion of human rights. OHCHR provided targeted trainings and advocacy to support implementation of the Istanbul Protocol,¹⁰ and continued to raise awareness of conflict-related sexual violence. OHCHR also supported the preparations for Ukraine's third Universal Periodic Review (UPR) which took place on 15 November 2017. Furthermore, the United Nations Partnership Framework with Ukraine defining the support of the United Nations to national development priorities has been signed. OHCHR will contribute to specifically support those relating to democratic governance, rule of law, civic participation, human security and social cohesion.

II. Rights to life, liberty, security, and physical integrity

A. International humanitarian law in the conduct of hostilities

"If the shelling does not start at 22:00, I cannot fall asleep."

- Resident of a village near the contact line.

20. During the reporting period, daily exchanges of fire across the contact line by all parties to the conflict continued. Some improvement in the security situation was observed since the beginning of the reporting period in mid-August until the end of October, which may be partially attributable to renewed ceasefire commitments. Following the end of the "harvest ceasefire" (agreed to allow local communities to bring in their crops safely), another renewed ceasefire commitment commenced on 25 August to allow children to start the new school year safely. However, such commitments to ceasefire by the sides to the conflict can only be a temporarily solution. The escalation that took place by the end of the reporting period, in the first two weeks of November, indicates that achieving a sustainable peace requires full compliance with the Minsk agreements. Meanwhile, sporadic and unpredictable spikes in the armed hostilities further exacerbated the situation of general insecurity for civilians living in conflict-affected areas, and in particular, those close to the contact line.

21. OHCHR remains concerned about the continued presence of heavy weapons near the contact line,¹¹ in disregard of pledges made under the Minsk agreements to withdraw such weapons. The Special Monitoring Mission (SMM) of the Organization for Security and Cooperation in Europe (OSCE) documented the repeated use of weapons with a wide impact area (such as artillery and mortars) or the capacity to deliver multiple munitions over a wide area (such as multiple launch rocket systems).¹² The use of such weapons in densely populated areas can be considered incompatible with the principle of distinction and may amount to a violation of

¹⁰ United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

¹¹ For example, the OSCE SMM observed four multiple launch rocket systems being transported between Shehastia and Voitove (government-controlled territory) on 15 September, four multiple launch rocket systems near Novoamvrosiivske and ten tanks near Novoselivka (armed-group-controlled territory) on 12 October. See OSCE SMM daily reports, available at <http://www.osce.org/ukraine-smm/reports>.

¹² For example, on 22 August, the OSCE SMM camera in (government-controlled) Shyrokyne recorded *inter alia* 8 rocket-assisted projectiles in flight and 20 explosions assessed as impacts. OSCE SMM daily report available at <http://www.osce.org/special-monitoring-mission-to-ukraine/336636>. On 10 October, the OSCE SMM heard 35-40 explosions assessed as impacts of multiple launch rocket system near (government-controlled) Lebedynske. OSCE SMM daily report, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/349206>.

international humanitarian law due to the likelihood of indiscriminate effects. During the reporting period, HRMMU documented civilian casualties and damage to civilian property caused by heavy weapons.¹³

22. The risk to civilian lives has been further heightened by the contamination of highly-frequented areas with mines and IEDs, as well as the presence of ERW.¹⁴ The parties to the conflict continued the practice of placement of IEDs and anti-personnel mines in populated areas and near objects of civilian infrastructure.¹⁵ OHCHR notes that placement of such victim-activated explosive devices, which, by their nature, cannot differentiate between civilians and combatants, in densely populated areas and areas frequently attended by civilians may amount to an indiscriminate attack in violation of the principle of distinction enshrined in international humanitarian law.¹⁶ Further, OHCHR recalls that parties to a conflict must take all precautionary measures to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.¹⁷

23. OHCHR continued to observe military presence in densely populated areas and military use of civilian property on both sides of the contact line, increasing the risk to civilian lives, property and critical infrastructure.¹⁸ Locating military positions and equipment within or near residential areas and objects indispensable for the survival of the civilian population falls short of taking all feasible steps to separate military objectives from the civilian population, in contravention to international humanitarian law.¹⁹ OHCHR notes that where such presence is justified due to military necessity, the parties must protect the resident civilian population, including by providing alternative accommodation.²⁰ Some residents of (government-controlled) Opytne and in the “no man’s land” part of Pivdenne informed HRMMU they wished to relocate

¹³ See “Civilian casualties” below. In addition, HRMMU documented damage to civilian houses in (armed-group-controlled) Pervomaisk caused by shelling on 23-24 August, and damages to civilian houses and infrastructure in (armed-group-controlled) Kyivskiy district of Donetsk city during an escalation in hostilities on 5-6 November 2017. See also OSCE SMM documentation of civilian property damaged by shelling in (government-controlled) Marinka on 27 September and (armed-group-controlled) Yasnuvata on 29 September, available at <http://www.osce.org/ukraine-smm/reports/>.

¹⁴ “Ukraine has the largest number of anti-vehicle mine-related incidents globally, and ranks fifth worldwide for civilian casualties as a result of landmines and unexploded ordnance (UXO).” 2018 Humanitarian Needs Overview, Ukraine, November 2017, available at <https://reliefweb.int/report/ukraine/ukraine-humanitarian-needs-overview-2018-enuk>. On 6 September, a man in Dmytrivka was injured by ERW. On 4 October, an employee of the local power company was killed after tripping an anti-personnel mine near a powerline on the outskirts of Betmanove (formerly Krasnyi Partizan). On 5 November, one child was killed and two injured by ERW near a school in (armed-group-controlled) Petrovskiy district of Donetsk city. OHCHR civilian casualties records.

¹⁵ HRMMU documented a case of a man in Zolote 4 (located in “no man’s land”) who went deaf in one ear as result of an explosion of a sound grenade placed near his house. HRMMU interview, 29 September 2017. On 8 October, a tractor driver was injured by the explosion of a mine near Metalist in an area which had been previously de-mined.

<http://www.osce.org/special-monitoring-mission-to-ukraine/349421>. On 31 October, HRMMU documented the case of a woman who was injured in April 2017 by a trip-wired explosive device planted in her neighbour’s house.

¹⁶ ICRC, Customary International Humanitarian Law Database, Rules 1, 11 and 12.

¹⁷ ICRC, Customary International Humanitarian Law Database, Rule 7.

¹⁸ Presence of military or armed groups and their use or occupation of civilian property was documented by HRMMU in government-controlled territory in Dacha (1 November), Krymske (29 August), Luhanske (4 October), Mahynove (5 October), Novhorodske (5 September), Novoluhanske (4 October), Novotoshkiivske (6 October), Opytne (10 October), Shehastia (5 October), Tonenke (10 October), Troitske (31 October), and Zolote 4 (30 August), in armed-group-controlled territory in Admimploshadka (26 September), Donetskyyi (16 August and 3 November), Donetsk city Kyivskiy district (9 November), Lukove (8 September), Molodizhne (25 August), Pikuzy (formerly Kominternove) (26 October), and Zolote 5 (4 October), and in “no man’s land” in the Chihari area of Pivdenne (9 November), as well as in both the government-controlled and armed-group-controlled parts of Zaisseve (1 November).

¹⁹ See ICRC, Customary International Humanitarian Law Database, Rules 22 and 23.

²⁰ Customary international humanitarian law sets out the following elements of protection of civilians in such situation: (1) prohibition on use of human shields (Rule 97), (2) requirement to warn the civilian population of upcoming attacks (Rule 20), and (3) requirement to remove the civilian population and objects under control of the belligerent party from the vicinity of military objectives (Rule 24; Guiding Principles on Internal Displacement, Principle 7(3)(b), Principle 15(a)). In the case that the security of the civilian population or military imperative demand evacuation, humane conditions must be ensured and affected civilians must be provided with adequate alternative accommodation (Rule 131; Guiding Principles on Internal Displacement, Principle 7(2)). In addition, civilian properties should be protected and compensation paid for any use or damage of property (Rule 52, Rule 133).

to a safer place, however adequate alternative accommodation was never offered by the authorities.²¹

24. During the reporting period, 10 incidents affecting water facilities were documented in conflict-affected areas.²² The First Lift Pumping Station²³ of the South Donbas water pipeline was shelled on three occasions, causing damage to the facility and vehicles, and came under small-arms fire on three occasions. The Donetsk Filtration Station²⁴ was shelled repeatedly between 3 and 5 November 2017, causing damage to a backup chlorine pipeline. If the main pipeline in use or any of the 900-kg bottles storing chlorine in these facilities were to sustain a direct hit, it would endanger the lives of not only staff, but any person within a 200-metre radius, disrupt the water supply to approximately 350,000 people on both sides of the contact line, and have devastating consequences for the environment.²⁵ On 5 November, the Verkhokalmiuska Filtration Station, which supplies clean water to 800,000 people and stores 100 tons of chlorine gas, was hit by multiple shells. If toxic chlorine gas were to be released, it could have “devastating consequences” for the population in Donetsk city, Makiivka and Avdiivka.²⁶ This is not the first time that shelling of such infrastructure has threatened lives and the environment.²⁷ OHCHR notes that critical civilian infrastructure such as water facilities require special protection and calls on all parties involved in the hostilities to adhere to the agreement reached in Minsk on 19 July 2017 in which they expressed commitment to create “safety zones” around the Donetsk Filtration Station and the First Lift Pumping Station.

25. Armed hostilities also continued to threaten industrial facilities containing hazardous materials which, if released, may have severe consequences for the environment and civilians living in close proximity. For example, the sludge collector of the phenol plant in (government-controlled) Novhorodske requires regular bi-weekly maintenance. For the last year, however, no such maintenance or repair work could be done due to the lack of security guarantees for a “window of silence”.²⁸ It should be noted that if the dam around the collector is damaged, it risks releasing liquid toxic waste into the Kryvyi Torets and Siverskyi Donets rivers which serve as the main water sources for the Donbas region.²⁹ On 9 November an agreement to provide security guarantees for a “window of silence” was reached by the Joint Centre for Control and Coordination and repair works started. OHCHR recalls that particular care must be taken to avoid attacks and damages of installations containing dangerous forces and substances and also to protect the natural environment against widespread, long-term and severe damage. OHCHR calls on the parties involved in hostilities to negotiate adequate security arrangements which would allow regular maintenance as well as repairs to be conducted on the phenol plant.

B. Civilian casualties

26. Between 16 August and 15 November 2017, OHCHR recorded 87 conflict-related civilian casualties in 44 locations of Ukraine: 15 deaths (14 men and 1 boy) and 72 injuries (42 men, 19

²¹ HRMMU interviews.

²² See WASH Cluster Incident Reports nos. 81-93, available at <https://www.humanitarianresponse.info/en/operations/ukraine/documents/bundles/46705>.

²³ The First Lift Pumping Station is located between the armed group-controlled villages of Vasyliivka and Kruta Baika, in immediate proximity to the contact line.

²⁴ The Donetsk Filtration Station is located in “no man’s land”, approximately 15 kilometres north of Donetsk city, between government-controlled Avdiivka and armed group-controlled Yasynuvata.

²⁵ See “Ukraine: UN experts warn of chemical disaster and water safety risk as conflict escalates in East”, United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and Special Rapporteur on the human rights to safe drinking water and sanitation, 10 November 2017.

²⁶ See “Ukraine: UN experts warn of chemical disaster and water safety risk as conflict escalates in East”, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22382&LangID=E>.

²⁷ See, e.g., OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, paras. 29-30; OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para. 18.

²⁸ A “window of silence” is a localized agreement to adhere to the ceasefire for a designated time period.

²⁹ HRMMU interview.

women, 10 boys and 1 girl).³⁰ This is a 48 per cent decrease compared with the previous reporting period of 16 May to 15 August 2017, during which 168 civilian casualties (26 deaths and 142 injuries) were recorded.

27. This reduction is mainly in the number of civilian casualties caused by shelling and SALW³¹ fire, which has been steadily decreasing since May 2017. Between August and October, it decreased four-fold as compared to May through July (11 and 42 on average per month, accordingly). OHCHR also observed an increasing disparity in regard to civilian casualties caused by shelling and SALW fire occurring on territory controlled by armed groups and those occurring on territory controlled by the Government. From May through July 2017, the ratio was 2 to 1, while from August through October, the ratio was 10 to 1 (29 in territory controlled by armed groups versus 3 in government-controlled territory).³² With regard to the 52 civilian casualties caused by mines, ERW, booby traps and IEDs, 20 occurred in mine-related incidents (38.5 per cent), while 32 (61.5 per cent) resulted from imprudent handling or dismantling of ERW or the detonation of hand grenades in interpersonal conflicts.

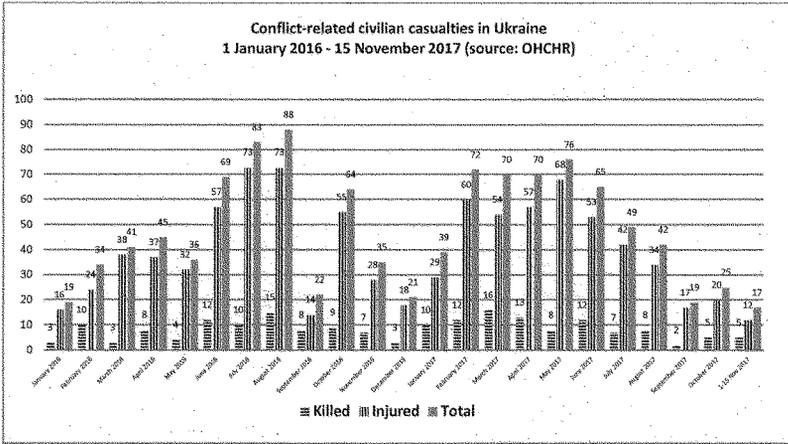
Civilian casualties from 16 August to 15 November 2017									
	Shelling (mortars, guns, howitzers, tanks, MLRS)			Small arms and light weapons			Mines, ERW, booby traps and IEDs		
	Killed	Injured	Total	Killed	Injured	Total	Killed	Injured	Total
Donetsk region (total)	1	17	18	2	11	13	6	22	28
Government-controlled		2	2		4	4	2	10	12
Controlled by armed groups	1	15	16	2	7	9	3	12	15
"No man's land"							1		1
Luhansk region (total)		2	2	2		2	3	13	16
Government-controlled				1		1		4	4
Controlled by armed groups		2	2	1		1	2	9	11
"No man's land"							1		1
Cherkasy region							1	2	3
Dnipropetrovsk region								5	5
Grand total	1	19	20	4	11	15	10	42	52
Per cent			23.0			17.2			59.8

28. Overall levels of civilian casualties in 2017 were comparable to 2016 levels. From 1 January to 15 November 2017, OHCHR recorded 544 conflict-related civilian casualties: 98 killed and 446 injured. This is a 3.6 per cent increase compared to the same period in 2016, when 525 civilian casualties (87 killed and 438 injured) were recorded.

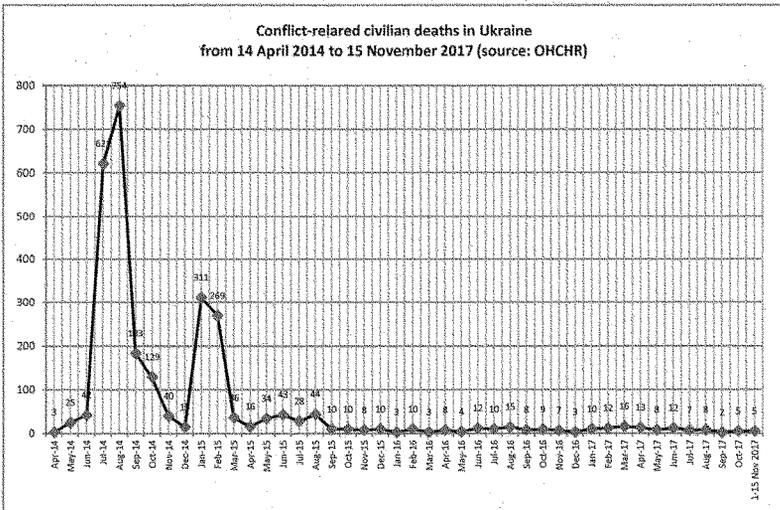
³⁰ OHCHR investigated reports of civilian casualties by consulting a broad range of sources and types of information which were evaluated for credibility and reliability. In undertaking documentation and analysis of each incident, OHCHR exercises due diligence to corroborate information on casualties from as wide a range of sources as possible, including OSCE public reports, accounts of witnesses, victims and other directly-affected persons, military actors, community leaders, medical professionals, and other interlocutors. In some instances, investigations may take weeks or months before conclusions can be drawn, meaning that conclusions on civilian casualties may be revised as more information becomes available. OHCHR does not claim that the statistics presented in this report are complete. Civilian casualties may be underreported given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods.

³¹ Small arms and light weapons.

³² OHCHR is not in a position to establish with certainty which party to the conflict is responsible for specific civilian casualties caused by shelling and SALW fire; it is only able to make their attribution per territory of control.



29. During the entire conflict period, from 14 April 2014 to 15 November 2017, at least 2,523 civilians were killed: 1,399 men, 837 women, 91 boys, 47 girls and 149 adults whose sex is unknown. An additional 298 civilians, including 80 children, were killed as a result of the MH17 plane crash on 17 July 2014. The number of conflict-related civilian injuries is estimated between 7,000 and 9,000.



30. In total, from 14 April 2014 to 15 November 2017, OHCHR recorded 35,081 conflict-related casualties in Ukraine among Ukrainian armed forces, civilians and members of the armed groups. This includes 10,303 people killed and 24,778 injured.³³

C. Missing persons and recovery of human remains

31. With the outbreak of the armed conflict in April 2014, documentation of missing persons was considerably disrupted in eastern Ukraine. Although efforts have subsequently resumed in both territory controlled by the Government and territory controlled by armed groups, there has been no effective exchange of forensic information (such as DNA samples and anthropometrical data) across the contact line for over three years. As of 15 November 2017, draft legislation “On the legal status of missing persons” foreseeing the establishment of a commission for missing persons, which is crucial for fulfilment of Ukraine’s obligations under international humanitarian law,³⁴ was still pending before Parliament.³⁵

32. There is therefore no effective possibility to match figures on the missing reported by the Government (865³⁶ to 1,476³⁷) and those reported by armed groups (509 as of 10 November 2017 according to the ‘ombudsperson’s office’ of the ‘Donetsk people’s republic’).³⁸ As of 22 August 2017, the ICRC estimated the number of conflict-related missing persons to be from 1,000 to 1,500.³⁹

33. OHCHR believes that many of those reported as missing persons may be dead, with their bodies either not yet found or identified. Further, OHCHR cannot exclude that some individuals reported missing may currently be held *incommunicado* either by the Government or by armed groups. Full and unimpeded access of independent international monitors to all places of detention, especially those in territory controlled by armed groups, is crucial for establishing the whereabouts of some of the missing.

D. Summary executions, killings, deprivation of liberty, enforced disappearances, torture and ill-treatment, and conflict-related sexual violence

1. Summary executions and killings

34. OHCHR continued to receive and verify allegations of summary executions and wilful killings of civilians, Ukrainian servicemen, and individuals associated with armed groups. These allegations mostly concern 2014, but also 2015 through 2017, indicating the prevailing impunity for grave violations and abuses of international human rights law and violations of international humanitarian law in the conflict zone. Victims’ relatives and witnesses interviewed by HRMMU often do not give consent for public reporting on such cases out of fear of retaliation or persecution.

³³ This is a conservative estimate based on available data. These totals include: casualties among Ukrainian forces as reported by Ukrainian authorities; 298 people from flight MH-17; civilian casualties on the territory controlled by the Government as reported by local authorities and regional departments of internal affairs; and casualties among civilians and members of armed groups on territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, as reported by armed groups, the so-called ‘local authorities’ and local medical establishments. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, and due to overall underreporting, especially of military casualties. Injuries have been particularly underreported. The increase in the number of casualties between the different reporting dates does not necessarily mean that these casualties happened between these dates: they could have happened earlier, but were recorded by a certain reporting date.

³⁴ ICRC, Customary International Humanitarian Law Database, Rule 117.

³⁵ There have been no developments on the two draft laws since 7 June 2017, when the Parliamentary Committee on human rights issued its conclusion regarding the texts.

³⁶ As of 15 November, according to the Main Department of the National Police in Donetsk region.

³⁷ As of 15 November, according to the National Police of Ukraine.

³⁸ No figures have been reported by the ‘Luhansk people’s republic’.

³⁹ <https://www.ukrinform.ru/rubric-society/2290807-krasnij-krest-razyskivaet-640-propavshih-bez-vesti-na-donbasse.html>.

35. For example, a civilian who participated in the May 2014 “referendum on the status of the Donetsk ‘peoples’ republic” went missing after Ukrainian military, including the Aidar volunteer battalion, retook control of the area. His body was found in November 2014 with traces of gunshot wounds to the head. His family is not aware of any investigation conducted into his death.⁴⁰ In another case, in July 2016, a man was found shot dead near his house in a village of Luhansk region controlled by armed groups. Neighbours had heard three shots in the preceding evening. There was an armed groups’ checkpoint nearby, manned by the ‘Brianka-USSR’ battalion. The victim’s family was notified that a suspect was ‘arrested’ by ‘police’ at the beginning of November.⁴¹

2. Unlawful/arbitrary deprivation of liberty, enforced disappearances and abductions

“When you do not understand anything and just sit there in the basement, every night you expect that someone may come, take you out, kill you and bury you in some forest, and then no one will ever find out where you are. That’s the only thing you can think about.”

- Victim describing *incommunicado* detention.

36. OHCHR continued documenting cases of unregistered detention, when a person is held *incommunicado* prior to being delivered to an official place of detention, a practice which increases the likelihood of torture and ill-treatment with a view to extracting a confession. Although these cases occurred earlier, they were documented during the reporting period.

37. For example, on 16 April 2015, a former member of an armed group was detained in his home by armed men in balaclavas. Without introducing themselves or presenting a search warrant, they beat him, threatened him, and searched his house. They took the victim to a basement, which he believes was on the outskirts of Pokrovsk (formerly Krasnoarmiisk), where he was detained *incommunicado*, handcuffed to a metal safe which forced his body into a difficult position. He was interrogated and tortured by having water poured over his face, electrocutions, and beatings on his back and kidneys. The perpetrators made him sign documents and filmed a video confession. He was taken to the Kramatorsk SBU on 21 April 2015, where he was given more documents to sign. In November 2015, he was convicted of terrorism.⁴²

38. On 10 January 2015, a resident of Pokrovsk was stopped in his car and detained by four armed men. They brought him to the Right Sector training camp near Velykomykhailivka (Dnipropetrovsk region), where he was detained in a basement and beaten with a truncheon for two days. The victim was held *incommunicado* until 14 May 2015, during which time he was ill-treated and witnessed the death of another detainee. The perpetrators are currently on trial.⁴³

39. OHCHR is concerned about the lack of progress in investigations of enforced disappearances which occurred in 2014. For example, there has been no progress in the investigation into the disappearance of a truck driver who went missing on 25 July 2014 near Katerynivka (formerly Yuvileine) in Luhansk region. HRMMU recently learned that his passport was found in March 2017 in possession of a UAF serviceman.⁴⁴ On 30 August 2017, National Police of Ukraine in Bilokurakynsk district of Luhansk region launched a criminal investigation under article 115 (murder).

⁴⁰ HRMMU interview.

⁴¹ HRMMU interview.

⁴² HRMMU interview. His appeal is currently being heard.

⁴³ HRMMU interview.

⁴⁴ HRMMU interview.

Territory controlled by armed groups

40. OHCHR documented the continued practice of ‘administrative arrest’, during which persons are held *incommunicado* and prohibited from contact with relatives or a defence counsel. The initial detention period of 30 days was often automatically prolonged beyond the initial period.⁴⁵ OHCHR is concerned about arbitrary application of ‘administrative arrest’ and *incommunicado* detention, and the lack of any procedural guarantees or recourse for persons who find themselves subjected to it. Further, OHCHR notes that such a practice – of detaining persons, denying them access to lawyers or relatives, and refusing to provide information to families on their whereabouts – may amount to enforced disappearance.

41. For example, on 29 April 2017, two men traveling to Dokuchaievsk were detained by ‘border guards’ at an armed-group-controlled checkpoint and taken to the ‘department of combating organized crime’ (UBOP) in Donetsk. Both men worked as State Fiscal Service inspectors in government-controlled territory. They were detained for a few days in ‘UBOP’ and then brought to a temporary detention facility administered by ‘police’ and held *incommunicado* under ‘administrative arrest’. Their families were not notified of their ‘arrests’, and learned of their whereabouts from other sources. The lawyer hired by relatives was denied access to the detainee. Since April, the men were released every 30 days, given a moment to talk to relatives, and then immediately ‘re-arrested’ by ‘UBOP’ on different ‘charges’ and placed under another 30-day ‘administrative arrest’.⁴⁶

42. On 27 February 2017, a couple was detained at a checkpoint controlled by armed groups. They were questioned for approximately six hours, then separated and brought to the ‘MGB’ building in Donetsk city. The woman was questioned again and told that they had discovered explosives in one of their bags and would charge her husband with ‘espionage’. When she was released, she saw her husband in another office; his pupils were unusually enlarged. Ten days later, she received a call from an ‘MGB officer’ who stated her husband was under ‘administrative arrest’. As of 15 November 2017, the victim was allegedly in Donetsk SIZO, however his wife has never been able to see him during his detention.⁴⁷

43. OHCHR continued documenting cases of individuals subjected to enforced disappearance. On 31 August 2017, a young man who made his living carrying luggage for people walking along the Stanytsia Luhanska crossing route went missing. He had crossed the government-controlled entry-exit checkpoint while carrying luggage, but was stopped by personnel at the checkpoint controlled by the armed groups of the ‘Luhansk people’s republic’ and his passport was taken away. Despite relatives’ inquiries, the whereabouts and fate of the victim remain unknown.⁴⁸ On 2 September 2017, the National Police of Ukraine in Stanytsia Luhansk district of Luhansk region launched a criminal investigation under article 146 (Illegal confinement or abduction of a person).

44. On 25 August 2017, a man was taken from his home to a ‘police station’ in Makiivka by the ‘ministry of state security’ (‘MGB’) officers, where he was held for at least two days. The family’s last contact with him occurred by phone on 27 August. They were informed by ‘police’ that the man was under ‘administrative arrest’ and denied permission to speak or meet with him. It is believed that his ‘arrest’ is retaliation for his political opinion, as he openly expressed ‘pro-unity’ views and criticism of the ‘Donetsk people’s republic’ and the Russian Federation.⁴⁹

45. OHCHR is concerned that there has been no progress on cases that occurred in earlier stages of the conflict. For example, on 1 July 2015 an unconscious man with visible injuries on his head and torso was seen being dragged from his apartment by three armed men in camouflage

⁴⁵ See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, paras. 43–45.

⁴⁶ HRMMU interview.

⁴⁷ HRMMU interview.

⁴⁸ HRMMU interviews; HRMMU meeting, 15 September.

⁴⁹ Approximately seven months ago, the victim was fired from his job at a local hospital in Makiivka due to his ‘pro-unity’ views.

with 'Vostok' insignia. The victim was put in a car. As of 15 November 2017, his whereabouts remained unknown.

46. OHCHR notes that enforced disappearance not only constitutes a grave violation of the rights to life and to liberty and security of the person, but is “inseparably linked” to treatment that amounts to torture or to cruel, inhuman or degrading treatment or punishment.

3. Torture and ill-treatment

“If you behave well, if you say what we want – you won’t be hurt. If you resist, we will send Right Sector to your house. Your boy will be crippled; your wife will be met on the way from work. We will inject you with drugs, so you will become a plant.”

- Perpetrator to a victim of torture.

47. During the reporting period, OHCHR continued to receive allegations which match the previously documented pattern of use of torture to extract confessions from persons suspected of being members of or otherwise affiliated with armed groups.⁵⁰ Also, in a few cases, Ukrainian servicemen detained on suspicion of committing criminal offences were subjected to torture until they provided self-incriminating testimonies. It is deeply concerning that investigations into allegations of torture are rarely opened and when so, have been ineffective. Defence lawyers also rarely raise allegations of torture, either due to intimidation or as a strategy to reduce the sentence.

48. For example, in August 2015, in two separate episodes, SBU arrested two residents of Kharkiv region accused of being supporters of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ and planning to carry out subversive activities. Both victims were transported to the regional SBU department, where they were tortured (beaten, hands twisted behind the back, subjected to mock execution, and threats of violence against their families) until they signed self-incriminating statements. Although they were taken to hospital, SBU officers instructed doctors not to record any injuries. One of the victims begged a lawyer not to raise allegations of torture in court, fearing reprisals. The victim told the doctors in the pre-trial detention facility (SIZO) that he was injured falling from a tree. Both victims remain in detention, with trials ongoing.⁵¹

49. In another case, on 16 June 2016, a victim was physically attacked next to his apartment building by two men wearing balaclavas. The victim ran out into the street, where two other individuals hit him on the head, strangled him, and kicked his head when he fell on the ground. He was handcuffed, dragged into a van, and driven 30-40 minutes away. When the van stopped, an SBU official of the Kharkiv regional department questioned him about his acquaintances who joined the armed groups of the ‘Donetsk people’s republic’. Unsatisfied with the victim’s reply, SBU officers strangled, kicked and punched him while threatening his family. When the victim agreed to cooperate, the SBU officers explained that he would be taken to the Ukrainian-Russian border and detained for “smuggling weapons”. At the border, one officer stabbed the victim’s heel so he would not be able to escape. Afterwards, the victim was taken to the Kharkiv SBU building and forced to memorise a written statement. His “confession” was video recorded. The victim is currently on trial for “terrorism” and “trespass against territorial integrity of Ukraine”. While the Military Prosecutor for Kharkiv Garrison is investigating the allegations of torture, no notifications of suspicions or indictments have been issued.⁵²

⁵⁰ Not all incidents documented by OHCHR which occurred during the reporting period are reflected in this report in order to maintain the highest protection of victims through strict adherence to the principles of confidentiality and informed consent.

⁵¹ HRMMU interviews.

⁵² HRMMU interviews; HRMMU trial monitoring, 15 September and 30 October 2017; HRMMU meeting, 5 September 2017.

50. In another case, a man was detained in his home in Nyzhnioteple in November 2016 by members of the UAF. They searched him at gun point, beat him causing lasting pain, and subjected him to suffocation and electroshocks. They forced him to make a video confession that he provided information on Ukrainian military positions to armed groups. Then he was taken to the Sievierodonetsk SBU building where he was interrogated without a lawyer and forced to sign papers in order to receive medical care. Afterwards, he was taken to the hospital but threatened by SBU officers not to complain of any ill-treatment. He is accused of being a spotter for armed groups and is currently on trial.⁵³

51. OHCHR also followed cases of Ukrainian servicemen who reported being subjected to torture while detained on criminal charges.⁵⁴ On 30 October 2014, a serviceman of the Kirovohrad volunteer battalion together with five fellow soldiers was detained by a group of 20 armed men. The victim was held *incommunicado* in solitary confinement for three days in the basement of the SBU regional department building in Kramatorsk. He was tortured several times a night in order to extract information about his commanders. The victim was beaten, including with truncheons, and hung from bars while being hit and subjected to electroshocks. On the third night, the perpetrators cuffed the victim's hands behind his back, put duct tape tightly over his eyes and mouth causing pain, pushed him to the floor and kicked him. The victim lost consciousness and choked on his own blood. The beating continued until the victim confirmed that he was ready to "confess". He was told what to say in court and forced to sign documents. The SBU officers who took him to the court threatened that if he asked for a lawyer or complained, his "therapy" in the basement would continue. In the presence of two masked, armed SBU officers, the judge ordered his pre-trial detention for 60 days, without announcing any charges.⁵⁵ The victim's injuries were later documented at hospital and in the SIZO. Despite his written complaints about the *incommunicado* detention and torture, as well as two court orders for the Office of the General Prosecutor to conduct a forensic expertise of his injuries and investigate the circumstances of his arrest, there has been no progress in investigation. As of 15 November 2017, he remains in detention and complains about not receiving necessary medical aid.⁵⁶

Territory controlled by armed groups

52. Victims of torture residing in territory controlled by armed groups hesitate to report torture and rarely give consent for public reporting for fear of retaliation and direct threats to their safety.⁵⁷ When cases are reported, it is often much later after the incident occurred.

53. OHCHR documented the case of a Russian blogger,⁵⁸ who was detained with his wife at their home in Donetsk city on 27 September 2017 by armed men dressed in camouflage. The blogger was physically assaulted by the perpetrators, resulting in a fractured leg. One of the perpetrators also attempted to suffocate him. The victims were then taken to the 'UBOP' office, and interrogated separately for a few hours. During this time, no medical aid was provided. The woman was released that evening, while the man was forced to sign a 'notice' that he was detained under 'administrative arrest' upon charges of participating in a terrorist organisation. He was released on 2 November 2017.⁵⁹

54. During the reporting period, OHCHR received and followed up on accounts of seven individuals (three women and four men) who had been detained *incommunicado* in an armed-group-controlled place of detention called "Izoliatsiia".⁶⁰ Since at least 2016, the facility has been used by the 'MGB' and the 'UBOP' of the 'Donetsk people's republic' to detain men and women

⁵³ HRMMU interviews.

⁵⁴ HRMMU interviews.

⁵⁵ The victim was later charged and on 28 April 2017, the Kostiantynivka City Court convicted him under articles 187(2), 189(3), 263(1) and 410(1) of the Criminal Code and sentenced him to 10 years. He has appealed the verdict.

⁵⁶ HRMMU interview.

⁵⁷ HRMMU interviews.

⁵⁸ See also para. 105 below.

⁵⁹ HRMMU interviews.

⁶⁰ Izoliatsiia was an industrial facility that was turned into cultural facility in Donetsk city prior to the conflict. In May 2014, it was seized by armed groups and used as an illegal detention facility where individuals were tortured. OHCHR has previously reported on the human rights violations that occurred there.

suspected of “treason”, “subversive activities” or cooperation with SBU. Some members of the armed groups of the ‘Donetsk people’s republic’ were also reportedly held in this facility. Detention periods varied from a few hours to over a year. The facility has cells used for punishment (e.g. one only for sitting, another only for standing) and a ‘monitoring room’ from which the cells could be watched 24 hours via video cameras. Guards wore camouflage without insignia and were armed with AK-47 assault rifles. To keep detainees in a state of exhaustion, the guards forced them to constantly perform physical work.⁶¹

4. Conflict-related sexual violence

“We will bring your daughter here and we will have sexual intercourse with her in all possible ways.”

– Staff to detainee during interrogation.

55. OHCHR continued documenting cases of conflict-related sexual violence, most of which occurred at the early stages of the conflict, in 2014-2015, but were only reported recently when the victims felt safe and were able to access some services. These cases fit into the previously-identified pattern of sexual violence used as a form of torture or to force victims to perform actions demanded by the perpetrators.⁶² Some emblematic cases are described below.

56. On 28 September 2017, a civilian man was taken off a bus at an internal checkpoint by armed men in camouflaged uniform and accused of affiliation with armed groups based on his social media pictures. He was transferred to a police station in Kreminna, where he was forced to strip to his underwear and stand in a cold room for two hours, with people walking in and out. He was beaten, threatened with rape and of being handed over to Azov battalion. Without access to a lawyer, he was forced to sign a statement, typed by an investigator, that he was a member of armed groups. The next day he was released.⁶³

57. In December 2014, seven masked men armed with assault rifles, including several members of a volunteer battalion, broke into a private house in a town near the contact line. One perpetrator put a knife to the victim’s neck, who was eight months pregnant, and threatened to cut her throat if she screamed. He tied her hands and legs with rope and gagged her with a cloth wet with engine oil, causing her to suffocate. He also pointed a gun to her stomach threatening to shoot her baby. While one perpetrator demanded to know where the money and valuables were, another one sexually assaulted her by touching her breasts and genitals under her clothing, and a third man threatened her with gang rape. During this ordeal, the victim could hear her parents screaming in another room, causing additional suffering and reinforcing the threats. After seizing all the valuables and money, the men threatened to shoot the family if they reported the crime. The perpetrators are currently on trial.⁶⁴

Territory controlled by armed groups

58. On 31 May 2014, near Luhansk, two civilian men were abducted and detained by five members of an armed group masked with balaclavas and armed with assault rifles. They were taken to a tent camp and separated. One victim, who was known for his pro-Ukrainian views, was brought inside a tent, where other members of armed groups beat him and subjected him to a mock execution before interrogating him. At one point, the interrogator kicked the victim in his testicles, which was extremely painful and resulted in residual injury. The victim was also beaten with a metal rod wrapped in a rag by different individuals, including a woman. The perpetrators forced the victim to open his social network accounts, which was followed by more beatings on different parts of his body, including his kidneys and the back of his head. The perpetrators

⁶¹ HRMMU interviews.

⁶² See OHCHR report on conflict-related sexual violence in Ukraine, 14 March 2014 to 31 January 2017.

⁶³ HRMMU interview.

⁶⁴ HRMMU interview.

threatened the second victim that his younger sister “may not come back home tonight”; they knew where she studied and what time she returned home. The victims also heard a man armed with a pistol ask the guards whether his friends could rape the ‘detainees’.⁶⁵

5. Access to places of detention

59. In government-controlled territory, OHCHR – in general – continued to enjoy unimpeded access to official places of detention. OHCHR conducted confidential interviews, in line with international standards, of detainees in SIZOs in Bakhmut, Kharkiv, Kherson, Mariupol, Mykolaiv, Odesa, Starobilsk, Vinnytsia and Zhytomyr, and in penal colonies in Kharkiv, Mykolaiv and Odesa regions. At the same time, OHCHR faced unreasonable delays with access to a number of detainees held in Dnipro and Kyiv. In Kharkiv, OHCHR was denied permission for three months to hold a confidential interview with a detainee under SBU investigation, and also faced delays accessing other such detainees.

60. In both ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, OHCHR continued to be denied access to detainees and places of deprivation of liberty. Coupled with first-hand information received by HRMMU, this denial of access continued to raise serious concerns regarding detention conditions, as well as possible further human rights abuses such as torture and ill-treatment.

6. Conditions of detention

61. In government-controlled territory, HRMMU noted during its visits that the general conditions in some places of detention did not satisfy applicable international standards such as the Mandela Rules.⁶⁶ The issue of access to medical care remains acute, particularly for conflict-related detainees in SIZOs. Frequently raised concerns included: refusal to provide medical care⁶⁷; failure or inability to provide opportunities for specialised medical care (e.g. consultations with a neurologist, endocrinologist, surgeon or gynaecologist) or for a specific medical examination despite repeated requests⁶⁸; failure to provide medical check-ups or needed X-rays⁶⁹; and failure to provide medical assistance due to the absence of basic medication in SIZOs⁷⁰ or inability to ensure access to antiretroviral treatment for detainees with HIV⁷¹. While these findings are based on HRMMU interviews with conflict-related detainees, the United Nations Subcommittee on Prevention of Torture (SPT) also captured these violations as a result of systemic challenges.⁷²

62. During interviews and court hearings, alleged victims and their lawyers continue to raise concerns that bodily injuries of detainees as a result of torture are not systematically documented when detainees are admitted to a SIZO or temporary detention facility (ITT), despite existing regulations.⁷³ For example, a detainee was first rejected by the ITT in Kramatorsk due to visible signs of ill-treatment, but later admitted after the military police forced him to sign a statement that the injuries were sustained prior to his apprehension. The ITT administration did not attempt

⁶⁵ HRMMU interview.

⁶⁶ United Nations General Assembly Resolution 70/175, “United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)”, 17 December 2015.

⁶⁷ HRMMU interviews.

⁶⁸ HRMMU interviews.

⁶⁹ HRMMU interview.

⁷⁰ HRMMU interview.

⁷¹ HRMMU trial monitoring, 17 October 2017.

⁷² CAT/OP/UKR/3, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Visit to Ukraine undertaken from 19 to 25 May and from 5 to 9 September 2016: observations and recommendations addressed to the State party, paras. 53-56.

⁷³ For example, the existing Order of the Ministry of Internal Affairs No. 638 dated 2 December 2008, registered in the Ministry of Justice on 12 February 2009, requires that all detainees pass a medical examination in the medical institution under the Ministry of Health, and if a detainee has any health complaints, ITT staff should call an ambulance. If there are any visible signs of injuries, the Prosecutor’s Office should be immediately notified. Unfortunately, based on HRMMU monitoring, these safeguards do not always work, which leads to poor documentation of torture at all stages. HRMMU therefore welcomes efforts of the National Police and other relevant law-enforcement agencies to improve the situation through training of their staff, including on Istanbul Protocol, as well as a pilot project in ITT nr. 1 in Dnipropetrovsk region.

to verify the veracity of the written statement.⁷⁴ Often, detainees are only asked if they have any medical complaints and are not duly examined by a health practitioner. In some cases, although injuries were documented, SIZO staff failed to provide a copy of the medical certificate to the detainee⁷⁵ despite the legal requirement to do so.⁷⁶ As was highlighted by the SPT, delayed or superficial medical examination may thwart investigative efforts into allegations of torture.⁷⁷

Situation of pre-conflict prisoners in territory controlled by armed groups

63. OHCHR welcomes the transfer on 14 September 2017 of 19 pre-conflict prisoners from four penal colonies⁷⁸ controlled by the 'Donetsk people's republic' to facilities in government-controlled territory. The transferred prisoners did not report being subjected to torture or ill-treatment, however, in certain penal colonies, the conditions were poor, including substandard quality of food, insufficient healthcare due to lack of medical staff and supplies, and lack of adequate heating.⁷⁹

64. Prisoners reported that one of the primary reasons for requesting transfer was to be able to maintain contact with families, which had become difficult once the armed conflict erupted. While prisoners are sometimes able to make phone calls, there is no postal service between government-controlled territory and armed-groups-controlled territory, and relatives cannot easily cross the contact line. OHCHR is not informed about criteria used for selecting detainees for transfer. It is of concern that the 'Donetsk people's republic' denies transfer requests of pre-conflict prisoners with official registration in government-controlled territory of Donetsk region.

65. Even those prisoners who have served their complete sentence or were acquitted by a court in government-controlled territory after the start of the conflict have not been released. The armed groups do not acknowledge court decisions taken in government-controlled territory and do not recognize or apply the Savchenko Law,⁸⁰ resulting in the arbitrary detention of the concerned individuals.⁸¹

66. To date, no pre-conflict prisoners have been transferred from penal colonies controlled by the 'Luhansk people's republic' despite numerous appeals by prisoners and advocacy by HRMMU. This raises concern when paired with allegations received by HRMMU of ill-treatment, particularly in penal colonies in Slovianoserbsk and Khrustalnyi (formerly Krasnyi Luch). In addition to poor conditions of detention,⁸² prisoners alleged that they have been regularly beaten by masked men believed to be 'special forces' ("spetsnaz"). The perpetrators wore camouflage with a chevron displaying a skull wearing a beret with a knife in its teeth.⁸³

⁷⁴ HRMMU interview.

⁷⁵ HRMMU interviews.

⁷⁶ Joint Decree of the Ministry of Justice Ukraine and the Ministry of Health of Ukraine no. 239/5/104 of 10 February 2012, explicitly requires SIZO medical staff to issue a copy of a medical certificate attesting to documented bodily injuries to the detainee, regardless of the nature and circumstances of such injuries

⁷⁷ CAT/OP/UKR/3, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Visit to Ukraine undertaken from 19 to 25 May and from 5 to 9 September 2016: observations and recommendations addressed to the State party, paras. 34-38.

⁷⁸ Penal colonies no. 32 and 97 in Makivka, no. 28 in Torez, and no. 52 in Yenakiieve.

⁷⁹ HRMMU interviews.

⁸⁰ Law of Ukraine 'On amendments to the Criminal Code of Ukraine concerning the improvement of rules of incorporation by the court of the period of pre-trial detention into the period of sentence' No.838-VIII of 26 November 2015.

⁸¹ Under the Savchenko Law, when calculating time served, one day in a pre-trial detention facility was counted as two days of detention in a prison colony, which could substantially reduce the overall length of a prison sentence.

⁸² Prisoners reported insufficient quantity of food, insufficient of medical aid, limited electricity and running water (available only two hours per day), no heating in the barracks, and insufficient opportunities for personal hygiene (prisoners are allowed to wash only once a month).

⁸³ HRMMU interviews.

III. Accountability and administration of justice

A. Accountability for human rights violations and abuses in the east

"We will kill you now, and we will avoid any punishment for that."

- Perpetrators to victim of human rights violations.

67. The Government of Ukraine has a duty to ensure that victims of human rights violations and abuses have access to an effective remedy, including reparations, and that such remedies are enforced when granted.⁸⁴ Yet accountability for most conflict-related cases has not been achieved. These include both human rights violations perpetrated by Government forces and human rights abuses perpetrated by armed groups.

68. As of 1 November 2017, military prosecutor's offices reported carrying out 118 investigations into crimes allegedly perpetrated by Ukrainian military forces and other military formations (including killings of civilians) as well as by the SBU (including abuse of power and physical abuse of detainees to force confessions).⁸⁵ They further reported that, under their procedural guidance, the national police are carrying out 119 investigations.⁸⁶ At the same time, certain human rights violations allegedly perpetrated by Ukrainian military (in particular by members of special units formed on a voluntary basis) and SBU remain uninvestigated.⁸⁷

69. Similarly, police were hesitant to investigate the enforced disappearance of a Luhansk resident on 14 July 2014 allegedly perpetrated by members of the Ukrainian military due to "absence of elements of the crime". Only in May 2017, after the victim's mother had repeatedly filed a complaint with the police, was an investigation formally launched.⁸⁸ In another case, a Ukrainian soldier, accused of arbitrarily detaining a person, complained that the military prosecutor's office failed to investigate his own complaint of arbitrary detention and beatings over the course of three days at the Kramatorsk SBU. Despite repeated complaints since 2015, the investigation was closed and reopened twice, with no results to date.⁸⁹

70. The effectiveness of investigations is also an issue. For example, the criminal investigation into unlawful detention of individuals at the Kharkiv SBU has been ongoing for a year without yielding any results, raising concern regarding the genuine intention to bring the perpetrators to accountability.⁹⁰ Similarly, a conflict-related detainee's allegations of torture and ill-treatment by SBU officers in Sievierodonetsk were not properly addressed by the military prosecution.⁹¹ Furthermore, the investigation into the enforced disappearance of a resident of Dobropillia (Donetsk region) on 1 October 2014 has not yielded any results. The victim's brother collected witness accounts suggesting that the crime had been committed by members of the

⁸⁴ ICCPR, art. 2(3); CERD art. 6; CAT, art. 14.

⁸⁵ According to the Military Prosecutor, in addition, 13 investigations have been suspended, 124 have been closed and 83 have been submitted to courts with indictments (52 of which resulted in judgments of conviction).

⁸⁶ According to the Military Prosecutor, in addition, 6 investigations have been suspended, 142 have been closed and 243 have been submitted to courts with indictments (150 of which resulted in judgments of conviction).

⁸⁷ For instance, killings of Roman Postolenko and Dmytro Shabratskyi, OHCHR thematic report on accountability for killings in Ukraine, Annex I, paras. 11-14 and 117-118 respectively.

⁸⁸ HRMMU interview.

⁸⁹ HRMMU interview.

⁹⁰ OHCHR Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, para. 41 and footnote 37.

⁹¹ HRMMU interview. The victim complained to the Prosecutor's office of Luhansk region, which forwarded the complaint to the military prosecutor of Luhansk garrison, which in turn forwarded the detainee's complaint to the SBU internal oversight mechanism. The latter replied to the victim that no illegal actions had been established as a result of conducted investigation.

Donbas battalion with the acquiescence of the SBU and local police. The same police department is in charge of the investigation.⁹²

71. OHCHR is deeply concerned with the release on 6 November 2017 of a State Border Guard who had been convicted in the first instance court of killing a civilian in 2014 and sentenced to 13 years in prison.⁹³ The release followed a public information campaign by political figures in support of the accused which distorted the facts of the case, requests by members of Parliament for the SBU to investigate the judges of the trial court for links to armed groups and to examine their previous judgments,⁹⁴ and a meeting between members of Parliament and the Prosecutor General.⁹⁵ Further, President Poroshenko made a public statement in support of the accused.⁹⁶ Such pressure is emblematic of interference with the judiciary, and is likely to have a chilling effect on future investigations into serious violations of international human rights law or international humanitarian law committed by members of the security forces.

72. The Office of the Military Prosecutor continued to investigate human rights abuses perpetrated in territory controlled by armed groups, including killings, arbitrary deprivation of liberty, and torture and ill-treatment of both Ukrainian military and civilians. It reported having established numerous violations of Part 2 of Article 75 of Protocol I.⁹⁷ Testimonies of over 1,050 individuals arbitrarily detained by armed groups have reportedly been collected.

73. Individuals affiliated or linked with armed groups continued to face charges based only on their alleged participation in or support to armed groups rather than on violations of international humanitarian law or the human rights abuses they may have committed.⁹⁸ According to the Military Prosecutor, only 11 persons have been charged with violating the rules and customs of war under article 438 of the Criminal Code.⁹⁹

74. OHCHR notes the *in absentia* murder conviction and life sentences issued on 10 November 2017 against three members of armed groups of the 'Donetsk people's republic' for the 2014 killing of 16-year-old Stepan Chubenko.¹⁰⁰ While OHCHR welcomes adjudication of

⁹² HRMMU interview.

⁹³ Judgement of conviction, Prymorskyi district court of Mariupol, 15 November 2016, upheld by court of appeal of Donetsk region on 7 February 2017, available at: <http://reyestr.court.gov.ua/Review/64775792>. The accused was released based on the decision of the High Specialized Court for Civil and Criminal Cases on 6 November 2017 to return the case for retrial, available at: <http://reyestr.court.gov.ua/Review/70144868>.

⁹⁴ See appeal of judges of Prymorskyi district court of Mariupol to the High Council of Justice regarding interference with the judiciary, 6 November 2017, available at http://www.vru.gov.ua/content/file/2951-0-6-17_.pdf. On 1 November, a member of Parliament filed a request with SBU to examine whether the judges of Prymorskyi district court are linked to the armed groups. In addition, approximately 150 men, including senior officials and servicemen of the State Border Guard Service, members of the Donbas battalion, at least four members of the Parliament, and young men in sportswear with a red duct tape on their shoulders, attended the hearing on 2 November, and up to 200 men in military uniform attended the hearing on 6 November before the High Specialized Court for Civil and Criminal Cases. HRMMU trial monitoring, 2 and 6 November 2017.

⁹⁵ On 2 November, members of Parliament who support the perpetrator met with the Prosecutor General to discuss the case. http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=218440&fp=20.

⁹⁶ President Poroshenko made a statement supporting the Court decision saying that 'sometimes the Motherland has to defend its defenders' (available at: <https://www.facebook.com/petroporoshenko/posts/1136056533195404>)

⁹⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977.

⁹⁸ See OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2017, para. 88; OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2017, para. 72.

⁹⁹ See defendants listed in OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2017, footnote 118. Additional defendants include a 'commander' of the 'Hooligan battalion' of the 'Luhansk people's republic' (suspected of armed assault, abduction and illegal detention), the 'military commandant' of the 'ministry of defence' of the 'Luhansk people's republic' (suspected of creating an armed group in July 2014, assault, and misappropriating of property to be used in operation of the 'Luhansk people's republic'), commander of the 'Vostok battalion' for failure to provide medical aid to a Ukrainian soldier, leading to his death (see OHCHR thematic report on Accountability for killings in Ukraine from January 2014 to May 2016, Annex I, paras. 26-28), and a member of the armed groups of 'Donetsk people's republic' for physical violence against captured military servicemen and civilians in Snizhne, Donetsk region. According to the Office of the Military Prosecutor, 3,000 persons (including 1,450 civilians) have been unlawfully detained and subjected to torture, inhuman and degrading treatment.

¹⁰⁰ Judgment of conviction of Dzerzhynskiy town court of Donetsk region (available at: <http://reyestr.court.gov.ua/Review/70145786>). See also OHCHR thematic report on accountability for killings from January 2014 to May 2016, Annex I, paras. 44-47.

the human rights violation rather than focusing on membership in an armed group, concerns remain regarding possible deficiencies of the national legal framework regulating trials *in absentia* which may fall short of international human rights standards.¹⁰¹

B. Fair trial rights

"The European Court of Human Rights is very far. SBU, on the other hand, is right here."

- Criminal judge.

75. Individuals arrested and detained for conflict-related charges often found themselves victims of human rights violations such as arbitrary detention, torture and ill-treatment. The pattern suggested that the majority of these violations occurred shortly after arrest with the aim of obtaining incriminating testimonies and information. Victims' complaints of torture or ill-treatment were often disregarded, even when submitted in court.¹⁰² Furthermore, OHCHR documented cases suggesting that immediate access to a lawyer remains a problem for conflict-related detainees. This problem existed mainly in combination with the practice of unlawful detention prior to registering the arrest of a person.¹⁰³

76. Article 258-3 of the Criminal Code on the "setting up of a terrorist group or organization" criminalizes a broad range of actions, including "participating in" as well as "materially, institutionally, or otherwise facilitating the setting up or operation of" a terrorist group or organization. Such wording allows for broad interpretation of the law, in contradiction to the basic principle of legal certainty. On 28 September 2017, the Andrushivskiy district court of Zhytomyr region sentenced one media professional and one IT specialist to nine years for the "informational facilitation" of "activity of a terrorist organization" for helping to organize the operation of Novorossia TV channel.¹⁰⁴

77. OHCHR continued to observe attempts to pressure or otherwise interfere with the judiciary in conflict-related cases. A judge of Zarichnyi district court of Sumy¹⁰⁵ reported being harassed by 'civic activists' in response to the acquittal of a former security officer accused of joining an armed group.¹⁰⁶ In an unrelated case, after acquitting the former chief of the Kramatorsk town police who was accused of supporting armed groups, another judge found himself under investigation for the same charges.¹⁰⁷ A judge of the court of appeal of Luhansk region considering an appeal in the second acquittal of a district council official charged under article 114-1 of the Criminal Code¹⁰⁸ openly stated during a hearing that it was difficult for him to handle the "poorly substantiated appeal" given the attention to the case of "people from above".¹⁰⁹ Judges of Selydivskiy town court of Donetsk region who complained to the High

¹⁰¹ While an accused person has the right to be present at his or her trial (art.14, ICCPR), trials *in absentia* may be acceptable in special circumstances so long as the rights of an effective defence is preserved (General Comment no. 13, art. 14, ICCPR). The Criminal Code of Ukraine allows for *in absentia* trials, however does not provide for retrials, nor an opportunity to appeal against the verdict after the expiry of the general 30-day statutory limitation.

¹⁰² HRMMU interviews (with regard to complaints made in six different cases).

¹⁰³ HRMMU interviews.

¹⁰⁴ Judgment available at <http://reyestr.court.gov.ua/Review/69213571>.

¹⁰⁵ HRMMU interview.

¹⁰⁶ The acquittal was based on lack of recognition of the 'Donetsk people's republic' as a terrorist organization and non-admissibility of evidence, obtained by coercion.

¹⁰⁷ HRMMU interview.

¹⁰⁸ Article 114-1, introduced into the Criminal Code at the wake of the armed conflict in April 2014, criminalizes any "obstruction of lawful activities of the armed forces of Ukraine or other military formations". The current legislation does not define such 'lawful actions' with sufficient clarity, nor does it set a threshold to qualify as 'obstructing' them. This raises concerns that an unjustifiably wide discretion is left to prosecutors and judges, and the article may be used to persecute legitimate complaints against the military.

¹⁰⁹ HRMMU trial monitoring, 30 October 2017. According to publicly available information, the Deputy Minister for Temporary Occupied Territories and IDPs made prejudicial statements against the accused and another senior official of

Council of Justice about interference with their functions by the prosecutor's office of Donetsk region in conflict-related criminal cases, afterwards found themselves under investigation led by the latter.¹¹⁰

78. OHCHR recalls that the presumption of innocence is among fundamental guarantees of fair trial, and senior public officials should refrain from making public statements regarding criminal proceedings which would prejudice the public to believe the suspect is guilty or prejudice the assessment by judicial authorities.¹¹¹ OHCHR is concerned with public statements made by the deputy speaker of the Parliament claiming that former Sloviansk mayor Nelia Shtepa¹¹² (currently on trial for trespass against territorial integrity of Ukraine and creation of terrorist organization) called the "Russian world" into Donbas.¹¹³ (See also the release of a convicted State Border Guard, para. 71 above.)

C. Territory controlled by armed groups

"The circus continues..."

- Person on 'trial'.

79. The 'Donetsk people's republic' and 'Luhansk people's republic' continued developing structures through which they performed government-like functions, including in the area of 'justice'. OHCHR recalls that it is increasingly accepted that non-state actors exercising government-like functions and effective control over a territory must respect human rights standards when their conduct affects the human rights of individuals under their control.¹¹⁴

the district council, blaming them for construction of barricades obstructing the movement of UAF troops. Notably, he publicly admitted to interfering with the judiciary and pledged to "not step away until purging the land of this scum". See <https://apostrophe.ua/ua/article/society/2015-10-02/georgiy-tuka-o-vozvrashchenii-separatistov-vo-vlast-i-bludayushih-snyayerah/2353> and <https://amnesty.org.ru/ru/2015-09-18-ukraina2/>.

¹¹⁰ See complaints regarding interference with the judiciary, dated 23 June 2017 and 11 July 2017 (available at http://www.vru.gov.ua/content/file/1288-0-6-17_.pdf and http://www.vru.gov.ua/content/file/1288-1-6-17_.pdf). The judges complained about the failure of the prosecutor's office of Donetsk region to comply with legislation when prosecuting individuals on conflict-related charges, leaving judges no option but to return indictments back to the prosecution or acquit defendants. They alleged that in order to shift attention from their failures, the prosecutors blame the judges of intentional protraction of proceedings and unwillingness to adjudicate in conflict-related cases. On 7 July 2017, a group of "National Corps" activists allegedly organized by the prosecutor's office of Donetsk region protested against the acquittal of the "head" of the "supreme court" of 'Donetsk people's republic' and performed a mock 'hanging of the corrupt judge' (see <http://azov.press/ru/selidivs-kim-suddyam---lyustraciyn>). On 4 August 2017, based on a submission of a member of the Parliament, the prosecutor's office of Donetsk region launched an investigation into the acquittal of the "head" of the "supreme court" of 'Donetsk people's republic' by the judges of Selydivskiy district court of Donetsk region on charges of delivering a knowingly unjust verdict (see OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2017, footnote 74).

¹¹¹ It is a duty of all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. In *Gridin v. Russia* (2000), the Human Rights Committee found a violation of the presumption of innocence where public statements by officials which received wide media coverage presented the accused as guilty. See also *Saidova v. Tajikistan* (2004), *Ismoilov and others v. Russia*, ECHR, no. 2947/06, 24 April 2008.

¹¹² See OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, footnote 122. On 20 September 2017, Leninskyi district court of Kharkiv released Ms Shtepa from custody, replacing detention with house arrest upon the motion of the defence. Decision available at <http://reyestr.court.gov.ua/Review/69076525>. After more than three years of extending the detention (since Shtepa's arrest in July 2014), the court concluded that there was not a risk of flight. Of note, on 6 November 2017, the court informed the parties that the presiding judge on the trial has gone on paternity leave and recused himself. It is unclear whether the case will now need to be tried *de novo*.

¹¹³ <https://www.facebook.com/iryna.gerashchenko/posts/151203932550542>.

¹¹⁴ The United Nations Committee on the Elimination of Discrimination against Women considers that "under certain circumstances, in particular where an armed group with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights" (General Recommendation No 30, 2013). The United Nations Security Council strongly condemned "the continued violations of international humanitarian law and the widespread human rights violations and abuses, perpetrated by armed groups" in the Central African Republic (resolution 2127 (2013), para. 17). In relation to the situation in the Democratic Republic of the Congo, it reminded all parties "in Uvira and in the area that they must abide by international humanitarian standards

80. The armed groups contend that conflict-related detainees are under 'investigation' and/or in 'custody' awaiting 'trial'. As a general rule, conflict-related 'criminal cases' ('espionage', 'high treason', etc.) are held in closed 'sessions' without outside observers or independent international monitors. OHCHR is concerned that, behind closed doors, conflict-related detainees are 'convicted' and face harsh 'sentences' without recourse to effective remedy. For example, on 31 October, a 'military court' of the 'Luhansk people's republic' 'sentenced' a man to 12 years for 'high treason' after a two-week 'trial' held in closed sessions. OHCHR notes that the defence counsel, who was 'appointed' by 'MGB', never visited his client in detention. OHCHR further notes that while the details of the 'prosecution' and 'conviction' are unknown, the man was initially arrested after singing a Ukrainian song in a local bar.¹¹⁵

81. In addition to these concerns, the inherent lack of independence and impartiality of these 'tribunals' raises serious concerns that residents in territory controlled by armed groups do not have adequate protection of their rights and no access to justice. The situation is even more concerning in light of reports that a second 'death penalty' was 'pronounced' on 7 November 2017 by the 'supreme court' of the 'Donetsk people's republic'.¹¹⁶ International law sets stringent conditions for application of the death penalty, including meticulous compliance with international fair trial standards. The structures put in place by the "Donetsk people's republic" clearly fail to meet those standards and should therefore in no circumstances impose capital punishment.

82. In territory controlled by armed groups of both 'Donetsk people's republic' and 'Luhansk people's republic', the process of 'registered' detention is often preceded by a period of *incommunicado* detention perpetrated by the 'law enforcement structures', by 'MGB'¹¹⁷ or 'UBOP'¹¹⁸, which is not subject to any 'review'. Such *incommunicado* detention may last for weeks or months.

83. Persons residing in territory under the control of armed groups, including those in detention, who wished to obtain a lawyer faced new challenges. On 30 June 2017, the 'head' of 'Donetsk people's republic' issued a 'decree' stating that only lawyers who were 'certified' by the 'Donetsk people's republic' may represent a 'defendant' in 'criminal cases', which is in conflict with the 'law on the bar and practice of law'.¹¹⁹ Many lawyers fear obtaining such 'certification', as it may put them at risk of arrest and prosecution when they travel to government-controlled territory because the certification procedure requires taking an oath to the 'Donetsk people's republic'.

and ensure respect for human rights in the sectors they control" (statement by the President of the Council, S/PRST/2002/27(2002)), and indicated that "the RCD-GOMA must... ensure an end to all violations of human rights and to impunity in all areas under its control" (statement by the President of the Council, S/PRST/2002/22(2002)). See also, in relation to the situation in Gaza: A/HRC/16/71, para. 4, and in relation to the situation in Libya: A/HRC/17/45(2011), para. 20. See also Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, A/HRC/17/44, para. 72; and Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, para. 188.

¹¹⁵ HRMMU interviews. In addition, on 9 October 2017, the 'prosecutor-general's office' of the 'Donetsk people's republic' reported the 'sentencing' of two people to 14 years each for 'espionage', and on 13 November, OHCHR attended the pronouncement of a 'judgement' by the 'military tribunal' of the 'Donetsk people's republic' where a woman was 'convicted' of 'espionage' and 'sentenced' to 10 years. She reportedly received the minimum 'penalty' in exchange for cooperating with the prosecution.

¹¹⁶ The 'defendant' was 'convicted' of the rape, sexual assault and killing of a nine-year-old girl. Judgment available at <https://supcourt-dnr.su/content/verhovnyy-sud-prigovoril-nasilnika-i-ubiycu-k-isklyuchitel'noy-mere-nakazaniya>. The first 'death penalty' was 'pronounced' in December 2015 in a 'case' involving 'charges' of brigandism and killings, however as of 27 June 2017, the 'death penalty' had not been executed?

¹¹⁷ HRMMU interview; OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, paras. 47-50.

¹¹⁸ HRMMU interview.

¹¹⁹ The 'law' allows lawyers certified in Ukraine or the U.S.S.R. who have continuously practiced law in the 'Donetsk people's republic' since 11 May 2014 and are registered with the 'ministry of justice' to represent criminal defendants. HRMMU interview.

D. High-profile cases of violence related to riots and public disturbances

84. OHCHR continued to follow the cases of killings and violent deaths in the context of mass assemblies, including those which occurred at Maidan in Kyiv,¹²⁰ during the 2 May 2014 violence in Odesa¹²¹, during the Unity March in Kharkiv on 22 February 2015¹²² and from the explosion near Parliament on 31 August 2015.¹²³ Investigations into some episodes have been ongoing, while others have reached the courts, however no essential progress has been observed in convicting perpetrators.

1. Accountability for the killings of protesters at Maidan

85. According to the Prosecutor-General's Office, 53 persons (including former senior officials) have been notified of suspicion of committing crimes against participants of Maidan protests. Forty of them have reportedly absconded; special pre-trial investigations *in absentia* were launched against 27 of them.

86. Ten persons have been indicted, including five former "Berkut" special police regiment servicemen who are on trial on charges of killing 48 people and inflicting 128 gunshot injuries to 80 protesters on 20 February 2014, together with other absconded servicemen. They remain in custody pending trial at Sviatoshynskiy district court of Kyiv, which is still reviewing witnesses' and victims' testimonies and examines case files.

87. On 14 November 2017, Pecherskyi district court of Kyiv extended the pre-trial detention of one of alleged accomplices¹²⁴ of the abduction of two Maidan protesters on 21 January 2014. Both were reportedly severely beaten and released in a forest outside Kyiv. As a result, one victim froze to death.

88. The Prosecutor-General's Office continues its investigation against the former deputy head of the Kyiv SBU for launching an "anti-terrorist operation" in the Kyiv city centre which resulted in the deaths of protesters.¹²⁵ In total, 380 persons are under investigation for committing crimes against Maidan protesters.¹²⁶

2. Accountability for the 2 May 2014 violence in Odesa

89. On 18 September 2017, the Illichivskiy town court of Odesa region acquitted 19 persons¹²⁷ of mass disturbances in the city centre which led to the killing of six men.¹²⁸ The court held that the prosecution failed to prove that the accused took active part in the disorder. The court also noted that the pre-trial investigation was not impartial as it was carried out by police and according to available information, police officers could have been engaged in organizing and participating in the mass disturbances along with those on trial. The court also shared OHCHR's concerns regarding the one-sided investigation, noting in particular that the prosecution was biased against the 'pro-federalism' activists.

90. The court ordered the immediate release of the five defendants who had remained in custody since May 2014. SBU immediately re-arrested two of them in the courtroom after the

¹²⁰ At least 108 protesters and other individuals, as well as 13 police officers, were killed during the Maidan protests. See OHCHR report on Accountability for killings in Ukraine, paras. 20-24 and Annex I, tables 1 and 2.

¹²¹ During the mass disorder in Odesa city centre, 6 persons were shot dead and 42 died while trapped in the burning House of Trade Unions. See OHCHR report on Accountability for killings in Ukraine, paras. 25-27 and Annex I, table 3.

¹²² Four people were killed by a blast. See OHCHR report on Accountability for killings in Ukraine, Annex I, para. 4.

¹²³ Four police officers were killed by a combat grenade explosion. See OHCHR report on Accountability for killings in Ukraine, Annex I, para. 5.

¹²⁴ Another 11 suspects have been put on a wanted list.

¹²⁵ For more details, see OHCHR thematic report on Accountability for killings in Ukraine from January 2014 to May 2016, Annex I, Table 1.

¹²⁶ Of them: 48 senior officials, 203 law enforcement officers, including 25 investigators, 16 prosecutors and 15 judges, and 42 civilians (the so-called "titushky") have been charged with crimes against Maidan protesters from November 2013 to February 2014. One hundred fifty five indictments against 239 persons have been submitted to courts, and 42 people have been convicted.

¹²⁷ The 20th accused absconded from Ukraine on 11 August 2017 and his case was separated.

¹²⁸ Judgment of acquittal, available at: <http://reyestr.court.gov.ua/Review/68926870>. OHCHR notes that the legal proceedings were beset with delays, having been transferred between four different courts, as well as re-started on three different occasions. Notably, once the case reached the panel of the Illichivskiy town court of Odesa region, the trial saw rapid progress and was completed within four months (from 31 May to 18 September 2014).

judgement was pronounced, on charges of “trespass against the territorial integrity of Ukraine” in connection with a peaceful motorcade rally of ‘pro-federalism’ supporters in March 2014.¹²⁹

91. The court decision left unanswered the question of who is responsible for organizing the mass disturbances which resulted in 48 deaths. As of the date of this report, the investigations had identified only two persons who allegedly shot dead two men. One of the suspects is a member of ‘pro-unity’ groups and remains at liberty pending his trial, in stark contrast to the members of ‘pro-federalism’ groups who were detained for several years prior to their acquittal.¹³⁰

IV. Fundamental freedoms

A. Freedom of movement

“If we did not have to travel to the territory controlled by the Government to confirm our right to receive pensions, we would still go there... But to meet with relatives, to purchase food, not to be humiliated.”

- Resident living in territory not controlled by the Government.

92. Restrictions on freedom of movement and the transfer of goods and currency across the contact line continued to adversely affect hundreds of thousands of persons. Such restrictions, which required civilians to expose themselves to security risks, long queues and physical challenges, only served to further divide a once-integrated community.

93. Numerous factors contributed to longer queues at entry-exit checkpoints (EECPs) on both ends of the crossing routes. A total of 1.2 million individual crossings were recorded at the five crossing routes in August, and 1.1 million in September and October each.¹³¹ The daily working hours of the checkpoints at the crossing routes were reduced by 4.5 hours over the course of the reporting period.¹³² As of 15 November 2017, they were open from 8:00 to 17:00 hrs. Newly introduced measures¹³³ at the Cargill checkpoint (controlled by ‘Donetsk people’s republic’), also significantly slowed down the movement of people across the contact line. HRMMU observed that due to the longer waiting periods at this checkpoint, people attempted to cross the contact line through other crossing corridors, contributing to longer queues there as well. Civilians complained to HRMMU that long queues at government-controlled checkpoints were caused by an overly complicated checking procedure. OHCHR notes that corrupt practices were also claimed to be a significant factor negatively impacting the flow of civilians across the contact line.¹³⁴

94. During the reporting period, there have been at least nine security incidents at or in the vicinity of the crossing routes.¹³⁵ Mines continued to pose a serious threat to civilians crossing

¹²⁹ <http://reyestr.court.gov.ua/Review/69748399>, <http://reyestr.court.gov.ua/Review/69748019>

¹³⁰ The second suspect is a ‘pro-federalism’ activist who allegedly fled Ukraine after the 2 May violence.

¹³¹ Number of individual crossings of the contact line per month (information provided by the State Border Guard Service of Ukraine): August – 1,194,000; September – 1,093,000; October – 1,108,000; 1-15 November – 485,000.

¹³² On 1 September 2017, the working hours were reduced by 2.5 hours, and on 29 October, they were reduced by a further 2 hours. At the close of the reporting period, the EECPs were open from 8:00 to 17:00 hrs.

¹³³ Individual passport registration and checks already in place at other checkpoints were introduced at Cargill checkpoint on 7 September 2017.

¹³⁴ HRMMU site visits of all five crossing routes throughout the reporting period and information received from interlocutors.

¹³⁵ See Ukraine: Checkpoints – Humanitarian Snapshot (as of 16 November 2017), available at <https://reliefweb.int/report/ukraine/ukraine-checkpoints-humanitarian-snapshot-16-november-2017>; Ukraine: Checkpoints – Humanitarian Snapshot (as of 15 September 2017), available at <https://reliefweb.int/report/ukraine/ukraine-checkpoints-humanitarian-snapshot-15-september-2017>. Further, on 13 October 2017, one Ukrainian Border Guard was wounded as a

the contact line and those living in close vicinity to EECPs. On 22 August, two women (aged 60 and 56) suffered injuries requiring hospitalization from an explosive device while walking off the main road near the Novotroitske EECF.¹³⁶ On 1 September, a 54-year old woman was wounded by a mine explosion in a forest in Stanytsia Luhanska.¹³⁷

95. OHCHR continued to express concern over conditions at Stanytsia Luhanska, the sole crossing route in Luhansk region, which requires people to climb across unsafe wooden ramps connecting parts of a destroyed bridge.¹³⁸ This is especially challenging for elderly people (who make up the vast majority of those crossing), persons with disabilities, and families travelling with children. With the onset of winter, traversing the ramps will become increasingly more difficult due to snow and ice. For this reason, persons with disabilities living in territory controlled by armed groups often decide it is too dangerous to travel across in order to receive their disability support and pensions.¹³⁹ OHCHR fears that these conditions may also encourage use of alternative, unofficial crossing paths, which are often mined. For example, on 10 November 2017, a resident of Donetsk stepped on a landmine while attempting to cross the contact line from Donetsk to Marinka outside of official crossing routes.¹⁴⁰ He died instantly from his injuries, however, his body remained in “no man’s land” for two days before it could be recovered.

96. On 20 October 2017, in a unilateral action, the Government once again opened its EECF located at the hitherto closed crossing route near Zolote in Luhansk region¹⁴¹ and allowed people to cross into “no man’s land” towards positions of armed groups of the ‘Luhansk people’s republic’. The people were prohibited from crossing checkpoints manned by the armed groups and had to return. While OHCHR strongly urges the opening of additional crossing routes across the contact line, including at Zolote, this must be done in a coordinated manner and must avoid placing civilians at increased security risks.

97. OHCHR continued to document cases of discriminatory restriction of freedom of movement through so-called ‘internal check points’ operated by the National Police. Civilians, including representatives of local and international NGOs who are registered in territory controlled by armed groups are often stopped and required to present an IDP certificate and their cell phones for a check of IMEI codes.¹⁴² All personal data is reportedly stored for future use. Such practice not only restricts freedom of movement and has a negative impact on operation of NGOs but also has a discriminatory nature targeting people who are registered in territory controlled by armed groups.

98. Residents were also adversely affected by unnecessary and disproportionate restrictions imposed by Order no. 39 of the Ministry of Temporarily Occupied Territory, which specifies the list of goods and quantities which may be transported across the contact line. On 28 July 2017, a woman crossing the contact line was stopped from transporting life-saving medication for her disabled daughter who suffers from a serious kidney condition, because the quantity of medication exceeded the prescribed maximum. The mother and child were stuck at the EECF for eight hours, during which the woman had to perform peritoneal dialysis for her daughter twice.

result of sniper fire at Marinka checkpoint, and on 10 September 2017, the area around the government-controlled checkpoint at Maiorsk was impacted by shelling.

¹³⁶ Daily report of the OSCE SMM, 25 August 2017, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/336636>.

¹³⁷ ATO Press Centre, 2 September 2017, available at <https://www.facebook.com/ato.news/posts/1682749488402517>.

¹³⁸ See OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2017, para. 91.

¹³⁹ HRMMU meeting, 12 September 2017.

¹⁴⁰ OSCE SMM Daily report, 13 November 2017, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/336591>. In addition, on 7 November, a resident of Stanytsia Luhanska died when he detonated an anti-personnel mine in the vicinity of Krasnyi Yar village while attempting to cross a river by boat from government-controlled territory to territory controlled by armed groups (information provided by OSCE SMM).

¹⁴¹ The Government first opened the Zolote checkpoint in March 2016, however armed groups of the self-proclaimed ‘Luhansk people’s republic’ refused to open checkpoints on territory under its control which would allow for the crossing of civilians.

¹⁴² Information provided by NGO Right to Protection. In addition, on 16 October 2017, HRMMU national Human Rights Officers staff travelling in a private car were asked at an internal checkpoint about their registered place of residence (“propiska”), suggesting discriminatory treatment.

They were allowed to transport the medication across the contact line only after a local NGO intervened.¹⁴³

99. Since there is no legal provision determining the amount of money which may be transported across the contact line, border guards apply Order no. 39 arbitrarily and confiscate amounts in excess of 10,000 UAH.¹⁴⁴ As of 28 August 2017, the State Fiscal Service of Ukraine (SFS) had seized cash from persons crossing the contact line on 26 occasions, totalling over 300,000 USD.¹⁴⁵ In each of these incidents, the SFS opened criminal proceedings under article 285-5 of the Criminal Code (“financing terrorism”) and transferred the cases to SBU for investigation.

100. Civilians complained that at government-controlled checkpoints, SBU officers pressured civilians residing in territory controlled by armed groups to sign papers agreeing to cooperate with SBU, by gathering information and reporting it back to SBU.¹⁴⁶ OHCHR is deeply concerned that such actions place civilians at serious risk. Such exchanges with SBU, occurring at checkpoints, can have grave repercussions such as ‘arrest’ by members of the armed groups on ‘charges’ of ‘high treason’ or ‘espionage’.

B. Freedom of opinion and expression

“If you cover the events in a wrong manner, you will end up with a criminal case of terrorism.”

- Legal defender.

101. OHCHR is concerned about the use of and the broad interpretation of terrorism-related provisions of the Criminal Code, as well as the provisions on high treason and trespass on territorial integrity of the country, in cases against Ukrainian media professionals, journalists and bloggers who publish materials or make posts or reposts in social media which are labelled by the security service as ‘anti-Ukrainian’.

102. Within the reporting period, at least three individuals were arrested and detained¹⁴⁷ and one was convicted and given a suspended sentence based on a repost he made on social media.¹⁴⁸ In addition, on 28 September 2017, the Andrushivskiy district court of Zhytomyr region convicted one media professional and one IT specialist on terrorism charges and sentenced each to nine years.¹⁴⁹ They were accused of facilitating the online broadcasting of Novorossia TV channel (affiliated with the ‘Donetsk people’s republic’, which the SBU considers a terrorist organization). Another journalist detained at Zhytomyr SIZO since 2 August 2017 is charged

¹⁴³ HRMMU interview.

¹⁴⁴ The Order provides that a person may transport goods with a total value of 10,000 UAH.

¹⁴⁵ According to the SFS, they confiscated 3,393,500 UAH, 1,319,700 RUB, 137,300 USD, 8,600 EUR, 100 CAD and 35 GBP during 2017.

¹⁴⁶ HRMMU interviews.

¹⁴⁷ SBU arrested one man on 28 September 2017 in Zaporizhzhia for his alleged affiliation with the ‘social communication committee’ of the self-proclaimed ‘Donetsk people’s republic’ and his publications which SBU claimed to be anti-Ukrainian and contain public calls to trespass the territorial integrity of Ukraine (See <https://ssu.gov.ua/ua/news/1/category/2/view/3952#.3AuLYZF0.dpbs>), the second on 19 October in Berezivka town in Odesa region (<https://ssu.gov.ua/ua/news/7/category/21/view/4035#.ZODEPeyc.dpbs>), and the third on 27 October 2017 in Dnipro (<https://ssu.gov.ua/ua/news/4/category/21/view/4067#.r2HQ9i27.dpbs>) for social media posts deemed “anti-Ukrainian”.

¹⁴⁸ On 2 October 2017, the Desnianskii district court in Kyiv convicted a man under article 109 of the Criminal Code (“Actions aimed at forceful change or overthrow of the constitutional order or take-over of government”) for his repost on social media (<http://reyestr.court.gov.ua/Review/69284181#>).

¹⁴⁹ Both were found guilty of “Creation of a terrorist group or a terrorist organization” (Article 258-3 of the Criminal Code), and the IT specialist was additionally convicted of “public calls to commit a terrorist act” (Article 258-2) and “Violating the equality of citizens based on their race, ethnicity or regional beliefs” (Article 161). HRMMU interviews. See also Fair trial rights, para. 76 above.

inter alia with treason and terrorism based on his publications, and could face up to 15 years of imprisonment.¹⁵⁰

103. The lack of accountability for crimes against journalists raises serious concerns. Little progress was achieved in investigations of recent physical attacks against media professionals¹⁵¹ or in the high-profile cases of the killings of Pavlo Sheremet¹⁵² and Oles Buzyna.¹⁵³

104. OHCHR also noted a worrying trend of foreign journalists reporting on the conflict in the east being labelled “propagandists” as a basis for their deportation from Ukraine.¹⁵⁴ Three journalists from the Russian Federation and two from Spain were subjected to arrests, interrogations, and expulsions in connection with their reporting.¹⁵⁵ The SBU insists it is compelled to undertake restrictive measures in cases when journalists disregard objectivity and distort information. OHCHR stresses that any restriction of freedom of expression, if applied, must be proportionate to the legitimate aim pursued and calls for careful consideration of each restrictive measure, based on international standards including practice of the European Court of Human Rights.¹⁵⁶

Territory controlled by armed groups

105. Freedom of expression remains severely restricted with no critical publications or elements of dissent allowed in media outlets circulating in ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. On 27 September 2017, armed men forcibly entered the home of a well-known blogger and activist in Donetsk, beat him and interrogated both him and his wife (*see also* para. 53 *above*). The blogger was arbitrarily detained for 36 days, until 2 November,

¹⁵⁰ He is charged with “High Treason” (Article 111 of the Criminal Code), “Trespass against the territorial integrity and inviolability of Ukraine” (Article 110), “Violations of citizens’ equality based on their race, ethnicity and religious beliefs” (Article 161) and “Creation of a terrorist group or a terrorist organization” (Article 258-3). HRMMU interviews; <https://ssu.gov.ua/ua/news/1/category/2/view/3945#.Zd2HXxCc.dpbs>.

¹⁵¹ On 15 September 2017, a journalist and a cameraman from Radio Liberty were attacked in Kyiv, allegedly by a state guard officer while they were filming near the venue of the wedding of the General Prosecutor’s son. A criminal case was opened under article 345-1 (“threats or violence towards a journalist”). Both the victims and their lawyer state the law enforcement are failing to investigate the case. On 24 October 2017, one journalist was beaten and two others were attacked and apprehended while reporting on a trial in Sviatoshynskiy district court in Kyiv. A criminal case was opened under article 171 of the Criminal Code of Ukraine (“preventing legal professional activity of journalists”). In total, from January to October 2017, the National Union of Journalists of Ukraine documented 80 attacks against journalists, 20 of which were reportedly committed by state officials, civil servants or law enforcement agents. <http://nsju.org/index.php/article/6679>.

¹⁵² See OHCHR report on the human rights situation in Ukraine covering the period between 16 May and 15 August 2017, para. 97.

¹⁵³ See OHCHR report on Accountability for killings in Ukraine, January 2014 to May

2016, Annex 1, para. 79-82; OHCHR report on the human rights situation in Ukraine covering the period between 16 February and 15 May 2017, para. 86.

¹⁵⁴ The practice was widely criticised by the international community: On 18 September 2017, the Committee to Protect Journalists (CPJ) published an open letter to President Poroshenko which referred to seven incidents from August to September where SBU “targeted newsrooms and journalists on accusations that appear politically motivated, and in retaliation for critical reporting” and called on the President “to reaffirm his commitment to ensuring journalists’ safety”, available at <https://cpj.org/2017/09/cpj-calls-on-ukrainian-president-petro-poroshenko- php>.

¹⁵⁵ On 14 August 2017, SBU detained Tamara Nersisyan, special correspondent for Russian state broadcaster VGTRK and interrogated her about her reporting in eastern Ukraine. On 29 August 2017, SBU reported it had barred Spanish freelance journalists Antonio Pampliega and Ángel Sastre over their reporting on the conflict in the east and for posting “anti-Ukrainian” messages on social media. On 30 August 2017, unknown persons abducted Russian journalist from “Perviy kanal”, Anna Kurbatova, from a street in the centre of Kiev. On 4 October, SBU detained Russian “NTV” journalist Viacheslav Nemyshov and reported he had a ‘press accreditation’ of the self-proclaimed ‘Donetsk people’s republic’ and had been working on the armed-group-controlled territory in 2016-2017, reporting “anti-Ukrainian information”. All these journalists were expelled and barred from entering Ukraine for three years. On 13 October 2017 SBU reported to have lifted the ban for the two Spanish journalists

¹⁵⁶ See fact sheet on hate speech by the European Court of Human Rights, available at

http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf; *Handyside v. the United Kingdom*, Judgment, 7 December 1976, § 49: “Subject to paragraph 2 of Article 10 (art. 10-2), [freedom of expression] is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. [”.](https://hudoc.echr.coe.int/eng#{)

accused of ‘terrorism’. The ‘charge’ allegedly stemmed from his published articles criticising the leadership of the ‘Donetsk people’s republic’.¹⁵⁷

106. Armed groups of ‘Donetsk people’s republic’ continue to detain blogger Stanislav Aseyev (aka Vasin), held since 3 June 2017.¹⁵⁸ Another blogger in ‘Luhansk people’s republic’ was reportedly ‘convicted’ of “extremism” and “espionage” for his critical posts on social media and ‘sentenced’ to 14 years imprisonment.¹⁵⁹

107. The privacy and personal data protection of internet users in ‘Donetsk people’s republic’ have been compromised. On 21 September 2017, the ‘ministry of communication’ sent a letter to internet providers requesting them to collect and store the personal data of internet users¹⁶⁰ and information about their online activities.¹⁶¹ The justification provided was the “significant number” of requests from ‘law enforcement agents’ to identify persons suspected of committing offences.

C. Freedom of religion or belief

108. OHCHR continued documenting interference with freedom of religion through policies and actions undertaken in particular in territory controlled by armed groups. OHCHR also continued to monitor ongoing disputes between different churches in Ukraine for potential impacts which may infringe upon the freedom of religion.¹⁶²

109. On 17 August 2017, the ‘ministry of culture, sports and youth’ of ‘Luhansk people’s republic’ adopted a ‘decree’¹⁶³ requiring religious organizations to obtain a positive “theological opinion” in order to ‘register’, act as ‘legal entity’ and operate. The ‘expert council’ created to conduct such theological expertise can issue a negative opinion on the basis of a broad and vague list of reasons.¹⁶⁴ OHCHR is concerned that implementation of this ‘decree’ will lead to arbitrary infringement on the right to manifest one’s religion or belief, while further shrinking the space for members of minority religious groups to exercise their rights.

110. In both ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, a number of actions were taken against Jehovah’s Witnesses communities. In Horlivka, one of the houses of worship of the Jehovah’s Witnesses community (known as “Kingdom Halls”) was reportedly ‘expropriated’ by the ‘Donetsk people’s republic’ on the basis that it was “abandoned”, despite documentation confirming the congregation’s ownership of the property¹⁶⁵ as well as its continued use by parishioners.¹⁶⁶ On 28 August, the ‘MGB’ of the ‘Luhansk people’s republic’ announced that activities of unregistered organizations of Jehovah’s Witnesses were banned due to their alleged ties with the SBU. Since then, Kingdom Halls in Luhansk, Alchevsk and Holubivka in territory controlled by the ‘Luhansk peoples’ republic’ have been inaccessible for parishioners, bringing the total number of Jehovah’s Witnesses religious buildings seized by

¹⁵⁷ HRMMU interview.

¹⁵⁸ OHCHR Report on the human rights situation in Ukraine, 16 May and 15 August 2017, paras. 49 and 103.

¹⁵⁹ Joint Submission under Article 19 of the Centre of Democracy and Rule of Law, Interdisciplinary Scientific-Educational Centre on Fighting Corruption, Human Rights Information Centre, Human Rights Platform and Institute for Development of Regional Press for the Universal Periodic Review of Ukraine, 30 March 2017, available at <http://bit.ly/2jzbKwS>; Press briefing by a representative of the self-proclaimed ‘Luhansk people’s republic’, available at https://www.youtube.com/watch?time_continue=111&v=5XcYd6B6-rio.

¹⁶⁰ Internet providers are expected to provide ‘law enforcement’ with a user’s name, residence registration, contact details and IP address.

¹⁶¹ The information is to be stored for no less than six months. The letter is published on the website of the ‘ministry of communications’, available at https://xn--b1akbpgy3fwa.xn--p1acf/sites/default/files/pismo_ms_2418.pdf.

¹⁶² These churches include the Ukrainian Orthodox Church (Moscow Patriarchate), Ukrainian Orthodox Church of the Kyiv Patriarchate, and Ukrainian Greek Catholic Church.

¹⁶³ ‘Decree’ on ‘order of issuance of theological opinion on permissibility of state registration of religious organizations’, available at <https://mklnr.su/engine/download.php?id=507&area=static>.

¹⁶⁴ The list *inter alia* includes “complicity in aggression against the ‘Luhansk people’s republic’”.

¹⁶⁵ The documents were issued by Ukrainian authorities prior to the outbreak of the conflict.

¹⁶⁶ No ‘decision’ was communicated to the parishioners, who found out from anonymous sources after the ‘expropriation’ had already taken place.

armed groups since the beginning of the conflict to 12.¹⁶⁷ Furthermore, on 14 October, ‘MGB’ entered the private home of a parishioner, interrupted a joint worship and collected personal data of all the participants. Four parishioners were temporarily detained and one was accused of organising an unauthorised public gathering.¹⁶⁸

V. Economic and social rights

A. Right to an adequate standard of living

‘We had hoped that when we retire, we can finally start living for ourselves. But now we do not have money for anything. We just sit at home all day long. It is very depressing.’

- Pensioner.

111. The living conditions of people residing in conflict-affected areas remained dire due to damages and wear of key civilian infrastructure affecting public gas, water and electricity supply, lack of basic services in remote villages close to the contact line, severe restrictions on delivery of humanitarian aid, deteriorating economic environment, food insecurity, high level of unemployment and limited access to psycho-social and other forms of support.

112. As temperatures fell, the humanitarian situation in villages close to the contact line where civilian infrastructure and public gas supply are often damaged worsened. For example, the gas pipeline to (government-controlled) Krymske, Toshkivka and Nyzhnie was damaged by shelling on 5 June 2017, interrupting the supply of gas to those villages. The majority of residential houses have not been equipped with other heating mechanisms and will rely on limited humanitarian support in this regard. A similar situation was observed on the other side of the contact line, in Pikuzy village (formerly Kominternove) where 35 residential houses have not had gas supply since shelling damaged the pipeline in April 2017. Although the pipeline was repaired in May 2017, the gas company (located in Mariupol) stopped supplying gas to Pikuzy on 9 June 2017.¹⁶⁹ Due to high prices, residents cannot afford to purchase coal on a regular basis for heating purposes and instead rely on electric heaters. However, the electricity supply is irregular due to frequent damages inflicted by shelling.¹⁷⁰

113. Much of the key water infrastructure is located in “no man’s land”, which is often shelled and/or contaminated with UXO. The security situation poses serious obstacles for performing maintenance and repairs which should be completed prior to the onset of winter in order to avoid possible serious irreversible damage.¹⁷¹ Dokuchaievsk (located 2km from the contact line in territory controlled by ‘Donetsk people’s republic’) receives approximately only

¹⁶⁷ Kingdom Halls in Horlivka, Donetsk, Perevalsk, Khrustalniy (formerly Krasnyi Luch), Boikivske (formerly Telmanove), Yenakiieve, Holubivka (formerly Kirovsk) and Brianka remain confiscated. In addition, Kingdom Halls in Luhansk and Alchevsk were searched by ‘MGB’ on 4 August 2017 based on alleged mining of the area, during which, parishioners were forced out from the building, had their personal data collected, and were individually questioned (including children who were questioned without the presence of their parents). On 15 August, the Kingdom Hall in Holubivka (formerly Kirovsk) was sealed by the ‘Luhansk people’s republic’ without any justification provided. HRMMU interview; Jehovah’s Witnesses Report on Observance of Freedom of Religion in “Certain Territories in the Donetsk and Luhansk Regions”, July – September 2017; OHCHR Report on the human rights situation in Ukraine, 15 May to 14 August 2017, paras. 105-106.

¹⁶⁸ HRMMU interview. HRMMU documented other cases where parishioners of Jehovah’s Witnesses were detained, questioned with regard to their religious affiliation, and ill-treated by members of armed groups.

¹⁶⁹ HRMMU meeting, 7 September 2017.

¹⁷⁰ Other locations with restricted access to electricity caused by the conflict include government-controlled Lopaskyne (since May 2017), armed-group-controlled Staromarivka (since end of September 2017) and Novooleksandrivka (where inhabitants have not had electricity for more than three year). OSCE SMM.

¹⁷¹ If the pipes do not have water running through them when temperatures drop, they may freeze, causing irreversible damage. HRMMU meeting (WASH Cluster), 31 August 2017.

70 per cent of its water needs due to damages of the South Donbas Water Pipeline caused by shelling; the same damage places at risk the centralized heating of 400,000 people during the winter. Repairs would require a “window of silence” for water specialists to fix known damage and to check nine kilometres of pipe located in “no man’s land”, which may be contaminated with mines and UXO.

114. People living in villages close to the contact line continued to face obstacles accessing basic services and goods. For instance, in Opytne village where 42 residents remain, there has been no electricity, heating, gas or water supply since the beginning of the conflict. Furthermore, there is no grocery store, no pharmacy, no medical facility, and no public transportation. In order to access basic services, residents must walk 6 km to Avdiivka, along a footpath going through fields contaminated by mines and UXO, as the roads leading to Opytne are closed to vehicles. Persons with disabilities or elderly people who cannot walk the distance are especially vulnerable.¹⁷²

115. Restrictions on movement also prevented humanitarian assistance from reaching Opytne and other remote villages located close to the contact line in “no man’s land”. An NGO attempting to deliver humanitarian aid was stopped at an ‘internal’ checkpoint at the entrance to Pishchane (located 1.2km from the contact line) and denied entry to the village.¹⁷³ Similar incidents were documented in Novoluhanske, and the government-controlled area of Zaitseve (Bakhmutka and Zhovanka).¹⁷⁴

116. Access to adequate housing also remained an issue, in particular for displaced persons with disabilities. OHCHR observed poor living conditions in a collective centre for IDPs in Sviati Hory sanatorium in Donetsk region, where 90 per cent of the 203 residents (including 31 children) are persons with disabilities.¹⁷⁵ The indoor temperature of the two buildings was approximately 15 degrees Celsius. Residents share a single functioning shower, and a warm shower is available only once every nine days. The electricity is weak and the elevators do not function. Furthermore, IDPs accommodated in this collective centre lack basic food items, medications and hygiene products. OHCHR also documented the case of an 80-year-old wheelchair-bound IDP and her husband from Donetsk, who have spent two years living in their unheated country house. With very few accessible apartments available, they were unable to obtain appropriate alternative accommodation.¹⁷⁶

117. The space for humanitarian action in territory controlled by armed groups continued to be restricted. For instance, in ‘Donetsk people’s republic’ a new ‘accreditation’ for humanitarian cargo was introduced,¹⁷⁷ adding a third layer to an already cumbersome ‘accreditation’ process for humanitarian activity.¹⁷⁸ This cumbersome procedure creates additional challenges for humanitarian aid to reach people in need, at a time when 800,000 people in territory controlled by armed groups (double the number in 2016), are severely and moderately food insecure.¹⁷⁹

¹⁷² HRMMU visit to Opytne village, 10 October 2017. HRMMU documented similar situations during visits to Chorny Buhor and Chihari settlements in Pivdenne (2 November 2017), Dacha (1 November 2017), Katerynivka - particularly its western part Koshanivka (30 August 2017), Krymske (29 August 2017), government-controlled parts of Zaitseve (Bakhmutka and Zhovanka, 1 November 2017), Znamianka (9 November 2017) and Novooleksandrivka (20 October).

¹⁷³ HRMMU visit to Pishchane, 5 October 2017.

¹⁷⁴ HRMMU visit to Novoluhanske, 4 October 2017.

¹⁷⁵ HRMMU visit, 5 September 2017.

¹⁷⁶ HRMMU interview.

¹⁷⁷ Although ‘decree’ no. 74 “on adoption of a temporary order of accreditation of humanitarian cargo” was signed on 28 April 2017, it was not published until 12 September 2017.

¹⁷⁸ There are now three ‘accreditation’ required, for the humanitarian organization to operate in the territory, for the specific humanitarian project, and for humanitarian cargo.

¹⁷⁹ Food Security and Livelihoods Cluster, Update on Sectoral Needs, Ukraine, October 2017, available at: http://fslcluster.org/sites/default/files/documents/fslc_brief_update_on_sectoral_needs_october_2017.pdf.

B. Right to social security and social protection

"You should have thought about this in 2014! When will they terminate your pension?"

- Border Guard to pensioner crossing the contact line.

118. There has been no change in the Government's policy of linking pensions to IDP registration.¹⁸⁰ The verification and identification procedure¹⁸¹ under this policy has led to the suspension of pension payments to at least 500,000 people since its adoption on 8 June 2016.¹⁸²

119. OHCHR stresses that this discriminatory requirement violates Ukraine's legal obligations¹⁸³, jeopardizes social cohesion, and creates additional hardships for vulnerable people. For example, persons with disabilities, who are particularly affected by the conflict¹⁸⁴ and face greater challenges due to restrictions on freedom of movement,¹⁸⁵ have increased difficulty fulfilling the verification procedure. The policy also distorts displacement statistics and puts administrative burdens on local social protection departments tasked with conducting the verification. Moreover, verification (home visits) often cannot be conducted in government-controlled territory located near the contact line.¹⁸⁶

120. OHCHR notes that the suspension of pensions under the verification process, which deprived hundreds of thousands of people - and often entire families - of their sole income, appears to have been disproportionate and unnecessary. Of the 547,300 cases of suspensions which were reviewed by the inter-agency commission on assigning (resuming) pension payments in 2017, pension payments were reinstated in 385,100 cases, amounting to 70 per cent.¹⁸⁷ Further, those pension suspensions which were challenged in court also led to reinstatement in a significant number of cases.¹⁸⁸ Notably, on 30 August 2017, the Dobropillia city-district court of Donetsk region ruled in favour of a plaintiff who had been deprived of her pension since October

¹⁸⁰ See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para. 99; OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, para. 118.

¹⁸¹ Verification is intended to confirm that pensioners with residence registration in armed-group-controlled territory have *de facto* become IDPs living in government-controlled territory, which is required to continue receiving pension payments. The procedure was introduced by Cabinet of Ministers resolution no. 365 on "Some questions of implementation of social payments to internally displaced persons", available at <http://www.kmu.gov.ua/control/ru/cardnpd?docid=249110200>. On 13 September 2017, the Cabinet of Ministers adopted resolution no. 689 (available at <http://www.kmu.gov.ua/control/uk/cardnpd?docid=250271225>) abolishing the verification procedure (home visits) for pensioners if they undergo the obligatory identification procedure (personal appearance) in 'Oshchadbank' (due every three months). However, regular verification will continue for those IDPs who receive targeted assistance or any other forms of social benefits. As the majority of IDP-pensioners also receive IDP assistance or social benefits, they do not benefit from the amendments. In other cases, lack of cooperation and technical means for timely information exchange between the departments of social policy and 'Oshchadbank' have thwarted the intended effect of the reform.

¹⁸² Data provided by the Pension Fund of Ukraine on 3 November 2017.

¹⁸³ Article 9 of the International Covenant on Economic, Social and Cultural Rights; Article 1 of Protocol I to the Convention for the Protection of Human Rights and Fundamental Freedoms; Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms; Articles 41 (the right to property) and 46 (on the right to social security) of the Constitution of Ukraine; Decision of the Constitutional Court of Ukraine dated 7 October 2009 recognizing that pension payments cannot be suspended solely on the basis of the beneficiary's place of residents.

¹⁸⁴ See, e.g. Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Ukraine, 2 October 2015, paras. 13-14, 22-25; OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, paras. 91, 111 and 115.

¹⁸⁵ See Freedom of Movement *above*.

¹⁸⁶ For example, HRMMU was informed that representatives of the Ukrainian Pension Fund refused to cross the bridge to Staromarivka (located in "no man's land" in Donetsk region) to process the verification of four bedridden pensioners, whose entitlements were thereafter suspended. HRMMU meeting with NGO Right to Protection on 6 September 2017.

¹⁸⁷ Data provided by the Pension Fund of Ukraine, covering all cases reviewed from 1 January to 26 October 2017.

¹⁸⁸ In 90 per cent of cases filed in 2017 by the NGO Right to Protection (over 80 decisions), Ukrainian courts ruled in favour of citizens who appealed the decision to suspend their pension payments. The Pension Fund informed HRMMU that between January and October 2017, 165 IDPs had their pension payments restored based on court decisions.

2014, marking the first time that a court confirmed the right to pension of a resident who continuously lived in territory controlled by armed groups.¹⁸⁹ The decision, however, was overturned on 31 October 2017 and is now pending before the High Administrative Court of Ukraine.

121. Furthermore, the linking of the right to pension with IDP registration for citizens with residence registration in armed-group-controlled territory even when they choose to register a residence in government-controlled territory creates obstacles for the integration of IDPs in their new communities.¹⁹⁰ OHCHR reiterates that in order to prevent a situation of protracted displacement, Government policies should facilitate access to durable solutions such as local integration.

122. OHCHR noted a worrying trend where IDPs have been denied targeted financial assistance because the settlements they fled were not included in the official list of settlements where state authorities do not exercise their functions in accordance with Cabinet of Ministers' Order No. 1085.¹⁹¹ For example, Zaitseve, Zolote-5, Pivnichne, and Nevelske - which are regularly affected by the armed hostilities - have not been included in the list.

Territory controlled by armed groups

123. Since the conflict began, persons residing in territory controlled by armed groups have suffered from the loss of access to Government services. Persons with disabilities have been disproportionately affected as, for example, they no longer receive discounts on or free provision of certain medications, hygienic items and prosthetic equipment, and the social taxi (for people in wheelchairs) no longer functions. In addition, persons with disabilities in armed-group-controlled territory, including children, can no longer receive annual treatment or undergo rehabilitation in sanatoriums.

124. Residents stated that the 'disability allowance' paid by the self-proclaimed 'authorities' in both 'republics' is not a sustainable source of income and does not cover basic needs.¹⁹² As a result, persons with disabilities were often left fully dependent on families and/or humanitarian assistance, at a time when humanitarian organizations faced continuing restrictions (*see also Adequate standard of living above*).

C. Housing, land, and property rights

125. The lack of restitution and rehabilitation of, or compensation for, destroyed or damaged property remained among the most pressing unaddressed socio-economic issues.¹⁹³ OHCHR notes that there was no progress in development of a unified registry of damaged and/or destroyed property.¹⁹⁴ In certain areas close to the contact line, where residents were forced to leave their homes due to the security situation, the local civil-military administrations check on damaged property only when specifically requested by the owner. Therefore, it is likely that a large number of damaged and/or destroyed properties have not been certified by civil-military administrations, which would make it difficult for owners to obtain compensation or restitution in the future.

126. In six cases, a first instance court recognised the right to compensation of persons whose houses were damaged or destroyed due to the hostilities, however these decisions were overturned either by appeal or cassation courts.¹⁹⁵ In a recent decision, a court of appeal

¹⁸⁹ Court decision available at <http://reyestr.court.gov.ua/Review/68839150>.

¹⁹⁰ HRMMU interviews.

¹⁹¹ On 31 May 2017, the Cabinet of Ministers adopted amendments to resolution No. 505 (on provisions of targeted assistance to IDPs), which provides that only IDPs from settlements listed in Order No. 1085 are eligible for targeted Government assistance. The list in Order 1085 was adopted in November 2014 and last amended in December 2015.

¹⁹² HRMMU interviews.

¹⁹³ See OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, para. 119.

¹⁹⁴ In its previous report on the human rights situation in Ukraine, OHCHR recommended to the Cabinet of Ministers to develop property inventory and inspection procedures, including an effective and accessible mechanism for documentation and assessment of damages caused by the armed conflict.

¹⁹⁵ Information provided by the NGO Right to Protection.

overturned a judgment awarding compensation because the owner had received humanitarian assistance in the form of construction materials.¹⁹⁶ OHCHR reiterates that persons whose houses have been damaged or destroyed due to the armed conflict have the right to full and effective compensation as an integral component of the restitution process.¹⁹⁷

127. On 20 September 2017, the Cabinet of Ministers adopted resolution no. 708, which provides necessary criteria for IDPs to participate in the state affordable housing program.¹⁹⁸ The program provides financial assistance amounting to 50% of the estimated cost of purchasing or building a home. OHCHR welcomes the adoption of the resolution but cautions that, taking into consideration housing prices and unemployment levels in conflict-affected areas, housing may still be unaffordable for vulnerable categories of people despite this assistance.¹⁹⁹

Territory controlled by armed groups

128. A number of IDPs whose homes lie in territory controlled by armed groups expressed concern regarding a new ‘program’ introduced by the ‘Luhansk people’s republic’ to make an inventory of all “abandoned” apartments so that they can be allocated to people in need.²⁰⁰ This ‘program’ raises concerns that the private property of IDPs temporarily residing in government-controlled territory may be seized.

129. On 3 November 2017, the armed groups of ‘Donetsk people’s republic’ published a ‘decree’ on ‘nationalisation’ of harvest planted on land plots which are included in the ‘state’ or ‘municipal’ ‘property funds’ and have been “occupied” by legal entities or private persons without ‘authorization’.²⁰¹ The ‘ministry of taxes’ was given unhindered access to the storages of legal entities and private persons to implement the decree, which applies retroactively. OHCHR is concerned about the possible human rights impact of this action, particularly in light of the level of food insecurity in the territory.²⁰²

VI. Discrimination against persons belonging to minority groups

130. OHCHR continued to document attacks against persons belonging to minority groups, as well as the reluctance of police to classify such attacks as hate crimes. On 30 September, participants of the Equality Festival in Zaporizhzhia were attacked by a group of approximately 200 young people, resulting in hospitalization of four female activists.²⁰³ Whilst the perpetrators were beating the victims, they shouted, “This is not the place for people like you!” The police, whose number was insufficient to protect the participants,²⁰⁴ failed to timely react to the attack. Seventeen people were arrested, however police were unwilling to classify the attack as a hate crime²⁰⁵ and classified the charges as hooliganism.

131. OHCHR is concerned with manifestations of intolerance, including threats of violence, by extreme right-wing groups²⁰⁶ against individuals holding alternative, minority social or

¹⁹⁶ Decision of the Court of Appeal of Donetsk region, 12 September 2017, available at <http://reyestr.court.gov.ua/Review/68895276>.

¹⁹⁷ United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, known as the ‘Pinheiro Principles’, Principle 21.

¹⁹⁸ Available at <http://zakon3.rada.gov.ua/laws/show/708-2017-%D0%BF>.

¹⁹⁹ This point was raised during the HLP Fair organised by the Danish Refugee Council on 5 October 2017.

²⁰⁰ HRMMU phone conversations with IDPs from Luhansk. Statement of the ‘head’ of ‘Luhansk people’s republic’ of 11 September 2017.

²⁰¹ https://old.dnr-online.ru/wp-content/uploads/2017/11/Ukaz_N291_03112017.pdf

²⁰² See Food Security and Livelihoods Cluster, Update on Sectoral Needs, Ukraine, October 2017, available at: http://fscluster.org/sites/default/files/documents/fsic_brief_update_on_sectoral_needs_october_2017.pdf.

²⁰³ HRMMU interview.

²⁰⁴ The Ministry of the Interior informed HRMMU that 70 police officers were present.

²⁰⁵ Art. 161 of the Criminal Code prohibits “wilful actions inciting national, racial or religious enmity and hatred, humiliation of national honour and dignity, or the insult of citizens’ feelings in respect to their religious convictions, and also any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based on race, skin colour, political, religious and other convictions, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

²⁰⁶ “Extreme right-wing groups” is an umbrella term encompassing political parties, movements and groups who blame vulnerable groups for societal problems and incite intolerance and violence against them. Extreme right-wing groups bring into question fundamental principle of non-discrimination by propagating an ideology based on racism, racial

political opinions. On 8 September 2017, the LGBT association 'Liga' in Mykolaiv intended to lay flowers at a monument commemorating those who died during Maidan protests. The event was cancelled due to violent threats from representatives of Sokil²⁰⁷ and the Right Sector,²⁰⁸ and a lack of security guarantees from police.²⁰⁹ Organizers of the Forum of Editors, held in Lviv from 14 to 17 September, also received threats²¹⁰ from extreme right-wing groups (including the Right Sector, Sokil, National Corps²¹¹ and Volunteer Ukrainian Corps²¹²), forcing them to cancel the presentation of a book featuring lesbian parents. On 31 October, a session of the Gender Club organized by students of the National Pedagogical University was disrupted by members of "Traditions and Order"²¹³ who physically threatened the participants and ripped apart the European Union flag flying on the university building.²¹⁴ OHCHR is further concerned with expressions of intolerance voiced by government authorities, such as the Poltava City Council which adopted an open statement calling upon the Verkhovna Rada to discriminate against the LGBTI community.²¹⁵

VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol

"This arrest is an attempt to shut our mouths."

- Crimean Tatar on trial for alleged membership in a terrorist group.

132. [§] Despite continued lack of access to Crimea, OHCHR was able to document aspects of the human rights situation on the peninsula, through interviews with witnesses and victims of human rights violations, as well as visits to the Administrative Boundary Line with Crimea and meeting with local Government officials. During the reporting period, two deputy chairs of the Crimean Tatar Mejlis were sentenced by courts in Crimea to various terms of imprisonment. On 25 October, they were pardoned and jointly released. In other cases, OHCHR recorded serious human rights violations such as arbitrary arrest, torture and ill-treatment. The exercise of freedoms of peaceful assembly, opinion and expression continued to be curtailed through verdicts criminalizing criticism and dissent. OHCHR notes that under article 43 of the 1907

discrimination, xenophobia and related intolerance. The same groups are also involved in attacks against individuals based on their gender identity and sexual orientation. See Reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/35/42 of 26 April 2017 and A/HRC/18/44 of 21 July 2011).

²⁰⁷ The youth wing of the extreme right-wing political party Svoboda.

²⁰⁸ Right Sector is an extreme right-wing movement which consists of political party, paramilitary volunteer battalion and youth organization.

²⁰⁹ See Appeal of the Head of LGBT Association 'Liga' to the Ukrainian Parliament Commissioner for Human Rights, available at <http://lgbt.com.ua/звернення-до-уповноваженого-пл/>. Representatives of Sokil and Right Sector openly threatened to violently disrupt the event and stated that such events are not in line with the ideology of their organizations and cultural traditions of Ukraine.

²¹⁰ A number of extreme right-wing groups signed a letter addressed to the head of the Lviv Regional Department of the SBU, head of the Lviv Regional State Administration and the Head of the Lviv City Council calling upon them to prevent presentation of the book and threatening to otherwise take all possible actions themselves. See <http://bookforum.ua/wp-content/uploads/2017/09/Lyst.pdf>.

²¹¹ Extreme right-wing political party with Social Nationalistic ideology.

²¹² Volunteer battalion and military wing of the Right Sector Movement.

²¹³ Extreme right-wing group propagating nationalism and traditional family values.

²¹⁴ HRMMU was informed that the perpetrators were shouting that the idea of gender is contrary to Ukrainian traditional values and that such topics should not even be discussed. The police arrived to the site, however, after taking some written testimonies from perpetrators, they departed without taking any further actions. HRMMU interview.

²¹⁵ On 19 September 2017, the Poltava City Council adopted an open statement calling for the Verkhovna Rada to ban "propaganda of deviant sexual behaviour" including "dignity marches", "prides", "gay parades" and "queer-culture festivals", erase any mention of "sexual orientation" or "gender identity" from domestic legislation, abstain from adopting the Law on Civil Partnership, remove sexual education aimed at eliminating gender stereotypes from schools, adopt the Law on "prohibition of propaganda of homosexuality", halt the process of amending the Constitution and other legal acts with regard to the definition of family, marriage, fatherhood, motherhood and childhood.

Hague Regulation and article 64 of the Fourth Geneva Convention of 1949, the Russian Federation, as the occupying power, must respect the laws already in place in the occupied territory, and can only adopt penal provisions that are essential for maintaining an orderly government and ensuring its security.

A. Rule of law and administration of justice

133. On 25 October 2017, two Crimean Tatar leaders Akhtem Chiygoz and Ilmi Umerov, convicted in Crimea for “organizing mass disorders” and “public calls to violate the territorial integrity” of the Russian Federation, respectively, were freed. They were flown to Turkey and, on 27 October, returned to Ukraine. The President of the Russian Federation reportedly pardoned both deputy chairs of the Mejlis following negotiations with the Turkish President.

134. Chiygoz was sentenced on 11 September 2017 to 8 years in prison for organizing mass disorders during a rally in Simferopol on 26 February 2014. Umerov was found guilty on 27 September 2017 and sentenced to two years of imprisonment for public calls to violate territorial integrity of the Russian Federation during a televised interview. OHCHR notes that the conviction of Chiygoz may be viewed as a violation of Article 70 of Geneva Convention IV, according to which the arrest, prosecution and conviction by the occupying power of a “protected person”²¹⁶ for acts committed before the occupation are illegal, notwithstanding the issue of the law applied to the case.²¹⁷ With regard to the conviction of Umerov, OHCHR recalls that all forms of opinion are protected under human rights law and cannot be criminalized.

B. Right to liberty and security

135. During the reporting period, Crimean law enforcement officers arrested 10 Crimean Tatars alleged to be members of terrorist or extremist groups promoting a sectarian form of Islam. The police also briefly detained 49 Crimean Tatars who initiated peaceful single-person pickets to denounce the arrests and portrayal of Crimean Tatars as terrorists.

136. Following house raids, four Crimean Tatar men – all devout Muslims – were arrested on 2 October by the Crimea branch of the Russian Federation Federal Security Service (FSB). They are accused of “extremist activities” and alleged to be members of *Tablighi Jamaat*, a Sunni movement banned in the Russian Federation as an extremist organization.²¹⁸ Three of the men, who were represented by private lawyers, were remanded in custody and the remaining man was placed under house arrest. Within a few days, the three men in detention terminated the services of their private lawyers. According to OHCHR interlocutors, the waivers are the result of pressure exerted by FSB on the suspects and their relatives in order to dissuade them from requesting the services of a dedicated counsel in exchange for promised leniency.²¹⁹

137. On 11 October, the FSB and Special Forces units carried out a series of simultaneous searches of homes of Crimean Tatars in Bakhchysarai, resulting in the arrest of six Crimean Tatar men – all practicing Muslims – on charges of alleged membership in *Hizb ut-Tahrir*, an organization labelled as ‘terrorist’ and banned in the Russian Federation.²²⁰ With these arrests, the number of people detained in Crimea since March 2014 on accusation of membership in *Hizb ut-Tahrir* has reached 25. On the same day, 11 other Crimean Tatar men who came to show

²¹⁶ Article 4 of Geneva Convention IV states that “Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”

²¹⁷ Article 70 of Geneva Convention IV stipulates that “protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed before the occupation, with the exception of breaches of laws and customs of war.”

²¹⁸ The Supreme Court of the Russian Federation declared *Tablighi Jamaat* an extremist organization on 7 May 2009. In Ukraine, *Tablighi Jamaat* is allowed.

²¹⁹ HRMMU interviews.

²²⁰ The Supreme Court of the Russian Federation declared *Hizb ut-Tahrir* a terrorist organization on 14 February 2003.

solidarity and film the actions of law enforcement officers were also detained and later released. Nine of them were sentenced to administrative fines.²²¹

C. Right to physical and mental integrity

138. OHCHR documented grave human rights violations allegedly perpetrated by the Crimean branch of the FSB against a Crimean Tatar man. In the early morning of 13 September, following a search of his home, a Crimean Tatar man was detained by the Crimean FSB. The victim was held *incommunicado* for more than a day in the premises of the FSB in Simferopol, during which time his family made continuous inquiries to law enforcement about his whereabouts and fate.²²² On 14 September, the victim was left at a bus station in Simferopol. He was physically injured and stated he had been beaten and tortured, including by electric shock, and threatened with sexual violence in order to force him to make incriminating statements against himself and others. No formal record of his arrest was made and no official charges were brought against him.

D. Freedom of opinion and expression

139. Those who claimed that Crimea was occupied by the Russian Federation faced criminal consequences and possible imprisonment.

140. Like Ilmi Umerov, freelance journalist Mykola Semena was convicted on separatism charges on 22 September 2017 and handed a 30-month suspended prison sentence. He is also barred from “public activities” - including journalism - for three years. The conviction stems from an article he wrote for Radio Free Europe/Radio Liberty in 2015 which criticized the occupation of Crimea and called for its blockade by military means.

141. OHCHR notes that anti-separatism provisions must be applied in a manner consistent with the obligation of states under article 19, paragraph 1, of the International Covenant on Civil and Political Rights, and not used to silence or criminalize opposing opinions or criticism.

E. Freedom of religion or belief

142. On 31 August, court bailiffs stormed the building housing the Ukrainian Orthodox Church of the Kyiv Patriarchate (UOC-KP) in Simferopol. The action was undertaken pursuant to a judgment, upheld by the Supreme Court of the Russian Federation in February 2017, ordering to vacate premises used by a subsidiary company of the UOC-KP as office space and a shop in the first floor of the building. OHCHR notes that these developments created anxiety among churchgoers and revived concerns about the future of the UOC-KP, whose functioning in Crimea remains precarious due to the lack of an official legal status pursuant to Russian Federation legislation.²²³

143. Unlike the UOC-KP, the Ukrainian Greek-Catholic church (UGCC) re-registered in 2016 and is operating in Sevastopol, Yalta and Yevpatoriia in accordance with the legal framework imposed by the Russian Federation. However, the church had to change its name to the ‘Byzantine Catholic Church’, as its original appellation is not recognized in the Russian Federation. Furthermore, only two UGCC priests permanently reside in Crimea where they continue providing religious services. The other UGCC officials who were not residents of Crimea in March 2014 - and thus did not meet the legal condition to become Russian Federation citizens - became foreigners under Russian Federation law which was imposed in Crimea, and had to leave the peninsula.²²⁴

²²¹ HRMMU interview.

²²² HRMMU interviews.

²²³ Under Russian Federation law, all public organizations in Crimea, including religious communities, had to re-register in order to obtain legal status. Without registration, religious communities can congregate but cannot enter into contracts to rent State-owned property, open bank accounts, employ people or invite foreigners.

²²⁴ HRMMU interviews. See also OHCHR report on “The situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, paras. 64-70.

F. Freedom of peaceful assembly

144. The authorities in Crimea continued to impose restrictions on the exercise of the freedom of assembly. The police arrested 49 people who conducted one-man pickets in protest against the prosecution of Crimean Tatars. Further, 13 municipalities rejected requests to hold peaceful assemblies on LGBT rights.

145. On 14 October, a series of one-person pickets took place throughout Crimea in protest against the arrests of Crimean Tatars for alleged membership in “terrorist” or “extremist” organizations in Bakhchysarai. Nearly 100 people held up placards expressing demands to stop the persecution of Crimean Tatars. The police reported the arrests of 49 picketers for violating Russian Federation federal law on public assemblies.²²⁵ After “precautionary conversations” with the police, they were released. According to Russian Federation legislation applied by the Occupying Power in Crimea, one-person pickets do not require pre-authorization.²²⁶ OHCHR recalls that under international human rights law, restrictions on the exercise of the right to peaceful assembly may only be justified if they are necessary in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.

146. Thirteen municipalities in Crimea - Yevpatoriia, Yalta, Sudak, Feodosiia, Dzhankoi, Armiansk, Bakhchysarai, Sevastopol, Kerch, Alushta, Saky, Simferopol, and Krasnoperekopsk - banned LGBT assemblies planned in October 2017. LGBT organizations from the Russian Federation petitioned for these peaceful assemblies to advocate for recognition of human rights of LGBT persons. The refusals were based on Russian Federation legislation, applied by the Occupying Power in Crimea, prohibiting propaganda of “non-traditional sexual relations”. In *Bączkowski and Others v. Poland*, the European Court of Human Rights recognized that the refusal to hold a peaceful assembly on the ground of sexual orientation amounts to a violation of the right to free assembly in conjunction with the violation of the prohibition of discrimination.²²⁷

G. Military conscription

147. On 2 October 2017, the Russian Federation launched a new military draft. Around 2,000 men from Crimea are expected to be conscripted into the Russian Federation Armed Forces. The Russian Federation Ministry of Defence confirmed that one third of the conscripts will be transferred outside the peninsula, to the Russian Federation. Draft evasion is punishable under the Criminal Code of the Russian Federation, and possible sanctions include up to two years of incarceration.²²⁸ A local department of the Russian Federation Investigative Committee in Sevastopol confirmed pending criminal charges against a Sevastopol resident for draft evasion.²²⁹ OHCHR notes that the military draft violates the international humanitarian law prohibition to compel protected persons to perform military service in the armed forces of the occupying power.²³⁰

²²³ <https://82.mva.gov/news/item/11345690/>.

²²⁶ However, according to the Constitutional Court of the Russian Federation, when several one-person pickets are held simultaneously and are similar to one another with “sufficient obviousness” in respect of the items used, common goals, slogans and timing, such pickets may be considered as one single public picket carried out by a group of individuals, to which pre-authorization requirements for their conduct will apply. (Judgment of the Constitutional Court of the Russian Federation, 14 February 2013 No. 4-IT, par. 2.5; <https://rg.ru/2013/02/27/miting-i-dok.html>).

²²⁷ ECtHR, *Bączkowski and Others v. Poland* (No. 1543/06), 3 May 2007.

²²⁸ Article 328 of the Criminal Code of the Russian Federation.

²²⁹ Sevastopol Investigation Department of the Investigative Committee of the Russian Federation, statement of 28 September 2017, available at <http://sevastopol.sledcom.ru/news/item/1167566/>; Statement of 11 October 2017, available at <http://sevastopol.sledcom.ru/news/item/1170699/>.

²³⁰ Article 51, Geneva Convention IV.

VIII. Legal developments and institutional reforms

A. Legal framework concerning territory not controlled by the Government in certain areas of Donetsk and Luhansk regions

148. On 6 October, the Parliament of Ukraine prolonged²³¹ by one year the application of a 2014 law²³² providing for expanded local self-rule in certain areas of eastern Ukraine not under Government control as one of the political commitments under the Minsk agreements. The introduction of special governance rules is conditioned upon the implementation of a set of requirements for safe and democratic elections,²³³ including the withdrawal of weapons and all illegal military formations.

149. On the same day, Parliament adopted in its first reading the draft law providing a framework for the Government to re-establish control over certain areas of Donetsk and Luhansk regions.²³⁴ It states that the Russian Federation has conducted an armed aggression against Ukraine, resulting in the temporary occupation of parts of its territory. The text affirms Ukraine's right to self-defence,²³⁵ alongside its commitment to a peaceful political settlement based on international law. Conflict management is entrusted with the military - the Joint Operative Headquarter of the Armed Forces of Ukraine (JOHAFU)²³⁶ - and the principle of an anti-terrorist operation conducted under the auspices of the State Security Service of Ukraine (SBU) is abandoned.

150. Under the draft law, Ukraine claims no responsibility for illegal acts of the Russian Federation and armed groups in the territory they control and considers null and void any act (decisions, documents) committed by them in this territory. It recognizes Ukraine's positive obligations towards the population of these areas, and creates a "special legal regime" to protect its rights and freedoms, based largely on the 2014 law²³⁷ which previously applied exclusively to Crimea. The Ministry on Temporarily Occupied Territory (TOT) and IDPs is tasked with designing "protective measures" such as facilitating the satisfaction of economic and social needs, providing humanitarian aid, and ensuring access to the Ukrainian media and legal remedies. The procedure regulating movement of persons and goods across the contact line is to be defined by the Head of JOHAFU in consultations with the SBU and the Ministry on TOT and IDPs.

151. OHCHR takes note of the intention of the legislator to define, in legally binding terms, the conflict in eastern Ukraine. At the same time, it underlines that this position should not be used to impose a narrative - and introduce legal sanctions - restricting the freedom of opinion and expression.

152. OHCHR notes that the draft law generally lacks clarity regarding the legal framework for the protection of rights and freedoms in certain areas of Donetsk and Luhansk regions. Although legislation applying to Crimea is mentioned as forming the legal basis for human rights protection in eastern Ukraine, its transposition appears to require adjustments without which the legal certainty requirement may not be satisfied.

²³¹ Adoption of the Law of Ukraine "On Creating the Necessary Conditions for a Peaceful Settlement in Certain areas of Donetsk and Luhansk Regions" no.2167-VIII.

²³² Law of Ukraine "On the Special Order of Local Self Government in Certain Areas of the Donetsk and Luhansk regions" no.1680-VII of 16 September 2014. The law had been adopted for a three-year period, set to expire on 18 October 2017.

²³³ *Ibid.*, Article 10.

²³⁴ Draft Law no.7163 "On Particular Aspects of Public Policy Aimed at Safeguarding the Sovereignty of Ukraine over the Temporarily Occupied Territory of the Donetsk and Luhansk regions of Ukraine".

²³⁵ Article 51 of the United Nations Charter.

²³⁶ The Joint Operative Headquarter of the Armed Forces of Ukraine (JOHAFU) is a body responsible for the management and coordination of inter-agency militarised forces. Together with the General Staff of the UAF, it forms part of the Ukrainian military command. JOHAFU was included into the structure of the Ukrainian Armed Forces in the course of its reform in June 2016. See Law of Ukraine "On amendments to the legislation concerning defence" no.1420-VIII of 16 June 2016.

²³⁷ Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" no.1207-VII of 15 April 2014.

153. OHCHR also has concerns regarding the provision proclaiming blanket non-recognition of acts issued in the territory not under Government control, and urges that, in order to guarantee legal recognition of persons living in these areas, at a minimum that the procedure of recognition of the facts of birth and death occurring in such territories be continued.

154. Anticipating the consequences of the promulgation of the draft law, OHCHR urges the Government to prevent the abrupt termination of the validity of legal acts²³⁸ that established certain guarantees and privileges for the population for the duration of the anti-terrorist operation. A transitional period should foresee that the validity of such privileges be extended until national legislation is harmonized with the new legal framework.

B. Law on Education

155. On 28 September, a new law “On education” entered into force which aims to ensure equal opportunities for students to achieve fluency in the official language and introduces new rules on the use of languages in public education.²³⁹

156. Under the law, Ukrainian will become the main language of instruction in secondary (i.e. beginning from fifth grade) and higher education. National minorities retain the right to be instructed in their mother tongue in pre-primary and primary school, and at higher levels may request to be taught their native languages as a subject. Additionally, “one or more” subjects may be taught bi- or multi-lingually, in Ukrainian and any of the official languages of the European Union. Indigenous peoples can be educated in their native language from pre-primary to secondary school, and will also have the option of continuing to learn their indigenous language as a separate subject thereafter.²⁴⁰

157. OHCHR notes that the previous education law allowed the use of minority languages as a medium of instruction at all levels of education, thereby enabling national minorities to benefit from the full extent of international education standards. The UNESCO Principles on Language and Education state that minority language education should cover primary instruction and “be extended to as late a stage in education as possible”.²⁴¹ Similarly, according to the United Nations Special Rapporteur on National Minorities, “ideally, the instruction in the mother tongue should last for a minimum of between six to eight years – more when this is feasible”.²⁴²

158. The new legislation is more restrictive than the previous education law, as national minorities may not be instructed in their mother tongue beyond primary education. In its 2001 decision *Cyprus v. Turkey*, the European Court of Human Rights found a violation of the right to education²⁴³ where the provision of instruction in the minority language was ensured during primary education but not secondary.²⁴⁴

159. While it is a legitimate aim for states to provide students with sufficient opportunities to achieve fluency in the official language, OHCHR believes this should not be at the expense of education in minority languages.²⁴⁵ It also stresses that all rights must be enjoyed in a non-

²³⁸ For instance, the Law “On Temporary Measures for the Duration of the Anti-Terrorist Operation” no.1669-VII of 2 September 2014.

²³⁹ President Petro Poroshenko stated that the law improves the quality of the education system of Ukraine, enhances the role of the Ukrainian language, and provides everyone with equal learning opportunities. He also emphasized the determination to rigorously respect education rights of national minorities.

²⁴⁰ A transition period is provided for students who commenced their secondary education before 1 September 2018, and for whom former language rules will apply, but only until 1 September 2020 when the provisions of the new law will apply to all.

²⁴¹ UNESCO, Principles of Language and Education, Principle 1.

²⁴² United Nations Special Rapporteur on minority issues: Language Rights of Linguistic Minorities. A Practical Guide for Implementation, Geneva, March 2017, p. 18.

²⁴³ Article 2 of Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, (European Convention on Human Rights).

²⁴⁴ European Court of Human Rights, *Cyprus v. Turkey*, Judgement of 10 May 2001 (Grand Chamber) *Cyprus v. Turkey*, at para.278.

²⁴⁵ According to the United Nations Special Rapporteur on minority issues, “students should be provided with sufficient opportunities to achieve fluency in the official language, although not at the expense of education in their own language”, *supra*, footnote 4, p. 19.

discriminatory manner. This applies, for example, to the right of national minorities to be educated in “one or more subjects” in an official EU language, which is not available to those whose mother tongue is not an official EU language.

160. OHCHR recalls that the context prevailing in a country is central to the proper regulation of minority language issues. Representatives of various national minorities²⁴⁶ have approached HRMMU and complained that the provisions of the law, as adopted, do not take their interests into account, which were expressed during consultations. Some expressed concern that the significant limit on educational instruction in minority languages will affect both the quality of education and their right to cultural self-determination, especially in certain remote areas with a high concentration of residents belonging to national minorities. OHCHR is concerned that the new law may result in increased tensions in Ukrainian society.²⁴⁷ The Government of Ukraine is invited to ensure flexibility in developing and implementing language and education policies, and to introduce any changes gradually, in full respect of its international and regional obligations.

IX. Technical cooperation and capacity-building

161. OHCHR engages in technical cooperation and capacity-building activities to assist the Government of Ukraine in meeting its international obligations to protect and promote human rights. During the reporting period, meetings and events were held with a wide range of government actors and civil society, in order to provide guidance and assistance in addressing human rights issues. In particular, closer cooperation was established with the Permanent Representative of the President of Ukraine to Crimea. Further, OHCHR continued to support preparations for Ukraine’s third Universal Periodic Review (UPR) which took place on 15 November 2017.

162. HRMMU continued to promote implementation of the Istanbul Protocol²⁴⁸ through trainings and dissemination of information. In September and October, HRMMU provided trainings to over 160 practitioners including civil society monitors of the National Preventive Mechanism (NPM), management and medical staff of penitentiaries, members of prosecution offices, police and forensics experts. The trainings focused on torture prevention, humane treatment of detainees in line with the “Nelson Mandela Rules”²⁴⁹, effective identification and investigation of torture, state obligations under international law, and United Nations mechanisms to address torture. Such capacity-building activities complement HRMMU’s monitoring, reporting and advocacy efforts with regard to the practice of torture by Government agents and armed groups against conflict-related detainees, which the Mission has been documenting since 2014. In addition, on 10 October, jointly with the NPM, HRMMU conducted a partners’ meeting on implementation of the Istanbul Protocol. Representatives of the Office of the Prosecutor General, Ministry of Health, Ministry of Justice, the Parliament’s Commissioner for Human Rights (Ombudsperson), civil society and international organisations shared information on their completed and planned activities and identified challenges and gaps.

163. HRMMU also continued to raise awareness of conflict-related sexual violence and carry out follow-up activities to the OHCHR thematic report on conflict-related sexual violence in Ukraine released in February 2017. On 28 September and 2 November 2017, HRMMU delivered sessions on prevention of arbitrary and unlawful detention, torture and conflict-related sexual

²⁴⁶ HRMMU interviews with representatives of the Albanian, Gagauz, Hungarian, Moldovan, Romanian and Russian national minorities.

²⁴⁷ HRMMU was informed about a number of demonstrations against the language provision of the new law on education. For example, on 17 October 2017 in Chernivtsi a demonstration of people belonging to Romanian national minority demanded the right to education in their native language; simultaneously there was a counter demonstration organized by Ukrainian nationalist groups, including Right Sector and Svoboda, shouting that every citizen of Ukraine must be taught in Ukrainian (*see e.g.* http://zik.ua/news/2017/10/17/uchernivtsiyah_rumunski_organizatsii_piketuvaly_oda_cherez_zakon_pro_osvitu_118780

9).

²⁴⁸ United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

²⁴⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners, A/RES/70/175 adopted on 17 December 2015, available at <https://www.penalreform.org/resource/standard-minimum-rules-treatment-prisoners-smr/>.

violence to military personnel who will be deployed to the conflict area in civil-military coordination units. In addition to presenting the findings of the thematic report, HRMMU provided an overview of relevant international human rights and international humanitarian law standards, including through specific case studies. Further, in support of the Government's commitment to undertake steps to design and operationalize effective measures to address conflict-related sexual violence, HRMMU and UN-Women contracted an international expert consultant to provide strategic advice to the Government, civil society and the United Nations system on preventing and addressing conflict-related sexual violence in Ukraine. Extensive consultations were held from 13 October to 2 November with representatives of the Government, Parliament, local authorities, civil society and UN Agencies. The consultant's visit concluded with a workshop on 10 November hosted by the Ministry of Justice, where key state actors, including regional and local authorities from conflict-affected areas, service providers, civil society and development partners contributed to the development of the national strategy to prevent and address conflict-related sexual violence.

164. On 15 November 2017, Ukraine's compliance with international human rights obligations was appraised under the Universal Periodic Review (UPR) procedure of the Human Rights Council. 190 recommendations were issued by Member States in relation to women's rights/gender equality, domestic and sexual violence, fighting xenophobia and homophobia, inter-ethnic harmony, corruption, accountability/impunity, and judicial reform. The United Nations system in Ukraine contributed to an informed review of Ukraine's third UPR by submitting a joint human rights assessment, raising the awareness of embassies in Ukraine about key human rights issues, and facilitating consultations involving the Government, civil society organizations and the Ombudsperson Institution.

165. The United Nations Partnership Framework with Ukraine defining the support of the United Nations to national development priorities was signed on 25 October 2017. Under the Framework, OHCHR will contribute to specifically support those priorities related to democratic governance, rule of law, civic participation, human security and social cohesion.

X. Conclusions and recommendations

166. The temporary lull in the armed hostilities and consequent reduction in civilian casualties recorded in September and October demonstrated the potential positive impact on the population of adherence to the ceasefire. However, the number of civilian casualties is on the rise again in November. Further, while the number of casualties may have temporarily dipped, the adverse effects on the population caused by the conflict in eastern Ukraine did not diminish. Sudden and unpredictable spikes in the armed hostilities claimed lives, inflicted suffering and destroyed families. The duration of such suffering, stretched over three years, has taken a heavier toll than can be reflected in statistics. This suffering was compounded as individuals were subjected to human rights violations - including arbitrary detentions, torture and ill-treatment - committed in connection with the conflict on both sides of the contact line. At the same time, continuing restrictions on the freedom of movement served to further suffocate and isolate communities, jeopardizing social cohesion and future peace and reconciliation efforts.

167. For the 4.4 million people who have been affected by the conflict,²⁵⁰ there were no indications of serious efforts by the parties to the conflict to halt hostilities and restore peace. Faced with "more of the same", those who have already lost their loved ones, health, property, livelihood and opportunities are now losing hope. The approach of the fourth winter of security risks and hardship is anticipated as more difficult to bear than those endured earlier in the conflict.

168. Earnest efforts to take concrete steps toward resolving the conflict are long overdue. With the passage of time, divisions in Ukrainian society resulting from the conflict will continue to deepen and take root. Challenges which need to be overcome for a true reconciliation and

²⁵⁰ 2018 Humanitarian Needs Overview, Ukraine, November 2017, available at <https://reliefweb.int/report/ukraine/ukraine-humanitarian-needs-overview-2018-enuk>.

long-term peace throughout Ukraine also become greater as they remain unaddressed over time. A serious intention to honour and implement commitments made in the Minsk agreements would be an invaluable first step towards peace and reconciliation.

169. Furthermore, as we move into 2018, it is imperative that Government policies and legislative developments evolve in an inclusive manner, and together with judicial reforms, contributes to the enhancement of accountability and the foundation for future peace and reconciliation. Such measures would also create conditions for a free media and freedom of expression in the run-up to the 2019 elections, while combatting hate speech and discriminatory acts of violence.

170. Crimea continues to remain subjected to the legal and governance framework of the Russian Federation, in violation of international humanitarian law. For its part, the Government of Ukraine should foster and implement inclusive policies towards the population of the peninsula, to help ensure that existing divisions do not deepen further. The lifting of all unnecessary restrictions to freedom of movement would be a significant element in such an approach.

171. Most recommendations made in the previous OHCHR reports on the human rights situation in Ukraine have not been implemented and remain valid. OHCHR further recommends:

172. **To the Ukrainian authorities:**

- a) Where military presence within civilian areas is justified due to military necessity, take all possible steps to protect the resident civilian population, including making available adequate alternative accommodation, as well as compensation for the use of property and any damages;
- b) Government of Ukraine to develop a national mechanism to make adequate, effective, prompt and appropriate remedies, including reparation, available to civilian victims of the conflict, especially those injured and the families of those killed;
- c) Government of Ukraine to establish independent, transparent and non-discriminatory procedures of documentation and verification of housing, land and property ownership, create a registry of damaged or destroyed housing and other property, and a comprehensive legal mechanism for restitution and compensation;
- d) Law enforcement agencies to ensure effective investigation of cases of enforced disappearance, *incommunicado* detention, torture and ill-treatment in which Ukrainian forces (SBU, UAF, volunteer battalions, etc.) are allegedly involved, and consider establishing an inter-agency group in charge of investigation of such cases, as civilian investigative bodies do not have access to many alleged places of detention or where the victims were last seen;
- e) Security Service of Ukraine to grant immediate, unrestricted, and confidential access to conflict-related detainees newly arrested by SBU, including in Kharkiv region;
- f) Cabinet of Ministers to amend its resolution no. 99 so that it provides a list of items prohibited from transport across the contact line to replace the current list of permissible goods and quantities;
- g) Government of Ukraine to lift unnecessary and disproportionate restrictions and ease freedom of movement at all checkpoints including 'internal' checkpoints, and ensure that persons with residence registered in territory controlled by armed groups are not subjected to additional discriminatory checks;
- h) National Police to conduct transparent and effective investigation in all cases of attacks on media professionals, and undertake all possible measures to ensure

accountability for killings of journalists, including with international expertise where needed;

- i) National Police, Headquarters of the Antiterrorist Operation, heads of regional, district and village councils and heads of civil-military administrations to collaborate on defining the list of settlements affected by the armed conflict, ensuring that it does not deprive people of their economic and social rights;
- j) Ministry of Social Policy to ensure that the protection and support to IDPs extends to all persons who meet the IDP definition, without any discrimination including based on the list of settlements affected by the armed conflict;
- k) Government, Parliament and other relevant State bodies to eliminate obstacles which prevent Ukrainian citizens from having equal access to pensions regardless of place of residence or IDP registration;
- l) Ministry of Social Policy to establish effective cooperation and information exchange processes with all relevant actors engaged in conducting verification and identification procedures in relation to pensions, as well as in home-delivering payments for IDPs receiving pensions and social benefits, to avoid double-verification or any additional burden on vulnerable people;
- m) Cabinet of Ministers, Parliament and other relevant state bodies to ensure that persons with disabilities, regardless of their place of residence, have access to health services, including rehabilitation, as foreseen by state programs and laws;
- n) Ministry of Temporarily Occupied Territories and Internally Displaced Persons, Ministry of Social Policy and other relevant state bodies to ensure that IDPs with disabilities are provided with adequate accommodations, access to in-home and other services, and means for inclusion in the community;
- o) National Police and other law enforcement agencies to take all appropriate measures to secure public gatherings of persons belonging to minority groups;
- p) Office of the Prosecutor General and other law enforcement agencies to ensure appropriate classification, investigation and prosecution of hate crimes, including any crimes committed on the basis of ethnicity, sexual orientation and gender identity;
- q) Office of the Prosecutor General and other law enforcement agencies to properly address and investigate manifestations of intolerance, including threats of violence, by extreme right-wing groups against individuals of minority social groups and those holding alternative political opinions;
- r) Government of Ukraine to ensure that the language provision in the new Law on Education does not lead to violations of the rights of minorities and to avoid any discrimination against certain minority groups;
- s) Government authorities to create an administrative procedure, which is accessible to all, without discrimination of any kind, and free of charge, enabling use of documents relating to the facts of birth and death which are issued on territory not under Government control in the process of recognition of such facts under Ukrainian legislation, and maintain the judicial procedure as an alternative for disputable cases.

173. To all parties involved in the hostilities in Donetsk and Luhansk regions, including the Ukrainian Armed Forces, and armed groups of the self-proclaimed 'Donetsk people's republic' and 'Luhansk people's republic':

- a) Bring to an end the conflict by adhering to the ceasefire and implementing other obligations undertaken in the Minsk agreements, in particular regarding withdrawal of prohibited weapons and disengagement of forces and hardware,

and until such implementation, agree on and fully respect “windows of silence” to allow for crucial repairs to and maintenance of civilian infrastructure in a timely manner;

- b) Strictly adhere to international humanitarian law standards on the prohibition of use of weapons with indiscriminate effects in populated areas, including those with a wide impact area or the capacity to deliver multiple munitions over a wide area;
 - c) Respect the agreement reached in Minsk on 19 July 2017 in which parties expressed commitment to create “safety zones” around the critical civilian water facilities of Donetsk Filtration Station and First Lift Pumping Station in Donetsk region, and expand the list of such “safety zones” to include facilities which house hazardous materials that would endanger civilians and the environment if damaged by the armed hostilities;
 - d) Take necessary measures to ensure protection of civilian population living close to the contact line and in the case that the security of the civilian population or military imperative demand evacuation, ensure humane conditions of such evacuation and provide adequate alternative accommodation;
 - e) Enable and facilitate the voluntary transfer of all pre-conflict detainees to government-controlled territory, regardless of their registered place of residence, in order to enable contact with their families without the unnecessary hardship linked to restrictions on freedom of movement;
 - f) Facilitate the safe and unimpeded passage of civilians across the contact line by ensuring that crossing routes and entry-exit checkpoints are a no-fire area and by increasing the number of crossing routes, especially in Luhansk region by opening the Zolote crossing route for vehicles and pedestrian traffic;
 - g) Refrain from unnecessary impediments to access of humanitarian assistance to people in need, including in villages and settlements located close to the contact line;
 - h) Armed groups of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ to respect freedom of religion or belief in territory under their control and refrain from infringement upon this right, including by halting the seizure of religious buildings of Jehovah’s Witnesses and the harassment of their parishioners;
 - i) Armed groups of the ‘Luhansk people’s republic’ to ensure proper respect for property rights of IDPs when conducting any inventory of abandoned property.
174. To the Government of the Russian Federation:
- a) Implement General Assembly Resolution 71/205 of 19 December 2016, including by ensuring proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea;
 - b) Uphold human rights in Crimea for all and respect obligations that apply to an occupying power pursuant to international humanitarian law provisions;
 - c) Investigate all cases of enforced disappearance, torture and ill-treatment involving officers of the Crimean branch of the FSB, bring perpetrators to justice and ensure redress for victims;
 - d) Refrain from application of anti-extremism and anti-terrorism legislation to criminalize peaceful religious conduct of devout Muslims in Crimea, and immediately release all persons arrested and charged with such crimes;

- e) Put an end to searches of houses indiscriminately affecting Crimean Tatars by law enforcement agencies in Crimea;
 - f) Ensure that the rights to freedom of expression, peaceful assembly, thought, conscience and religion can be exercised by any individual and group in Crimea, without discrimination on any grounds, including race, nationality, political views, ethnicity or sexual orientation;
 - g) Comply with the international humanitarian law prohibition against compelling residents of the occupied territory of Crimea to serve in the armed forces of the Russian Federation;
175. To the international community:
- a) Continue using all diplomatic means to press all parties involved to end hostilities, by emphasizing the human rights situation and suffering of civilians caused by the active armed conflict;
 - b) Support the Ministry of Justice and other Government actors in carrying out penitentiary reform in Ukraine which will improve material conditions and provision of services, particularly medical services, in places of detention;
 - c) Ensure that the Media Freedom Guidelines developed for Ukraine by international media experts and lawyers continue to adhere to international standards and best practices in the domain of freedom of expression during any review or amendment process;
 - d) Support the Government of Ukraine in devising laws and policies that promote inclusiveness and social cohesion.

19860

660

**Office of the United Nations High Commissioner
for Human Rights**

**Report on the human rights situation in Ukraine
16 November 2018 to 15 February 2019**

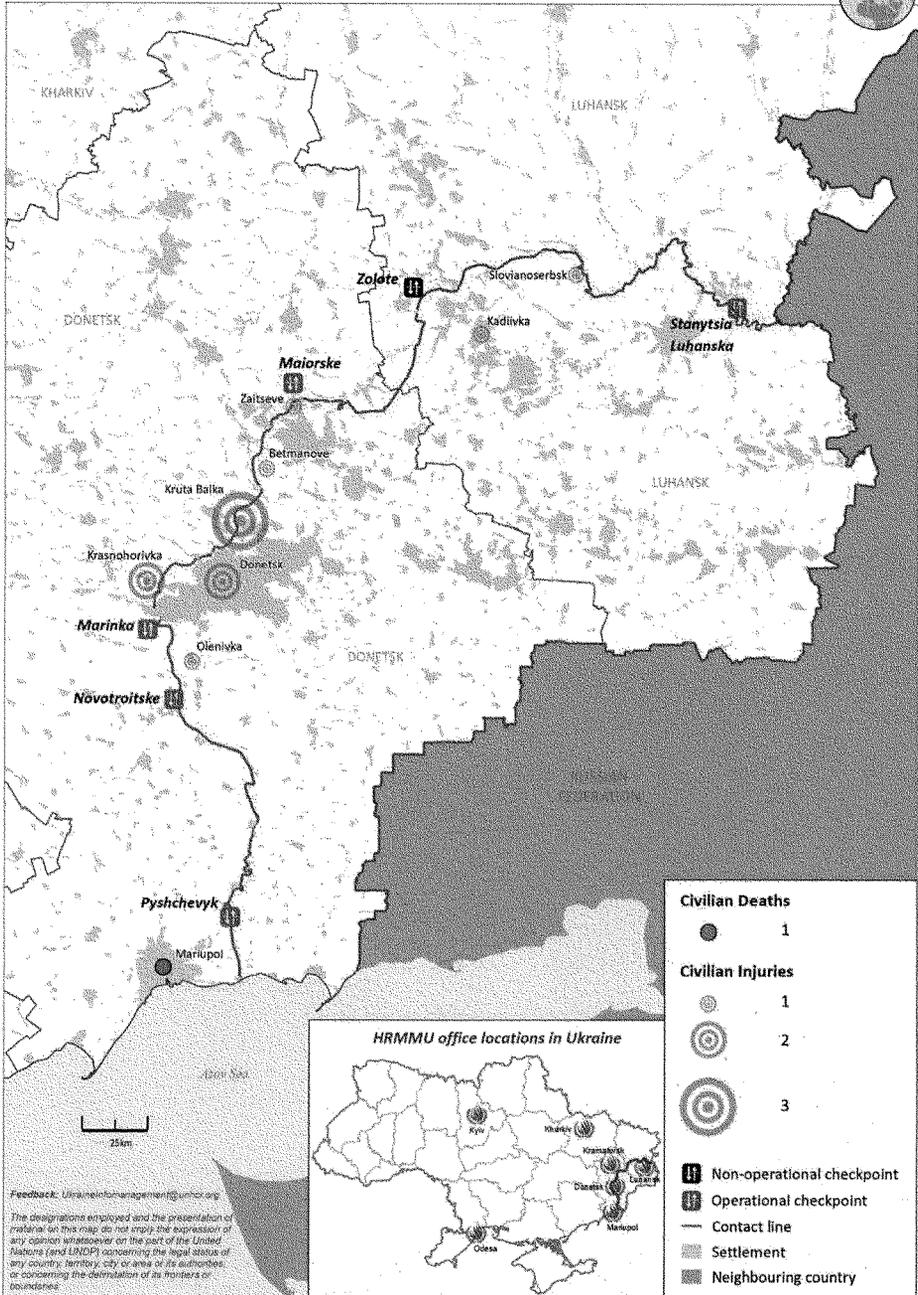


**UNITED NATIONS
HUMAN RIGHTS**
OFFICE OF THE HIGH COMMISSIONER

<i>Table of Contents:</i>	<i>Page</i>
I. Executive summary.....	1
II. OHCHR methodology.....	3
III. Impact of hostilities.....	4
A. Conduct of hostilities and civilian casualties.....	4
B. Civilian casualties in 2018.....	5
C. Civilian casualties during the entire conflict period.....	6
D. Economic and social rights of conflict-affected persons.....	7
1. Remedy and reparation for conflict-affected population.....	8
2. Right to restitution and compensation for use or damage of private property.....	8
3. Right to social security and social protection.....	9
4. Freedom of movement, isolated communities and access to basic services.....	10
IV. Right to physical integrity.....	11
A. Access to detainees and places of detention.....	11
B. Arbitrary detention, enforced disappearance and abduction, torture and ill-treatment.....	11
C. Situation of pre-conflict prisoners.....	13
V. Accountability and administration of justice.....	15
A. Administration of justice.....	15
B. Accountability for human rights violations in eastern Ukraine.....	17
C. Accountability for cases of violence related to riots and public disturbances.....	17
1. Accountability for the killings of protesters during the Maidan protests.....	17
2. Accountability for the 2 May 2014 violence in Odesa.....	18
VI. Democratic/civic space and fundamental freedoms.....	18
A. Freedom of opinion and expression and freedom of the media.....	19
B. Freedom of peaceful assembly and association.....	19
C. Freedom of religion or belief.....	20
D. Discrimination, hate speech, racially-motivated violence and manifestations of intolerance.....	20
VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation.....	21
A. International Humanitarian Law violations.....	21
B. Administration of justice, intimidation and harassment of human rights defenders.....	22
C. Freedoms of religion, opinion and expression.....	23
D. Illegal population transfers and freedom of movement.....	24
E. Forced conscription.....	24
VIII. Technical cooperation and capacity-building.....	25
IX. Conclusions and recommendations.....	26



Ukraine: Civilian casualties along the contact line, 16 November 2018 - 15 February 2019



I. Executive summary

1. This twenty-fifth report on the situation of human rights in Ukraine by the Office of the United Nations High Commissioner for Human Rights (OHCHR) is based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU),¹ and covers the period from 16 November 2018 to 15 February 2019.

2. OHCHR documented 315 human rights violations during the reporting period, which affected 202 victims.² This represents an increase of documented violations compared with those documented during the previous reporting period of 16 August to 15 November 2018.³ Of the violations documented in this report, 221 violations occurred during the reporting period.

3. Of the violations documented by OHCHR, the Government of Ukraine was responsible for 126 violations, the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic'⁴ for 154, and the Government of the Russian Federation (as the occupying Power in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation⁵) for 35.

4. Throughout the reporting period, OHCHR operations in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' continued to be restricted. Ongoing discussions through regular meetings with representatives of both 'Donetsk people's republic' and 'Luhansk people's republic' have yet to secure the full resumption of OHCHR operations in the territory they control, as well as unimpeded confidential access to detainees in this territory.

5. The armed conflict in eastern Ukraine continued with ongoing hostilities in a number of hotspots along the contact line. Overall, OHCHR noted a trend of decreasing conflict-related civilian casualties, which in 2018 were 53 per cent lower than in 2017, and were at their lowest for the entire conflict period.⁶ The total civilian death toll of the conflict reached at least 3,321 as of 15 February 2019. More than 80 per cent of these occurred before mid-February 2015, reflective of the long-term positive impact of the Package of Measures to implement the Minsk Agreements on the decline of hostilities and civilian casualties since the adoption of the latter and United Nations Security Council Resolution 2202 in February 2015.⁷

6. During the reporting period, OHCHR documented 16 conflict-related civilian casualties: two people were killed and 14 injured, which represents a 68 per cent decrease compared with the previous reporting period from 16 August to 15 November 2018. Shelling and small arms and light weapons (SALW) fire injured ten civilians – one of the lowest figures for the entire conflict period. Of these, nine were recorded in territory

¹ HRMMU was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine, and to propose recommendations to the Government and other actors to address human rights concerns. For more details, see paras. 7-8 of the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

² Between 16 August and 15 November 2018, OHCHR documented 242 human rights violations. Of those, 207 human rights violations occurred in the course of that reporting period. These numbers include civilian casualties caused by the armed conflict.

³ The increase of violations documented is not representative of a deterioration of the overall human rights situation; it is in part due to a high number of victims of human rights violations OHCHR was able to interview only after their transfer to government-controlled territory in December 2018 and February 2019.

⁴ Hereinafter 'Donetsk people's republic' and 'Luhansk people's republic.'

⁵ Hereinafter Crimea.

⁶ 279 conflict-related civilian casualties (55 killed and 224 injured) in 2018 versus 604 (117 killed and 487 injured) in 2017.

⁷ See United Nations Security Council resolution 2202/2015.

controlled by armed groups⁸ and are attributable to the Government, and one was recorded in government-controlled territory and is attributable to armed groups of ‘Donetsk people’s republic’. During the reporting period, OHCHR did not record any mine-related civilian casualties.

7. More than five million people,⁹ including over 1.3 million registered internally displaced persons (IDPs)¹⁰ and persons living in isolated communities along the contact line in eastern Ukraine continue to bear the brunt of the armed conflict and its consequences. The hardship they endure is exacerbated by the lack of access to basic services, social support, as well as remedies and reparations for injured persons and relatives of those killed and for destroyed property. A dozen civilians died in the first few weeks of 2019, mainly due to serious health complications, while crossing the contact line. During the winter months, the lack of adequate heating remained one of the main challenges for civilians, especially those living along the contact line. Despite consistent court decisions in favour of individuals who lost access to their pensions, the Government has failed to implement the judgments and continues to link access to pensions to IDP registration. Further, OHCHR noted the continued need for broader protection of conflict-affected civilians, including IDPs, regardless of where they reside in Ukraine, and realization of their economic and social rights to pave the way for restoring peace and stability in eastern Ukraine.

8. In government-controlled territory, OHCHR had access to official places of detention and conducted confidential interviews with detainees in accordance with international standards. In territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, OHCHR continues to call for confidential access to detainees to be granted to OHCHR and international observers.

9. OHCHR welcomes the transfers of 88 pre-conflict prisoners from territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ to government-controlled territory that took place in December 2018 and February 2019. Of them, seventy-five were transferred from territory controlled by ‘Luhansk people’s republic’ for the first time since the outbreak of the conflict.

10. OHCHR is concerned about the practice of arbitrary arrest, *incommunicado* detention, torture and ill-treatment of civilians in government-controlled territory. During the reporting period, OHCHR documented two cases of arbitrary detention of civilians allegedly by officers of the Security Service of Ukraine (SBU). Individuals in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ continued to be subjected to ‘administrative’ arrest and ‘preventive’ arrest, respectively, which may constitute enforced disappearance.

11. In conflict-related cases, due process and fair trial violations persist as a result of the pervasive practice of prolonged pre-trial detention, and the use of force and coercion to obtain confessions or to accept plea bargains. Interference into the work of courts in conflict-related and other high-profile trials continued during the reporting period. Five years after violent clashes between law-enforcement and Maidan protestors, the killings of protestors and law-enforcement officers remain largely unaddressed by the Government. Delays in the investigation and trial proceedings related to the 2 May 2014 violence in Odesa continue.

⁸ Eight - in territory controlled by ‘Donetsk people’s republic’ and one - in territory controlled by ‘Luhansk people’s republic’.

⁹ See Multi-Year Humanitarian Response Plan (HRP) 2019-2020 available from <https://www.humanitarianresponse.info/en/operations/ukraine/document/ukraine-2019-humanitarian-response-plan-hrp>.

¹⁰ According to Ukraine’s Ministry of Social Policy, as of 5 February 2019 there were 1,361,912 internally displaced persons registered in Ukraine since the beginning of the armed conflict in 2014.

12. Safeguarding civic space and protecting people's rights to freedom of opinion and expression, media and peaceful assembly and association is key in ensuring that the upcoming presidential and parliamentary elections in Ukraine are peaceful and inclusive. OHCHR documented 16 violations of the afore-mentioned freedoms, as well as the right to non-discrimination, a decrease in keeping with the seasonal lull occurring every New Year period.¹¹ OHCHR remains concerned about the failure of the Government to bring perpetrators of attacks against media professionals, political and civil society activists to account. Space for freedom of expression and freedom of the media remains highly restricted in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic.'

13. During the reporting period, OHCHR followed closely the developments around the granting of autocephaly to the newly established Orthodox Church in Ukraine and the introduction of a 30-day martial law in some regions of Ukraine on 26 November 2018, following the naval incident near the Kerch Strait.

14. The Russian Federation, the occupying power in Crimea, has still not granted OHCHR access to the peninsula in line with UN General Assembly resolution on the territorial integrity of Ukraine 68/262 and resolutions 71/205, 72/190 and 73/263. OHCHR monitors the human rights situation on the peninsula from mainland Ukraine. The Russian Federation continues to apply its laws, in violation of international humanitarian law applicable to an occupying power, resulting in grave human rights violations, disproportionately affecting Crimean Tatars. OHCHR also notes that Ukrainian crew members apprehended by Russian authorities in the Kerch Strait on 25 November 2018 could be considered as *prisoners of war* and protected under the Third Geneva Convention.

II. OHCHR methodology

15. This report is based on 152 in-depth interviews with victims and witnesses. Findings are included in the report where the "reasonable grounds" standard of proof is met. The standard is met when a sufficient and reliable body of information from primary sources collected through interviews (with victims, witnesses, relatives of victims and lawyers), site visits, meetings with Government representatives, civil society and other interlocutors, and trial monitoring is consistent with information from secondary sources assessed as credible and reliable, such as reviews of court documents, officials records, open-source material, and other relevant materials. OHCHR applies the same due diligence and standard of proof when documenting conflict-related civilian casualties.¹² Consent is sought from sources on the use of information, ensuring confidentiality as appropriate. Specific attention was paid to the protection of victims and witnesses, assessing the risk of reprisals.

16. During the reporting period, OHCHR continued to be present, albeit with limited operations, in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic', and was able to obtain and verify information through various means.

¹¹ During the last reporting period between 16 August and 15 November 2018, OHCHR documented 59 violations of the fundamental freedoms of opinion and expression, peaceful assembly and association, religion or belief, as well as the right to non-discrimination and equal protection under the law.

¹² OHCHR documents civilian casualties by consulting a broad range of sources and types of information that are evaluated based on credibility and reliability. In analyzing each incident, OHCHR exercises due diligence to corroborate information from as wide a range of sources as possible, including OSCE public reports, victim and witness accounts, military actors, community leaders, medical professionals and other interlocutors. In some instances, documentation may take weeks or months before conclusions can be drawn, meaning that numbers on civilian casualties may be revised as more information becomes available. OHCHR attributes a civilian casualty to a particular party based on the geographic location where it occurred, the direction of fire, and the overall context surrounding the incident.

17. While OHCHR cannot provide an exhaustive account of all human rights violations committed throughout Ukraine, it is able to document patterns of human rights violations and abuses based on individual cases.

III. Impact of hostilities

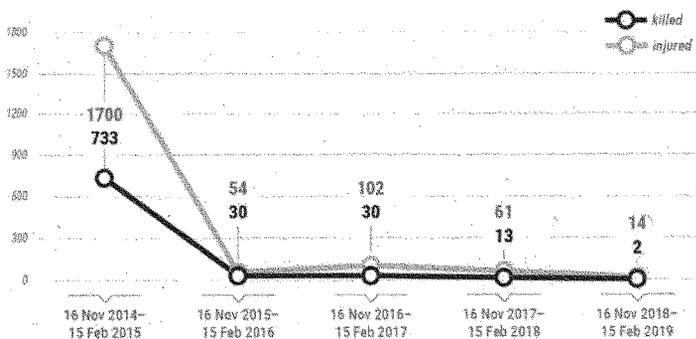
I have already forgotten when I slept in a night robe. We go to bed in sports pants and sports jumpers so we don't have to run naked when the shelling starts. We go to sleep and wonder if we are going to wake up or not. I wish I could have a good night rest at least once.
- Resident in Kamianka, a village near the contact line.

18. During the reporting period, hostilities continued to affect the civilian population in the conflict zone of eastern Ukraine. Against the backdrop of a decreasing number of ceasefire violations as reported by the OSCE Special Monitoring Mission to Ukraine,¹³ exchanges of fire across the contact line continued to impact residential areas and result in civilian casualties and damage to civilian property and infrastructure, including water facilities and electricity lines. Deteriorating factor was the continued placing of military positions in immediate proximity to residential areas and decreasing distances between the positions of Ukrainian forces and armed groups.

A. Conduct of hostilities and civilian casualties

19. Between 16 November 2018 and 15 February 2019, OHCHR recorded 16 conflict-related civilian casualties: two killed¹⁴ and 14 injured,¹⁵ a 68 per cent decrease compared with the previous reporting period of 16 August to 15 November 2018 when 50 civilian casualties (14 killed and 36 injured) were recorded. The number of locations where civilian casualties were recorded decreased from 25 to 11. The reporting period was also marked by the lowest number of civilian casualties compared with same calendar periods (mid-November to mid-February) from 2014 to 2018.

CIVILIAN CASUALTIES DURING REPORTING PERIOD, COMPARED WITH THE SAME PERIODS IN PREVIOUS YEARS (16 November – 15 February)



Creation Date: 15 February 2019 Source: OHCHR Ukraine HRMM

¹³ 72,805 ceasefire violations from 16 November 2018 to 15 February 2019 versus 90,771 ceasefire violations from 16 August to 15 November 2018.

¹⁴ A man and a woman.

¹⁵ 11 men and three women.

20. During the same period, shelling and SALW¹⁶ fire injured ten civilians (eight men and two women) and killed none. This is a 44.4 per cent decrease with the previous reporting period (six killed and 12 injured), and one of the lowest figures for the entire conflict period. Of the ten civilian injuries caused by shelling and SALW fire, eight were recorded in territory controlled by 'Donetsk people's republic' and one was recorded in territory controlled by 'Luhansk people's republic' and are attributable to the Government, and one was recorded in government-controlled territory and is attributable to armed groups of 'Donetsk people's republic'.

21. For instance, on 5 December 2018, a woman was injured by fire from an automated grenade launcher in the armed group-controlled village of Zaitseve (Donetsk region). On 10 January 2019, three male workers of the Voda Donbasa water station received injuries when a vehicle, which they drove to the Vasylyvka water pumping station near the armed-group controlled Kruta Balka (Donetsk region) was hit by a rocket or a shell.¹⁷ On 16 December 2018, a man was injured in the government-controlled village of Chernalyk (Donetsk region). On 23 January 2019, the same man's house came under heavy machinegun fire. The house is reportedly located near positions of the Ukrainian forces.¹⁸

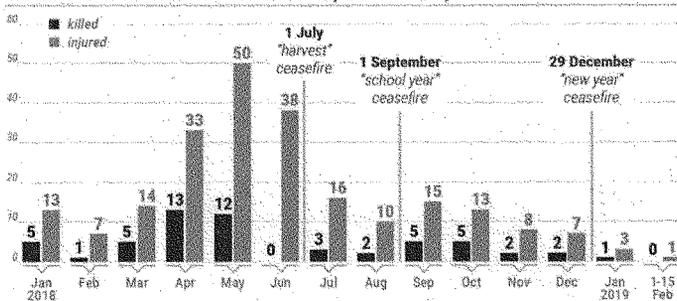
22. During the reporting period, OHCHR did not record any civilian casualties resulting from mine-related incidents. However, there were six casualties (two killed and four injured) resulting from the handling of explosive remnants of war (ERW), mostly hand grenades.

B. Civilian casualties in 2018

23. From 1 January to 31 December 2018, OHCHR recorded 279 conflict-related civilian casualties: 55 killed (32 men, 15 women, six boys and two girls) and 224 injured (122 men, 70 women, 16 boys, seven girls and nine adults, whose gender is yet unknown). This is a 53.8 per cent decrease compared with 2017, when 604 civilian casualties (117 killed and 487 injured) were recorded, and the lowest annual civilian casualty numbers during the entire conflict period.

	Killed	Injured	Total	Percent
Shelling/SALW fire	21	135	156	55.9
MRE/ERW handling	34	85	119	42.7
Drone attacks		2	2	0.7
Road incidents		2	2	0.7
Total	55	224	279	100.0

TIMELINE OF CIVILIAN CASUALTIES from 1 January 2018 to 15 February 2019



Creation Date: 15 February 2019 Source: OHCHR Ukraine HRMM

¹⁶ Small arms and light weapons.

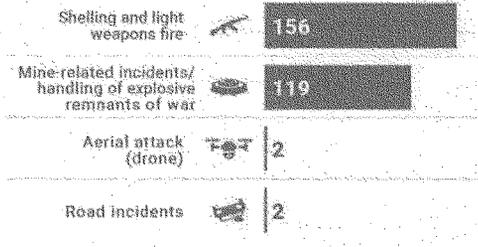
¹⁷ OHCHR civilian casualty records.

¹⁸ HRMMU interviews, 28 December 2018 and 28 January 2019.

24. From 1 January to 31 December 2018, shelling and SALW fire caused 156 civilian casualties (21 killed and 135 injured), a 54.7 per cent decrease compared with 2017 when 344 civilian casualties (49 killed and 295 injured) caused by shelling and SALW fire were recorded.

25. Of the 156 civilian casualties caused by shelling and SALW fire in 2018: 121 (77.6 per cent) were recorded in territory controlled by armed groups and are attributable to the Government, 28 (17.9 per cent) - in government-controlled territory and are attributable to armed groups, and 7 (4.5 per cent) - in 'no man's land'.¹⁹

CAUSES OF CIVILIAN CASUALTIES IN 2018



Creation Date: 15 Feb. 2019 Source: OHCHR Ukraine HRMM

26. From 1 January to 31 December 2018, OHCHR recorded 119 civilian casualties (34 killed and 85 injured) resulting from mine-related incidents²⁰ (MRI) and ERW handling.²¹ This is a 50 per cent decrease compared with 2017 when 238 civilian casualties (64 killed and 174 injured), resulting from mine-related incidents and ERW handling, were recorded.

C. Civilian casualties during the entire conflict period²²

27. During the entire conflict period, from 14 April 2014 to 15 February 2019, OHCHR recorded 3,023 civilian deaths (1,794 men, 1,046 women, 97 boys, 49 girls and 37 adults whose gender is unknown). With the 298 deaths on board of Malaysian Airlines MH17 flight on 17 July 2014, the total death toll of the conflict on civilians has been at least 3,321. The number of injured civilians is estimated to exceed 7,000.

¹⁹ To compare: of the 344 civilian casualties caused by shelling and SALW fire in 2017: 230 (66.9 per cent) were recorded in territory controlled by armed groups, 113 (32.8 per cent) in government-controlled territory, and 1 (0.3 per cent) in 'no man's land'.

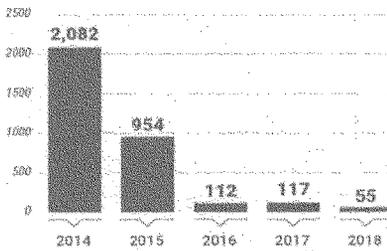
²⁰ Incidents, in which civilians were killed or injured by mines (antipersonnel or anti-vehicle) or explosive devices triggered in the same way, such as booby traps, or by ERW (explosive remnants of war) that are inadvertently detonated by unsuspecting civilians.

²¹ Victims of ERW handling manipulated an ERW for a certain period of time and took actions to cause its detonation (for instance, by trying to dismantle it), or were near those, who manipulated an ERW.

²² Though civilians have been the major focus of OHCHR casualty recording in Ukraine, OHCHR also collects reports/data on casualties among combatants to prevent inclusion of combatants into civilian casualty statistics, and to estimate the total death toll of the conflict. OHCHR estimates the total number of conflict-related casualties in Ukraine (from 14 April 2014 to 15 February 2019) at 40,000–43,000: 12,800–13,000 killed (at least 3,321 civilians and est. 9,500 combatants), and 27,500–30,000 injured (est. 7,000–9,000 civilians and est. 21,000–24,000 combatants). Previous conservative OHCHR estimate of total conflict-related casualties was as of 15 November 2017: at least 10,303 killed, including 2,821 civilians and 7,482 combatants, and at least 24,778 injured, including 7,000 to 9,000 civilians (OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2017, paragraphs 29–30). Between 16 November 2017 and 15 February 2019, OHCHR recorded 63 civilian deaths which occurred during that period, and recorded/processed data on 437 civilian deaths that occurred before 16 November 2017, mostly in 2014 and 2015. The increase in the estimate of killed combatants from at least 7,482 as of 15 November 2017 to est. 9,500 as of 15 February 2019 is due to combatants' deaths that occurred from 16 November 2017 to 15 February 2019 (est. 450) and to recorded/processed data on combatants' deaths that occurred before 16 November 2017 (est. 1,500), mostly in 2014 and 2015.

Conflict-related civilian casualties during the entire conflict period, per year

	Killed	Injured	Total
2018	55	224	279
2017	117	487	604
2016	112	476	588
2015	954	>2,000	>3,000
2014	2,082 ²³	>4,000	>6,000
Total	3,320	>7,000	>10,000

CONFLICT-RELATED CIVILIAN DEATHS
from 2014 – 2018

Creation Date: 15 Feb, 2019 Source: OHCHR Ukraine HRMM

28. The reporting period was marked by the fourth anniversary of the Package of Measures for the implementation of the Minsk Agreements, which was signed on 12 February 2015. The ceasefire and disengagement measures stipulated by the Package, though never implemented fully, have over time resulted in a dramatic decrease in conflict-related civilian casualties. The first ten months of the conflict (mid-April 2014 to mid-February 2015) accounted for 81.9 per cent of all civilian deaths (2,713), while the four years after the adoption of the Package accounted for 18.1 per cent of civilian deaths (608).

D. Economic and social rights of conflict-affected persons

We appreciate all the assistance, but nothing brings us joy when there is shelling. I will not survive another escalation. If someone tells you they are not afraid, don't believe them. It is terrifying.

- A retired coal-miner from the government-controlled village of Zhovanka.

29. About 5.2 million conflict-affected persons,²⁴ including over 1.3 million registered IDPs and persons living in isolated communities along the contact line continue to suffer due to the lack of access to basic services, such as water and heating, the lack of adequate housing, healthcare, and the absence of mechanisms for remedy and reparations. Displaced persons and those residing in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' face difficulties in accessing their pensions and social benefits. In December 2018, as reported by the Pension Fund, only 562,000 pensioners with residence registration in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' continued to receive pensions. Notably, this is less than a half of the pensioners registered in those territories as of August 2014.²⁵

30. Due to restrictions on freedom of movement, which result, in particular, in long waiting lines at entry-exit checkpoints on the contact line, civilians continue to face

²³ Including 298 on board of MH17 flight on 17 July 2014.

²⁴ See Multi-Year Humanitarian Response Plan (HRP) 2019-2020.

²⁵ 1,278,200 pensioners were registered as of August 2014. UN Briefing Note, Pensions for IDPs and persons living in the areas not controlled by the Government in the east of Ukraine, February 2019.

difficulties accessing government-controlled territory, to maintain family ties, access their social entitlements or critical services and facilities, such as hospitals. This contributes to the negative impact on the already fragile socio-economic situation and jeopardize prospects for social cohesion and people's wellbeing.

1. Remedy and reparation for conflict-affected population

31. During the reporting period, OHCHR observed the implementation of the amendments to the law 'On the status of war veterans and their social protection guarantees', which expanded the scope of the law to include civilians, who acquired a disability as a result of hostilities.²⁶ The inter-agency commission to establish the nexus between disability and conflict-related injury has considered in total 30 cases as of 15 February 2019. OHCHR welcomes this development, but remains concerned that provisions of the Law expressly exclude civilians who were injured in territory not controlled by the Government after 1 December 2014. OHCHR is also concerned by the continued lack of a comprehensive state policy of remedy and reparation for civilian victims of the armed conflict.

Court case on reparations for the family member of a person killed due to hostilities, Luhansk region

The Supreme Court is considering a case of a woman seeking reparation for the loss of her daughter, who died during the armed conflict in eastern Ukraine. The Supreme Court did not suspend the execution of an earlier positive ruling by an appeals court. According to the judgment, the Government of Ukraine is obliged to provide monetary reparation for the family.

OHCHR notes the positive development, which paves the way to ensure reparation for people who have lost their family members in the armed conflict. The Government has yet to develop, establish and ensure proper implementation of a comprehensive mechanism for remedy and reparation for individuals, who have been injured, and to families of those, who lost their family member due to conflict.

2. Right to restitution and compensation for use or damage of private property

32. OHCHR notes the long-standing absence of a unified, comprehensive and inclusive mechanism to enable access to compensation for civilian property damaged and/or destroyed due to hostilities. As of 15 February 2019, there are over 50,000 civilian homes on both sides of the contact line damaged during the hostilities and homes of some 40,000 families, living on both sides of the contact line, are reportedly in urgent need of repairs to protect inhabitants from low winter temperatures.²⁷

33. Civilians face multiple obstacles in accessing compensation for the military use of their houses, land and other property in government-controlled territory.²⁸ Persons told OHCHR the military forces did not sign lease agreements with them for the use of their property. Without such documents, civilians are not able to claim compensation for utility bills and any damages to their property caused during its use by the military. OHCHR has yet to observe the initiation of investigations into acts of looting allegedly committed by officers of the Ukrainian Armed Forces or other ground military forces.

²⁶ Law "On amendments to the Law of Ukraine 'On the status of war veterans and their social protection guarantees' enhancing the social protection of participants of the anti-terrorist operation, of the Revolution of Dignity and of the family members of such persons," no. 2203-VIII of 14 November 2017. The law entered into force on 24 February 2018.

²⁷ See Humanitarian Needs Overview 2019, p. 10 and Multi-Year Humanitarian Response Plan 2019-2020, p. 12.

²⁸ OHCHR does not assess the military necessity of the use of civilian homes, land or property.

34. On a separate note, OHCHR observed that IDPs, among them persons with disabilities, residing in collective centres²⁹ in Odesa, Sviatohirsk and Zhytomyr, experience frequent interruptions of adequate heating.

3. Right to social security and social protection

35. OHCHR regrets the absence of changes in Government policy that links payment of social benefits, in particular pensions, with the need to register as an IDP, which would result in inability of Ukrainian citizens to access their fundamental social and economic rights on an equal basis, especially as pensions are recognized as a form of property.

36. Despite three Supreme Court decisions,³⁰ issued over the past six months, ordering the restoration of rights to pensions and social entitlements, the Government continues to link access to pensions with IDP registration.

37. OHCHR positively notes that national courts followed the Supreme Court's judgment in an "exemplary case," restoring pension rights of an IDP.³¹ Since the judgement entered into force in September 2018, national courts have issued over 450 rulings in favour of IDPs between October and December 2018.³² Despite the general court practice on this issue, OHCHR regrets that the Government has so far failed to execute the court rulings, in violation of Ukrainian law.

38. In accordance with a July 2018 ruling of the Kyiv Appellate Administrative Court³³ that invalidated certain provisions of the Cabinet of Ministers Resolutions no. 365 and 637,³⁴ authorities can no longer carry out home visits for residence verification of IDPs and suspend pension payments on these grounds, when an individual is not found to be in residence. Reports indicate, however, that the practice continues. On 20 December 2018, the Supreme Court upheld the appellate court decision.³⁵ Welcoming this final ruling, OHCHR reiterates that the Government should review its IDP policy more broadly to ensure equal access to pensions regardless of place of residence or IDP registration.

39. In another positive development, the Government adopted a state programme on physical, medical and psychological rehabilitation, and social and professional re-adaptation of veterans of the armed conflict in eastern Ukraine.³⁶ This followed the establishment of the dedicated Ministry for Veterans Affairs in November.³⁷

40. In accordance with the law "On particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the

²⁹ OHCHR monitoring in Odesa, Sviatohirsk and Zhytomyr.

³⁰ See OHCHR Report on the human rights situation in Ukraine, 16 August - 15 November 2018, paras. 37-39.

³¹ *Ibid.*, para. 37.

³² According to NGO Right to Protection (R2P), there were about 60 positive court rulings during each quarter of 2018. This is more than a 65 per cent increase in comparison to each quarter in 2017. Overall, national courts issued about 550 positive decisions regarding applications submitted in 2018.

³³ The Kyiv Appellate Administrative Court judgment of 4 July 2018, case no. 826/12123/16, available at <http://reyestr.court.gov.ua/Review/78808062>. See OHCHR Report on the human rights situation in Ukraine, 16 May - 15 August 2018, para. 39.

³⁴ The ruling rendered inactive the following provisions of Cabinet of Ministers Resolutions no. 365 and 637: the Procedure for exercising control over the payment of social benefits to internally displaced persons at the place of their actual residence/stay and paras. 7-9, 13 of the Procedure for allocation (renewal) of social benefits to internally displaced persons, approved by Cabinet of Ministers Resolution no. 365; as well as para. 1(10) of Cabinet of Ministers Resolution no. 637.

³⁵ Administrative Chamber of the Supreme Court, judgment of 20 December 2018 case no. 826/12123/16, available at <http://reyestr.court.gov.ua/Review/78808062>.

³⁶ Cabinet of Ministers Resolution no. 1021 of 5 December 2018 "On approval of the State Target Programme on physical, medical and psychological rehabilitation and social and professional re-adaptation of participants of the anti-terrorist operation and persons taking part in the measures on ensuring the national security and defence, the containment and deterrence of the armed aggression of the Russian Federation in Donetsk and Luhansk regions, for the period until 2022".

³⁷ Cabinet of Ministers Resolution no. 986 of 28 November 2018 "Issues regarding the activity of the Ministry for Veterans Affairs of Ukraine".

Donetsk and Luhansk regions of Ukraine,³⁸ the President of Ukraine signed a decree establishing a list of residential areas, which are not controlled by the Government.³⁹ Meanwhile, Order No.1085 of the Cabinet of Ministers, also indicating these areas, remains in force, which could lead to inconsistent or interrupted payment of pension and social benefits.⁴⁰

4. Freedom of movement, isolated communities and access to basic services

*Crossing the contact line is a humiliating experience.
- A resident in Travnve, the village near the contact line.*

41. Despite a 2.5-hour reduction in operating hours of the crossing points as of 1 December 2018, enforced as part of a shift to the winter operation mode, during the reporting period, there were over one million crossings of the contact line on average each month. OHCHR notes improvements of conditions at the crossing points made by the Government, however, civilians continue to wait in long queues and are regularly exposed to snow, ice and low winter temperatures, and inadequate sanitary and medical facilities, on both sides of the contact line. Since the beginning of 2019, 11 persons died while crossing the contact line in eastern Ukraine, reportedly due to health condition.⁴¹ Four people died at the only crossing point in the Luhansk region open exclusively to pedestrians, near the government-controlled town of Stanytsia Luhanska. Civilians also face other risks when crossing the contact line. For instance, in December 2018 and February 2019, around 90 people were temporarily trapped in 'no man's land' coming from territory controlled by 'Donetsk people's republic' due to arriving at the Maiorske crossing point shortly before its closure.⁴² They were eventually let through by Ukrainian authorities.

42. According to the 2019 Humanitarian Response Plan under a 2019-2020 Strategy, around 3.5 million people in Ukraine need humanitarian aid and protection services.⁴³ Many conflict-affected civilians in villages on both side of the contact line lack access to basic services. During the winter, heating was one of the main challenges for civilians living along the contact line. The cost of coal, which is traditionally used for heating houses, increased drastically during the winter, forcing civilians to collect firewood in nearby forested areas, making them even more vulnerable to landmines or being subject to fines for cutting down trees.

43. OHCHR notes that the Ministry of Defence has not progressed in finalizing the draft Resolution regulating the procedure for movement of persons and transfer of goods across the contact line. As a member of a working group created by the Ministry of Defence to develop the draft Resolution, OHCHR underlines the necessity to harmonize the draft Resolution with existing national norms and international standards, as well as key recommendations of the international community and civil society.

³⁸ The text of the law is available at <https://zakon.rada.gov.ua/laws/show/2268-19/>

³⁹ The decree establishing "Boundaries and list of districts, cities, towns and villages, parts of these areas, temporarily occupied in Donetsk and Luhansk regions" is available at <https://www.president.gov.ua/>

⁴⁰ Cabinet of Ministers order No.1085 is available at <https://zakon.rada.gov.ua/>

⁴¹ According to monitoring by national and international organizations, in total, during the reporting period, 13 civilians died when crossing the contact line in eastern Ukraine.

⁴² Social media posts by NGOs Right to Protection and Prolika, Representative of the Ombudsperson's Office in Donetsk and Luhansk regions, and the Joint Forces Operation of Ukraine, 6 December 2018 and 14 February 2019.

⁴³ See Multi-Year Humanitarian Response Plan (HRP) 2019-2020.

IV. Right to physical integrity

44. During the reporting period, OHCHR documented at least 172 human rights violations involving unlawful or arbitrary detention, torture, ill-treatment and/or threats to physical integrity, committed on both sides of the contact line.⁴⁴ Out of these violations 18 can be attributed to the Government of Ukraine, and at least 154 can be attributed to 'Donetsk people's republic' and 'Luhansk people's republic.' At least 91 violations occurred within the reporting period, which affected 46 victims (40 men and six women).

A. Access to detainees and places of detention

45. In government-controlled territory, OHCHR continued to enjoy access to official places of detention and conducted confidential interviews with detainees in accordance with international standards. OHCHR interviewed 93 conflict-related detainees (85 men and eight women) in pre-trial detention facilities (SIZO) in Bakhmut, Kharkiv, Kherson, Kyiv, Mariupol, Mykolaiv, Odesa, Starobilsk, Vilniansk and Zaporizhzhia.

46. OHCHR follows the ongoing penitentiary reform and welcomes all efforts to transfer medical personnel from subordination of the State Penitentiary Service of Ukraine to the Centre for Health Protection of the State Penal Service of Ukraine.⁴⁵ However, the transition process negatively affects the provision of health care at the detention facilities.⁴⁶ OHCHR continued to receive complaints regarding the lack of access to health care and adequate food, especially for detainees in need of a special diet due to illness.

47. In territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic', OHCHR did not have unimpeded access to places of deprivation of liberty to visit and speak in private with detainees. The lack of such access raised serious concerns about the treatment of detainees and conditions of detention. First-hand information received from pre-conflict prisoners transferred to serve their sentence in government-controlled territory supports OHCHR concerns (see *Situation of pre-conflict prisoners*).

B. Arbitrary detention, enforced disappearance and abduction, torture and ill-treatment

48. OHCHR is concerned that the previously identified pattern⁴⁷ of arbitrary deprivation of liberty, enforced disappearance, torture and ill-treatment of individuals in government-controlled territory may be re-emerging. In at least two cases, documented during the reporting period, victims were arbitrarily arrested during daytime allegedly by SBU officers.⁴⁸

49. OHCHR received information that several SBU officers in camouflage uniforms, armed with machine guns entered the house of an Armenian national and asylum seeker in Ukraine, in Svitlodarsk on 13 December 2018. SBU searched his house without a warrant and seized his electronic equipment and documents. They threatened to deport him to Azerbaijan or Crimea, and his family to 'no man's land'.⁴⁹ He told OHCHR that they then

⁴⁴ This number encompasses violations in relation to inhuman conditions of detention and treatment in penitentiaries in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic.' The majority of these violations dated back to 2014-2016. In some colonies, OHCHR documented systematic beatings of prisoners by men wearing masks, which allegedly lasted until mid-2018, and the widespread use of forced labour.

⁴⁵ A state institution independent of the management of penal institutions of the State Penal Service of Ukraine.

⁴⁶ The process of transfer of the State Penal Service premises for the needs of medical units, as well as medicine and medical equipment to the structural units of the Centre for Health Protection of the State Penal Service in the regions is ongoing. These structural changes lead to the lack of medicines and staff in penitentiary institutions.

⁴⁷ OHCHR report on the human rights situation in Ukraine, 16 November 2017 - 15 February 2018, para. 29.

⁴⁸ OHCHR interviews, 12 January and 24 January 2019.

⁴⁹ No man's land is commonly described as a territory, where no authorities exercise control, even though it is formally controlled by the Government of Ukraine.

handcuffed him, put a bag over his head and took him to a basement, where they interrogated him, accusing him of espionage for the Russian and Armenian intelligence. He said SBU officers periodically beat him, each time for 20-30 minutes, to force him to confess. The man agreed to confess to the SBU accusations on video camera after being threatened at gun point. Two days later, they took him to Kyiv, held him in an apartment and continued to beat him, inflicting severe pain and leaving numerous bruises on his body. On 17 December, SBU officers took him to a hospital for his injuries, registering him under a fake name. He said doctors recommended hospitalization, but SBU officers took him to another apartment and held him there for around two weeks. At one point, he did not receive food for two days. Finally, on 29 December, the SBU released him, telling him to keep silent about his ordeal.⁵⁰

50. In another case, on 15 November 2018, two men, allegedly SBU officers, wearing camouflage and masks detained a Russian citizen in Kyiv. They handcuffed him and took him to an unknown location. On 23 November, after the man's wife reported his disappearance, the police opened a criminal investigation, but closed it five days later.⁵¹ On 26 December, a prosecutor's office instructed the police to reopen the investigation. On 30 December, the man's personal information (name, surname, date of birth, and alleged criminal charges) appeared on the Myrotvorets website.⁵² As of 15 February 2019, his relatives have no information about his whereabouts.

51. Late on 21 November 2018, several SBU officers detained a woman in the Kostiantynivka – Kyiv night train.⁵³ They ordered her to leave the train, seized her passport and mobile phone and drove her from Kostyantynivka to an SBU office in Mariupol. She told OHCHR that the Mariupol SBU interrogated her all night and she learned that the SBU got her name and other identifying personal information from the Myrotvorets website. The woman saw her lawyer a day after her arrest, when she was taken to Kramatorsk to meet a Donetsk Regional Prosecutor in order to receive an act of suspicion. She was charged with creating 'a terrorist group or organization'.⁵⁴ On 23 November, the Zhovtnevyi district court of Mariupol ordered her arrest.⁵⁵

52. OHCHR notes that prompt, timely, effective and transparent investigations of all incidents of arbitrary detention, enforced disappearance, torture and other ill-treatment could help stop the pervasive practice and prevent reoccurrence. In this regard, OHCHR notes that the State Bureau of Investigations (SBI) became operational on 27 November 2018.⁵⁶ This body took over the investigative jurisdiction over the crimes involving senior

⁵⁰ OHCHR interview, 24 January 2019.

⁵¹ Pursuant to Article 284 of the Criminal Code of Ukraine, part 1(2).

⁵² The website includes personal data and information available on social media about persons, allegedly involved in activities of 'Donetsk people's republic' and 'Luhansk people's republic'. It is allegedly maintained by volunteers but has been actively used since 2014 by Ukraine's law-enforcement and military. As previously noted by OHCHR, the website also publishes information about members of civil society and journalists, who work in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic.'

⁵³ In November 2014, she received an IDP registration and had been crossing the contact line from territory controlled by 'Donetsk people's republic' to government-controlled territory on a regular basis.

⁵⁴ Pursuant to Article 258-3 of the Criminal Code of Ukraine.

⁵⁵ OHCHR interview, 28 November 2018.

⁵⁶ The State Bureau of Investigations was established on 1 March 2016 by Cabinet of Ministers Resolution no. 127 of 29 February 2016. However, the Bureau began its work only two and a half year later. By the end of 2018, the SBI had around 843 cases under investigation, nearly 80 per cent of which had been transferred to the SBI from other investigative bodies. According to authorities, in order to prevent the backlog, the investigations opened before 27 November 2018 would not be transferred to the SBI and should be finalized by the prosecutors within a year. The statement of the Head of the SBI, Roman Truba, 21 December 2018, available at <https://dbr.gov.ua/news/roman-trubastat-slidechikh-dbr-bude-zbilsheno>.

public officials, judges, officers of law enforcement or national anti-corruption bodies, and the crimes related to military service.⁵⁷

53. During the reporting period, in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' individuals continued to be subjected to 30-day 'administrative arrest' and 'preventive arrest,' respectively, which amount to arbitrarily *incommunicado* detention and may constitute enforced disappearance. In territory controlled by 'Luhansk people's republic,' OHCHR documented cases of 'preventive arrests' of civilians, held *incommunicado* for prolonged periods, before formalizing these 'arrests.'⁵⁸

54. On 16 November 2018, representatives of the 'ministry of state security' ('MGB') of 'Luhansk people's republic' detained a Luhansk resident at the entry-exit checkpoint near Stanytsia Luhanska. The man called his mother and told her he had been detained. His mother sent complaints about his detention to the 'MGB', 'head' of 'Luhansk people's republic', 'general prosecutor's office', and the 'ministry of the interior' ('Mol'), requesting information about her son's whereabouts. On 26 November, the 'MGB' informed her that her son was being held *incommunicado* under 'preventive arrest.' He was released on 4 December 2018.⁵⁹

C. Situation of pre-conflict prisoners

Back in 2016 I could complain to the prison administration for forcing us to work. Now no one would complain for fear of being thrown in the isolation ward and beaten.

- A pre-conflict prisoner transferred from a penal colony in territory controlled by 'Luhansk people's republic'

55. OHCHR welcomes the transfer of 88 pre-conflict prisoners (83 men and five women) that took place during the reporting period⁶⁰ from places of detention in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' to government-controlled territory in December 2018 and February 2019.⁶¹ There were two transfers from places of detention in territory controlled by 'Luhansk people's republic' since the beginning of the armed conflict. To date, 274 persons (including nine women) have been transferred from places of detention in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic'.

56. Transferred prisoners told OHCHR that there were more prisoners in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic,' who wanted to

⁵⁷ Articles 401-435 of the Criminal Code of Ukraine, except for Article 422 'disclosing military information constituting a state secret', which remains under the SBU jurisdiction.

⁵⁸ OHCHR interview, 21 January 2019.

⁵⁹ OHCHR interview, 5 December 2018.

⁶⁰ On 12 December 2018, the transfer of 42 pre-conflict prisoners (39 men and three women) was carried out from territory controlled by 'Luhansk people's republic' to government-controlled territory. On 13 December 2018, 13 prisoners (11 men and two women) were transferred from territory controlled by 'Donetsk people's republic'. On 7 February 2019, another 33 pre-conflict prisoners (all men) were transferred from territory controlled by 'Luhansk people's republic.' Based on interview with prisoners, OHCHR was able to verify information about conditions of detention between 2014 and 2018.

⁶¹ Among those transferred on 12 December 2018, two individuals were transferred from the Luhansk SIZO, where they had been held since 2014. One of them had appealed a first-instance court ruling; another was scheduled for transfer from the pre-trial detention to another city for trial, but due to the outbreak of the armed conflict remained there. Moreover, OHCHR is aware of at least three individuals, who were held in a Donetsk SIZO, before the outbreak of the armed conflict in eastern Ukraine. In October 2015, a court in government-controlled territory ordered the release of one of these three individuals, however, he remains in custody.

be transferred to government-controlled territory and maintain contacts with relatives living there.⁶²

57. Recently transferred individuals from detention facilities in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic', including from two female penal colonies, reported a deterioration of detention conditions and prisoner treatment after the outbreak of the armed conflict in 2014. In particular, they mentioned insufficient food supply and the lack of electricity: in 2014-2015 during power outages, lasting from a couple of hours to several months, prisoners had to burn furniture to heat their barracks. They said the situation had improved since 2016, however, ill-treatment by prison staff, the absence of adequate medical treatment, including specialised doctors, such as gynaecologists, and forced labour remain of concern. Prisoners also reported difficulties in maintaining contacts with relatives who live in government-controlled territory.

58. Pre-conflict prisoners were transferred from eight places of detention in territory controlled by 'Luhansk people's republic'.⁶³ Transferred prisoners said that their detention conditions worsened after the outbreak of the armed conflict. They described inadequate accommodation, such as leaking barrack roofs, low inside temperature during the cold season, and insufficient health care due to the lack of medical staff and medicines (particularly for prisoners living with HIV/AIDS and tuberculosis). In several instances, delays to deliver timely and adequate medical care led to an inmate's death in custody. In some colonies, prisoners said they had gone "hungry" for several months in 2014 and lacked access to water and electricity.

59. Some of the transferred prisoners complained that in 2014-2015 members of armed groups entered penal colonies, beat prisoners and subjected them to mock executions. Prisoners also reported severe beatings by men in masks and by penal colony staff, who allegedly changed their uniforms and put masks on. The prisoners said it was done to intimidate and 'discipline' them, including when the prison administration was understaffed. In some instances, such beatings, allegedly, led to serious injuries requiring medical attention or prisoners' deaths. Such visits by 'masked men' continued till mid-2018, but reportedly stopped since then.

60. OHCHR received allegations of forced labour in most penal colonies in territory controlled by 'Luhansk people's republic'. In Sukhodilsk penal colony №36, prisoners said they had to work in two shifts from 6:30am to 9pm, often without days off on weekends and meagre or no compensation.⁶⁴ Those, who did not want to work or who did not meet the work requirements, were beaten and put in the isolation ward. The 'head' of the colony personally beat prisoners in front of others to intimidate and make them work harder.

61. Individuals, transferred from five penal colonies in territory controlled by 'Donetsk people's republic,' confirmed information OHCHR had received from other transferred prisoners about the lack of food, water, electricity, heating, hygiene items and medicine in 2014-2015.⁶⁵ Some reported that the situation had gradually improved in Snizhne female penal colony №127, whereas the situation had remained difficult in male colonies despite minor improvements. Male prisoners alleged that in 2014-2015 a special unit from armed groups of 'Donetsk people's republic' with insignia 'ROSNAZ'⁶⁶ entered Yenakiieve penal colony №52 on two occasions and severely beat some prisoners. Since 2016, the treatment of prisoners reportedly improved, however a number of issues remain unresolved, in particular, Michurinska penal colony №57 in Horlivka is still affected by shelling.

⁶² OHCHR interviews with pre-conflict prisoners, 18-20 December 2018.

⁶³ Some of the prisoners were also held in other detention facilities for various periods of time.

⁶⁴ The prisoners said they received 80-90 RUB a month, whereas a pack of tea cost 180 RUB.

⁶⁵ See OHCHR report on the human rights situation in Ukraine, 16 November 2017 - 15 February 2018.

⁶⁶ Meaning a "republican special unit".

V. Accountability and administration of justice

A. Administration of justice

While article 176.5 is in force, a person can be held in SIZO eternally. There is no need to prove anything. It's a very convenient tool
- A detainee in the Kyiv SIZO.

62. OHCHR notes the persistent practice of prolonged pre-trial detention and the use of pressure to obtain forced confession or plea bargains. OHCHR documented 89 violations of the right to a fair trial in conflict-related criminal cases.⁶⁷

63. During the reporting period, OHCHR continued to observe a worrying trend of convicting individuals affiliated or linked with armed groups of 'Donetsk people's republic' and 'Luhansk people's republic' based on guilty pleas and confessions without material evidence. In 35 out of 60 verdicts in conflict-related criminal cases, defendants pled guilty or admitted guilt. In 24⁶⁸ out of those 35 cases prosecutors presented no material evidence, giving rise to concerns about substantiality of the charges. In four cases defendants were sentenced to as much time as they had already spent in pre-trial detention⁶⁹ and were thus immediately released. OHCHR is concerned that defendants could see pleading guilty to a crime as the only way to be released from detention in the context of a protracted trial.

64. The wide application of plea bargains in conflict-related criminal cases is problematic due to the practice of coercing defendants to admit guilt, including through the use of physical violence, as documented by OHCHR. In at least three documented cases, detainees of the Kharkiv SIZO tried on terrorism charges complained of being under pressure.⁷⁰ In particular, the SIZO administration repeatedly placed defendants in punishment cells⁷¹ for minor infractions of the SIZO rules and regulations.⁷² By conducting excessively frequent searches and seizures of personal items, the administration allegedly provoked other detainees to be violent towards the defendants. One of them was brought to the court with visible injuries on his face and body and told the court that he had been beaten after complaining to the prosecution about this punitive practice by top SIZO officials. He explained to the court that he feared for his life but refused to describe the beating.

There is no way to be released other than to sign a plea bargain.
- A detainee in the Odessa SIZO.

⁶⁷ The Criminal Code of Ukraine, articles 109-114¹, 258-258⁵, 260, and 261. These crimes constitute "conflict-related crimes".

⁶⁸ Data from the Unified Register of Court Decisions.

⁶⁹ According to para.5 Art. 72 of the Criminal Code of Ukraine as of the version amended by Law № 838-VIII of 26.11.2015 (also known as the 'Savchenko law' after Nadiia Savchenko, a member of the Parliament and an author of the law), a pre-trial detention shall be counted as a part of a sentence at a ratio of 1:2 days. See the Great Chamber of the Supreme Court judgement of 29 August 2018 № 663/537/1.

⁷⁰ Cumulative data of OHCHR court monitoring, interviews with victims and their relatives, visits to penitentiary facilities, information provided by governmental bodies upon OHCHR's requests.

⁷¹ Placing of defendants in punishment cells comes with other restrictions such as prohibition of personal items, receiving packages (on which many detainees depend for food and medications), absence of adequate medical care and poor cell conditions (such as, low temperature).

⁷² The most common disciplinary violations were reportedly possessing or bringing to the SIZO a prohibited item, being awake after 10 p.m., interfering with cell searches and arguing with guards.

65. According to the information⁷³ received by OHCHR, the SIZO administration placed the three defendants in punishment cells at least a dozen times, to force them to admit guilt in court, while the prosecution failed to meaningfully investigate the allegations of ill-treatment. OHCHR emphasizes that the right not to be compelled to testify against oneself or to confess guilt comprises the guarantee of absence of any direct or indirect physical or undue psychological pressure with a view to obtaining a confession of guilt.⁷⁴

66. Despite the prohibition of unreasonably lengthy pre-trial detention and the need to reconsider alternatives to pre-trial detention,⁷⁵ courts continue to put in custody individuals charged with links or affiliation with armed groups and crimes against national security relying solely on provisions of article 176.5 of the Criminal Procedure Code of Ukraine. OHCHR is aware of at least 46 cases, where defendants had been in pre-trial detention for over two years. In 11 of these cases the defendants have been in custody for over four years – equaling to eight years of imprisonment according to the ‘Savchenko law’.⁷⁶ The situation is exacerbated by appeal courts’ heavy reliance on article 176.5 instead of international human rights law and the case law of the European Court of Human Rights. In some cases, defendants could not appeal due to the delay in obtaining court orders of their restraint measures, which violated their right to appeal.

67. OHCHR is also concerned that protracted trials in conflict-related criminal cases might be caused, *inter alia*, by the lack of judges.⁷⁷ In the majority of conflict-related criminal cases, the courts schedule hearings only once every month or two.

68. OHCHR continued to document cases of interference by members of extreme right-wing groups in criminal proceedings of conflict-related and high profile criminal cases through the intimidation of judges, defendants and their lawyers. In three documented cases⁷⁸ members of extreme right-wing groups disrupted court hearings by verbally abusing judges and defendants. In one case, they beat a defendant in a conflict-related case outside the courtroom,⁷⁹ but police did not stop the beating.⁸⁰

69. OHCHR is concerned about the lack of progress in the criminal case regarding the killing of journalist Oles Buzyna⁸¹ in 2015 and allegations of obstruction of justice. The High Council of Justice is still considering the issue of one of the judge’s removal for failing a qualification test.⁸² The judge had previously claimed she was made to fail the test in order to remove her from the case.⁸³ Although the judge continues to participate in the

⁷³ OHCHR interviews with the victims and their defense counsel, trial monitoring, government data.

⁷⁴ See Human Rights Committee, General Comment No. 32. Article 14, para. 41.

⁷⁵ See Human Rights Committee, General Comment No. 35 Article 9, para. 37.

⁷⁶ Para. 5 Art. 72 of the Criminal Code of Ukraine. In one such case, tried in the Zhovtnevyi district court of Kharkiv, five out of eight defendants are in custody although the court has not yet conducted the preparatory hearing. The defendants complained to OHCHR that the prosecution threatened them with indefinite custody unless they all accept guilty pleas.

⁷⁷ According to the High Qualification Commission of Judges of Ukraine, as of January 2019, Ukraine’s judicial system lacked 32 per cent of the judges needed to staff the country’s courts: 5,503 judges were employed out of 7,991 required. The number of judges, authorized to administer justice was even lower, as the tenure of 702 judges had terminated. As a result, 14 courts had no active judges and did not operate, while 124 courts lacked more than half of their judges. The data was proved on 30 January 2019 at OHCHR’s written request.

⁷⁸ Court hearings at the Dzerzhynskiyi district court of Kharkiv, 12 December 2018, the Ordzhonikidzevskiyi district court of Mariupol, 13 December 2018, and the Shevchenkivskiyi district court of Zaporizhzhia, 21 January 2018.

⁷⁹ OHCHR trial monitoring at the Dzerzhynskiyi district court of Kharkiv on 4 January 2019.

⁸⁰ Prior to the hearing, members of an extreme right-wing group organized a protest outside the court.

⁸¹ See OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2018, para. 84.

⁸² See High Qualification Commission of Judges decision of 6 August 2018, available at: www.vksu.gov.ua/

⁸³ During a session at the High Council of Justice on 9 October 2018, the judge alleged that she was made to fail the test to disqualify her from hearing Buzyna’s case. A video recording of the session is available at: <http://www.vru.gov.ua/video/497>.

trial.⁸⁴ concerns arise about her bias towards the defendants and a likely re-trial in case of her eventual removal by the High Council of Justice,⁸⁵ which would violate the rights of the victim's relatives and the defendants. The judge's allegation of the interference into her professional activities merits prompt and effective investigation.

70. In an unrelated case, the car of Valentyn Rybin, a lawyer known for defending conflict-related detainees, was set on fire.⁸⁶ According to Rybin,⁸⁷ the police is reluctant to investigate the attack.

71. During the reporting period, OHCHR observed violations⁸⁸ of the right to a public hearing when judges held hearings of conflict-related criminal cases in their offices instead of courtrooms⁸⁹ without making these changes known to the general public⁹⁰ and thus obstructing public presence.

B. Accountability for human rights violations in eastern Ukraine

72. OHCHR continued to document Ukrainian authorities' inaction in prosecuting military officials, suspected of crimes against civilians.⁹¹ OHCHR notes that prosecutors fail to enforce defendants' presence during trials as a general practice.⁹²

C. Accountability for cases of violence related to riots and public disturbances

73. OHCHR noted limited progress in legal proceedings concerning the 2014 Maidan protests and the violent events of 2 May 2014 in Odesa.

I. Accountability for the killings of protesters during the Maidan protests

74. Five years after violent clashes between law enforcement and Maidan protesters, the Special Investigations Department (SID) of the Prosecutor-General's Office continues its probe into killings during the protests in early 2014. The SID, however, will lose its investigative functions on 20 November 2019.⁹³ By then, all investigations conducted into the Maidan killings must be completed or transferred to the State Bureau of Investigations, which began its work on 27 November 2018.

75. While the SID continues its work, the investigators have been stripped of labour and social protection guarantees,⁹⁴ which, according to the SID Head, has had a negative impact on the work of the department.⁹⁵

76. The Office of the Military Prosecutor completed its investigation into the shooting from the SBU building in Khmelnytskyi on 19 February 2014. The former Head of the

⁸⁴ Defense lawyers requested the court to remove the judge from the case due to her allegations at the High Council of Justice on 9 October 2018.

⁸⁵ On 9 October 2018, the High Council of Justice postponed the hearing of the judge's case.

⁸⁶ A Car of a Defence Lawyer Rybin, Who Protected Ruban and Yezhov, Was Burned, UNIAN.

⁸⁷ Rybin's speech on 22 January 2018, available at: <https://press.liga.net/press-conf/releases/konferentsiya-peresliduvannya-ta-napadi-na-advokativ-sogodenni-realti-derjavi>.

⁸⁸ OHCHR trial monitoring at the Kramatorsk city court, 5 December 2018.

⁸⁹ Courts must provide for adequate facilities for the attendance of interested members of the public. See Human Rights Committee, General Comment No. 32, Art. 14, para. 28.

⁹⁰ Courts must make information regarding the time and venue of the oral hearings available to the public. See Human Rights Committee, General Comment No. 32, Art. 14, para. 28.

⁹¹ In the case of eight members of Aidar battalion tried at the Zhovtnevyi district court of Kharkiv, four years later, the court has not yet started to hear the merits of the case.

⁹² In the case of an SBU officer charged with an Avdiivka resident's killing on 4 March 2017, the prosecutor failed to enforce the dependent's participation (via videoconference). In particular, he did not request the court to order the defendant's detention or suspension from service. The defendant continues to serve in the SBU and has access to service firearms.

⁹³ Parts 1 and 2 of Chapter XI, Transitional Provisions of the Criminal Procedure Code of Ukraine.

⁹⁴ According to p. 5 of Transitional provisions of Law of Ukraine "On the Public Prosecutor's Office", social and pension guarantees for prosecutors are extended to investigators of the Prosecutor's Office until the State Bureau of Investigations starts operating on 27 November 2018.

⁹⁵ OHCHR meeting, 13 December 2018.

Khmelnytskyi SBU, who had allegedly ordered the use of lethal force against the protestors, and the SBU officer, who had allegedly shot and killed one person and injured three protestors, have been indicted on charges of abuse of power, unintentional killing and negligent grave bodily injury. On 18 December 2018, a court ordered house arrest for the SBU officer⁹⁶ but he was later released.⁹⁷

2. Accountability for the 2 May 2014 violence in Odesa

77. Delays in the investigation and trial proceedings related to the 2 May 2014 violence in Odesa continue. As of 15 February 2019, almost five years after the events, which led to the deaths of 48 people, none of the state officials have been held accountable.

78. On 16 January 2019, the court of appeals for Odesa region reversed the decision of the Kyivskiy district court of Odesa to return to the prosecutor's office the indictment against three State Emergency Service officials accused of negligence and ruled to start the trial.

79. OHCHR notes no progress in the case against the only 'pro-unity' activist accused of killing: two hearings were adjourned due to the court's failure to select a jury panel and disruption of the proceedings by 'pro-unity' supporters. On 17 December 2018, around 30-40 supporters of the defendant disrupted the hearing in the Malynovskiy district court of Odesa. When the panel of judges attempted to leave the courtroom, one of the supporters approached the presiding judge obstructing his movement and began arguing with him. The judge was only able to leave the courtroom after the defendant and his lawyer interfered.

80. The Prymorskiy district court of Odesa has not started to hear the case against three high ranking police officials accused of negligence and endangering others. On 11 October 2018, the judge ruled to merge the case with another legal proceeding against one of the accused related to the 2 May violence in Odesa. However, on 16 January 2019, the case was returned for retrial due to procedural issues.

VI. Democratic/civic space and fundamental freedoms

81. During the reporting period, OHCHR documented 16 violations of the rights to freedom of opinion and freedom of expression, freedom to peaceful assembly and association, freedom of religion or belief and the right to non-discrimination. While the Ukrainian authorities were responsible for all 16 human rights violations that OHCHR documented during the reporting period, the space for freedom of expression and freedom of the media remains highly restricted in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic'.

82. The 30-day martial law period declared in ten regions of Ukraine⁹⁸ did not lead to significant human rights limitations. However, certain martial law restrictions had direct application under national legislation leading to restrictions of electoral rights and the right to peaceful assembly.⁹⁹ The prohibition to hold elections resulted in the cancellation of the elections to territorial "hromadas" in the ten regions under martial law.¹⁰⁰ At the same time, the prohibition to hold public assemblies was not strictly enforced. OHCHR observed that

⁹⁶ See the ruling of the Podilskiy district court of Kyiv of 18 December 2018 at <http://reyestr.court.gov.ua/Review/78821440>.

⁹⁷ See the ruling of the Pecherskiy district court of Kyiv of 3 January 2019 at <http://reyestr.court.gov.ua/Review/79001111>.

⁹⁸ The martial law was in force between 26 November and 26 December 2018 in ten out of 25 administrative regions of Ukraine: Vinnytsia, Luhansk, Mykolaiv, Odesa, Sumy, Kharkiv, Chernihiv, Donetsk, Zaporizhzhia and Kherson and the internal waters of the Azov Sea and the Kerch Strait.

⁹⁹ Article 19 of Law of Ukraine 'On the legal regime of martial law' no. 389-VIII of 12 May 2015.

¹⁰⁰ On 29 November 2018, the Central Electoral Commission of Ukraine cancelled the elections in several territorial "hromadas" (united territorial communities), scheduled for 23 December 2018 in all ten regions under martial law (in total 52 elections).

public events did take place in the affected regions. Police in Odesa reportedly evoked the martial law when dissolving a public event in order to unblock a traffic jam.¹⁰¹

A. Freedom of opinion and expression and freedom of the media

83. Despite the decrease in the number of violations of freedom of expression and freedom of the media during the reporting period, OHCHR continues to document cases of interference in the work of media professionals and physical attacks and acts of intimidation against them. Seven incidents took place during the period under review, which led to nine human rights violations, including the persistent lack of investigations into attacks against journalists and civic activists.

84. On 18 November 2018, members of extreme right-wing groups used pepper spray against a Canadian journalist covering a transgender rights public event in Kyiv and punched him in the face. Police opened an investigation into the attack, classifying the assault as ‘hooliganism’.

85. OHCHR remains concerned about the failure of the Government to bring perpetrators of attacks on civil society activists to account. OHCHR notes the creation of a special parliamentary commission to investigate a lethal attack on a senior staff of the Kherson city council and attacks on other activists.¹⁰² Concerns remain, however, about the lack of effective investigations by law enforcement into these attacks so far.

86. OHCHR documented two attacks against members of political parties during the reporting period. On 28 November 2018, around 30 masked men attacked three political activists in Odesa.¹⁰³ On 12 December, a group of approximately 15 perpetrators, with alleged links to extreme right-wing groups, stormed offices of a political party in Kyiv. They beat at least two political activists and searched the offices. The police arrived after the attack when the perpetrators had already left.¹⁰⁴

87. Space for freedom of expression and freedom of the media remains highly restricted in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. OHCHR is concerned that expression of any critical opinion or alternative view could lead to arbitrary detention or other punishment of critics.

B. Freedom of peaceful assembly and association

88. OHCHR continued to document attacks by extreme right-wing groups on peaceful assemblies organized by groups, with whose views they disagree. On 18 November 2018, members of extreme right-wing groups attacked the transgender rights public event in Kyiv. Despite the presence of the police on site, the members of extreme right-wing groups from a counter-rally followed several event participants and attacked them by using pepper spray. Two participants and one journalist received injuries. Instead of isolating perpetrators police asked organizers to stop the event and forced the participants into a nearby subway station. Authorities did not launch an investigation into the disruption of the peaceful event and attacks against the participants.¹⁰⁵ OHCHR notes that such attacks could amount to a form of gender-based discrimination against LGBTQI people.

89. In territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, OHCHR did not observe any developments with regard to peaceful assembly. In territory controlled by ‘Luhansk people’s republic’, a ‘decree’ remains ‘in force’, according

¹⁰¹ On 28 November 2018, a group of Odesa residents blocked a public road protesting against an unlawful construction. Police dispersed the protest and apprehended one of the protestors for disobedience. After a few hours in a police station, the protestor was released.

¹⁰² Established on 6 November 2018, the commission conducted numerous meetings with victims of attacks, law enforcement, state and local officials, including in Odesa, Kharkiv and Kherson; OHCHR interview, 18 January 2019.

¹⁰³ OHCHR interview, 1 February 2019.

¹⁰⁴ OHCHR interview, 7 February 2019. The police initiated a criminal investigation on charges of hooliganism. However, the victims’ lawyer noted the absence of investigative activities.

¹⁰⁵ OHCHR interviews, 15 January 2019.

to which organizers of peaceful assemblies are required to seek prior approval of the ‘ministry of state security’ or the ‘ministry of the interior’.¹⁰⁶

C. Freedom of religion or belief

90. OHCHR continued to monitor developments related to granting autocephaly to the newly established church – the Orthodox Church in Ukraine. On 15 December 2018, members of the Unification Council of the Orthodox Churches of Ukraine formally agreed to create the new church and chose its leader. OHCHR documented incidents that could be perceived as acts of intimidation against members of the Ukrainian Orthodox Church of the Moscow Patriarchate.

91. During the reporting period, the SBU in several regions of Ukraine initiated four criminal investigations into incitement to religious enmity and hatred; one of these cases has an additional charge of high treason, without issuing notices of suspicion.¹⁰⁷ The SBU conducted searches in the premises of the Ukrainian Orthodox Church of the Moscow Patriarchate and places of residence of clergymen, questioning some of them.¹⁰⁸

92. On 20 December 2018, the Parliament of Ukraine launched a process of mandatory renaming of religious organizations that are affiliated with religious centers in the Russian Federation. OHCHR is concerned that this process is primarily targeting Ukrainian Orthodox Church communities and may be discriminatory.¹⁰⁹ OHCHR is also concerned that the Parliament warranted restrictions on access of the clergymen of such organizations to the premises of the Ukrainian Armed Forces on the basis of national security considerations, which contravenes article 18(3) of the ICCPR.¹¹⁰

93. Following the establishment of the new church, a number of religious communities decided to join. OHCHR received reports that in a few cases the transfers were not voluntary and were initiated by state or local authorities or even representatives of extreme right-wing groups, who were not members of those religious communities.¹¹¹ Furthermore, on 17 January 2019, the Parliament adopted amendments setting out a procedure for voluntary change of denomination by religious communities.¹¹²

D. Discrimination, hate speech, racially-motivated violence and manifestations of intolerance

94. OHCHR continued documenting violations related to discrimination, hate speech and/or violence, targeting members of minority groups or those holding alternative or minority opinions. Among two incidents documented that occurred during the reporting

¹⁰⁶ See OHCHR report on human rights situation in Ukraine, 16 May - 15 August 2018, para. 100.

¹⁰⁷ OHCHR interview, 17 January 2019. The police launched criminal investigations in Zaporizhzhia, Kyiv, Zhytomyr and Rivne regions.

¹⁰⁸ OHCHR interview, 17 January 2019.

¹⁰⁹ According to law no. 2662-VIII of 20 December 2018, a religious organization that is affiliated with a foreign religious organization, the governing centre of which is located in a country, recognized as an “aggressor state”, should include this affiliation in its name, or risk ceasing its operations. On 18 January 2018, the Verkhovna Rada adopted the law “On the peculiarities of the state policy to ensure the state sovereignty of Ukraine in temporarily occupied territories in Donetsk and Luhansk regions,” which recognizes the Russian Federation as an aggressor state. President Poroshenko signed the law on 20 February 2018.

¹¹⁰ Human Rights Committee in para. 8 of its general comment No. 22 (1993) emphasized that Article 18(3) of the ICCPR permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. This paragraph is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the ICCPR, such as national security.

¹¹¹ OHCHR interview, 25 February 2019.

¹¹² According to the law, a decision to change subordination is made by two thirds of the community’s quorum. The amendments reaffirm the principle of religious communities’ independent determination of their membership and establish a moratorium on sale or other transfer of the religious community’s property until the registration process is completed.

period, one involved threats and another direct violence by members of extreme right-wing groups. The failure of the law enforcement to prevent violence, to properly classify these violations as hate crimes, and to effectively investigate and prosecute these crimes violates the right to non-discrimination and creates an environment of impunity. It also denies victims of these attacks equal access to justice.

95. Investigations and prosecution of several attacks against Roma people still lack progress.¹¹³ Positively, on 28 December 2018, prosecutors of the Lviv Regional Prosecutor's Office charged a man responsible for the killing of a young Roma man outside Lviv in June 2018.¹¹⁴ In contrast, the Holosiivsky district court of Kyiv cancelled on procedural grounds the note of suspicion against an alleged perpetrator in another violent attack against a Roma settlement in Kyiv in April 2018.¹¹⁵

96. OHCHR documented the case of a prisoner with pro-Ukrainian views, who served his sentence in a penal colony in territory controlled by 'Luhansk people's republic' between 2014 and 2018. The prisoner had conflicts with the colony administration for his political views and speaking Ukrainian. The colony administration staff reportedly forced the prisoner "to drop his nationalistic views", threatened and beat him. In 2016, the colony guards allegedly beat him with batons as ordered by the colony head. After this incident, the prisoner was held in the isolation cell for a year. He said that as a result of his long-lasting intimidation and ill-treatment, he tried to commit suicide in December 2017.¹¹⁶

VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation

97. The overall human rights situation in Crimea continued to be marked by restrictions in the exercise of fundamental freedoms and the lack of effective remedies to seek justice. In addition, the continuing failure of the Russian Federation to acknowledge its status as an occupying power in Crimea has resulted in further violations of international humanitarian law committed by its State actors during the reporting period, failing to recognize and ensure obligations related to applicable occupation law.

98. OHCHR continued to record human rights violations, including restrictions on freedoms of opinion, expression, and religion or belief, and violations of international humanitarian law in Crimea. In total, OHCHR documented 38 violations during the reporting period, and of this number 25 violations occurred within the reporting period; with the Government of the Russian Federation responsible for 35 and the Government of Ukraine for three.¹¹⁷

A. International Humanitarian Law violations

99. On 25 November 2018, Ukrainian authorities reported an assault of the Russian Federation naval forces on three Ukrainian naval vessels near the Kerch Strait. The Ukrainian vessels were on their way to the Azov Sea through the Kerch Strait, which is the only passage between the Black Sea and the Azov Sea and lies between the Russian Federation and Russian Federation-occupied Crimea. The Ukrainian Government stressed that the Ukrainian ships were attacked in international waters, while the Russian Federation insisted that the ships entered its territorial waters and received repeated warnings to leave the area. The Russian Federation naval forces opened fire on the Ukrainian vessels, seized them, and captured 24 crew members (22 naval officers and two SBU officers).

¹¹³ See OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2018, para. 91.

¹¹⁴ See OHCHR Report on the human rights situation in Ukraine, 16 August to 15 November 2018, para 82.

¹¹⁵ On 25 February, the Kyiv court of appeal will hear the prosecutors' appeal of the Holosiivsky district court decision to cancel the notice of suspicion to the alleged perpetrator.

¹¹⁶ OHCHR interviews, 18 December 2018.

¹¹⁷ The violations attributable to the Government of Ukraine did not necessarily occur in Crimea itself, but concern events in mainland Ukraine connected to the situation in Crimea. They are related to freedom of movement, access to public services, and the right to property.

100. OHCHR notes that by virtue of the continued occupation of Crimea by the Russian Federation, an international armed conflict continues to exist between the two States in Crimea and international humanitarian law continues to apply there. As such, a single hostile encounter between the armed forces or assimilated armed units of two sovereign states, as the 25 November 2018 incident, suffices to trigger the application of international humanitarian law, irrespective of the pre-existence of an armed conflict. Consequently, the rules of international humanitarian law that are applicable to international armed conflict continue to apply.

101. All 24 crew members, including those who had reportedly sustained injuries during the incident, have been charged with illegal crossing of the Russian border, a criminal offence punishable by up to six years of imprisonment, and remanded in custody.¹¹⁸ Between 29 and 30 November 2018, the Russian Federation authorities reportedly transferred all 24 crew members from Simferopol to Moscow, where they placed them in SIZOs.

102. The Ukrainian Government considers the apprehended crew members to be *prisoners of war*. Similar statements were made by the crew members and their lawyers, including during court hearings on the measure of restraint. Nevertheless, as of 15 February 2019, the Russian Federation authorities refuse to apply international humanitarian law provisions to the incident and deny the detained crew members the status of *prisoners of war*.

103. OHCHR notes that based on the provisions of international humanitarian law,¹¹⁹ the 24 detained crew members could be considered as *prisoners of war* and protected by the Third Geneva Convention. In any case, they shall enjoy the status of a *prisoner of war* until a competent tribunal determines otherwise.¹²⁰ OHCHR recalls that *prisoners of war* must *inter alia* be humanely treated, protected against violence or intimidation, and provided with the medical assistance if needed.

B. Administration of justice, intimidation and harassment of human rights defenders

104. On 7 December 2018, a district court in Simferopol sentenced Crimean Tatar lawyer Emil Kurbedinov, known for defending critics of Crimea's occupation and alleged members of organizations, banned in the Russian Federation, to five days of administrative detention for disseminating extremist symbols through a social network.¹²¹ During a court hearing, the judge ignored the fact that the impugned content was posted five years ago – prior to the *de facto* implementation of the Russian legislation in Crimea¹²² – and denied over 40 motions of his defense team, including the motion to ensure the presence of a prosecutor, to question an expert witness and recuse a presiding judge.¹²³ Kurbedinov was released on 11 December after serving his sentence in full.

105. OHCHR notes that Kurbedinov's conviction follows a series of earlier incidents that indicate a pattern of deliberate intimidation, hindrance, harassment or interference by the Russian authorities in Crimea with his professional activities. In 2017, he was also prosecuted for social media posts.¹²⁴ On 6 November 2018, police raided his office in Simferopol to serve him with a "formal warning" against engagement in extremism. OHCHR is concerned that this time, the extremism charges may be used to formally deprive Kurbedinov of his right to practice law in Crimea. On 18 December, the Ministry of

¹¹⁸ OHCHR interviews, 27 – 29 November 2018.

¹¹⁹ Article 4 (A) (1) and 4 (A) (4) of the Third Geneva Convention and Articles 43 and 44 of Additional Protocol I.

¹²⁰ Article 5 of the Third Geneva Convention.

¹²¹ Judgment of the Kyivskiy district court of Simferopol, 7 December 2018, Case No. 5-1148/2018.

¹²² This may be viewed as a violation of Article 70, Geneva Convention IV.

¹²³ OHCHR interview, 7 December 2018.

¹²⁴ Earlier, on 26 January 2017, Emil Kurbedinov was sentenced to ten days of administrative detention on similar charges, *see* OHCHR report on the human rights situation in Ukraine, 16 November 2016 - 15 February 2017, para. 128.

Justice of Crimea requested a bar association in Simferopol to renounce Kurbedinov's membership, which may lead to his disbarment.

106. Emil Kurbedinov's case reflects the overall hostile attitude of Russian Federation authorities towards human rights defenders and civic activists. Lawyers, who take up defense in sensitive cases against individuals accused of extremism or terrorism in Crimea, risk facing similar charges themselves. OHCHR reiterates its findings on the pressure faced by members of *Crimean Solidarity*, a non-registered civic group cooperating closely with defense lawyers on the peninsula.¹²⁵ The law enforcement have disrupted the group's meetings and issued formal warnings to *Crimean Solidarity* members not to engage in illegal activities, including unauthorized public gatherings and extremist acts.¹²⁶

C. Freedoms of religion, opinion and expression

107. Consistent with previous OHCHR findings, the pattern of criminalization of affiliation to or sympathy towards religious Muslim groups, banned in the Russian Federation, continued to disproportionately affect Crimean Tatars.

108. On 24 December 2018, a military court in the Russian city of Rostov-on-Don found four Ukrainian citizens, all Crimean Tatar men previously transferred to the Russian Federation from Crimea, guilty of membership in a terrorist organization and preparation to commit a forcible seizure of power. One man received a 17-year prison sentence, while three others – 9 years of imprisonment each. The accusations were based on the defendants' alleged membership in *Hizb ut-Tahrir*, an Islamic movement, which is legal in Ukraine but banned as a terrorist group in the Russian Federation. According to a court ruling,¹²⁷ the defendants were prosecuted for four meetings, during which they had discussed Islamic dogmas, *Hizb ut-Tahrir* ideology and sharia law. In a separate case, on 22 January 2019, the Supreme Court of Crimea found four Crimean residents guilty of membership in *Tablighi Jamaat*, another Islamic group banned in the Russian Federation. Three defendants received conditional sentences, while the fourth man was sentenced to four years of imprisonment.¹²⁸ In both cases, the defendants were found guilty based on their alleged membership in the banned Muslim groups, as well as the fact that they had possessed, read and discussed books deemed to be 'extremist' under the Russian law despite the absence of any evidence indicating that they had called for or planned to engage in any form of violence or violation of public order.

109. OHCHR notes with concern that in September 2016, four other Crimean Tatar men received long prison sentences for their alleged membership in the same organization,¹²⁹ while at least 11 other Crimean residents are currently on trial on similar charges.¹³⁰ OHCHR reiterates that freedom to manifest one's religion or belief may only be limited on the grounds prescribed by law, which are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.¹³¹

110. During the reporting period, at least five criminal cases against Crimean residents charged for their alleged anti-Russian statements in social media were closed following the de-criminalization of a single act of "incitement of hatred or violence" under Russian

¹²⁵ OHCHR second thematic report "On the situation of human rights in the temporary occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine", 13 September 2017 - 30 June 2018, para. 53.

¹²⁶ The police disrupted meetings of *Crimean Solidarity* on 27 January 2018 in Sudak and on 27 October 2018 in Simferopol.

¹²⁷ Judgment of the Severo-Kavkazskiy circuit military court of the Russian Federation, 24 December 2018, Case No. 1-42/2018.

¹²⁸ Judgment of the Supreme court of Crimea, 22 January 2019, Case No. 1-1/2019.

¹²⁹ See OHCHR report on the human rights situation in Ukraine, 16 August - 15 November 2016, para. 164.

¹³⁰ See OHCHR report on the human rights situation in Ukraine, 16 May - 15 August 2018, para. 111-112.

¹³¹ ICCPR, art. 18 (3).

law,¹³² which is *de facto* applied in Crimea. Previously, OHCHR reported extensively about the systematic use by the Russian Federation authorities of the anti-extremism legislation in Crimea against critics of the peninsula's occupation and vocal pro-Ukrainian activists.¹³³ OHCHR welcomes this positive step by the Russian Federation, although the extent to which such de-criminalization will be implemented remains to be seen.

D. Illegal population transfers and freedom of movement

111. According to the Russian Federation judicial registry, in 2018, courts in Crimea ordered deportation from the peninsula of at least 435 individuals considered foreigners under Russian Federation laws, including 231 Ukrainian nationals. Of the total number in 2018, at least 50 individuals were "forcibly removed", a procedure that prescribes placement in temporary detention before deportation. Many of the deported were Ukrainian citizens, whose residence rights in Crimea were not recognized by authorities. In one case, a man, who had relocated to Crimea from Kyiv to undergo medical rehabilitation, was deported after having been compelled to cooperate with law enforcement, or risk detention.¹³⁴

112. Deportations of protected persons from Crimea occur against the backdrop of restrictions imposed on free movement between mainland Ukraine and the peninsula. During the reporting period, the Federal Security Service of the Russian Federation denied entry to a Ukrainian journalist and banned her from Crimea for 10 years.¹³⁵ Russian border officials informed the journalist of the ban at one of the crossing points of the Administrative Boundary Line without any explanation of the specific grounds for such decision. Russian authorities issue similar bans to other journalists, civic activists, or other public figures, who are perceived as critics of Crimea's occupation.¹³⁶

113. Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying Power, or to that of any other country, occupied or not, are prohibited under international humanitarian law, regardless of their motive.¹³⁷ International human rights law guarantees to everyone the right to liberty of movement and freedom to choose their own residence within their own country.¹³⁸

E. Forced conscription

114. The reporting period was marked by the eighth conscription campaign of Crimean residents into the Russian Federation Armed Forces since the beginning of the occupation. During the latest campaign, which ended in December 2018, approximately 2,800 men from Crimea were enlisted, bringing the overall number of Crimean conscripts to at least 14,800 men.¹³⁹ The number of the enlisted Crimeans has significantly increased from 500 conscripts during the first military draft in 2015.

¹³² Law of the Russian Federation No 519-FZ, 27 December 2018.

¹³³ See *inter alia* OHCHR second thematic report "On the situation of human rights in the temporary occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine", 13 September 2017 - 30 June 2018, para. 46.

¹³⁴ OHCHR interview, 21 November 2018.

¹³⁵ OHCHR interview, 29 November 2018.

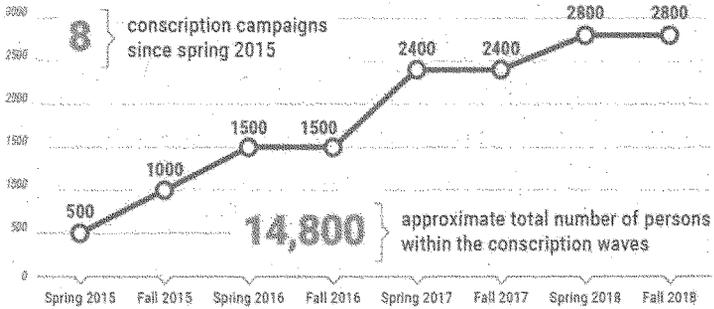
¹³⁶ See OHCHR first thematic report "On the situation of human rights in the temporary occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine", 22 February 2014 - 12 September 2017, para. 128.

¹³⁷ Article 49 of the Fourth Geneva Convention.

¹³⁸ ICCPR, Article 12.

¹³⁹ All figures are approximate and primarily based on reports of the Ministry of Defense of the Russian Federation.

NUMBER OF CONSCRIPTED PERSONS FROM CRIMEA AND SEVASTOPOL TO THE
RUSSIAN ARMED FORCES as of 12 Dec. 2018*



* All figures are approximate. They are based on periodic announcements of the Ministry of Defense of the Russian Federation and/or comments of its officials for the media.

Creation Date: 15 February 2019 Source: OHCHR Ukraine HRMM

115. Draft evasion is punishable under Russian criminal law by up to two years imprisonment. OHCHR notes that criminal prosecution of Crimean residents for evading Russian military drafts has intensified during 2018, with at least 21 guilty verdicts.¹⁴⁰ One defendant was sentenced to a suspended prison term, while others were fined. Forced enlistment adversely affects the enjoyment of human rights of potential conscripts, restricting their free movement and access to education and employment. In one case, a resident of Crimea was forced at his local military draft commission to leave Crimea or face conscription in the future. Registering at the military draft commission was also a prerequisite for receiving his university diploma in Simferopol.¹⁴¹

116. As an occupying power, the Russian Federation must comply with international humanitarian law prohibiting compulsion of Crimean residents into its armed or auxiliary forces.¹⁴² No pressure or propaganda aimed at securing voluntary enlistment is permitted.

VIII. Technical cooperation and capacity-building

117. OHCHR engages in technical cooperation and capacity-building activities to assist the Government of Ukraine and civil society to protect and promote human rights.

118. OHCHR carried out 334 specific follow-up activities to facilitate the protection of human rights connected with the cases documented, including trial monitoring, detention visits, referrals to State institutions, humanitarian organizations and non-governmental organizations (NGOs), and cooperation with United Nations human rights mechanisms. OHCHR referred 34 allegations of human rights violations to specific duty-bearers; to the Government of Ukraine, 19 allegations were raised with two fully and seven partially addressed; to the 'ombudsperson' of 'Donetsk people's republic' seven allegations were raised with one fully and one partially addressed; and to 'Luhansk people's republic' seven allegations were raised with three partially addressed.

119. On 30 November, OHCHR, the Geneva Academy of International Humanitarian Law and Human Rights and the Age and Disability Technical Working Group organized a joint capacity-building training session on the Protection of the Rights of Persons with

¹⁴⁰ These are the verdicts verifiable through the Russian Federation court registry. OHCHR has been able to verify three such verdicts in 2017.

¹⁴¹ OHCHR interview, 15 January 2019.

¹⁴² Article 51 of the Fourth Geneva Convention.

Disabilities (PwD) in the armed conflict in Ukraine. Participants included Government officials and local authorities, staff of international and national organizations, civil society activists and persons with disabilities. The main purpose of the training was to strengthen the protection of persons with disabilities affected by the conflict in Ukraine through raising awareness of international standards, identifying challenges and needs related to protection of PwD and establishing stronger cooperation between key stakeholders.

IX. Conclusions and recommendations

120. OHCHR welcomes the significant decrease in civilian casualties, however, the armed conflict in eastern Ukraine continues, affecting lives and livelihoods not only of more than five million civilians on both sides of the contact line, but the entire country. All parties to the conflict need to fully implement the ceasefire and disengagement provisions of the Minsk agreements to protect civilians, civilian property and infrastructure, and lessen their daily hardships. The Government of Ukraine needs to step up efforts for protection of conflict-affected civilians, including IDPs, regardless of where they reside in Ukraine, as well as for the realization of their economic and social rights to pave the way for a durable reconciliation between communities and restoring peace and stability in eastern Ukraine.

121. The Government must act to protect space for civic expression ahead of Ukraine's presidential, parliamentary and local elections in 2019 and 2020. Impunity for attacks on media professionals, civil society activists, lawyers and political opponents weakens Ukraine's democratic institutions and fuels further intolerance, discrimination and violence, and could compromise the integrity of the upcoming elections.

122. As in the previous reporting periods, OHCHR regrets the absence of the meaningful progress in investigations and prosecutions of those responsible for the killings during the Maidan protests and the violence that took place on 2 May 2014 in Odesa.

123. The human rights situation in Crimea continues to deteriorate as a direct result of the Russian Federation authorities applying its laws against residents of Crimea in violation of their obligations as an occupying power under the Fourth Geneva Convention, and other violations of international humanitarian law affecting the protected population. The Russian Federation must address pervasive human rights violations such as restrictions on freedoms of religion, opinion and expression and association, as well as the intimidation and harassment of human rights defenders, disproportionately affecting Crimean Tatars.

124. Most recommendations made in the previous OHCHR reports on the human rights situation in Ukraine have not yet been implemented and remain valid. OHCHR further recommends the following, based on the issues identified from 16 November 2018 to 15 February 2019.

125. **To the Ukrainian authorities:**

Parliament of Ukraine:

- a) **adopt and harmonize the legislation to serve as a base for developing a comprehensive mechanism for restitution and compensation for property, damaged and destroyed during the armed conflict in eastern Ukraine, as well as property, currently in military use;**
- b) **revise the Law on War Veterans so that all civilians who acquired a disability as a result of hostilities in eastern Ukraine in 2014-2019 can be eligible for receiving status of war veterans and appropriate social protection.**

Cabinet of Ministers:

- c) **develop and adopt a national policy framework that establishes clear institutional authorities and responsibilities for the protection of civilians and civilian objects in hostilities, as recommended in the 2018 United Nations Secretary General's report on protection of civilians in armed conflict (S/2018/462);**

- d) develop a comprehensive mechanism, including an administrative procedure, for restitution of property and compensation for any damages and destruction of civilian property in the armed conflict in eastern Ukraine;
- e) develop a non-discriminatory and accessible mechanism for restitution and compensation for property, which is in military use, including keeping records of civilian property and infrastructure in military use;
- f) allocate financial support to local authorities in order to provide safe and adequate housing to the conflict-affected population and IDPs;
- g) ensure swift and full implementation of the law 'On the legal status of missing persons', in particular by providing sufficient resources for effective realization of mandate of the Commission on Missing Persons;
- h) ensure that the right to freedom to manifest religion or belief is protected including at premises of the Ukrainian Armed Forces, in accordance with Article 18(3) of the ICCPR.

Ministry of Social Policy:

- i) adopt a non-discriminatory policy to provide equal access for all citizens of Ukraine to pensions and social benefits, regardless of their place of residence or IDP registration.

Ministry of Defence:

- j) finalize the draft Resolution regulating movement of individuals and transfer of goods through the EECs in line with international standards and in consultation with the international community and civil society.

JFO Command:

- k) build up the capacity of the Working Group for Collection and Consolidation of Information on Injuries and Deaths of Civilian Population;
- l) facilitate documentation of damages and destruction of civilian property caused by hostilities in eastern Ukraine;
- m) facilitate documentation (i.e. signing of lease agreements) and ensure compensation for the military use of civilian homes and other property, including when such use caused damage to property.

Military-Civil Administrations of Donetsk and Luhansk regions and local authorities:

- n) develop, in cooperation with the JFO Command, a response mechanism guaranteeing affected population adequate alternative housing and compensation for damages caused by hostilities or due to the military use of housing, land and property.

Ministry of Justice:

- o) establish an electronic registry of detained persons, including those who were held in detention facilities in territory controlled by the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic', before the outbreak of the armed conflict in eastern Ukraine.

Judges and court administration:

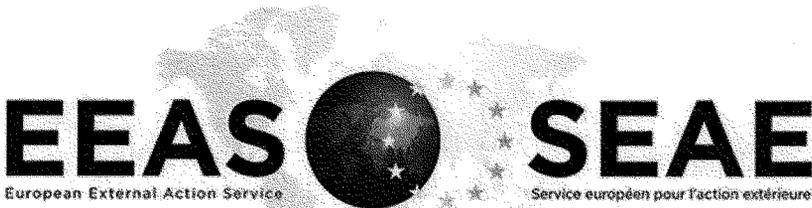
- p) conduct rigorous review of all plea bargains and refuse to accept them, when there are reasonable grounds to believe that plea bargains were obtained by coercion or under psychological pressure due to prolonged pre-trial detention and when no evidence of guilt is presented;
- q) ensure that there is sufficient number of judges in local courts to administer justice promptly and effectively.

Office of the Prosecutor General and law enforcement agencies:

- r) ensure prompt, impartial and effective investigation of all alleged incidents of arbitrary detention, torture, ill-treatment and enforced disappearance, including those allegedly committed by State actors or individuals acting with State authorization, support or acquiescence, in line with international standards, including Istanbul Protocol;
 - s) act to stop and effectively prosecute any acts of interference into activities of legal professionals, attacks on defence lawyers, and attempts to exert pressure on judges;
 - t) facilitate prompt trial proceedings in conflict-related criminal cases through, *inter alia*, requesting courts to ensure the presence of all parties and witnesses during trials;
 - u) condemn all acts of violence and promptly, impartially and efficiently investigate all violent attacks against media professionals, civic and political activists, human rights defenders, political parties, and defence lawyers. Motives of perpetrators and other aggravating circumstances should be considered during initial criminal classification and investigations into these attacks;
 - v) ensure adequate and effective security for all peaceful public assemblies, prevent and stop all acts of violence, while facilitating the exercise of freedom of peaceful assembly without discrimination;
126. To all parties involved in the hostilities in Donetsk and Luhansk regions, including the Ukrainian Armed Forces, and armed groups of the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic':
- a) strictly adhere to the ceasefire and disengagement provisions of the Minsk agreements;
 - b) ensure full compliance with international humanitarian law rules of distinction, proportionality and precaution, including by immediately ceasing the use of weapons with indiscriminate effect in populated areas, particularly weapons with wide impact area;
 - c) take all possible measures to minimize harm to the civilian population, including by positioning military objects outside of densely populated areas, and refraining from deliberately targeting civilians or civilian infrastructure, such as water facilities and power lines;
 - d) create conditions for safe and quick crossing of the contact line by civilians, including an improved access to the first medical aid at EECsP and near them.
127. To the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic':
- a) ensure unimpeded and confidential access by OHCHR and other international organisations to all places of deprivation of liberty and allow private, confidential interviews with detainees in accordance with international standards;
 - b) refrain from practice of 'preventive arrest' and 'administrative arrest', which may amount to *incommunicado* detention and provide information on detainees' whereabouts to their families;
 - c) treat all persons in detention humanely in all circumstances and ensure conditions of detention are in accordance with international standards;
 - d) continue transfers of prisoners to the government-controlled territory and in doing so prioritize the transfer of those individuals, who had been held in one trial custody at the time when the armed conflict broke out

128. In the context of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation, to the Government of the Russian Federation:
- a) implement General Assembly Resolution 73/263 of 22 December 2018, including by ensuring proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea;
 - b) respect the laws in place in Crimea in 2014 before the beginning of the occupation, in particular by refraining from enforcing Russian Federation legislation in Crimea;
 - c) ensure unimpeded freedom of movement between Crimea and mainland Ukraine; end the practice of apprehension of protected persons at the ABL and in the territorial waters adjacent to Crimea;
 - d) ensure humane treatment, appropriate medical care, unrestricted access of Ukrainian consular officers and defence counsels to 24 Ukrainian crew members detained by the Russian Federation following the naval incident near the Kerch strait on 25 November 2018;
 - e) take all necessary steps to ensure that freedoms of expression, peaceful assembly, association, thought, conscience and religion or belief can be exercised by all in Crimea, without discrimination on any grounds;
 - f) enable a safe environment for independent and pluralistic media outlets and civil society organizations; ensure unimpeded access of Ukrainian and foreign journalists, human rights defenders and other civil society actors to Crimea;
 - g) end the practice of applying legislation on extremism, terrorism and separatism to criminalize free speech and peaceful conduct; stop prosecuting Crimean residents for possession of publications or sharing of social media content that does not constitute calls for discrimination or violence;
 - h) take all necessary measures to ensure the independence of the legal profession and to enable lawyers and human rights defenders in Crimea, including Emil Kurbedinov, to perform their professional functions freely and without any intimidation, threat, harassment or interference;
 - i) refrain from compelling residents of Crimea to serve in the armed forces of the Russian Federation;
 - j) end the practice of deportations and forcible transfers of protected persons, including detainees, outside the occupied territory.
129. In the context of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation, to the Government of Ukraine:
- a) respect human rights obligations in relation to Crimean residents; use all legal and diplomatic means available to this end.
130. To the international community:
- a) continue using all diplomatic means to press all parties to immediately end hostilities and implement all obligations foreseen in the Minsk agreements, emphasizing how the active armed conflict causes suffering of civilians and hampers prospects for stability, peace and reconciliation;
 - b) use all influence possible to ensure unimpeded access and operation of OHCHR in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic', and in Crimea;

- c) **urge the Russian Federation to comply with its obligations as an occupying power under international human rights and humanitarian law;**
 - d) **continue advocacy for the respect of human rights, including by condemning human rights violations committed by State agents of the Russian Federation in Crimea at bilateral and multilateral forums; conduct, within practical limits, trial monitoring in the Russian Federation in cases involving Ukrainian detainees transferred from Crimea.**
-



Brussels
30/09/2019 - 10:19
Factsheets

EU-Ukraine relations - factsheet

Ukraine is a priority partner for the European Union (EU). The EU supports Ukraine in ensuring a stable, prosperous and democratic future for its citizens, and is unwavering in its support for Ukraine's independence, territorial integrity and sovereignty. The Association Agreement (AA), including its Deep and Comprehensive Free Trade Area (DCFTA), is the main tool for bringing Ukraine and the EU closer together, promoting deeper political ties, stronger economic links and respect for common values. Since Spring 2014, Ukraine has embarked on an ambitious reform programme, aiming to stabilise its economy and improve the livelihoods of its citizens. Priority reforms include the fight against corruption, reform of the judiciary, constitutional and electoral reforms, improvement of the business climate and energy efficiency, as well as reform of public administration, including decentralisation. Since 2014, the EU and the European Financial Institutions have mobilised a package of more than €15 billion in grants and loans to support the reform process, with strong conditionality on continued progress.

[/file/eu-ukrainecapturejpg_eneu-ukraine_capture.jpg](#)



Close partners

Ukraine is a **priority partner** for the European Union, also within the EU's **Eastern Partnership**. An **Association Agreement**, including a **Deep and Comprehensive Free Trade Area (DCFTA)** between the EU and Ukraine, was negotiated between 2007 and 2011 and signed on 21 March and 27 June 2014. It replaces earlier frameworks for cooperation.

The Association Agreement is the main tool for bringing Ukraine and the EU closer together: it promotes **deeper political ties, stronger economic links** and the **respect for common values**.

Parts of the **Association Agreement** have been provisionally applied since 1 November 2014. This has enhanced EU-Ukraine cooperation on human rights, fundamental freedoms and the rule of law; political dialogue and reforms; movement of persons; and strengthened cooperation in a number of sectors, including, energy; the environment and climate action; transport; financial services; public finances, including anti-fraud; agriculture and rural development; fisheries and maritime policies; consumer protection and civil society.

The Agreement entered into force on 1 September 2017. The state of implementation of the Association Agreement is reported on annually. The latest report (2018) is available online.

Support for Ukraine's reform programme

/file/support-ukraines-reform-programme-smalljpg_ensupport-for-ukraines-reform-programme-small.jpg



[Click to enlarge](#)

Since Spring 2014, Ukraine has embarked on an **ambitious reform timetable** aiming to stabilise its economy and improve the livelihoods of its citizens. Ukraine and the EU have jointly defined a reform agenda - the **Association Agenda**, and follow the progress of this closely. The fight against corruption, reforming the judiciary, constitutional and electoral reforms, the improvement of the business and investment climate and energy efficiency, as

well as reform of public administration, including decentralisation, are among the top priorities on the agenda. Gender mainstreaming is a priority in all sectors.

In addition to political support, since 2014, the EU and the European Financial Institutions have mobilised more than €15 billion in grants and loans to support the reform process in Ukraine.

Programmes committed and under implementation include, *inter alia*:

- The European Commission, on behalf of the EU, has on 30 November 2018 approved the release of the first € 500 million of the new Macro-Financial Assistance (MFA) programme to Ukraine. With this release, the total Macro-Financial Assistance extended to Ukraine by the EU since 2014 has reached € 3.3 billion (out of 4.4 billion committed), the largest amount of such assistance directed at any non-EU country.
- **€ 3 billion in loans signed by the European Investment Bank (EIB)** between 2014 and the end of 2016, to support infrastructure development and reforms in the transport, energy, agriculture, education and municipal sectors, as well as substantial financial and technical support for SME development. A Memorandum of Understanding has been agreed with the Ukrainian Government on future EIB investments.
- **€ 3.5 billion in investment from 2014-2017 from the European Bank for Reconstruction and Development**, thanks to the support of the EU and its Member States, including as donors, to help develop and reform, *inter alia*, the banking sector, agribusiness, transport and small businesses in Ukraine, including facilitating the purchase of \$ 300 million of gas for the 2015-2016 heating season. This is in addition to nuclear safety projects.
- **EU External Investment Plan (EIP)** - This is a key EU initiative set up to encourage public and private investments. The EIP leverages additional investments by mitigating financial risks with the new EU Guarantee Fund (€ 1.5 billion) and by blending EU grants with loans from European Financial Institutions via the Neighbourhood Investment Platform (NIP). Since 2014, more than € 181 million has been channelled through the NIP to Ukraine to support the financing of infrastructure in fields such as water and sanitation, energy efficiency, environment and SME funding. Support is also provided for local currency lending.
- **€ 1 billion and 284 million from the European Neighbourhood Instrument**, including:
 - In 2014 - €365 million to support and monitor democratic reforms and reinforce macroeconomic stability, strengthen governance capacity and Ukraine's socioeconomic development. This was done through two actions: budget support in the form of a State Building Contract (€355 million) and support to Civil Society in Ukraine (€10 million).
 - In 2015 - €200 million for: a private sector development programme (€95 million), Technical Cooperation Facility (€15 million), and support to the decentralisation reform U-LEAD (€90 million).

- In 2016 – €200 million for: the EU Anti-corruption Initiative in Ukraine (€15 million), Technical Cooperation Facility (€28.5 million), Public Administration Reform (€104 million), and PRAVO programme to support rule of law reforms (€52.5 million).
 - In 2017 – €200 million for: energy efficiency (€50 million), public finance management (€50 million), support to sustainable socioeconomic development and good governance in conflict-affected eastern regions of Ukraine (€50 million), Technical Cooperation Facility (€37 million), and €13 million for local currency lending to provide additional finance i.a. to micro- and small enterprises.
 - In 2018 - Energy Efficiency Support Programme for Ukraine – EE4U-II (€ 54 million), Technical Cooperation Facility (€ 37 million), EU4Skills: Better Skills for Modern Ukraine (€ 38 million), People to People Contacts Programme: House of Europe (€ 18 million).
 - In 2019 - EU Anti-Corruption Initiative in Ukraine – Phase II (€ 15 million), U-LEAD with Europe: Phase II (€ 40 million), support to Civil Society and Culture (€ 10 million), Technical Cooperation Facility 2019 (€ 44 million).
- More than € 100 million from the **Instrument contributing to Stability and Peace (IcSP)** since 2014 to support election observation and confidence building measures, the OSCE Special Monitoring Mission, Internally Displaced Persons (IDPs), conflict-affected populations, restoration of governance and reconciliation in crisis-affected communities, strengthening their resilience and reintegration of veterans, as well as police reforms.
 - The **EU Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine)**, under the EU's Common Security and Defence Policy (CSDP), was established in August 2014 and launched in December 2014. It aims to assist the Ukrainian authorities towards sustainable reforms in order to achieve an efficient and trustworthy civilian security sector, including in the fight against corruption. Its mandate was extended until May 2019 with a total budget for the entire period of over € 83 million. EUAM is an unarmed, non-executive civilian mission with its Headquarters in Kyiv and regional presences in Lviv, Kharkiv and Odesa.
 - In 2014, the European Commission also created a dedicated **Support Group for Ukraine (SGUA)**. It is composed of experts from EU institutions and Member States, who provide coordination and advice to the Ukrainian authorities in key reform sectors.

Trade

The **DCFTA** constitutes a major milestone in bilateral trade relations and offers new economic opportunities to both the EU and Ukraine. Ukrainian businesses receive **stable and predictable preferential access to the largest market in the world**, with over 500 million consumers; while EU businesses are able to benefit from easier access to the Ukrainian market and build new relationships with Ukrainian suppliers and partners. The Deep and Comprehensive Free Trade Area has supported the increase of bilateral trade

between the EU and Ukraine, which grew by 49% since it entered into force in January 2016. Thus, the EU is reinforcing its position as Ukraine's number one trading partner, 42% of Ukraine's trade is now with the EU. The agreement has triggered a reform of Ukraine's legal framework, with the aim of aligning it with that of the EU (the EU *acquis*). It will allow, in the long-term, to treat many Ukrainian products the same way as others in the EU internal market. Given the gradual approximation of Ukrainian legislation with EU legislation and internationally-recognised EU standards in production and services, Ukraine should be able to **export more easily** not only to the EU, but also to the rest of the world. In addition, the reforms that are anchored in the DCFTA will allow **improvements in the overall business climate** in Ukraine, including **curbing corruption**, which will in turn **increase investors' confidence**.

The DCFTA implementation enables Ukraine to diversify its economy, which is today based on the large companies in basic commodity sectors (e.g. metallurgy). The aim is to move towards a more modern model including the development of a vibrant services sector and many small- and medium-sized enterprises (SMEs).

Furthermore, a regulation of the European Parliament and of the Council on temporary "Autonomous Trade Measures" for Ukraine **entered into force on 1 October 2017**, increasing the quantities of agricultural products Ukraine can export to the EU under the AA/DCFTA without paying customs duties and accelerating the elimination of customs tariffs for several industrial products, as foreseen in the Agreement. This has further boosted Ukrainian exports to the EU and helped to counter the effect of Russia's restrictive measures against Ukraine.

Visa liberalisation

Visa-free travel for Ukrainian citizens with biometric passports **entered into force on 11 June 2017** following the successful conclusion of the visa liberalisation dialogue, covering significant reforms ranging from rule of law to integrated border management and fundamental rights. Since visa liberalisation, Ukrainian citizens have made more than 3 million visa-free visits to the EU with biometric passports.

Visa liberalisation is one of the EU's most powerful tools in facilitating people-to-people contacts and strengthening ties between the citizens of third countries and the EU. To safeguard this instrument for contacts between the EU and Ukrainian citizens, the Commission monitors the continuous fulfilment of the requirements that had to be fulfilled by Ukraine to achieve the visa liberalisation. Each year, the Commission publishes a report reflecting this monitoring. The **second report under the visa suspension mechanism** was published on 19 December 2018.

Energy partners

On 24 November 2016, in Brussels, the European Commission Vice-President for Energy Union, Maroš Šefčovič and the Energy Minister of Ukraine, Ihor Nasalyk, **signed a new Memorandum of Understanding on a Strategic Energy Partnership between the EU and Ukraine**. The Memorandum has broadened the cooperation in all areas of energy policy, including energy efficiency, renewable energy, as well as research and

innovation. This will, in turn, support the energy sector reform in Ukraine. The priority actions are agreed in the [Annual Work Plans](#).

The EU supports swift implementation of **energy sector reforms** in line with Ukraine's Energy Community and Association Agreement commitments. Through technical advice, the EU has assisted the Ukrainian government in preparing the establishment of an independent energy regulatory authority, as well as new gas and electricity laws to improve efficiency in the energy sector. The creation of the Energy Efficiency Fund, to which the EU is ready to contribute, will, for the first time, support the energy efficient renovation of multi-apartment buildings, thus facilitating budgetary and household savings; reduce import needs and greenhouse gas emissions; and will create new opportunities for further cooperation with innovative EU companies.

The European Commission, in close cooperation with the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD) and the World Bank, continues to support the **modernisation of the Ukrainian gas transportation system**, in line with the Joint Declaration made in March 2009.

Since the association of Ukraine to the [Euratom Research and Training Programme](#), Ukraine can benefit from **research and training programmes** for direct and indirect actions in the field of fission and fusion.

The European Union is also the largest donor to the New Safe Confinement over the destroyed unit four of the **Chornobyl** nuclear power plant, which was [put in place in November 2016](#). Work is ongoing to make the Chornobyl site safe by dismantling the old shelter and managing the radioactive waste.

The European Commission remains committed to facilitating **trilateral talks** between Ukraine and the Russian Federation on the long-term transit of gas to Europe.

Research and Innovation

The EU supports the integration of Ukraine into the European Research Area through the [association](#) of Ukraine to the [Horizon 2020](#) and the complementary [Euratom](#) research programmes. Such association allows Ukrainian **researchers, businesses and innovators** to apply to all funding schemes of both programmes, across the whole research and innovation value-chain, from fundamental research up to pre-commercialization activities, **on equal terms with their EU counterparts**. Furthermore, the EU is supporting the reform and modernisation of the Ukrainian national research and innovation system in line with the outcome of a [comprehensive peer-review conducted in 2016](#) to support more innovation-oriented research. The EU is also supporting general awareness in Ukraine on the impact of research and innovation projects under Horizon 2020, with a particular focus on business engagement - notably SMEs. Support is also provided to modernise the Technology Transfer system of Ukraine. More information on EU-Ukraine research and innovation cooperation is available [online](#).

Education and people-to-people contacts

The EU supports the integration of Ukraine into the European Higher Education Area and major reforms in the country to restructure and modernise the education system in order to deliver **globally-recognised, quality education**, to enhance the relevance of the educational offer and expand its internationalisation. Ukraine participates actively in EU capacity-building and **academic mobility** schemes of Erasmus+, leading to international and intercultural experiences of students and staff, familiarisation with new learning and teaching methods, and strengthening of competences and networks.

The EU also supports key competences and **skills of young people**, their **active citizenship**, social inclusion and solidarity through specific actions in the field of youth. Ukraine takes an active role in Erasmus+ projects promoting **youth exchanges and volunteering**, cooperation, networking and peer-learning activities.

More than 7,250 Ukrainian and nearly 3,000 European students and academic staff have benefitted from Erasmus academic exchange opportunities. In addition, over 11,600 young people and youth workers from Ukraine have taken part in short-term exchanges, mobility, training and volunteering projects.

Since 2014, 191 Erasmus+ scholarships have been awarded to Master students from Ukraine to follow Erasmus Mundus Joint Degree programmes.

The EU has dedicated € 5 million as a specific bilateral window for Ukraine under Erasmus+ to increase the existing opportunities for student and academic mobility and traineeships, support to reform processes at higher education institutions and greater involvement of Ukraine in Jean Monnet activities in the years 2019 and 2020.

Illegal annexation of Crimea and Sevastopol

The European Council of 20 March 2014 **strongly condemned the illegal annexation of Crimea and Sevastopol by the Russian Federation**. EU leaders underlined that there is no place for the use of force and coercion to change borders in Europe in the 21st century. Five years on, the EU does not recognize and continues to condemn this violation of international law. The EU has adopted a strict **non-recognition policy** with regard to the illegal annexation. This policy has led to substantive sanctions, set out in the annex to this Factsheet. The sanctions have been extended several times since then and are still in place (see annex).

Situation in the Sea of Azov

The European Union has been following with great concern the situation in the Sea of Azov and the dangerous increase of tensions which has led to the seizure of Ukrainian vessels and their crews by Russia and shots being fired at them, wounding several Ukrainian servicemen.

This unjustified use of force is a reminder of the negative effects of the illegal annexation of Crimea on regional stability. The European Union expects Russia to ensure unhindered and

free passage of all ships through the Kerch Strait to and from the Sea of Azov, in accordance with international law. The illegal restrictions to such passage have negative economic consequences for Ukraine's ports in the Sea of Azov and on the whole region.

The EU has further called on Russia to release the captured Ukrainian sailors unconditionally.

The EU is also stepping up its support to the Sea of Azov region to alleviate Russia's destabilising actions and their impact on the local economy and communities. This includes: (i) increasing the EU presence through an EU programme office in Mariupol; (ii) improving connections, including feasibility studies for rail and road rehabilitation projects, in cooperation with international financial institutions; (iii) support to socioeconomic development and resilience, including the fostering of SMEs, civil society, education, demining and psychosocial assistance. The European financial institutions also channel investments to conflict-affected areas. The European Investment Bank has provided a package of € 200 million for the early recovery of small-scale damaged infrastructure.

Conflict in eastern Ukraine (including sanctions)

The EU has been strongly supporting efforts to come to a **peaceful and sustainable solution** to the conflict in eastern Ukraine.

From the outset, the EU has supported Ukraine's territorial integrity, condemning the clear violations of Ukrainian sovereignty and territorial integrity by acts of aggression by the Russian armed forces. It has fully supported all initiatives aimed at bringing a lasting political solution to the conflict in eastern Ukraine, using all the means available. The Russian presidential decree of 24 April 2019, enabling the simplified issuing of passports in certain areas of Ukraine's Donetsk and Luhansk regions runs counter to the spirit and objectives of the Minsk agreements.

The EU's approach has been to **combine pressure through restrictive measures with diplomatic efforts and continuing dialogue**.

Diplomatic restrictions against the Russian Federation were first imposed at an extraordinary meeting of EU leaders on 6 March 2014. The EU gradually increased its restrictive measures, starting on 17 March 2014 with targeted sanctions against persons responsible for actions against Ukraine's territorial integrity, sovereignty and independence. In view of Russia's actions destabilising eastern Ukraine, a first package of significant economic sanctions targeting cooperation and exchanges with Russia was announced on 29 July 2014. A reinforced package of economic sanctions was announced in September 2014. Details about restrictive measures are in the annex.

At the same time, the EU participated directly in negotiating the Geneva Joint Statement of 17 April 2014. It welcomed the subsequent agreements for a ceasefire and further steps to stabilise the situation and achieve a political solution, reached in Minsk in September 2014 and in February 2015. The duration of the EU's economic sanctions against the Russian Federation is clearly linked to the **complete implementation of the Minsk agreements**. As part of its efforts for a political solution, the EU has stepped up its assistance to the

Organisation for Security and Co-operation in Europe (OSCE), conducted trilateral talks on trade and energy-related issues with Russia and supported political engagement including through discussions in the Normandy format (France; Germany; Ukraine; Russia) and the Trilateral Contact Group (OSCE; Ukraine; Russia).

Support for the Organisation for Security and Co-operation in Europe (OSCE)

The EU and its Member States are the biggest contributors to the [OSCE's Special Monitoring Mission](#), which monitors the implementation of the Minsk agreements. The EU accounts for two thirds of both the mission's budget and monitors. In addition to Member States, the EU has contributed through the Instrument contributing to Stability and Peace € 49 million to support the Mission's capacity to fulfil its mandate. The EU has furthermore donated 40 unarmoured and 44 armoured vehicles, 35 trauma kits and provided training.

Humanitarian assistance

The EU has been at the forefront of the response to the humanitarian crisis. Humanitarian needs are still high in eastern Ukraine: the conflict is affecting over 4.4 million people, of which 3.4 million are still in need of humanitarian assistance, especially along the contact line and in the non-government controlled territories.

The European Union and its Member States have provided financial support to the most vulnerable people. The EU, together with its Member States, is the biggest donor of humanitarian and early recovery/development assistance to Ukraine.

The [EU's Civil Protection and Humanitarian Aid Operations](#) (ECHO) have operated in Ukraine since February 2014 and plays a key role in facilitating humanitarian coordination and information sharing with various humanitarian organisations, including donors, authorities and aid partners. The EU is stepping up humanitarian funding to help those most in need in Ukraine with an additional €17.7 million. The assistance includes essential support such as healthcare, shelter repairs, water, cash transfers and Education in Emergencies projects. All EU humanitarian aid is impartial and independent, and will be provided along the line of conflict and in the non-government controlled areas. This brings the total EU humanitarian support for Ukraine to €133.8 million

In addition to financial aid, in-kind assistance was mobilised through the EU Civil Protection Mechanism in the early onset of the conflict. The EU also provides assistance to displaced Ukrainians in Belarus and Russia.

Malaysian Airlines flight MH17

When the Malaysian Airlines flight MH17 was downed on 17 July 2014, the EU expressed shock and deep sadness at the loss of so many innocent lives. The EU has consistently demanded that **those responsible for the downing be held accountable and brought to justice**. The EU fully supports the criminal investigation by the Joint Investigation Team

(JIT) and the international efforts to establish an effective prosecution mechanism. The EU considers that it is crucial that the investigators can complete their work, independently and thoroughly.

Following the technical report by the Dutch Safety Board of 13 October 2014, the interim results of the independent criminal investigation, presented by the JIT on 28 September 2016, the Joint Investigation Team presented further findings of its independent, professional and impartial investigation on 24 May 2018. It concluded that the BUK installation used to bring down flight MH17 belonged beyond doubt to the armed forces of the Russian Federation.

The Joint Investigation Team announced on 19 June that criminal charges will be brought in the Netherlands against four individuals. The EU has called on Russia to cooperate fully with the ongoing investigation, and expressed its full confidence in the independence and professionalism of the legal procedures that lie ahead.

ANNEX: EU Restrictive measures

FIVE YEARS SINCE RUSSIA'S ILLEGAL ANNEXTION OF CRIMEA

18 March 2014:

Russia illegally annexed the Autonomous Republic of Crimea and the city of Sevastopol – a violation of the territorial integrity of Ukraine



27 March 2014:

United Nations General Assembly adopted Resolution 68/262 'Territorial integrity of Ukraine'. All EU Member States vote for the resolution

EU'S RESPONSE?

NON-RECOGNITION POLICY AND SANCTIONS


IMPORTS
to the EU
from Crimea
BANNED
unless a
Ukrainian origin
certificate


INVESTMENT
by EU companies
in Crimea
BANNED


EXPORTS
to Crimea for products or
technology related to transport,
telecoms or the energy sectors;
or the exploration of oil, gas
and mineral resources
BANNED


**EU
TOURISM
SERVICES**
in Crimea
BANNED

ASSET FREEZES AND VISA BANS

170
PEOPLE



are on the sanctions list for actions undermining Ukraine's territorial integrity, sovereignty and independence

44 ENTITIES'

(companies or institutions) EU assets
have been frozen: 11 in Crimea and
Sevastopol



More details can be found on www.eeas.europa.eu
March 2019

Diplomatic measures

- Instead of the G8 summit in Sochi, a G7 meeting was held in Brussels on 4 and 5 June 2014. EU nations supported the suspension of negotiations over Russia joining the OECD and the International Energy Agency (IEA).
- The EU-Russia summit was cancelled and EU Member States decided not to hold regular

bilateral summits. Bilateral talks with Russia on visa matters as well as on the New Agreement between the EU and Russia were suspended.

Asset freezes and travel bans

Asset freezes and visa bans apply to 170 persons while 44 entities are subject to a freeze of their assets in the EU. This includes persons and entities responsible for action against Ukraine's territorial integrity, persons providing support to or benefitting Russian decision-makers and 11 entities in Crimea and Sevastopol that were confiscated or that have benefitted from a transfer of ownership contrary to Ukrainian law. The ban also includes a prohibition of any payments made to these persons and entities. On 10 December the EU has added to the list 9 individuals, elected or involved in the so-called "elections" in the non-government controlled areas of Donetsk and Luhansk. On 15 March 2019 the EU added 8 Russian individuals involved in the actions that led to the detention of Ukrainian seamen and the seizure of vessels in the Kerch Strait on 25 November 2018.

See the [latest consolidated version in the Official Journal](#).

Restrictions for Crimea and Sevastopol

As part of the EU's non-recognition policy of the illegal annexation of Crimea and Sevastopol, the EU has imposed substantial restrictions on economic exchanges with the territory. These include:

- A ban on imports of goods originating in Crimea or Sevastopol unless they have Ukrainian certificates;
- A prohibition to invest in Crimea. Europeans and EU-based companies can no longer buy real estate or entities in Crimea, finance Crimean companies or supply related services. In addition, they may not invest in infrastructure projects in six sectors;
- A ban on providing tourism services in Crimea or Sevastopol. European cruise ships may not call at ports in the Crimean peninsula, except in case of emergency. This applies to all ships owned or controlled by a European or flying the flag of an EU Member State;
- Goods and technology for the transport, telecommunications and energy sectors or the exploration of oil, gas and mineral resources may not be exported to Crimean companies or for use in Crimea;
- Technical assistance, brokering, construction or engineering services related to infrastructure in the same sectors must not be provided.

To facilitate compliance with these restrictive measures and other elements of the non-recognition policy, the EU has compiled an Information Note to EU business operating and/or investing in Crimea/Sevastopol.

[Information note to EU business on operating and or investing in Crimea/Sevastopol](#)

"Economic sanctions"

- EU nationals and companies may not buy or sell new bonds, equity or similar financial

instruments with a maturity exceeding 30 days, issued by:

- five major state-owned Russian banks;
 - three major Russia energy companies;
 - three major Russian defence companies;
 - subsidiaries outside the EU of the entities above, and those acting on their behalf or at their direction.
- Assistance in relation to the issuing of such financial instruments is also prohibited.
 - EU nationals and companies may also not provide loans with a maturity exceeding 30 days to the entities described above.
 - Embargo on the import and export of arms and related material from/to Russia, covering all items on the EU common military list, with some exceptions.
 - Prohibition on exports of dual use goods and technology for military use in Russia or to Russian military end-users, including all items in the EU list of dual use goods. Export of dual use goods to nine mixed end-users is also banned.
 - Exports of certain energy-related equipment and technology to Russia are subject to prior authorisation by competent authorities of Member States. Export licenses will be denied if products are destined for oil exploration and production in waters deeper than 150 meters or in the offshore area north of the Arctic Circle, and projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing.
 - The following services necessary for the above mentioned projects may not be supplied: drilling, well testing, logging and completion services and supply of specialised floating vessels.

See the [Commission Guidance note on the implementation of certain provisions of Regulation \(EU\) No 833/2014](#)

Measures concerning economic cooperation

- On 16 July 2014, the European Council requested the EIB to suspend the signature of new financing operations in the Russian Federation. European Union Member States will coordinate their positions within the EBRD Board of Directors with a view to also suspending financing of new operations.
- The implementation of EU-Russia bilateral and regional cooperation programmes has been largely suspended. Projects dealing exclusively with cross-border cooperation and civil society are maintained.

Asset freezes for misappropriation of Ukrainian state funds

An asset freeze is in place against 12 people identified as responsible for the

misappropriation of Ukrainian state funds or for abuse of office causing a loss to Ukrainian public funds.

[See the latest list of persons concerned](#)

See also

[EU-Ukraine relations \(EUDEL website\)](#)

[European Union Delegation in Ukraine website](#)

[Support Group for Ukraine website](#)

[Factsheet: FAQs on Ukraine, the EU's Eastern Partnership and the EU-Ukraine Association Agreement](#)

[EU Advisory Mission for Civilian Security Sector Reform Ukraine website](#)

[Statistics on trade and investment between the EU and Ukraine](#)

[Eastern Partnership website](#)

Press contacts

Press Contacts:

[Maja KOCIJANCIC](#)

Maja KOCIJANCIC

Spokesperson for Foreign Affairs and Security Policy/European Neighbourhood Policy and Enlargement Negotiations

+32 (0)2 29 86570

+32 (0)498 984 425

[Adam KAZNOWSKI](#)

Adam KAZNOWSKI

Press Officer for Foreign Affairs and Security Policy

+32 (0) 2 29 89359

+32 (0)460 768 088

www.eeas.europa.eu

Source URL:

http://eueuropaeas.fpfis.slb.ec.europa.eu:8084/headquarters/headquarters-homepage/4081/eu-ukraine-relations-factsheet_en

NEW: Impeachmentguide (<https://impeachmentguide/>) is our new project explaining and tracking the impeachment inquiry of President Trump

X

[Congress \(/congress\)](#) / [Votes \(/congress/votes\)](#) / [House Vote #568 in 2017 \(115th Congress\)](#)

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017

Oct 12, 2017 at 3:38 p.m. ET. On Passage of the Bill in the House.

This was a vote to pass [S. 585 \(115th\) \(/congress/bills/115/s585\)](#) in the House.

S. 585 provides additional protections to Federal employees who are retaliated against for disclosing waste, fraud, and abuse in the Federal government. Specifically, the legislation increases protections for federal employees, increases awareness of federal whistleblower protections, and increases accountability and requires discipline for supervisors who retaliate against whistleblowers.

The bill provides enhanced protections and expedites investigations of instances in which probationary federal employees are fired for whistleblowing; enacts reforms to ensure that managers who retaliate against whistleblowers are held accountable; provides the Office of Special Counsel with adequate access to information from federal agencies to allow for complete investigations and better protect whistleblowers; ensures that all federal employees are informed of their rights as whistleblowers and provides training to managers on protections; and establishes measures to hold VA employees that improperly access the medical records of their fellow VA employees accountable.

Further, the bill requires the Government Accountability Office to provide two reports to discuss retaliation against employees on probationary status and assess management and staffing levels of police officers at VA medical centers.

Dr. Chris Kirkpatrick was a 38-year old clinical psychologist at the Tomah Veterans Affairs Medical Center. In early 2009 Dr. Kirkpatrick complained that a number of his patients were too drugged to treat properly. In April 2009, Kirkpatrick was called to a disciplinary meeting and given a written reprimand.

In July 2009, three months after Tomah VA officials disciplined him for criticizing medication practices, Kirkpatrick had reported that one of his veteran patients had threatened to harm him and his dog. A treatment team decided the patient should be discharged, but he never was. Kirkpatrick was summoned to another disciplinary meeting. This time, he was fired. Soon after, Dr. Kirkpatrick committed suicide.

A VA investigation -- triggered earlier this year by the revelation that a veteran died at Tomah last August from "mixed drug toxicity" -- found Kirkpatrick's concerns had been warranted. Tomah veterans were 2½ times more likely to get high doses of opiates than the national average. Further investigations found retaliation against whistleblowers has become a major problem at VA facilities across the country. The U.S. Office of Special Counsel is investigating 110 retaliation claims from whistleblowers in 38 states and the District of Columbia.

Source: [Republican Policy Committee \(https://policy.house.gov/legislative/bills/s-585-dr-chris-kirkpatrick-whistleblower-protection-act-2017\)](https://policy.house.gov/legislative/bills/s-585-dr-chris-kirkpatrick-whistleblower-protection-act-2017)

Show Less Summary ^

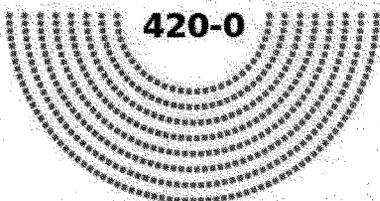
[\(About Ads \(/advertising\)\)](#) | [Hide These Ads \(/accounts/membership\)](#)

Totals

	All Votes	R	D
Aye	100%	420	232 188
No	0%	0	0
Not Voting	13	7	6

Passed. Simple Majority Required. Source: [house.gov \(http://clerk.house.gov/evs/2017/roll568.xml\)](http://clerk.house.gov/evs/2017/roll568.xml).

Ideology Vote Chart



Key: Republican - Aye Democrat - Aye

Seat position based on our [ideology score \(/about/analysis#ideology\)](#).

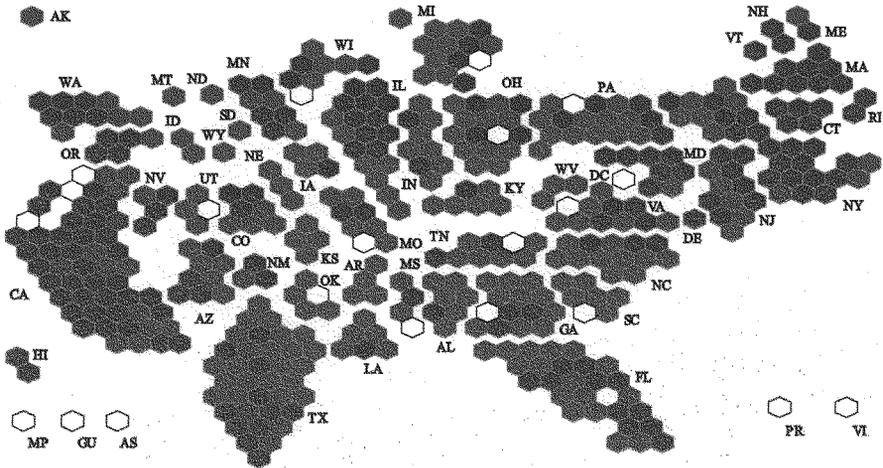
Cartogram Map

19910

711

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrack.us



Each hexagon represents one congressional district. Solid hexes are Aye votes.

What you can do

Get Email Alerts

Tweet

7
Share

Vote Details

Notes: [The Speaker's Vote?](#) "Aye" or "Yea"?

Download as [CSV \(/congress/votes/115-2017/h568/export/csv\)](#)

Vote	District	Party	Representative
Alabama			
Aye	AL 1 st	R	Byrne, Bradley (/congress/members/bradley_byrne/412601)
Aye	AL 2 nd	R	Roby, Martha (/congress/members/martha_roby/412394)
Aye	AL 3 rd	R	Rogers, Mike (/congress/members/mike_rogers/400341)
Aye	AL 4 th	R	Aderholt, Robert (/congress/members/robert_aderholt/400004)
Aye	AL 5 th	R	Brooks, Mo (/congress/members/mo_brooks/412395)
Aye	AL 6 th	R	Palmer, Gary (/congress/members/gary_palmer/412608)
Aye	AL 7 th	D	Sewell, Terri (/congress/members/terri_sewell/412396)

12/20/2019

S. 585: Dr. Chris Kirpatrick Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Alaska			
Aye	AK	R	Young, Don (/congress/members/don_young/400440)
Arizona			
Aye	AZ 1 st	D	O'Halleran, Tom (/congress/members/tom_ohalleran/412682)
Aye	AZ 2 nd	R	McSally, Martha (/congress/members/martha_mcsally/412611)
Aye	AZ 3 rd	D	Grijalva, Raúl (/congress/members/raul_grijalva/400162)
Aye	AZ 4 th	R	Gosar, Paul (/congress/members/paul_gosar/412397)
Aye	AZ 5 th	R	Biggs, Andy (/congress/members/andy_biggs/412683)
Aye	AZ 6 th	R	Schweikert, David (/congress/members/david_schweikert/412399)
Aye	AZ 7 th	D	Gallego, Ruben (/congress/members/ruben_gallego/412612)
Aye	AZ 8 th	R	Franks, Trent (/congress/members/trent_franks/400141)
Aye	AZ 9 th	D	Sinema, Kyrsten (/congress/members/kyrsten_sinema/412509)
Arkansas			
Aye	AR 1 st	R	Crawford, Eric (/congress/members/eric_crawford/412400)
Aye	AR 2 nd	R	Hill, French (/congress/members/french_hill/412609)
Aye	AR 3 rd	R	Womack, Steve (/congress/members/steve_womack/412402)
Aye	AR 4 th	R	Westerman, Bruce (/congress/members/bruce_westerman/412610)
California			
Aye	CA 1 st	R	LaMalfa, Doug (/congress/members/doug_lamalfa/412510)
No Vote	CA 2 nd	D	Huffman, Jared (/congress/members/jared_huffman/412511)
Aye	CA 3 rd	D	Garamendi, John (/congress/members/john_garamendi/412382)
Aye	CA 4 th	R	McClintock, Tom (/congress/members/tom_mcclintock/412295)
No Vote	CA 5 th	D	Thompson, Mike (/congress/members/mike_thompson/400403)
Aye	CA 6 th	D	Matsui, Doris (/congress/members/doris_matsui/400663)
Aye	CA 7 th	D	Bera, Ami (/congress/members/ami_bera/412512)
Aye	CA 8 th	R	Cook, Paul (/congress/members/paul_cook/412513)
Aye	CA 9 th	D	McNerney, Jerry (/congress/members/jerry_mcnerney/412189)
Aye	CA 10 th	R	Denham, Jeff (/congress/members/jeff_denham/412403)

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Aye	CA 11 th	D	DeSaulnier, Mark (/congress/members/mark_desaulnier/412613)
Aye	CA 12 th	D	Pelosi, Nancy (/congress/members/nancy_pelosi/400314)
Aye	CA 13 th	D	Lee, Barbara (/congress/members/barbara_lee/400237)
Aye	CA 14 th	D	Speier, Jackie (/congress/members/jackie_speier/412259)
Aye	CA 15 th	D	Swalwell, Eric (/congress/members/eric_swalwell/412514)
Aye	CA 16 th	D	Costa, Jim (/congress/members/jim_costa/400618)
Aye	CA 17 th	D	Khanna, Ro (/congress/members/ro_khanna/412684)
No Vote	CA 18 th	D	Eshoo, Anna (/congress/members/anna_eshoo/400124)
Aye	CA 19 th	D	Lofgren, Zoe (/congress/members/zoe_lofgren/400245)
Aye	CA 20 th	D	Panetta, Jimmy (/congress/members/jimmy_panetta/412685)
Aye	CA 21 st	R	Valadao, David (/congress/members/david_valadao/412515)
Aye	CA 22 nd	R	Nunes, Devin (/congress/members/devin_nunes/400297)
Aye	CA 23 rd	R	McCarthy, Kevin (/congress/members/kevin_mccarthy/412190)
Aye	CA 24 th	D	Carbajal, Salud (/congress/members/salud_carbajal/412686)
Aye	CA 25 th	R	Knight, Steve (/congress/members/steve_knight/412614)
Aye	CA 26 th	D	Brownley, Julia (/congress/members/julia_brownley/412516)
Aye	CA 27 th	D	Chu, Judy (/congress/members/judy_chu/412379)
Aye	CA 28 th	D	Schiff, Adam (/congress/members/adam_schiff/400361)
Aye	CA 29 th	D	Cárdenas, Tony (/congress/members/tony_cardenas/412517)
Aye	CA 30 th	D	Sherman, Brad (/congress/members/brad_sherman/400371)
Aye	CA 31 st	D	Aguilar, Pete (/congress/members/pete_aguilar/412615)
Aye	CA 32 nd	D	Napolitano, Grace (/congress/members/grace_napolitano/400290)
Aye	CA 33 rd	D	Lieu, Ted (/congress/members/ted_lieu/412616)
Aye	CA 34 th	D	Gomez, Jimmy (/congress/members/jimmy_gomez/412739)
Aye	CA 35 th	D	Torres, Norma (/congress/members/norma_torres/412617)
Aye	CA 36 th	D	Ruiz, Raul (/congress/members/raul_ruiz/412519)
Aye	CA 37 th	D	Bass, Karen (/congress/members/karen_bass/412404)

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Aye	CA 38 th	D	Sánchez, Linda (/congress/members/linda_sanchez/400355)
Aye	CA 39 th	R	Royce, Ed (/congress/members/edward_royce/400348)
Aye	CA 40 th	D	Roybal-Allard, Lucille (/congress/members/lucille_roybal_allard/400347)
Aye	CA 41 st	D	Takano, Mark (/congress/members/mark_takano/412520)
Aye	CA 42 nd	R	Calvert, Ken (/congress/members/ken_calvert/400057)
Aye	CA 43 rd	D	Waters, Maxine (/congress/members/maxine_waters/400422)
Aye	CA 44 th	D	Barragán, Nanette (/congress/members/nanette_barragan/412687)
Aye	CA 45 th	R	Walters, Mimi (/congress/members/mimi_walters/412618)
Aye	CA 46 th	D	Correa, Luis (/congress/members/luis_correa/412688)
Aye	CA 47 th	D	Lowenthal, Alan (/congress/members/alan_lowenthal/412521)
Aye	CA 48 th	R	Rohrabacher, Dana (/congress/members/dana_rohrabacher/400343)
Aye	CA 49 th	R	Issa, Darrell (/congress/members/darrell_issa/400196)
Aye	CA 50 th	R	Hunter, Duncan (/congress/members/duncan_hunter/412283)
Aye	CA 51 st	D	Vargas, Juan (/congress/members/juan_vargas/412522)
Aye	CA 52 nd	D	Peters, Scott (/congress/members/scott_peters/412523)
Aye	CA 53 rd	D	Davis, Susan (/congress/members/susan_davis/400097)
Colorado			
Aye	CO 1 st	D	DeGette, Diana (/congress/members/diana_degette/400101)
Aye	CO 2 nd	D	Polis, Jared (/congress/members/jared_polis/412308)
Aye	CO 3 rd	R	Tipton, Scott (/congress/members/scott_tipton/412405)
Aye	CO 4 th	R	Buck, Ken (/congress/members/ken_buck/412619)
Aye	CO 5 th	R	Lamborn, Doug (/congress/members/doug_lamborn/412191)
Aye	CO 6 th	R	Coffman, Mike (/congress/members/mike_coffman/412271)
Aye	CO 7 th	D	Perlmutter, Ed (/congress/members/ed_perlmutter/412192)
Connecticut			
Aye	CT 1 st	D	Larson, John (/congress/members/john_larson/400233)
Aye	CT 2 nd	D	Courtney, Joe (/congress/members/joe_courtney/412193)

12/20/2019

S. 585: Dr. Chris Kirkpatrick/Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Aye	CT 3 rd	D	DeLauro, Rosa (/congress/members/rosa_delauro/400103)
Aye	CT 4 th	D	Himes, James (/congress/members/james_himes/412282)
Aye	CT 5 th	D	Esty, Elizabeth (/congress/members/elizabeth_esty/412524)
Delaware			
Aye	DE	D	Blunt Rochester, Lisa (/congress/members/lisa_blunt_rochester/412689)
Florida			
Aye	FL 1 st	R	Gaetz, Matt (/congress/members/matt_gaetz/412690)
Aye	FL 2 nd	R	Dunn, Neal (/congress/members/neal_dunn/412691)
Aye	FL 3 rd	R	Yoho, Ted (/congress/members/ted_yoho/412525)
Aye	FL 4 th	R	Rutherford, John (/congress/members/john_rutherford/412692)
Aye	FL 5 th	D	Lawson, Al (/congress/members/al_lawson/412693)
Aye	FL 6 th	R	DeSantis, Ron (/congress/members/ron_desantis/412526)
Aye	FL 7 th	D	Murphy, Stephanie (/congress/members/stephanie_murphy/412694)
Aye	FL 8 th	R	Posey, Bill (/congress/members/bill_posey/412309)
Aye	FL 9 th	D	Soto, Darren (/congress/members/darren_soto/412695)
Aye	FL 10 th	D	Demings, Val (/congress/members/val_demings/412696)
Aye	FL 11 th	R	Webster, Daniel (/congress/members/daniel_webster/412410)
Aye	FL 12 th	R	Billirakis, Gus (/congress/members/gus_bilirakis/412250)
Aye	FL 13 th	D	Crist, Charlie (/congress/members/charlie_crist/412697)
Aye	FL 14 th	D	Castor, Kathy (/congress/members/kathy_castor/412195)
Aye	FL 15 th	R	Ross, Dennis (/congress/members/dennis_ross/412411)
Aye	FL 16 th	R	Buchanan, Vern (/congress/members/vern_buchanan/412196)
Aye	FL 17 th	R	Rooney, Thomas (/congress/members/thomas_rooney/412311)
Aye	FL 18 th	R	Mast, Brian (/congress/members/brian_mast/412698)
Aye	FL 19 th	R	Rooney, Francis (/congress/members/francis_rooney/412699)
Aye	FL 20 th	D	Hastings, Alcee (/congress/members/alcee_hastings/400170)
Aye	FL 21 st	D	Frankel, Lois (/congress/members/lois_frankel/412529)
Aye	FL 22 nd	D	Deutch, Theodore (/congress/members/theodore_deutch/412385)

12/20/2019

S. 585: Dr. Chris Kirpatrick/Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Aye	FL 23 rd	D	Wasserman Schultz, Debbie (/congress/members/debbie_wasserman_schultz/400623)
Aye	FL 24 th	D	Wilson, Frederica (/congress/members/frederica_wilson/412412)
Aye	FL 25 th	R	Diaz-Balart, Mario (/congress/members/mario_diaz_balart/400108)
Aye	FL 26 th	R	Curbelo, Carlos (/congress/members/carlos_curbelo/412621)
Aye	FL 27 th	R	Ros-Lehtinen, Ileana (/congress/members/ileana_ros_lehtinen/400344)
Georgia			
Aye	GA 1 st	R	Carter, Buddy (/congress/members/buddy_carter/412622)
Aye	GA 2 nd	D	Bishop, Sanford (/congress/members/sanford_bishop/400030)
Aye	GA 3 rd	R	Ferguson, Drew (/congress/members/drew_ferguson/412700)
Aye	GA 4 th	D	Johnson, Hank (/congress/members/henry_johnson/412199)
Aye	GA 5 th	D	Lewis, John (/congress/members/john_lewis/400240)
Aye	GA 6 th	R	Handel, Karen (/congress/members/karen_handel/412737)
Aye	GA 7 th	R	Woodall, Rob (/congress/members/rob_woodall/412417)
Aye	GA 8 th	R	Scott, Austin (/congress/members/austin_scott/412417)
Aye	GA 9 th	R	Collins, Doug (/congress/members/doug_collins/412531)
Aye	GA 10 th	R	Hice, Jody (/congress/members/jody_hice/412623)
Aye	GA 11 th	R	Loudermilk, Barry (/congress/members/barry_loudermilk/412624)
Aye	GA 12 th	R	Allen, Rick (/congress/members/rick_allen/412625)
No Vote	GA 13 th	D	Scott, David (/congress/members/david_scott/400363)
Aye	GA 14 th	R	Graves, Tom (/congress/members/tom_graves/412388)
Hawaii			
Aye	HI 1 st	D	Hanabusa, Colleen (/congress/members/colleen_hanabusa/412418)
Aye	HI 2 nd	D	Gabbard, Tulsi (/congress/members/tulsi_gabbard/412532)
Idaho			
Aye	ID 1 st	R	Labrador, Raul (/congress/members/raul_labrador/412419)
Aye	ID 2 nd	R	Simpson, Mike (/congress/members/michael_simpson/400376)
Illinois			

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Aye	IL 1 st	D	Rush, Bobby (/congress/members/bobby_rush/400350)
Aye	IL 2 nd	D	Kelly, Robin (/congress/members/robin_kelly/412595)
Aye	IL 3 rd	D	Lipinski, Daniel (/congress/members/daniel_lipinski/400630)
Aye	IL 4 th	D	Gutiérrez, Luis (/congress/members/luis_gutierrez/400163)
Aye	IL 5 th	D	Quigley, Mike (/congress/members/mike_quigley/412331)
Aye	IL 6 th	R	Roskam, Peter (/congress/members/peter_roskam/412202)
Aye	IL 7 th	D	Davis, Danny (/congress/members/danny_davis/400093)
Aye	IL 8 th	D	Krishnamoorthi, Raja (/congress/members/raja_krishnamoorthi/412701)
Aye	IL 9 th	D	Schakowsky, Jan (/congress/members/janice_schakowsky/400360)
Aye	IL 10 th	D	Schneider, Bradley (/congress/members/bradley_schneider/412534)
Aye	IL 11 th	D	Foster, Bill (/congress/members/bill_foster/412257)
Aye	IL 12 th	R	Bost, Mike (/congress/members/mike_bost/412629)
Aye	IL 13 th	R	Davis, Rodney (/congress/members/rodney_davis/412536)
Aye	IL 14 th	R	Hultgren, Randy (/congress/members/randy_hultgren/412422)
Aye	IL 15 th	R	Shimkus, John (/congress/members/john_shimkus/400373)
Aye	IL 16 th	R	Kinzinger, Adam (/congress/members/adam_kinzinger/412421)

Vote	District	Party	Representative
Aye	IL 17 th	D	Bustos, Cheri (/congress/members/cheri_bustos/412537)
Aye	IL 18 th	R	LaHood, Darin (/congress/members/darin_lahood/412674)
Indiana			
Aye	IN 1 st	D	Visclosky, Peter (/congress/members/peter_visclosky/400417)
Aye	IN 2 nd	R	Walorski, Jackie (/congress/members/jackie_walorski/412538)
Aye	IN 3 rd	R	Banks, Jim (/congress/members/jim_banks/412702)
Aye	IN 4 th	R	Rokita, Todd (/congress/members/todd_rokita/412426)
Aye	IN 5 th	R	Brooks, Susan (/congress/members/susan_brooks/412539)
Aye	IN 6 th	R	Messer, Luke (/congress/members/luke_messer/412540)
Aye	IN 7 th	D	Carson, André (/congress/members/andre_carson/412258)
Aye	IN 8 th	R	Bucshon, Larry (/congress/members/larry_bucshon/412427)

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Aye	IN 9 th	R	Hollingsworth, Trey (/congress/members/trey_hollingsworth/412703)
Iowa			
Aye	IA 1 st	R	Blum, Rod (/congress/members/rod_blum/412627)
Aye	IA 2 nd	D	Loebsack, David (/congress/members/david_loebsack/412209)
Aye	IA 3 rd	R	Young, David (/congress/members/david_young/412628)
Aye	IA 4 th	R	King, Steve (/congress/members/steve_king/400220)
Kansas			
Aye	KS 1 st	R	Marshall, Roger (/congress/members/roger_marshall/412704)
Aye	KS 2 nd	R	Jenkins, Lynn (/congress/members/lynn_jenkins/412284)
Aye	KS 3 rd	R	Yoder, Kevin (/congress/members/kevin_yoder/412430)
Aye	KS 4 th	R	Estes, Ron (/congress/members/ron_estes/412735)
Kentucky			
Aye	KY 1 st	R	Comer, James (/congress/members/james_comer/412676)
Aye	KY 2 nd	R	Guthrie, Brett (/congress/members/brett_guthrie/412278)
Aye	KY 3 rd	D	Yarmuth, John (/congress/members/john_yarmuth/412211)
Aye	KY 4 th	R	Massie, Thomas (/congress/members/thomas_massie/412503)
Aye	KY 5 th	R	Rogers, Hal (/congress/members/harold_rogers/400340)
Aye	KY 6 th	R	Barr, Andy (/congress/members/garland_barr/412541)
Louisiana			
Aye	LA 1 st	R	Scalise, Steve (/congress/members/steve_scalise/412261)
Aye	LA 2 nd	D	Richmond, Cedric (/congress/members/cedric_richmond/412432)
Aye	LA 3 rd	R	Higgins, Clay (/congress/members/clay_higgins/412705)
Aye	LA 4 th	R	Johnson, Mike (/congress/members/mike_johnson/412706)
Aye	LA 5 th	R	Abraham, Ralph (/congress/members/ralph_abraham/412630)
Aye	LA 6 th	R	Graves, Garret (/congress/members/garret_graves/412631)
Maine			
Aye	ME 1 st	D	Pingree, Chellie (/congress/members/chellie_pingree/412307)
Aye	ME 2 nd	R	Poliquin, Bruce (/congress/members/bruce_poliquin/412633)

12/20/2019

S. 585: Dr. Chris Kirkpatrick/Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Maryland			
Aye	MD 1 st	R	Harris, Andy (/congress/members/andy_harris/412434)
Aye	MD 2 nd	D	Ruppersberger, A. Dutch (/congress/members/a_dutch_ruppersberger/400349)
Aye	MD 3 rd	D	Sarbanes, John (/congress/members/john_sarbanes/412212)
Aye	MD 4 th	D	Brown, Anthony (/congress/members/anthony_brown/412707)
Aye	MD 5 th	D	Hoyer, Steny (/congress/members/steny_hoyer/400189)
Aye	MD 6 th	D	Delaney, John (/congress/members/john_delaney/412544)
Aye	MD 7 th	D	Cummings, Elijah (/congress/members/elijah_cummings/400090)
Aye	MD 8 th	D	Raskin, Jamie (/congress/members/jamie_raskin/412708)
Massachusetts			
Aye	MA 1 st	D	Neal, Richard (/congress/members/richard_neal/400291)
Aye	MA 2 nd	D	McGovern, Jim (/congress/members/james_mcgovern/400263)
Aye	MA 3 rd	D	Tsongas, Niki (/congress/members/niki_tsongas/412254)
Aye	MA 4 th	D	Kennedy, Joseph (/congress/members/joseph_kennedy/412543)
Aye	MA 5 th	D	Clark, Katherine (/congress/members/katherine_clark/412600)
Aye	MA 6 th	D	Moulton, Seth (/congress/members/seth_moulton/412632)
Aye	MA 7 th	D	Capuano, Michael (/congress/members/michael_capuano/400063)
Aye	MA 8 th	D	Lynch, Stephen (/congress/members/stephen_lynch/400249)
Aye	MA 9 th	D	Keating, William (/congress/members/william_keating/412435)
Michigan			
Aye	MI 1 st	R	Bergman, Jack (/congress/members/jack_bergman/412709)
Aye	MI 2 nd	R	Huizenga, Bill (/congress/members/bill_huizenga/412437)
Aye	MI 3 rd	R	Amash, Justin (/congress/members/justin_amash/412438)
Aye	MI 4 th	R	Moolenaar, John (/congress/members/john_moolenaar/412634)
Aye	MI 5 th	D	Kildee, Daniel (/congress/members/daniel_kildee/412546)
Aye	MI 6 th	R	Upton, Fred (/congress/members/fred_upton/400414)
Aye	MI 7 th	R	Walberg, Tim (/congress/members/tim_walberg/412213)

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Aye	MI 8 th	R	Bishop, Mike (/congress/members/mike_bishop/412635)
Aye	MI 9 th	D	Levin, Sander (/congress/members/sander_levin/400238)
Aye	MI 10 th	R	Mitchell, Paul (/congress/members/paul_mitchell/412710)
Aye	MI 11 th	R	Trott, Dave (/congress/members/dave_trott/412636)
Aye	MI 12 th	D	Dingell, Debbie (/congress/members/debbie_dingell/412637)
Aye	MI 13 th	D	Conyers, John (/congress/members/john_conyers/400080)
No Vote	MI 14 th	D	Lawrence, Brenda (/congress/members/brenda_lawrence/412638)
Minnesota			
Aye	MN 1 st	D	Walz, Timothy (/congress/members/timothy_walz/412214)
Aye	MN 2 nd	R	Lewis, Jason (/congress/members/jason_lewis/412711)
Aye	MN 3 rd	R	Paulsen, Erik (/congress/members/erik_paulsen/412303)
Aye	MN 4 th	D	McCollum, Betty (/congress/members/betty_mccollum/400259)
Aye	MN 5 th	D	Ellison, Keith (/congress/members/keith_ellison/412215)
Aye	MN 6 th	R	Emmer, Tom (/congress/members/tom_emmer/412639)
Aye	MN 7 th	D	Peterson, Collin (/congress/members/collin_peterson/400316)
Aye	MN 8 th	D	Nolan, Richard (/congress/members/richard_nolan/408211)
Mississippi			
Aye	MS 1 st	R	Kelly, Trent (/congress/members/trent_kelly/412673)
Aye	MS 2 nd	D	Thompson, Bennie (/congress/members/bennie_thompson/400402)
Aye	MS 3 rd	R	Harper, Gregg (/congress/members/gregg_harper/412280)
No Vote	MS 4 th	R	Palazzo, Steven (/congress/members/steven_palazzo/412443)
Missouri			
Aye	MO 1 st	D	Clay, Lacy (/congress/members/lacy_clay/400074)
Aye	MO 2 nd	R	Wagner, Ann (/congress/members/ann_wagner/412548)
Aye	MO 3 rd	R	Luetkemeyer, Blaine (/congress/members/blaine_luetkemeyer/412292)
Aye	MO 4 th	R	Hartzler, Vicky (/congress/members/vicky_hartzler/412444)
Aye	MO 5 th	D	Cleaver, Emanuel (/congress/members/emanuel_cleaver/400639)

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Aye	MO 6 th	R	Graves, Sam (/congress/members/sam_graves/400158)
No Vote	MO 7 th	R	Long, Billy (/congress/members/billy_long/412445)
Aye	MO 8 th	R	Smith, Jason (/congress/members/jason_smith/412596)
Montana			
Aye	MT	R	Gianforte, Greg (/congress/members/greg_gianforte/412736)
Nebraska			
Aye	NE 1 st	R	Fortenberry, Jeff (/congress/members/jeff_fortenberry/400640)
Aye	NE 2 nd	R	Bacon, Don (/congress/members/don_bacon/412713)
Aye	NE 3 rd	R	Smith, Adrian (/congress/members/adrian_smith/412217)
Nevada			
Aye	NV 1 st	D	Titus, Dina (/congress/members/dina_titus/412318)
Aye	NV 2 nd	R	Amodei, Mark (/congress/members/mark_amodei/412500)
Aye	NV 3 rd	D	Rosen, Jacky (/congress/members/jacky_rosen/412715)
Aye	NV 4 th	D	Kihuen, Ruben (/congress/members/ruben_kihuen/412716)
New Hampshire			
Aye	NH 1 st	D	Shea-Porter, Carol (/congress/members/carol_shea_porter/412219)
Aye	NH 2 nd	D	Kuster, Ann (/congress/members/ann_kuster/412557)
New Jersey			
Aye	NJ 1 st	D	Norcross, Donald (/congress/members/donald_norcross/412606)
Aye	NJ 2 nd	R	LoBiondo, Frank (/congress/members/frank_lobiondo/400244)
Aye	NJ 3 rd	R	MacArthur, Tom (/congress/members/tom_macarthur/412643)
Aye	NJ 4 th	R	Smith, Chris (/congress/members/christopher_smith/400380)
Aye	NJ 5 th	D	Gottheimer, Josh (/congress/members/josh_gottheimer/412714)
Aye	NJ 6 th	D	Pallone, Frank (/congress/members/frank_pallone/400308)
Aye	NJ 7 th	R	Lance, Leonard (/congress/members/leonard_lance/412290)
Aye	NJ 8 th	D	Sires, Albio (/congress/members/albio_sires/412186)
Aye	NJ 9 th	D	Pascrell, Bill (/congress/members/bill_pascrell/400309)
Aye	NJ 10 th	D	Payne, Donald (/congress/members/donald_payne/412506)

12/20/2019

S. 585. Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrack.us

Vote	District	Party	Representative
Aye	NJ 11 th	R	Frelinghuysen, Rodney (/congress/members/rodney_frelinghuysen/400142)
Aye	NJ 12 th	D	Watson Coleman, Bonnie (/congress/members/bonnie_watson_coleman/412644)
New Mexico			
Aye	NM 1 st	D	Lujan Grisham, Michelle (/congress/members/michelle_lujan_grisham/412558)
Aye	NM 2 nd	R	Pearce, Steve (/congress/members/stevan_pearce/400313)
Aye	NM 3 rd	D	Luján, Ben (/congress/members/ben_lujan/412293)
New York			
Aye	NY 1 st	R	Zeldin, Lee (/congress/members/lee_zeldin/412646)
Aye	NY 2 nd	R	King, Pete (/congress/members/peter_king/400219)
Aye	NY 3 rd	D	Suozzi, Thomas (/congress/members/thomas_suozzi/412717)
Aye	NY 4 th	D	Rice, Kathleen (/congress/members/kathleen_rice/412647)
Aye	NY 5 th	D	Meeks, Gregory (/congress/members/gregory_meeks/400271)
Aye	NY 6 th	D	Meng, Grace (/congress/members/grace_meng/412560)
Aye	NY 7 th	D	Velázquez, Nydia (/congress/members/nydia_velazquez/400416)
Aye	NY 8 th	D	Jeffries, Hakeem (/congress/members/hakeem_jeffries/412561)
Aye	NY 9 th	D	Clarke, Yvette (/congress/members/yvette_clarke/412221)
Aye	NY 10 th	D	Nadler, Jerrold (/congress/members/jerrold_nadler/400289)
Aye	NY 11 th	R	Donovan, Daniel (/congress/members/daniel_donovan/412672)
Aye	NY 12 th	D	Maloney, Carolyn (/congress/members/carolyn_maloney/400251)
Aye	NY 13 th	D	Española, Adriano (/congress/members/adriano_espallat/412718)
Aye	NY 14 th	D	Crowley, Joe (/congress/members/joseph_crowley/400087)
Aye	NY 15 th	D	Serrano, José (/congress/members/jose_serrano/400366)
Aye	NY 16 th	D	Engel, Eliot (/congress/members/eliot_engel/400122)
Aye	NY 17 th	D	Lowey, Nita (/congress/members/nita_lowey/400246)
Aye	NY 18 th	D	Maloney, Sean (/congress/members/sean_maloney/412562)
Aye	NY 19 th	R	Faso, John (/congress/members/john_faso/412719)
Aye	NY 20 th	D	Tonko, Paul (/congress/members/paul_tonko/412319)

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Aye	NY 21 st	R	Stefanik, Elise (/congress/members/elise_stefanik/412648)
Aye	NY 22 nd	R	Tenney, Claudia (/congress/members/claudia_tenney/412720)
Aye	NY 23 rd	R	Reed, Tom (/congress/members/tom_reed/412393)
Aye	NY 24 th	R	Katko, John (/congress/members/john_katko/412649)
Aye	NY 25 th	D	Slaughter, Louise (/congress/members/louise_slaughter/400378)
Aye	NY 26 th	D	Higgins, Brian (/congress/members/brian_higgins/400641)
Aye	NY 27 th	R	Collins, Chris (/congress/members/chris_collins/412563)
North Carolina			
Aye	NC 1 st	D	Butterfield, G.K. (/congress/members/george_butterfield/400616)
Aye	NC 2 nd	R	Holding, George (/congress/members/george_holding/412553)
Aye	NC 3 rd	R	Jones, Walter (/congress/members/walter_jones/400209)
Aye	NC 4 th	D	Price, David (/congress/members/david_price/400326)
Aye	NC 5 th	R	Fox, Virginia (/congress/members/Virginia_fox/400643)
Vote	District	Party	Representative
Aye	NC 6 th	R	Walker, Mark (/congress/members/mark_walker/412670)
Aye	NC 7 th	R	Rouzer, David (/congress/members/david_rouzer/412641)
Aye	NC 8 th	R	Hudson, Richard (/congress/members/richard_hudson/412550)
Aye	NC 9 th	R	Pittenger, Robert (/congress/members/robert_pittenger/412551)
Aye	NC 10 th	R	McHenry, Patrick (/congress/members/patrick_mchenry/400644)
Aye	NC 11 th	R	Meadows, Mark (/congress/members/mark_meadows/412552)
Aye	NC 12 th	D	Adams, Alma (/congress/members/alma_adams/412607)
Aye	NC 13 th	R	Budd, Ted (/congress/members/ted_budd/412712)
North Dakota			
Aye	ND	R	Cramer, Kevin (/congress/members/kevin_cramer/412555)
Ohio			
Aye	OH 1 st	R	Chabot, Steve (/congress/members/steve_chabot/400071)
Aye	OH 2 nd	R	Wenstrup, Brad (/congress/members/brad_wenstrup/412564)

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrack.us

Vote	District	Party	Representative
Aye	OH 3 rd	D	Beatty, Joyce (/congress/members/joyce_beatty/412565)
Aye	OH 4 th	R	Jordan, Jim (/congress/members/jim_jordan/412226)
Aye	OH 5 th	R	Latta, Robert (/congress/members/robert_latta/412256)
Aye	OH 6 th	R	Johnson, Bill (/congress/members/bill_johnson/412460)
Aye	OH 7 th	R	Gibbs, Bob (/congress/members/bob_gibbs/412463)
Aye	OH 8 th	R	Davidson, Warren (/congress/members/warren_davidson/412675)
Aye	OH 9 th	D	Kaptur, Marcy (/congress/members/marcy_kaptur/400211)
Aye	OH 10 th	R	Turner, Michael (/congress/members/michael_turner/400411)
Aye	OH 11 th	D	Fudge, Marcia (/congress/members/marcia_fudge/412327)
Aye	OH 12 th	R	Tiberi, Pat (/congress/members/patrick_tiberi/400406)
Aye	OH 13 th	D	Ryan, Tim (/congress/members/tim_ryan/400352)
Aye	OH 14 th	R	Joyce, David (/congress/members/david_joyce/412566)
Aye	OH 15 th	R	Stivers, Steve (/congress/members/steve_stivers/412461)
No Vote	OH 16 th	R	Renacci, James (/congress/members/james_renacci/412462)
Oklahoma			
No Vote	OK 1 st	R	Bridenstine, Jim (/congress/members/jim_bridenstine/412567)
Aye	OK 2 nd	R	Mullin, Markwayne (/congress/members/markwayne_mullin/412568)
Aye	OK 3 rd	R	Lucas, Frank (/congress/members/frank_lucas/400247)
Aye	OK 4 th	R	Cole, Tom (/congress/members/tom_cole/400077)
Aye	OK 5 th	R	Russell, Steve (/congress/members/steve_russell/412650)
Oregon			
Aye	OR 1 st	D	Bonamici, Suzanne (/congress/members/suzanne_bonamici/412501)
Aye	OR 2 nd	R	Walden, Greg (/congress/members/greg_walden/400419)
Aye	OR 3 rd	D	Blumenauer, Earl (/congress/members/earl_blumenauer/400033)
Aye	OR 4 th	D	DeFazio, Peter (/congress/members/peter_defazio/400100)
Aye	OR 5 th	D	Schrader, Kurt (/congress/members/kurt_schrader/412315)
Pennsylvania			

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrack.us

Vote	District	Party	Representative
Aye	PA 1 st	D	Brady, Robert (/congress/members/robert_brady/400047)
Aye	PA 2 nd	D	Evans, Dwight (/congress/members/dwight_evans/412677)
Aye	PA 3 rd	R	Kelly, Mike (/congress/members/mike_kelly/412465)
Aye	PA 4 th	R	Perry, Scott (/congress/members/scott_perry/412569)
Aye	PA 5 th	R	Thompson, Glenn (/congress/members/glenn_thompson/412317)
Aye	PA 6 th	R	Costello, Ryan (/congress/members/ryan_costello/412651)
Aye	PA 7 th	R	Meehan, Patrick (/congress/members/patrick_meehan/412466)
Aye	PA 8 th	R	Fitzpatrick, Brian (/congress/members/brian_fitzpatrick/412721)
Aye	PA 9 th	R	Shuster, Bill (/congress/members/bill_shuster/409888)
No Vote	PA 10 th	R	Marino, Tom (/congress/members/tom_marino/412468)
Aye	PA 11 th	R	Barletta, Lou (/congress/members/lou_barletta/412469)
Aye	PA 12 th	R	Rothfus, Keith (/congress/members/keith_rothfus/412570)
Aye	PA 13 th	D	Boyle, Brendan (/congress/members/brendan_boyle/412652)
Aye	PA 14 th	D	Doyle, Mike (/congress/members/michael_doyle/400114)
Aye	PA 15 th	R	Dent, Charles (/congress/members/charles_dent/400648)
Aye	PA 16 th	R	Smucker, Lloyd (/congress/members/lloyd_smucker/412722)
Aye	PA 17 th	D	Cartwright, Matthew (/congress/members/matthew_cartwright/412571)
Aye	PA 18 th	R	Murphy, Tim (/congress/members/tim_murphy/400285)
Rhode Island			
Aye	RI 1 st	D	Cicilline, David (/congress/members/david_cicilline/412470)
Aye	RI 2 nd	D	Langevin, Jim (/congress/members/james_langevin/400230)
South Carolina			
Aye	SC 1 st	R	Sanford, Mark (/congress/members/marshall_sanford/400607)
Aye	SC 2 nd	R	Wilson, Joe (/congress/members/joe_wilson/400433)
Aye	SC 3 rd	R	Duncan, Jeff (/congress/members/jeff_duncan/412472)
Aye	SC 4 th	R	Gowdy, Trey (/congress/members/trey_gowdy/412473)
Aye	SC 5 th	R	Norman, Ralph (/congress/members/ralph_norman/412738)

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
No Vote	SC 6 th	D	Clyburn, Jim (/congress/members/james_clyburn/400075)
Aye	SC 7 th	R	Rice, Tom (/congress/members/tom_rice/412572)
South Dakota			
Aye	SD	R	Noem, Kristi (/congress/members/kristi_noem/412475)
Tennessee			
Aye	TN 1 st	R	Roe, Phil (/congress/members/david_roe/412310)
Aye	TN 2 nd	R	Duncan, John (/congress/members/john_duncan/400116)
Aye	TN 3 rd	R	Fleischmann, Chuck (/congress/members/charles_fleischmann/412476)
Aye	TN 4 th	R	DesJarlais, Scott (/congress/members/scott_desjarlais/412477)
Aye	TN 5 th	D	Cooper, Jim (/congress/members/jlm_cooper/400081)
No Vote	TN 6 th	R	Black, Diane (/congress/members/diane_black/412478)
Aye	TN 7 th	R	Blackburn, Marsha (/congress/members/marsha_blackburn/400032)
Aye	TN 8 th	R	Kustoff, David (/congress/members/david_kustoff/412724)
Aye	TN 9 th	D	Cohen, Steve (/congress/members/steve_cohen/412236)
Texas			
Aye	TX 1 st	R	Gohmert, Louie (/congress/members/louie_gohmert/400651)
Aye	TX 2 nd	R	Poe, Ted (/congress/members/ted_poe/400652)
Aye	TX 3 rd	R	Johnson, Sam (/congress/members/sam_johnson/400206)
Aye	TX 4 th	R	Ratcliffe, John (/congress/members/john_ratcliffe/412653)
Aye	TX 5 th	R	Hensarling, Jeb (/congress/members/jeb_hensarling/400175)
Aye	TX 6 th	R	Barton, Joe (/congress/members/joe_barton/400018)
Aye	TX 7 th	R	Culberson, John (/congress/members/john_culberson/400089)
Aye	TX 8 th	R	Brady, Kevin (/congress/members/kevin_brady/400046)
Aye	TX 9 th	D	Green, Al (/congress/members/al_green/400653)
Aye	TX 10 th	R	McCaul, Michael (/congress/members/michael_mccaul/400654)
Aye	TX 11 th	R	Conaway, Michael (/congress/members/michael_conaway/400655)
Aye	TX 12 th	R	Granger, Kay (/congress/members/kay_granger/400157)
Aye	TX 13 th	R	Thomberry, Mac (/congress/members/mac_thomberry/400404)

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Aye	TX 14 th	R	Weber, Randy (/congress/members/andy_weber/412574)
Aye	TX 15 th	D	Gonzalez, Vicente (/congress/members/vicente_gonzalez/412725)
Aye	TX 16 th	D	O'Rourke, Beto (/congress/members/beto_orourke/412575)
Aye	TX 17 th	R	Flores, Bill (/congress/members/bill_flores/412480)
Aye	TX 18 th	D	Jackson Lee, Sheila (/congress/members/sheila_jackson_lee/400199)
Aye	TX 19 th	R	Arrington, Jodey (/congress/members/jodey_arrington/412726)
Aye	TX 20 th	D	Castro, Joaquin (/congress/members/joaquin_castro/412576)
Aye	TX 21 st	R	Smith, Lamar (/congress/members/lamar_smith/400381)
Aye	TX 22 nd	R	Olson, Pete (/congress/members/pete_olson/412302)
Aye	TX 23 rd	R	Hurd, Will (/congress/members/will_hurd/412654)
Aye	TX 24 th	R	Marchant, Kenny (/congress/members/kenny_marchant/400656)
Aye	TX 25 th	R	Williams, Roger (/congress/members/roger_williams/412578)
Aye	TX 26 th	R	Burgess, Michael (/congress/members/michael_burgess/400052)
Aye	TX 27 th	R	Farenthold, Blake (/congress/members/blake_farenthold/412482)
Aye	TX 28 th	D	Cuellar, Henry (/congress/members/henry_cuellar/400657)
Aye	TX 29 th	D	Green, Gene (/congress/members/gene_green/400160)
Aye	TX 30 th	D	Johnson, Eddie (/congress/members/eddie_johnson/400204)
Aye	TX 31 st	R	Carter, John (/congress/members/john_carter/400068)
Aye	TX 32 nd	R	Sessions, Pete (/congress/members/pete_sessions/400367)
Aye	TX 33 rd	D	Veasey, Marc (/congress/members/marc_veasey/412579)
Aye	TX 34 th	D	Vela, Filemon (/congress/members/filemon_vela/412580)
Aye	TX 35 th	D	Doggett, Lloyd (/congress/members/lloyd_doggett/400111)
Aye	TX 36 th	R	Babin, Brian (/congress/members/brian_babin/412655)
Utah			
Aye	UT 1 st	R	Bishop, Rob (/congress/members/rob_bishop/400029)
Aye	UT 2 nd	R	Stewart, Chris (/congress/members/chris_stewart/412581)
Aye	UT 4 th	R	Love, Mia (/congress/members/mia_love/412656)

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrackus

Vote	District	Party	Representative
Vermont			
Aye	VT	D	Welch, Peter (/congress/members/peter_welch/412239)
Virginia			
Aye	VA 1 st	R	Wittman, Robert (/congress/members/robert_wittman/412255)
Aye	VA 2 nd	R	Taylor, Scott (/congress/members/scott_taylor/412727)
Aye	VA 3 rd	D	Scott, Bobby (/congress/members/robert_scott/400364)
Aye	VA 4 th	D	McEachin, Donald (/congress/members/donald_mceachin/412728)
Aye	VA 5 th	R	Garrett, Thomas (/congress/members/thomas_garrett/412729)
No Vote	VA 6 th	R	Goodlatte, Bob (/congress/members/bob_goodlatte/400154)
Aye	VA 7 th	R	Brat, Dave (/congress/members/david_brat/412605)
Aye	VA 8 th	D	Beyer, Donald (/congress/members/donald_beyer/412657)
Aye	VA 9 th	R	Griffith, Morgan (/congress/members/morgan_griffith/412485)
Aye	VA 10 th	R	Comstock, Barbara (/congress/members/barbara_comstock/412658)
Aye	VA 11 th	D	Connolly, Gerald (/congress/members/gerald_connolly/412272)
Washington			
Aye	WA 1 st	D	DelBene, Suzan (/congress/members/suzan_delbene/412505)
Aye	WA 2 nd	D	Larsen, Rick (/congress/members/rick_larsen/400232)
Aye	WA 3 rd	R	Herrera Beutler, Jaime (/congress/members/jaime_herrera_beutler/412486)
Aye	WA 4 th	R	Newhouse, Dan (/congress/members/dan_newhouse/412660)
Aye	WA 5 th	R	McMorris Rodgers, Cathy (/congress/members/cathy_mcmorris_rodgers/400659)
Aye	WA 6 th	D	Kilmer, Derek (/congress/members/derek_kilmer/412583)
Aye	WA 7 th	D	Jayapal, Pramila (/congress/members/pramila_jayapal/412730)
Aye	WA 8 th	R	Reichert, David (/congress/members/david_reichert/400660)
Aye	WA 9 th	D	Smith, Adam (/congress/members/adam_smith/400379)
Aye	WA 10 th	D	Heck, Denny (/congress/members/denny_heck/412584)
West Virginia			
Aye	WV 1 st	R	McKinley, David (/congress/members/david_mckinley/412487)
Aye	WV 2 nd	R	Mooney, Alex (/congress/members/alex_mooney/412662)

12/20/2019

S. 585: Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 -- GovTrack.us

Vote	District	Party	Representative
Aye	WV 3 rd	R	Jenkins, Evan (/congress/members/evan_jenkins/412663)
Wisconsin			
Aye	WI 2 nd	D	Pocan, Mark (/congress/members/mark_pocan/412585)
Aye	WI 3 rd	D	Kind, Ron (/congress/members/ron_kind/400218)
Aye	WI 4 th	D	Moore, Gwen (/congress/members/gwen_moore/400661)
Aye	WI 5 th	R	Sensenbrenner, James (/congress/members/james_sensenbrenner/400365)
Aye	WI 6 th	R	Grothman, Glenn (/congress/members/glenn_grothman/412661)
Aye	WI 7 th	R	Duffy, Sean (/congress/members/sean_duffy/412488)
Aye	WI 8 th	R	Gallagher, Mike (/congress/members/mike_gallagher/412731)
Wyoming			
Aye	WY	R	Cheney, Liz (/congress/members/liz_cheney/412732)

site MENU[Home \(/\)](#)[Start Tracking \(/start\)](#)[About GovTrack \(/about\)](#)[About the Data \(/about-our-data\)](#)[Privacy & Legal \(/legal\)](#)[Log in \(/accounts/login\)](#)*follow* GOVTRACK[f Facebook \(https://www.facebook.com/govtrack/\)](https://www.facebook.com/govtrack/)[t Twitter \(http://twitter.com/govtrack\)](http://twitter.com/govtrack)[M Medium \(https://medium.com/govtrack-insider\)](https://medium.com/govtrack-insider)[\\$ Patreon \(https://www.patreon.com/govtrack\)](https://www.patreon.com/govtrack)[B Blog \(/blog\)](#)[C Code \(https://github.com/govtrack/govtrack.us-web/commits/master\)](https://github.com/govtrack/govtrack.us-web/commits/master)

Launched in 2004, GovTrack helps everyone learn about and track the activities of the United States Congress. This is a project of [Civic Impulse, LLC \(http://www.civicimpulse.com\)](http://www.civicimpulse.com). GovTrack.us is not a government website.

[About the Site \(/about\)](#) | [Contact Us \(/contact\)](#)

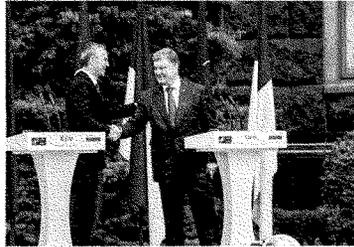
You are encouraged to reuse any material on this site. Hackers/journalists/researchers: See these [open data sources \(/about-our-data\)](#).



NATO's Support to Ukraine

At their meeting in Warsaw on 9 July 2016, the Heads of State and Government of the NATO-Ukraine Commission endorsed a Comprehensive Assistance Package (CAP) for Ukraine. The CAP supports Ukraine so that it can better provide for its own security, and carry out essential reforms in the security and defence sector. This includes objectives set out in the 2016 Strategic Defence Bulletin (SDB) towards adopting NATO standards and achieving interoperability with NATO forces by 2020.

In July 2018, Ministers of Defence of the NATO-Ukraine Commission noted the second review of the CAP, aligning it further to Ukraine's reform objectives under the Annual National Programme (ANP). This fact sheet reflects the current state of NATO's support to Ukraine under the CAP.



NATO advisory effort

Allied experts, based at the NATO Representation to Ukraine (NRU), advise Ukraine on key issues related to the implementation of the SDB. They support the reform of Ukraine's logistics system, the development of a non-commissioned officers' corps and other issues. Advisers also provide support to Ukraine in developing national legislation reflecting key Euro-Atlantic principles and norms. Recently, advisory efforts have focused on the implementation of Ukraine's Law on National Security (notably, effective command and control arrangements, ensuring civilian control and democratic oversight of the security and defence sector and reform of the Security Service of Ukraine).

Command, Control, Communications and Computers (C4) Trust Fund

Through the C4 Trust Fund, led by Canada, Germany and the UK, and executed by the NATO Communications and Information Agency (NCIA), NATO assists Ukraine in re-organising and modernising its C4 structures and capabilities, as well as increasing interoperability with NATO. Under the C4 Trust Fund:

- The Regional Airspace Security Programme (RASP) aims to increase civil/ military air traffic coordination and enable real-time connectivity with neighbouring countries to provide early notification and coordination on airspace threats, security incidents and suspicious aircrafts. The implementation of the project is expected to start by the end 2018.
- The Secure Communications project will provide secure satellite communications and Blue Force Tracking Capabilities to the Ukrainian Armed Forces by the end of 2018.
- The Knowledge Sharing project provides Ukraine with information on NATO C4 standards and procedures. Various activities have already taken place, including workshops, expert visits and a hackathon. The project will be completed by the beginning of 2019.

Logistics and Standardisation Trust Fund

The Trust Fund, led by the Czech Republic, the Netherlands and Poland, supports the ongoing reform of Ukraine's logistics and standardisation systems. The project will be achieved through the implementation of three initiatives:

- National Codification Capability Enhancement: This project supports the transition to a NATO Codification System (NCS) by the end of 2018.
- Supply Chain Management Capability Improvement: This project enhances logistics performance by testing

improvements on a small scale, focusing on an improved Supply Chain Command and Control System (C2S), warehouse management, and materiel distribution and (re)supply, to be completed by summer 2019.

- Standardisation Management Capability Improvement: This project supports the implementation of a centralised standardisation management system, which is expected to become operational in Ukraine by summer 2019.

Cyber Defence Trust Fund

The Cyber Defence Trust Fund, led by Romania, and implemented by Rasirom, a Romanian state-owned company, supports Ukraine in developing defensive capabilities in the area of cyber security incident response. Assistance includes establishing two Incident Management Centres to monitor cyber security events, as well as laboratories to investigate and handle cyber security incidents. Ukraine also receives training in employing this technology and equipment. In June 2017, the equipment was successfully delivered at the Ukrainian beneficiary institutions.

Medical Rehabilitation Trust Fund

Through the Medical Rehabilitation Trust Fund, NATO is assisting Ukraine in raising the standards and long-term sustainability of its medical rehabilitation services for wounded servicemen and women. With Bulgaria as lead nation, and executed by the NATO Support Agency (NSPA), the Medical Rehabilitation Trust Fund focuses on direct medical support for servicemen and women to facilitate their rapid access to medical and psychological rehabilitation services, as well as capability development for Ukraine's medical rehabilitation institutions.

To date, support has been provided to 1,500 medical rehabilitation experts, 500 servicemen, 90 families, 4 medical rehabilitation units, and to the Invictus Games Team Ukraine. In addition, the Trust Fund has provided capacity-building support to the Presidential Administration, Ministry of Defense, Ministry of Health, Ministry of Social Policy, Ministry of Education, and established long-term educational programs for different categories of care providers.



Military Career Transition Trust Fund

The MCT Trust Fund supports Ukraine in developing a sustainable and effective military career transition system for military personnel returning to civilian careers. The Trust Fund, led by Norway and executed by NATO's Political Affairs and Security Policy Division, also supports specific psychological rehabilitation activities. From 2014 to 2018, the programme delivered 187 three-day seminars dedicated to the psychological rehabilitation of 7,486 military servicemen from the Armed Forces, the National Guard and State Border Guard Service, previously deployed in active operations in eastern Ukraine.

Resettlement Programme

This programme aims to facilitate the reintegration process from military to civilian careers for military personnel. Through vocational training, beneficiaries are provided with opportunities to obtain additional qualifications relevant to the civilian labour market. As of mid-2018, more than 10,000 former military servicemen benefited from the programme in 65 locations all across Ukraine, with overall re-employment rate at 75%. The total number of beneficiaries in 2018 is expected to be 850.

"Demilitarisation" Trust Fund

Initiatives under the Trust Fund on the Destruction of Conventional Ammunition, Small Arms and Light Weapons and Anti-personnel Mines of PFM-1 type in Ukraine, led by the United States and executed by NSPA, have resulted in:

- Destruction of 27,853 tons of conventional ammunition (of a 44,231 tons target)
- Destruction of 2,128,068 PFM-1 anti-personnel land mines (of a 5,766,768 units target).
- Destruction of 130,100 pieces of Small Arms and Light Weapons.

Following a request from Ukraine, the Trust Fund is currently working on a proposal to enhance Ammunition Storage Safety Management in the country.

Radioactive Waste Disposal Trust Fund

This Trust Fund, led by Germany and executed by the NSPA, aims to tackle radioactive waste buried by the former Soviet Army and currently under the control of the Ministry of Defence of Ukraine. The remediation of a site in Tsybuleve, Kitrovhrad region follows the successful completion in 2017 of a first project at the site of Vakulenchuk, Zhytomyr region.

Explosive Ordnance Disposal and Counter-Improvised Explosive Devices (EOD/ C-IED) Trust Fund

The project assists the transformation of EOD and development of C-IED capabilities through three initiatives:

- Doctrine: Development of common EOD and C-IED terminology, the publication of a Ukrainian C-IED doctrine, and the identification of capability requirements for the future.
- Interoperability: Training to foster interoperability between national actors.
- Civil support: Search training for use in urban areas.

NATO-Ukraine Platform on Countering Hybrid Warfare

NATO and Ukraine established a joint Platform on Countering Hybrid Warfare to facilitate cooperation in identifying hybrid threats, to build capacity and to strengthen resilience against hybrid threats. High-level seminars were held on crisis management in Warsaw, Poland, in October 2017, and strategic communications in Vilnius, Lithuania, in April 2018 and in Kyiv, Ukraine, in November 2018. Further projects are being prepared.

Roadmap on NATO-Ukraine Defence Technical Cooperation

In September 2015, the Chairman of the Interagency Commission for Policy on Military-Technical Cooperation and Exports Control and NATO's Deputy Assistant Secretary General for Defence Investment signed a Joint Declaration on strengthening defence-technical cooperation between Ukraine and NATO. A Roadmap supports a number of activities including those related to C4, ammunition safety, codification, life cycle management and assurance, as well as defence industry reform.

Strategic Communications Partnership Roadmap

The Strategic Communications Partnership Roadmap was signed by the NATO Secretary General and the Secretary of the National Security and Defense Council of Ukraine in September 2015. It advises the Ukrainian authorities in developing, managing and responding to security challenges by placing strategic communications at the core of a national strategy. It helps civilian and military staff to be effective strategic communicators. In 2017/18 the NATO Information and Documentation Centre organised 19 training activities, and advised national academies in Ukraine in the area of strategic communications.

Planning and Review Process (PARP)

In 2018, forty-two PARP Partnership Goals were agreed between NATO and Ukraine that aim to help Ukraine modernise and reform its defence forces. Twenty-six Partnership Goals are addressed to the Ministry of Defence and the Armed Forces of Ukraine, with an emphasis on reforming current structures towards western defence principles and practices. A total of 15 Partnership Goals are also addressed to the Ministry of Interior and its security organisations (State Border Guard Service of Ukraine, National Guard of Ukraine, State Emergency Service of Ukraine), and one to the SSU.

Defence Education Enhancement Programme (DEEP)

DEEP assists Ukraine in improving and restructuring its military education and professional training systems. It focuses on eight defence education institutions and five training centres for Non-Commissioned Officers. Since 2017, DEEP focuses on curriculum development in the areas of civilian and democratic control, personnel management, strategic communication, leadership, quality management and operational planning. The programme has been extended until 2020.



Building Integrity (BI)

NATO BI provides institutional and individual tailored assistance to strengthen integrity and reduce corruption in the defence and security institutions. Ukraine joined NATO BI in 2007. Since 2014, Ukraine is the biggest recipient of NATO BI assistance. The Secretariat of the Cabinet of Ministers, Ministry of Defence, Ministry of Internal Affairs, State Border Guards Service, National Guards, Security Service, National Police as well as National Anti-Corruption Bureau, National Agency for Corruption Prevention and NGOs are benefiting from NATO BI expertise. BI support mainly focuses on the management of personnel and financial resources. Specific educational programmes are also offered to military and security academies. This tailored assistance is supported through contributions to the BI Trust Fund.

Professional Development Programme (PDP)

Launched in 2005, NATO's Professional Development Programme (a Trust Fund led by the UK) trains key civilian security and defence officials on effective democratic management and building local capacity. In 2011-2016 alone, the PDP delivered various forms of training to some 9,000 civil servants in Ukraine. In 2016-2017, the Programme underwent a major transformation to better align it to the strategic situation in Ukraine. Key activities in 2018 aim to provide training to Euro-Atlantic integration specialists, support defence and security sector reform efforts, and focus on management and leadership skills.

Science for Peace and Security Programme (SPS)

Ukraine has been the largest beneficiary of the NATO Science for Peace and Security (SPS) Programme since 2014. There are currently 42 ongoing SPS activities with Ukraine. Leading areas of cooperation include defence against chemical, biological, radiological and nuclear (CBRN) agents, security-related advanced technology, and unexploded ordnance and mine detection and clearance. Flagship SPS projects in Ukraine include building capacity in the field of telemedicine, support to humanitarian demining in Ukraine, and the development of a 3D landmine detection radar. Ukraine is actively involved in cutting-edge research to develop a system capable of detecting explosives and weapons, in real time, in a mass transit environment. Looking ahead, the SPS is supporting the hybrid platform through a new project on early warning signals for hybrid attacks.

Public Diplomacy Division (PDD) – Press & Media Section

Tel.: +32(0)2 707 5041

E-mail: moc@hq.nato.int

Follow us @NATOpress

www.nato.int

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

AMERICAN OVERSIGHT,

Plaintiff,

v

U.S. DEPARTMENT OF ENERGY,

Defendant

Case No. 1 19-cv-3155-ABJ

JOINT STATUS REPORT AND PRODUCTION SCHEDULE

Plaintiff, American Oversight (“AO” or “Plaintiff”), and Defendant, the United States Department of Energy (“DOE” or “Defendant”), submit the following Joint Status Report and Production Schedule in accordance with this Court’s Order (ECF # 7).

This is a FOIA case. Plaintiff’s complaint seeks records responsive to eight separate FOIA requests. The parties have agreed to the schedule below.

1. On or before January 28, 2020, DOE will complete its Outlook searches (emails, attachment to emails, and calendar invites) and produce any non-exempt records¹ identified in those searches that are responsive to the following FOIA requests.

¹ DOE’s production may not include responsive documents in which other agencies have equities and which must be reviewed by those agencies prior to release.

Case 1:19-cv-03155-ABJ Document 9 Filed 01/13/20 Page 2 of 3

- a. HQ-2019-01418-F (Perry Communications);²
- b. HQ-2020-00011-F (McCormick Communications); and
- c. HQ-2019-01238-F (Ukraine Delegation).

2. On or before February 4, 2020, DOE will complete its Outlook searches (emails, attachment to emails, and calendar invites) and produce any non-exempt records³ identified in those searches that are responsive to the following FOIA requests:

- a. HQ-2019-01236-F (Bleyzer Communications),
- b. HQ-2020-00053-F (Ukraine Communications), and
- c. HQ-2020-00012-F (Giuliani Communications).

3. On or before March 16, 2020, DOE will complete its search and produce any non-exempt records identified in those searches that are responsive to the first paragraph of request HQ-2020-00052-F (Ukraine Meetings).

4. The schedule above reflects some, but not all, of the FOIA requests at issue in this case and some, but not all, of the search mediums requested for certain of those requests. The parties agree to address those additional requests and search mediums in subsequent reports and propose to file such reports on the last business day of each month.

² Request HQ-2019-01418-F (Perry Communications) sought certain communications sent or received by Secretary Perry, "as well as by any aide or other assistant who accompanied Secretary Perry to Ukraine." On or before January 28, 2020, DOE will produce any responsive, non-exempt emails sent or received by Secretary Perry and one aide or assistant, but will not produce any responsive, non-exempt emails sent or received by two additional aides or assistants. With respect to the two additional aides or assistants, DOE will provide an update on those searches in a future status report.

³ DOE's production may not include responsive documents in which other agencies have equities and which must be reviewed by those agencies prior to release.

DATED: January 13, 2020

Respectfully submitted,

<p><u>/s/ Hart W. Wood</u> HART W. WOOD (D.C. Bar No. 1034361) SARA K. CREIGHTON (D.C. Bar No. 1002367) JOHN E. BIES (D.C. Bar No. 483730)</p> <p>AMERICAN OVERSIGHT 1030 15th Street NW, B255 Washington, DC 20005 (202) 873-1743 Hart.wood@americanoversight.org Sara.creighton@americanoversight.org John.bies@americanoversight.org</p> <p>Counsel for Plaintiff</p>	<p>JOSEPH H. HUNT Assistant Attorney General</p> <p>MARCIA BERMAN Assistant Branch Director</p> <p><u>/s/ Hilarie E. Snyder</u> HILARIE E. SNYDER (D.C. Bar No. 464837) Trial Attorney U.S. Department of Justice Civil Division, Federal Programs Branch 1100 L Street, N.W., Room 12010 Washington, D.C. 20005 Tel: (202) 305-0747; Fax: (202) 616-8470 hilarie.e.snyder@usdoj.gov</p> <p>Counsel for the Defendant</p>
--	--

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

CHARLES M KUPPERMAN
9075 Sorreno Ct
Naples, FL 34119

Plaintiff,

v

Civil Action No. 19-3224

UNITED STATES HOUSE OF
REPRESENTATIVES
Ford House Office Building Room 217
Washington, D C 20515

Defendant,

THE HONORABLE DONALD J TRUMP,
in his official capacity as President of the
United States
1600 Pennsylvania Avenue, NW
Washington, D C 20500

Defendant

THE HONORABLE NANCY PELOSI,
in her official capacity as Speaker of the
House of Representatives
1236 Longworth House Office Building
Washington, D C. 20515

Defendant,

THE HONORABLE ADAM B SCHIFF,
in his official capacity as Chairman of the
House Permanent Select Committee
on Intelligence
HVC304 Capitol
Washington, D C 20515

Defendant,

THE HONORABLE ELIOT L ENGEL,)
 in his official capacity as Chairman of the)
 House Committee on Foreign Affairs)
 2170 Rayburn House Office Building)
 Washington, D C 20515)
)
 Defendant,)
)
 THE HONORABLE CAROLYN B MALONEY,)
 in her official capacity as Acting Chair of the)
 House Committee on Oversight and Reform)
 2157 Rayburn House Office Building)
 Washington, D C 20515)
)
 Defendant,)
)
 _____)

COMPLAINT

Pursuant to 28 U S C §§ 2201 and 2202, Plaintiff Charles M Kupperman, the former Deputy National Security Advisor and Acting National Security Advisor to President Donald J. Trump, files this action in the nature of interpleader against Defendants the United States House of Representatives, Representative Nancy Pelosi, Speaker of the House of Representatives, Representative Adam B Schiff, Chairman of the House Permanent Select Committee on Intelligence, Representative Eliot L Engel, Chairman of the House Committee on Foreign Affairs, Representative Carolyn B Maloney, Acting Chair of the House Committee on Oversight and Reform (collectively, the “House Defendants”), and Donald J Trump, President of the United States Plaintiff is faced with irreconcilable commands by the Legislative and Executive Branches of the Government and, accordingly, seeks a declaratory judgment from this Court as to whether he is lawfully obliged to comply with a subpoena issued by the House Defendants demanding his testimony “[p]ursuant to the House of Representatives’ impeachment inquiry,” or he is lawfully obliged to abide by the assertion of immunity from congressional process made by

the President in connection with the testimony sought from Plaintiff. Plaintiff hereby alleges as follows:

INTRODUCTION AND SUMMARY OF THE ACTION

1 Plaintiff served as the Deputy National Security Advisor and Assistant to the President from January 9, 2019, to September 20, 2019, and as the Acting National Security Advisor from September 10, 2019, to September 20, 2019. As part of the House's impeachment inquiry, the House Defendants have issued a subpoena requiring Plaintiff to appear and testify about his official duties in connection with the United States' relations with Ukraine. The President, however, acting through the White House Counsel, has asserted that Plaintiff, as a close personal advisor to the President, is immune from Congressional process, and has instructed Plaintiff not to appear and testify in response to the House's subpoena. Plaintiff obviously cannot satisfy the competing demands of both the Legislative and Executive Branches, and he is aware of no controlling judicial authority definitively establishing which Branch's command should prevail.

2 Absent a definitive judgment from the Judicial Branch "say[ing] what the law is," *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), Plaintiff will effectively be forced to adjudicate the Constitutional dispute himself, and if he judges wrongly, he will inflict grave Constitutional injury on either the House or the President. On the one hand, an erroneous judgment to abide by the President's assertion of testimonial immunity would unlawfully impede the House from carrying out one of its most important core Constitutional responsibilities, "the sole Power of Impeachment." U.S. CONST., art. I, § 2, cl. 5. And it would subject Plaintiff to potential criminal liability for contempt of Congress. See 2 U.S.C. § 192. On the other hand, an erroneous judgment to appear and testify in obedience to the House Defendants' subpoena would

unlawfully impair the President in the exercise of his core national security responsibilities, *see generally* U.S. CONST., art. II, §§ 2–3, by revealing confidential communications from “those who advise and assist [him] in the performance of [his] manifold duties, the importance of this confidentiality is too plain to require further discussion.” *United States v. Nixon*, 418 U.S. 683, 705 (1974). And it would constitute a violation, albeit in good faith, of the oath Plaintiff took to uphold the Constitution of the United States. Under our system of Government, it does not fall to a private citizen, but rather falls to the Judicial Department, “to construe and delineate claims arising under express powers” granted to the Legislative and Executive Branches, and to resolve conflicting claims by those two Branches “with respect to powers alleged to derive from enumerated powers” conferred on them by the Constitution. *Id.* at 704.

JURISDICTION AND VENUE

3 This Court has jurisdiction pursuant to 28 U.S.C. § 1331. This case arises under Articles I and II of the Constitution of the United States, and implicates Article I, Section 2, Clause 5, which provides that the House of Representatives shall have “the sole Power of Impeachment,” and Article II, Section 1, Clause 1, which vests the “executive Power” in a President of the United States of America.”

4 This Court has authority to issue a declaratory judgment and order other relief that is just and proper pursuant to 28 U.S.C. §§ 2201 and 2202.

5 Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(e)(1) & (b)(2). All of the Defendants perform their official duties in this judicial district and a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

PARTIES

6 Plaintiff Charles M. Kupperman is a citizen of Florida.

7 Defendant United States House of Representatives is established by Article I, Section 1 of the Constitution of the United States, and it is vested with “the sole Power of Impeachment” U.S. CONST., art. I, § 2, cl. 5

8 Defendant Nancy Pelosi is the Speaker of the House of Representatives. She is sued in her official capacity.

9. Defendant Adam B. Schiff is the Chairman of the House Permanent Select Committee on Intelligence. He is sued in his official capacity.

10 Defendant Eliot L. Engel is the Chairman of the House Committee on Foreign Affairs. He is sued in his official capacity.

11 Defendant Carolyn B. Maloney is the Acting Chair of the House Committee on Oversight and Reform. She is sued in her official capacity.

12 Defendant Donald J. Trump is the President of the United States. He is sued in his official capacity.

FACTUAL ALLEGATIONS

13 Plaintiff served as the Deputy National Security Advisor and Assistant to the President from January 9, 2019, to September 20, 2019, and as the Acting National Security Advisor from September 10, 2019, to September 20, 2019. In that capacity, Plaintiff served as a close personal advisor to President Trump. Among Plaintiff’s many duties as Deputy National Security Advisor and Acting National Security Advisor was advising the President with respect to national security policy toward Ukraine and coordinating national security policy among the relevant Executive Branch agencies, including but not limited to the Department of State, the Department of Defense, and the Office of Management and Budget.

14 On October 25, 2019, Defendant Schiff, through Committee counsel, transmitted to Plaintiff's counsel an electronic message, "[p]ursuant to the House of Representatives' impeachment inquiry, transmitting a subpoena that compels [Plaintiff] to appear" for a deposition at 9 30 a.m. on October 28, 2019. Although the subpoena was signed by Defendant Schiff on Monday, October 21, 2019, Committee counsel did not serve the subpoena on Plaintiff's counsel until 4 14 p.m. on Friday, October 25, 2019. A copy of the electronic message and the subpoena is attached hereto as Exhibit A.

15 Committee counsel's electronic message explained that the "subpoena is being issued by the Permanent Select Committee on Intelligence 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 Committee on Oversight and Reform." Exhibit A at 1

16. The electronic message described the subject and scope of the investigation as follows: "The testimony shall be part of the House's impeachment inquiry and shared among the Committees, as well as with the Committee on the Judiciary as appropriate." *Id.*

17 Because the subpoena seeks testimony concerning Plaintiff's service as senior confidential adviser to the President, Plaintiff's counsel provided the White House Counsel with a copy of the subpoena, and requested that the White House Counsel notify him of the President's position on the subpoena.

18 On October 25, 2019, the White House Counsel transmitted a letter to counsel for Plaintiff, asserting the "constitutional immunity of current and former senior advisors to the President" and instructing Plaintiff not to appear and testify in response to the subpoena. A copy of the letter is attached hereto as Exhibit B. The White House Counsel stated that the Office of Legal Counsel of the Department of Justice had "advised [him] that [Plaintiff] is absolutely

immune from compelled congressional testimony with respect to matters related to his service as a senior adviser to the President ” Exhibit B at 1 The White House Counsel enclosed the opinion of the Office of Legal Counsel, and it is included in Exhibit B hereto

19 The White House Counsel informed Plaintiff’s counsel that “in order to protect the prerogatives of the Office of the President today and in the future, and in response to your request, the President directs Mr Kupperman not to appear at the Committee’s scheduled hearing on Monday, October 28, 2019 ” Exhibit B at 2

LEGAL FRAMEWORK

20 Plaintiff is uncertain whether the subpoena issued to Plaintiff by the House Defendants validly obligates Plaintiff to appear for two separate reasons (1) the President’s assertion of immunity against congressional process may override the House subpoena, and (2) the House subpoena may not have been validly issued under House Rules Plaintiff is not aware of any Supreme Court decision definitively answering either of these questions.

A. Plaintiff Seeks a Declaratory Judgment on Whether He Is Immune from Congressional Process.

21 For nearly a half century, the Office of Legal Counsel of the Department of Justice (“OLC”) has consistently opined that “ ‘the President and his immediate advisers are absolutely immune from testimonial compulsion by a Congressional committee’ on matters related to their official duties ” Memorandum for the Counsel to the President from Steven A Engel, Assistant Attorney General, Office of Legal Counsel, *Re Testimonial Immunity Before Congress of Former Counsel to the President*, 43 Op O L C , slip op. at *1 (May 20, 2019) (“Engel Opinion”) (quoting Memorandum for All Heads of Offices, Divisions, Bureaus and Boards of the Department of Justice, from John M Harmon, Acting Assistant Attorney General, Office of Legal Counsel, *Re Executive Privilege* at 5 (May 23, 1977)) OLC has reaffirmed this

position more than a dozen times over the course of the last nine administrations of both political parties. *See Engel Opinion* at 3, n 1 (citing OLC opinions from the administrations of every President since President Nixon)

22 The Executive Branch has, with few exceptions, refused to permit close White House advisors to the President to testify before Congress since the 1940s when the Executive Office of the President was created. *See id.* at 7. OLC first articulated the legal basis for testimonial immunity of close Presidential advisors in 1971 in a Memorandum authored by then-Assistant Attorney General William H. Rehnquist. *See Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, Re Power of Congressional Committee to Compel Appearance or Testimony of "White House Staff"* (Feb. 5, 1971). Assistant Attorney General Rehnquist defined the scope of the immunity as follows:

The President and his immediate advisers — that is, those who customarily meet with the President on a regular or frequent basis — should be deemed absolutely immune from testimonial compulsion by a congressional committee. They not only may not be examined with respect to their official duties, but they may not even be compelled to appear before a congressional committee.

Id. at 7.

23 Both in his capacity as Deputy National Security Advisor and Assistant to the President, and in his capacity as Acting National Security Advisor, Plaintiff met with, and advised, President Trump directly on a frequent and regular basis.

24 The Rehnquist Memorandum has been repeatedly, and without exception, reaffirmed in opinions by heads of OLC from both political parties. *See, e.g., Letter to Phillip E. Areeda, Counsel to the President, from Antonin Scalia, Assistant Attorney General, Office of Legal Counsel* (Sept. 25, 1974) (enclosing a Memorandum), *Letter Opinion for the Counsel for*

the President from Christopher H. Schroeder, Acting Assistant Attorney General, Office of Legal Counsel, *Re Immunity of the Counsel to the President from Compelled Congressional Testimony*, 20 Op. O.L.C. 308 (1996), Memorandum Opinion for the Counsel to the President from Karl R. Thompson, Acting Assistant Attorney General, Office of Legal Counsel, *Re Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C., slip op. *1 (July 15, 2014) (“Thompson Memorandum”).

25 OLC’s rationale for this immunity begins with the premise that “[t]he President is a separate branch of government. He may not compel congressmen to appear before him. As a matter of separation of powers, Congress may not compel him to appear before it.” Engel Opinion at 4 (quoting Memorandum for Edward C. Schmults, Deputy Attorney General, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel at 2 (July 29, 1982)). OLC has reasoned that the testimonial immunity enjoyed by the President himself necessarily must extend to his close confidential advisors whose only function is to advise and assist the President in carrying out his duties. “For the President’s absolute immunity to be fully meaningful, and for these separation of powers principles to be adequately protected, the President’s immediate advisers must likewise have absolute immunity from congressional compulsion to testify about matters that occur during the course of discharging their official duties.” Thompson Memorandum, 38 Op. O.L.C., slip op. at *2. Absent testimonial immunity against Congressional process, according to OLC, the President’s “strong interests in confidentiality, as well as the President’s ability to obtain sound and candid advice” would be impaired. Engel Opinion, 43 Op. O.L.C., slip op. at *5

26 On the other hand, the only judicial decision to address the question has concluded that the President's close advisors do *not* enjoy absolute immunity from Congressional process. In *Committee on the Judiciary v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008), the House Committee on the Judiciary brought suit against Counsel to the President Harriet Miers and White House Chief of Staff Joshua Bolten to enforce its subpoenas for testimony and documents relating to the termination of nine United States Attorneys. District Judge Bates explained that Supreme Court authority on this question "powerfully suggests that such advisors do not enjoy absolute immunity." *Id.* at 99. The district court pointed out, *see id.* at 100–03, that in *Harlow v. Fitzgerald*, the Supreme Court held that senior presidential advisors do not enjoy absolute immunity from civil suits based on official acts even though the Court had previously held that the President himself is absolutely immune from civil suits based on official acts. *See* 457 U.S. 800 (1982), *see also*, *Nixon v. Fitzgerald*, 457 U.S. 731, 749 (1982). The court emphasized the narrow scope of its decision, holding "only that Ms. Miers (and other senior presidential advisors) do not have absolute immunity from compelled congressional process in the context of this particular subpoena dispute." *Miers*, 558 F. Supp. 2d at 105–06.

27 The district court in *Miers* further concluded that the Counsel to the President was not entitled to absolute or qualified immunity because the inquiry did not "involve the sensitive topics of national security or foreign affairs." *Id.* at 105. National security and foreign affairs are at the heart of the information that the House Defendants seek from Plaintiff in connection with the House's impeachment inquiry.

28 The district court's decision in *Miers* was stayed pending appeal. *See Comm. on the Judiciary of the U.S. House of Representatives v. Miers*, 542 F.3d 909, 910–11 (D.C. Cir. 2008) (per curiam). The case settled, and the appeal was dismissed before any further action was

taken by the court of appeals *Comm on the Judiciary of the U S House of Representatives v Miers*, No 08-5357, 2009 WL 3568649, at *1 (D.C Cir Oct 14, 2009) Subsequent OLC decisions from both the Obama Administration and the Trump Administration have “respectfully disagree[d] with the district court’s conclusion in *Miers* and adhere[d] to this Office’s long-established position that the President’s immediate advisers are absolutely immune from compelled congressional testimony ” Engel Opinion, 43 Op. O L C , slip op. at *14 (citing Thompson Memorandum, 38 Op O L C , slip op at *5–9)

29 In short, there is no definitive judicial authority resolving the question whether Plaintiff is bound to abide by the President’s assertion of immunity or to comply with the House Defendants’ subpoena issued “[p]ursuant to the House of Representatives’ impeachment inquiry ” It is not clear whether OLC’s extension of testimonial immunity to a congressional subpoena issued in support of an impeachment inquiry – a judicial proceeding – is consistent with Supreme Court precedent post-dating the Rehnquist Memorandum *See, e g , United States v Nixon*, 418 U S 683 (1974) (President does not have absolute immunity from subpoenas issued by grand juries in criminal judicial proceedings) On the other hand, it is also not clear whether the decision in *Miers* rejecting a close Presidential advisor’s assertion of absolute testimonial immunity would extend to a subpoena issued to a former Deputy National Security Advisor seeking testimony relating to confidential national security communications concerning Ukraine, and in any case, that decision is not binding precedent.

B. Plaintiff Seeks a Declaratory Judgment on Whether the Subpoena Issued to Plaintiff Is Authorized under House Rules.

30 Supreme Court precedent requires courts to determine “whether the committee was authorized to exact the information which the witness withheld before consider[ing] whether Congress had the power to confer upon the committee the authority which it claimed ”

United States v. Rumely, 345 U.S. 41, 42–43 (1953). “The required authorization from the full House may take the form of a statute, a resolution, or a standing rule of the House.” *Trump v. Mazars USA, LLP*, No.19-5142, 2019 WL 5089748, at *22 (D.C. Cir. Oct. 11, 2019), *pet. for reh’g en banc* filed Oct. 24, 2019 (quoting Morton Rosenberg, *When Congress Comes Calling: A Study on the Principles, Practices, and Pragmatics of Legislative Inquiry* 33–34 (2017)), *see also Wilkerson v. United States*, 365 U.S. 399, 407–09 (1961), *Watkins v. United States*, 354 U.S. 178, 201 (1957), *Rumely*, 345 U.S. at 42–43.

31 Since 1975, the Rules of the House have granted committees the power to subpoena witnesses and materials under Rule XI, clause 2(m). *See* Elizabeth Rybicki and Michael Greene, *The Impeachment Process in the House of Representatives*, CONGRESSIONAL RESEARCH SERVICE R45769, at 4 (Updated Oct. 10, 2019), <https://bit.ly/2IGH6mI>. Prior to this rule change, House committees lacked subpoena power absent “resolutions providing blanket investigatory authorities that were agreed to at the start of a Congress or through authorizing resolutions for [an] impeachment investigation.” *Id.* The House has not passed a resolution or statute authorizing the House Defendants’ impeachment inquiry, nor has the House passed a resolution or statute authorizing the House Defendants to issue subpoenas as part of an impeachment investigation. Accordingly, the subpoena issued to Plaintiff is valid only if it is authorized by Rule XI, clause 2(m).

32 Rule XI, clause 2(m)(1) of the House Rules governing the 116th Congress authorizes Committee Chairs to issue subpoenas “[f]or the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII).” But none of the referenced “functions and duties” expressly include impeachment inquiries.

33. Rule X, clause 1 describes the “legislative,” rather than impeachment, jurisdictions of each standing committee. None of the “[g]eneral oversight responsibilities” listed in Rule X, clause 2 involve impeachment proceedings. Rather, this subsection also references only legislative concerns.

The various standing committees shall have general oversight responsibilities as provided in paragraph (b) in order to assist the House in— (1) its analysis, appraisal, and evaluation of— (A) the application, administration, execution, and effectiveness of Federal laws, and (B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation, and (2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.

Rule X, clause (2)(a). And none of the “[s]pecial oversight functions” identified in clause 3 or the “[a]dditional functions of committees” in clause 4 reference impeachment proceedings either.

34. Likewise, no provision in Rule XI assigns functions or duties regarding impeachment proceedings. And while Clause 1(b)(1) does provide that “[e]ach committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X,” Rule X concerns only legislative responsibilities and does not mention impeachment.

35. Nor does Rule XII, clause 2 assign any impeachment functions or duties. It sets forth procedures for the Speaker to refer bills, resolutions, and other matters to committees. *See* Rule XII, clause 2.

36. The House Defendants appear to acknowledge that they have not been authorized to issue subpoenas in aid of an impeachment inquiry. Instead, they have stated that the subpoena to Plaintiff was “issued by the Permanent Select Committee on Intelligence under the Rules of the House of Representatives *in exercise of its oversight and legislative jurisdiction*.” Exhibit A at 1 (emphasis added).

37 It is unclear whether a House committee has the authority to issue subpoenas to investigate potentially illegal conduct by an impeachable officer outside the scope of a properly authorized impeachment inquiry. In *Trump v Mazars USA, LLP*, Judge Rao observed, in dissent, that “[i]nvestigations of impeachable offenses simply are not, and never have been, within Congress’s legislative power.” No. 19-5142, 2019 WL 5089748 (D.C. Cir. Oct. 11, 2019) at *26 (Rao, J., dissenting). Judge Rao opined that longstanding principles of separation of powers preclude the Legislative Branch from investigating, prosecuting, and rendering judgment on alleged wrongdoing except when exercising its impeachment powers, which are *judicial* in nature. See *id.* at *31–32 (Rao, J., dissenting). And she concluded that historical practice going back to the Founding has consistently drawn a sharp distinction between congressional investigations for legislative purposes and investigations into misconduct by impeachable officials. See *id.* at *34–41 (Rao, J., dissenting).

38 Judge Rao advanced these points in dissent. The majority in *Mazars* disagreed with her analysis, holding instead that Rule XI, clause 2(m) authorized the House Oversight Committee to issue a subpoena in furtherance of an investigation into alleged misconduct by the President. *Id.* at *22–26. If the majority ruling remains undisturbed (the President has petitioned for review by the en banc Court of Appeals and indicated his intention to seek Supreme Court review if his en banc petition is denied), it would be binding here and would require the conclusion that the subpoena issued to Plaintiff by the House Defendants is authorized by the House Rules. But Plaintiff raises the issue here to preserve it pending final resolution of the *Mazars* case.

CLAIM FOR RELIEF

COUNT I

Declaratory Judgment

39 Plaintiff incorporates by reference and realleges the preceding paragraphs, as if set forth fully herein.

40 Plaintiff is bound by his oath of office to abide by the lawful constitutional commands of both the President and the House of Representatives

41. Plaintiff has a duty to abide by a lawful constitutional assertion of immunity by the President and a lawful instruction by the President that he decline to testify before Congress concerning his official duties as a close advisor to the President

42 Plaintiff likewise has a duty to comply with a lawful constitutional subpoena issued to him by a duly authorized committee of the House of Representatives

43 The House Defendants assert that Plaintiff is lawfully obligated to comply with the subpoena they issued to him, and it is a federal criminal offense to willfully fail “to give testimony or to produce papers” in response to a lawful subpoena issued by “any committee of either House of Congress, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months ”
2 U S C § 192

44 President Trump asserts that Plaintiff is lawfully obligated to abide by the President’s assertion of immunity from Congressional process and his instruction that Plaintiff not appear and testify in response to the subpoena

45 Plaintiff has reasonable cause to be uncertain whether the subpoena issued to Plaintiff by the House Defendants was duly authorized by the House and is thus valid and binding on Plaintiff.

46 Plaintiff has reasonable cause to be uncertain whether the President's assertion of immunity on behalf of Plaintiff is valid and binding on Plaintiff.

47 It is not possible for Plaintiff to satisfy the commands of both the House Defendants on the one hand, and President Trump on the other

48 Plaintiff is neither authorized nor able to resolve a Constitutional dispute between the Legislative and Executive Branches of our Government, instead, "[i]t is emphatically the province and the duty of the judicial department to say what the law is" *Marbury*, 5 U S at 177

49 Accordingly, Plaintiff is "an interested party seeking" a declaration of his "rights and other legal relations" with the House Defendants on the one hand, and the President on the other. *See* 28 U S C § 2201(a). Plaintiff takes no position on whether the command of the Legislative Branch or the command of the Executive Branch should prevail, he seeks only to carry out whichever constitutional obligation the Judicial Branch determines to be lawful and binding on Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court

A Pursuant to 28 U S C §§ 2201 and 2202, enter declaratory relief as follows

1. Declare whether the subpoena issued by the House Defendants to Plaintiff is authorized by, and valid under, House Rules, and

2. Declare whether the President's assertion of immunity from Congressional process on behalf of Plaintiff is valid and binding on Plaintiff

B Expedite its consideration and resolution of this case in light of the pending impeachment proceedings

C Grant such other and further relief as may be just and proper under the circumstances.

October 25, 2019

Respectfully submitted

/s/ Charles J. Cooper

Charles J. Cooper, Bar No. 248070

Michael W. Kirk, Bar No. 424648

Shelby Bard*

COOPER & KIRK, PLLC

1523 New Hampshire Avenue, NW

Washington, DC 20036

Telephone (202) 220-9600

Facsimile (202) 220-9601

Email: ccooper@cooperkirk.com

Counsel for Plaintiff Charles M. Kupperman

* D.C. Bar Application Pending, Admitted
in Pennsylvania

19953

754

Case 1 19-cv-03224 Document 1-1 Filed 10/25/19 Page 1 of 5

EXHIBIT A

Case 1:19-cv-03224 Document 1-1 Filed 10/25/19 Page 2 of 5

Subject: FW, Dr. Kupperman Deposition Subpoena - House Impeachment Inquiry
Date: Friday, October 25, 2019 5:57:17 PM
Attachments: 20191025 - Subpoena Kupperman.pdf
 ATT00001.htm
 House Deposition Regulations.pdf
 ATT00002.htm
 House_Resolution_6_Sec_103(a).pdf
 ATT00003.htm
 HPSCI_Rules_of_Procedure.pdf
 ATT00004.htm

Resent-From: "Proofpoint Essentials" <do-not-reply@proofpointessentials.com>
From: "Mitchell, Nicolas" [REDACTED]
Date: October 25, 2019 at 4:14:27 PM EDT
Resent-To: <mkirk@cooperkirk.com>
To: "Michael W. Kirk" <mkirk@cooperkirk.com>, Chuck Cooper
 <cocooper@cooperkirk.com>
Cc: "Bitar, Maher" [REDACTED], "Goldman, Daniel"
 [REDACTED], "Noble, Daniel" [REDACTED],
 "Grooms, Susanne Sachsman" [REDACTED], "Kenny, Peter"
 [REDACTED], "Bair, James" [REDACTED], "Carey,
 Laura" [REDACTED], "Wirkkala, Rheanne"
 [REDACTED]
Subject: Dr. Kupperman Deposition Subpoena - House Impeachment Inquiry

Mr. Kirk and Mr. Cooper:

Pursuant to the House of Representatives' impeachment inquiry, we are hereby transmitting a subpoena that compels your client, Dr. Charles Kupperman, to appear at a previously scheduled deposition on **October 28, 2019, at 9:30 a.m., at The Capitol, HVC-304.**

The subpoena is being issued by the Permanent Select Committee on Intelligence 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 Committee on Oversight and Reform. The testimony shall be part of the House's impeachment inquiry and shared among the Committees, as well as with the Committee on the Judiciary as appropriate. Your client's failure or refusal to comply with the subpoena, including at the direction or behest of the President, the White House, or the State Department shall constitute evidence of obstruction of the House's impeachment inquiry and may be used as an adverse inference against the President.

In light of recent attempts by the Administration to direct witnesses not to appear voluntarily for depositions, the enclosed subpoena compels your client's mandatory appearance.

Enclosed are copies of the House Deposition Rules, Section 103(a) of H. Res. 6, and HPSCI's Rules of Procedure for your information.

Kindly confirm receipt. Thank you.

19955

756

Case 1:19-cv-03224 Document 1-1 Filed 10/25/19 Page 3 of 5

Nicolas A. Mitchell
Senior Investigative Counsel
House Permanent Select Committee on Intelligence
[REDACTED]

SUBPOENA

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE
CONGRESS OF THE UNITED STATES OF AMERICA**

To Dr. Charles Kupperman

You are hereby commanded to be and appear before the
House Permanent Select Committee on Intelligence

of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: _____
 Date: _____ Time: _____

- to testify at a deposition touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee

Place of testimony: HPSCI, HVC-304, THE CAPITOL
 Date: 10/28/19 Time: 9:30 a.m.

- to testify at a hearing touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
 Date: _____ Time: _____

To U.S. Marshals Service, or any authorized Member or congressional staff

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 21ST day of OCTOBER, 2019.

Chairman or Authorized Member

Attest

Clerk

PROOF OF SERVICE

Subpoena for Dr. Charles Kupperman

Address C/o Michael W. Kirk, Esq., Cooper & Kirk, PLLC, 1523 New Hampshire Ave., N.W.

Washington, D.C. 20036

before the Permanent Select Committee on Intelligence

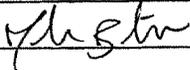
U.S. House of Representatives
116th Congress

Served by (print name) Maher Bitar

Title General Counsel

Manner of service Electronic Mail

Date 10/25/2019

Signature of Server 

Address Permanent Select Committee on Intelligence, HVC-304, U.S. Capitol

19958

759

Case 1:19-cv-03224 Document 1-2 Filed 10/25/19 Page 1 of 6

EXHIBIT B

THE WHITE HOUSE
WASHINGTON

October 25, 2019

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

Dear Mr. Cooper:

I write in response to your request regarding the subpoena issued to your client, Charles Kupperman, by the Permanent Select Committee on Intelligence of the United States House of Representatives (the "Committee") on October 25, 2019. The subpoena directs Mr. Kupperman to appear to testify at a deposition at 9:30 a.m. on Monday, October 28, 2019.

The Department of Justice (the "Department") has advised me that Mr. Kupperman is absolutely immune from compelled congressional testimony with respect to matters related to his service as a senior adviser to the President. See Letter to Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel (October 25, 2019). The Department has long taken the position—across administrations of both political parties—that "the President and his immediate advisers are absolutely immune from testimonial compulsion by a Congressional committee." *Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. O.L.C. 191, 191 (2007) (quoting *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 4 (1999) (opinion of Attorney General Janet Reno)); *Immunity of the Counsel to the President from Compelled Congressional Testimony*, 20 Op. O.L.C. 308, 308 (1996). That immunity arises from the President's position as head of the Executive Branch and from Mr. Kupperman's former position as a senior adviser to the President, specifically Assistant to the President and Deputy National Security Advisor.

As the Department's letter states, Mr. Kupperman qualifies as a senior presidential adviser entitled to immunity. The Department's opinions on this topic have consistently recognized that this immunity extends to immediate advisers "who customarily meet with the President on a regular or frequent basis," and upon whom the President relies directly for candid and sound advice." *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C. ___, at *2 (June 15, 2014) (quoting Memorandum from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of "White House Staff"* at 7 (Feb. 5, 1971)). Accordingly, Mr. Kupperman cannot be compelled to appear before the Committee because "[s]ubjecting a senior presidential adviser to the congressional subpoena power would be akin to requiring the President himself to appear before Congress on matters

Mr. Charles Cooper, Esq.
Page 2

relating to the performance of his constitutionally assigned executive functions.” *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. at 5. The constitutional immunity of current and former senior advisers to the President exists to protect the institution of the Presidency and, as stated by former Attorney General Reno, “may not be overborne by competing congressional interests.” *Id.*

Accordingly, in order to protect the prerogatives of the Office of President today and in the future, and in response to your request, the President directs Mr. Kupperman not to appear at the Committee’s scheduled hearing on Monday, October 28, 2019. This long-standing principle is firmly rooted in the Constitution’s separation of powers and protects the core functions of the Presidency, and this office is adhering to this well-established precedent in order to allow future Presidents to effectively execute the responsibilities of the Office of President. I also attach the letter opinion provided by the Department regarding Mr. Kupperman’s immunity.

Thank you for your attention to this matter. Please do not hesitate to contact me or Mike Purpura if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Pat A. Cipollone". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Pat A. Cipollone
Counsel to the President

**U.S. Department of Justice**

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

October 25, 2019

Pat A. Cipollone
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Cipollone.

Today, the Permanent Select Committee on Intelligence of the House of Representatives issued a subpoena seeking to compel Charles Kupperman, former Assistant to the President and Deputy National Security Advisor, to testify on Monday, October 28. The Committee subpoenaed Mr. Kupperman as part of its purported impeachment inquiry into the conduct of the President. The Administration has previously explained to the Committee that the House has not authorized an impeachment inquiry, and therefore, the Committee may not compel testimony in connection with the inquiry. Setting aside the question whether the inquiry has been lawfully authorized, you have asked whether the Committee may compel Mr. Kupperman to testify even assuming an authorized subpoena. We conclude that he is absolutely immune from compelled congressional testimony in his capacity as a former senior adviser to the President.

The Committee seeks Mr. Kupperman's testimony about matters related to his official duties at the White House. We understand that Committee staff informed Mr. Kupperman's private counsel that the Committee wishes to question him about the telephone call between President Trump and the President of Ukraine that took place on July 25, 2019, during Mr. Kupperman's tenure as a presidential adviser, and related matters. See "*Urgent Concern*" *Determination by the Inspector General of the Intelligence Community*, 43 Op. O.L.C. ___, at *1-3 (Sept. 3, 2019) (discussing the July 25 telephone call).

The Department of Justice has for decades taken the position, and this Office recently reaffirmed, that "Congress may not constitutionally compel the President's senior advisers to testify about their official duties." *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. ___, at *1 (May 20, 2019) ("*Immunity of the Former Counsel*") This testimonial immunity is rooted in the separation of powers and derives from the President's status as the head of a separate, co-equal branch of government. See *id.* at *3-7. Because the President's closest advisers serve as his alter egos, compelling them to testify would undercut the "independence and autonomy" of the Presidency, *id.* at *4, and interfere directly with the President's ability to faithfully discharge his responsibilities. Absent immunity, "congressional committees could wield their compulsory power to attempt to supervise the President's actions, or to harass those advisers in an effort to influence their conduct, retaliate for actions the committee disliked, or embarrass and weaken the President for partisan gain." *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach From Congressional Subpoena*, 38 Op. O.L.C. ___, at *3 (July 15, 2014).

Congressional questioning of the President's senior advisers would also undermine the independence and candor of executive branch deliberations. *See Immunity of the Former Counsel*, 43 Op O.L.C. at *5–7. Administrations of both political parties have insisted on the immunity of senior presidential advisers, which is critical to protect the institution of the Presidency. *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op O.L.C. 1, 5 (1999) (A.G. Reno).

Mr. Kupperman qualifies as a senior presidential adviser entitled to immunity. The testimonial immunity applies to the President's "immediate advisers—that is, those who customarily meet with the President on a regular or frequent basis." Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re Power of Congressional Committee to Compel Appearance or Testimony of "White House Staff"* at 7 (Feb 5, 1971). Your office has informed us that Mr. Kupperman served as the sole deputy to National Security Advisor John R. Bolton, and briefly served as Acting National Security Advisor after Mr. Bolton's departure. As Deputy National Security Advisor, Mr. Kupperman generally met with the President multiple times per week to advise him on a wide range of national security matters, and he met with the President even more often during the frequent periods when Mr. Bolton was traveling. Mr. Kupperman participated in sensitive internal deliberations with the President and other senior advisers, maintained an office in the West Wing of the White House, traveled with the President on official trips abroad on multiple occasions, and regularly attended the presentation of the President's Daily Brief and meetings of the National Security Council presided over by the President.

Mr. Kupperman's immunity from compelled testimony is strengthened because his duties concerned national security. The Supreme Court held in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), that senior presidential advisers do not enjoy absolute immunity from civil liability—a holding that, as we have previously explained, does not conflict with our recognition of absolute immunity from compelled congressional testimony for such advisers, *see, e.g., Immunity of the Former Counsel*, 43 Op. O.L.C. at *13–14. Yet the *Harlow* Court recognized that "[f]or aides entrusted with discretionary authority in such sensitive areas as national security or foreign policy," even absolute immunity from suit "might well be justified to protect the unhesitating performance of functions vital to the national interest." 457 U.S. at 812; *see also id.* at 812 n.19 ("a derivative claim to Presidential immunity would be strongest in such 'central' Presidential domains as foreign policy and national security, in which the President could not discharge his singularly vital mandate without delegating functions nearly as sensitive as his own").

Immunity is also particularly justified here because the Committee apparently seeks Mr. Kupperman's testimony about the President's conduct of relations with a foreign government. The President has the constitutional responsibility to conduct diplomatic relations, *see Assertion of Executive Privilege for Documents Concerning Conduct of Foreign Affairs with Respect to Haiti*, 20 Op. O.L.C. 5, 7 (1996) (A.G. Reno), and as a result, the President has the "exclusive authority to determine the time, scope, and objectives of international negotiations." *Unconstitutional Restrictions on Activities of the Office of Science and Technology Policy in Section 1340(a) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011*, 35 Op. O.L.C. ___, at *4 (Sept. 19, 2011) (quotation marks omitted). Compelling testimony about these sensitive constitutional responsibilities would only deepen the very concerns—about

separation of powers and confidentiality—that underlie the rationale for testimonial immunity. See *New York Times Co. v. United States*, 403 U.S. 713, 728 (1971) (Stewart, J., concurring) (“[I]t is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy.”).

Finally, it is inconsequential that Mr. Kupperman is now a private citizen. In *Immunity of the Former Counsel*, we reaffirmed that for purposes of testimonial immunity, there is “no material distinction” between “current and former senior advisers to the President,” and therefore, an adviser’s departure from the White House staff “does not alter his immunity from compelled congressional testimony on matters related to his service to the President.” 43 Op. O.L.C. at *16; see also *Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. O.L.C. 191, 192–93 (2007). It is sufficient that the Committee seeks Mr. Kupperman’s testimony on matters related to his official duties at the White House.

Please let us know if we may be of further assistance.

A handwritten signature in black ink that reads "Steven A. Engel" followed by a date "10/25/19".

Steven A. Engel
Assistant Attorney General

19964

765

MISCELLANEOUS TEXT (FEC Form 99)

PAGE 1 / 1

NAME OF COMMITTEE (In Full)
DONALD J. TRUMP FOR PRESIDENT, INC

FEC IDENTIFICATION NUMBER
C00580100

ing Address 725 FIFTH AVENUE

City	State	ZIP Code
NEW YORK	NY	10022

January 20, 2017
Processing Division
Federal Election Commission
999 E ST NW
Washington, DC 20463

To Whom It May Concern

While this does not constitute a formal announcement of my candidacy for the 2020 election, because I have reached the legal threshold for filing FEC Form 2, please accept this letter as my Form 2 for the 2020 election in order to ensure compliance with the Federal Election Campaign Act See 52 U S C 30102(e)(1), 11 C F R 100 3(a)(1)

Sincerely,

Donald J Trump

HARVARD LAW REVIEW

© 2019 by The Harvard Law Review Association

ARTICLE

FAITHFUL EXECUTION AND ARTICLE II

Andrew Kent, Ethan J. Leib & Jed Handelsman Shugerman

CONTENTS

INTRODUCTION	2113
I FAITHFUL EXECUTION IN 1787–1788 EVIDENCE FROM THE CONVENTION, RATIFICATION, AND LINGUISTIC USAGE	2121
<i>A The Philadelphia Convention</i>	2121
<i>B Ratification Debates</i>	2128
<i>C Linguistic Usage</i>	2132
<i>D The Other Components of the Clauses</i>	2134
1 “Take Care”	2134
2 “[T]he Laws”	2136
3 “Preserve, Protect and Defend”	2137
II FAITHFUL EXECUTION FROM MAGNA CARTA TO THE U.S. CONSTITUTION	2141
<i>A The Medieval Period and the Multiplicity of Oaths</i>	2141
<i>B The Early Modern Era, the Tudors, and More Specification of Faithful Execution</i>	2146
<i>C Faithful Execution and Oaths of Office in the Tumultuous Seventeenth Century</i>	2149
1 <i>Within the Realm</i>	2149
2 <i>The Early Settlements of American Colonies</i>	2159
<i>D Mature Governments in Colonial America</i>	2163
1 <i>Governors</i>	2163
2 <i>Officers of Chartered Corporations</i>	2164
3 <i>Other Colonial Public Officials</i>	2165
4 <i>Summing Up</i>	2169
<i>E The Revolution and the Critical Period</i>	2172
1 <i>Chief Magistrates of the Newly Independent States</i>	2173
2 <i>Executive Offices Created by the Continental Congress</i>	2176
III WHAT IT ALL MEANS: A FIDUCIARY THEORY OF ARTICLE II	2178
<i>A Ultra Vires Restrictions and Legislative Supremacy</i>	2181
<i>B The President’s Duty of Loyalty Against Self-Dealing</i>	2188
<i>C The President’s Affirmative Obligation of Diligence</i>	2190
CONCLUSION	2191

 FAITHFUL EXECUTION AND ARTICLE II

Andrew Kent,^{*} Ethan J. Leib^{**} & Jed Handelsman Shugerman^{***}

Article II of the U.S. Constitution twice imposes a duty of faithful execution on the President, who must "take Care that the Laws be faithfully executed" and take an oath or affirmation to "faithfully execute the Office of President." These Faithful Execution Clauses are cited often, but their background and original meaning have never been fully explored. Courts, the executive branch, and many scholars rely on one or both clauses as support for expansive views of presidential power, for example, to go beyond standing law to defend the nation in emergencies, to withhold documents from Congress or the courts, or to refuse to fully execute statutes on grounds of unconstitutionality or for policy reasons.

This Article is the first to explore the textual roots of these clauses from the time of Magna Carta and medieval England, through colonial America, and up through the Philadelphia Convention and ratification debates. We find that the language of "faithful execution" was for centuries before 1787 very commonly associated with the performance of public and private offices — especially those in which the officer had some control over the public fisc. "Faithful execution" language applied not only to senior government officials but to a vast number of more ministerial officers, too. We contend that it imposed three interrelated requirements on officeholders: (1) a duty not to act ultra vires, beyond the scope of one's office, (2) a duty not to misuse an office's funds or take unauthorized profits, and (3) diligent, careful, good faith, honest, and impartial execution of law or office.

These three duties of fidelity look a lot like fiduciary duties in modern private law. This "fiduciary" reading of the original meaning of the Faithful Execution Clauses might have important implications in modern constitutional law. Our history supports readings of Article II of the Constitution, for example, that limit Presidents to exercise their power in good faith, for the public interest, and not for reasons of self-dealing, self-protection, or other bad faith, personal purposes. So understood, Article II may thus place some limits on the pardon and removal authority. The history we present also supports readings of Article II that tend to subordinate presidential power to congressional direction, limiting presidential non-enforcement of statutes, and perhaps constraining agencies' interpretations of statutes to pursue Congress's objectives. Our conclusions undermine imperial and prerogative claims for the presidency, claims that are sometimes, in our estimation, improperly traced to dimensions of the clauses requiring the President's faithful execution.

^{*} Professor of Law, Fordham University School of Law

^{**} John D. Calamar Distinguished Professor of Law, Fordham University School of Law

^{***} Professor of Law, Fordham University School of Law. This article benefitted greatly from presentations at the Columbia Law School Legal History Workshop, NYU School of Law Legal History Colloquium, Originalism Works-in-Progress Conference at the University of San Diego School of Law, National Conference of Constitutional Law Scholars at the University of Arizona Law School, Georgetown Advanced Constitutional Law Seminar, and faculty workshops at Fordham and the University of Pennsylvania Law School/Wharton Legal Studies Department. Thanks to the organizers and participants in those conferences and workshops. For helpful comments and discussions, thanks also to Nestor Davidson, Martin Flaherty, Jonathan Genapp, David Golove, Philip Hamburger, John Harrison, Daniel Hulsebosch, Aziz Huq, Sophia Lee, Thomas Lee, Serena Mayeri, Michael McConnell, Bernadette Meyler, John Mikhail, Julian Mortenson, William Nelson, Victoria Nourse, Richard Primus, Michael Rappaport, Stephen Sachs, Matthew Stephenson, and William Treanor. We also thank John Shaw and Fordham librarians Janet Kearney and Gail McDonald for their research assistance.

INTRODUCTION

The faithfulness of a President to the Constitution, the laws, and the ideals and traditions of the United States is at issue as never before. The American people today are confronted with questions that go to the foundations of our constitutional system as a “government of laws, and not of men”¹ (or women). Presidential powers previously understood as plenary are being used in ways that many see as destructive of constitutional principles and norms. May a President fire senior law enforcement personnel, if the purpose is to protect himself or close associates from a criminal investigation? May a President use the pardon power or his control over classification and declassification of information for the same purposes? Does the Constitution have a plan for when it appears that a President may be motivated not by a view of the public good but by self-regarding or bad faith purposes?

We think that two frequently cited but poorly understood parts of the Constitution speak to these questions. Article II of the U.S. Constitution twice imposes a duty of faithful execution on the President, who must “take Care that the Laws be faithfully executed”² and take an oath or affirmation to “faithfully execute the Office of President.”³ Although other public servants are “bound by Oath or Affirmation[] to support [the] Constitution,”⁴ no other officeholder has the same constitutional command of fidelity. And the language of faith appears nowhere else in the document, save the requirement that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”⁵

The two clauses requiring faithful execution look somewhat different from each other. One is a straightforward legal command — albeit using the passive voice — imposing a duty throughout tenure in office with respect to the laws. The other requires a promissory oath or affirmation with respect to the office, a single-occasion speech act with, in Anglo-American culture, a heavily religious flavor, notwithstanding the

¹ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). The phrase is older. See, e.g., JOHN ADAMS, NOVANGELUS, OR, A HISTORY OF THE DISPUTE WITH AMERICA, FROM ITS ORIGIN, IN 1754, TO THE PRESENT TIME, NO. VII (1775), reprinted in THE REVOLUTIONARY WRITINGS OF JOHN ADAMS 220, 226 (C. Bradley Thompson ed., 2000) [hereinafter ADAMS WRITINGS] (“Aristotle, Livy, and Harrington define a republic to be a government of laws, and not of men.”)

² U.S. CONST. art. II, § 3.

³ *Id.* § 1. We are not the first to note that these two clauses share the element of faithful execution. See, e.g., Patricia L. Bellia, *Faithful Execution and Enforcement Discretion*, 164 U. PA. L. REV. 1753, 1771–72 (2016); Michael Stokes Paulsen, *The Most Dangerous Branch: Executive Power to Say What the Law Is*, 83 GEO. L.J. 217, 261 (1994); David E. Pozen, *Constitutional Bad Faith*, 129 HARV. L. REV. 885, 907–08 (2016); Saikrishna Bangalore Prakash, *The Executive’s Duty to Disregard Unconstitutional Laws*, 96 GEO. L.J. 1613, 1629–30 (2008).

⁴ U.S. CONST. art. VI, cl. 3.

⁵ *Id.* art. IV, § 1.

Constitution's command that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States"⁶ Edward Coke, the seventeenth-century jurist revered by many American framers,⁷ wrote that an oath necessarily involves "calling Almighty God to witness"⁸

Over the centuries, the two Faithful Execution Clauses have produced wide-ranging jurisprudences and have been marshaled in many constitutional debates. The President's oath, often in combination with the so-called Take Care Clause, is invoked by participants in debates about the power of the President not to enforce or defend congressional laws on the ground of unconstitutionality.⁹ Both clauses have been cited by the executive branch as supporting an executive privilege to withhold internal documents¹⁰ and an authority to go beyond or even defy standing law to protect the nation in emergencies.¹¹ The Supreme Court has

⁶ *Id.* art VI, cl 3

⁷ See BERNARD BAILY, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 30-31, 177, 225 (1967); GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC 1776-1787*, at 138-43 (1969)

⁸ EDWARD COKE, *THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND* 164 (London, 1797) (1644). For an expression of this view by a prominent American lawyer at the Founding, see James Hedell, Address to the North Carolina Convention (July 30, 1788), in 4 *THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION* 192, 196 (Jonathan Elliott ed., Washington, D.C., 1836) [hereinafter ELLIOTT]. At the time the Constitution was written, the affirmation option was not viewed as an accommodation for atheists or non-Christians — it was for most Americans unthinkable that such persons would hold public office. See MARC W. KRUMAN, *BETWEEN AUTHORITY & LIBERTY: STATE CONSTITUTION MAKING IN REVOLUTIONARY AMERICA* 47-49, 96-97 (1997) (discussing religious qualifications on officeholding in American states during the Founding era). Rather, the affirmation was an accommodation for Christians who belonged to Protestant sects (non-Anglican) that viewed oath-swearing as profane. See *infra* p. 2124. The No Religious Test Clause of the Constitution was understood to prohibit the kind of provisions found in Great Britain and some American states that required an oath or affirmation of orthodox Protestant Christian belief as a condition of holding office. See Note, *An Originalist Analysis of the No Religious Test Clause*, 120 *HARV. L. REV.* 1649, 1650-52 (2007).

⁹ See, e.g., Issues Raised by Provisions Directing Issuance of Official or Diplomatic Passports, 16 *OP. O.L.C.* 18, 31-33 (1992); AKHIL REED AMAR, *AMERICA'S CONSTITUTION 1787-1792* (2005); Christopher N. May, *Presidential Defiance of "Unconstitutional" Laws: Reviving the Royal Prerogative*, 21 *HASTINGS CONST. L.Q.* 865, 873-74 (1994); Daniel J. Meltzer, Lecture, *Executive Defense of Congressional Acts*, 61 *DUKE L.J.* 1183, 1195-96 (2012); Paulsen, *supra* note 3, at 261-62; Prakash, *supra* note 3.

¹⁰ See, e.g., Constitutionality of the OLC Reporting Act of 2008, 32 *OP. O.L.C.* 14, 16-17 (2008); Response to Cong. Requests for Info. Regarding Decisions Made Under the Indep. Counsel Act, 10 *OP. O.L.C.* 68, 79 (1986).

¹¹ See, e.g., Brief for Petitioner at 2-4, 27-28, 98-100, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 *U.S.* 579 (1952) (No. 745), First Inaugural Address — First Edition and Revisions (Mar. 4, 1861), in 4 *THE COLLECTED WORKS OF ABRAHAM LINCOLN* 249, 253 (Roy P. Basler ed., 1953), see also Michael Stokes Paulsen, *The Constitution of Necessity*, 79 *NOTRE DAME L. REV.* 1257, 1257-58 (2004) (locating in the Presidential Oath Clause and constitutional structure "an overriding principle of constitutional and national self-preservation that may even, in cases of extraordinary necessity, trump specific constitutional requirements").

agreed with the less aggressive proposition that the Take Care Clause, together with other parts of Article II, conveys a large measure of authority to defend the government and interests of the United States in the absence of standing law¹²

The Take Care Clause is also part of the justifications for, among other things, the President's unfettered ability to remove the heads of at least some types of executive agencies,¹³ federal courts' strict requirement of Article III standing, limiting Congress's ability to grant broad citizen standing,¹⁴ and presidentially imposed oversight of agency rule-making, such as mandatory cost-benefit analysis¹⁵ Proponents of prosecutorial discretion as within the province of the Executive invoke the Take Care Clause,¹⁶ as do participants in related debates about policy-based nonenforcement or suspension of statutes,¹⁷ and presidential impoundment of appropriated funds¹⁸ Most concede that the clause's imposition of a duty to execute law implies that the President cannot make law,¹⁹ but some argue that it allows presidential "completion" of incomplete statutory regimes²⁰

¹² See *In re Neagle*, 135 US 1, 63–64 (1890)

¹³ See, e.g., *Free Enter Fund v Pub Co Accounting Oversight Bd*, 561 US 477, 484 (2010), *Myers v United States*, 272 US 52, 117 (1926), see also *Suspension of Officer*, 18 Op Att'y Gen 318, 319 (1885) (citing the Presidential Oath Clause as well)

¹⁴ See, e.g., *Lujan v Defs of Wildlife*, 504 US 555, 577 (1992), *Allen v Wright*, 468 US 737, 761 (1984), *FEC v Akins*, 524 US 11, 36 (1998) (Scalia, J., dissenting)

¹⁵ See, e.g., Jack Goldsmith & John F Manning, *The President's Completion Power*, 115 YALE L J 2280, 2295–96 (2006) (discussing Executive Order No. 12,291, 3 C.F.R. 128 (1981), and Executive Order No. 12,866, 3 C.F.R. 638 (1993))

¹⁶ See, e.g., *United States v Armstrong*, 517 US 456, 464 (1996), *Heckler v Chaney*, 470 US 821, 832 (1985), *United States v Cox*, 342 F.2d 167, 171 (5th Cir. 1965)

¹⁷ See, e.g., *Texas v United States*, 86 F Supp. 3d 591, 614 (S.D. Tex. 2015), *aff'd*, 809 F.3d 134, 146 (5th Cir. 2015), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016) (mem.) (per curiam) (presidential authority for a deferred action immigration program), SAIKRISHNA BANGALORE PRAKASH, *IMPERIAL FROM THE BEGINNING: THE CONSTITUTION OF THE ORIGINAL EXECUTIVE* 92–97 (2015) (exploring whether the "Faithful Execution Clause" was written to bar suspensions and dispensations), MICHAEL D. RAMSEY, *THE CONSTITUTION'S TEXT IN FOREIGN AFFAIRS* 124 (2007) (suggesting that the Take Care Clause bars the suspension power claimed by English monarchs), Robert J. Delahunty & John C. Yoo, *Dream On: The Obama Administration's Nonenforcement of Immigration Laws, the DREAM Act, and the Take Care Clause*, 91 TEX. L. REV. 781, 784 (2013) (arguing "that the Constitution's Take Care Clause imposes on the President a duty to enforce all constitutionally valid acts of Congress in all situations and cases. In other words, there is simply no general presidential nonenforcement power"), Gillian E. Metzger, *The Constitutional Duty to Supervise*, 124 YALE L.J. 1836, 1878 (2015) (arguing that "the [Take Care] Clause at least embodies the principle that the President must obey constitutional laws and lacks a general prerogative of suspension power"), cf. *U.S. House of Representatives v Burwell*, 130 F. Supp. 3d 53, 70 (D.D.C. 2015) (addressing whether "the Executive was unfaithful" to the ACA)

¹⁸ See, e.g., Neil M. Soltman, Recent Development, *The Limits of Executive Power Impoundment of Funds*, 23 CATH. U. L. REV. 359, 366–67 (1973)

¹⁹ See, e.g., *Medellin v Texas*, 552 U.S. 491, 532 (2008), *Youngstown Sheet & Tube Co. v Sawyer*, 343 U.S. 579, 587 (1952)

²⁰ See, e.g., Goldsmith & Manning, *supra* note 15, at 2303–04

And in recent shorter works, we have suggested that the Take Care Clause and Presidential Oath Clause also speak to contemporary controversies about President Trump's use of the pardon power²¹ and his control over removal of officers in the Department of Justice²²

Notwithstanding all of these claims about the clauses by the Executive, courts, and scholars, no one has actually figured out where the clauses came from or what they were understood to mean when they were drafted and adopted²³ Writing about the Take Care Clause, but making a point that applies to the Presidential Oath Clause as well, Professors John Manning and Jack Goldsmith note that the Supreme Court tends to "treat[] the meaning as obvious when it is anything but that," and fails to "parse the text" or "examine the clause's historical provenance"²⁴ Little was said explicitly during the Philadelphia Convention or the ratification debates in the states about the Faithful Execution Clauses,²⁵ but some scholars have noted that the Take Care Clause mirrors language found in the post-independence constitutions of Vermont, New York, and Pennsylvania, and a frame of government for colonial Pennsylvania²⁶ Still, essentially nothing has yet been discovered or written about the origin and historical meaning of the "faithful execution" language they share

This Article, then, is the first substantial effort to pursue the historical origins of the twin commands of faithful execution²⁷ and to link

²¹ See Ethan J Leib & Jed Handelsman Shugerman, *Fiduciary Constitutionalism Two Legal Conclusions*, 16 GEO J L & PUB POL'Y (forthcoming 2019) (manuscript at 11–13) (on file with the Harvard Law School Library); Andrew Kent, Ethan Leib & Jed Shugerman, *Self-Pardons, Constitutional History, and Article II*, TAKE CARE BLOG (June 16, 2018), <https://takecareblog.com/blog/self-pardons-constitutional-history-and-article-ii> [<https://perma.cc/SR2S-UTX7>]; Jed Shugerman & Ethan J Leib, *This Overlooked Part of the Constitution Could Stop Trump from Abusing His Pardon Power*, WASH POST (Mar 14, 2018), <http://wapo.st/2pdlzK> [<https://perma.cc/48ZB-YSPE>]

²² Ethan J Leib & Jed Shugerman, *Mueller's Recourse*, SLATE (Mar 19, 2018), <https://slate.com/news-and-politics/2018/03/hf-a-tump-official-fires-the-special-counsel-to-protect-trump-mueller-can-sue-to-keep-his-job.html> [<https://perma.cc/2C66-WG6H>]

²³ See Jack Goldsmith & John F Manning, *The Protean Take Care Clause*, 164 U PA L REV 1835, 1836 & n 9 (2016)

²⁴ *Id.* at 1838

²⁵ See *infra* sections I A–B, pp 2121–32, see also MATTHEW A PAULEY, I DO SOLEMNLY SWEAR THE PRESIDENT'S CONSTITUTIONAL OATH 107 (1999) ("The wording of [the] oath occasioned little serious discussion during the Constitutional Convention"), Lawrence Lessig & Cass R Sunstein, *The President and the Administration*, 94 COLUM L REV 1, 63 (1994) ("[A]t the founding, the [Take Care Clause] received relatively little consideration by practically everyone in the debate")

²⁶ See *infra* notes 297, 374 & 377–378 and accompanying text, see also PRAKASH, *supra* note 17, at 96 (noting the linguistic similarities), Bellia, *supra* note 3, at 1174 n 118 (same), Delahunty & Yoo, *supra* note 17, at 802–03 (same), Zachary S Price, *Enforcement Discretion and Executive Duty*, 67 VAND L REV 671, 693 n 75 (2014) (same)

²⁷ But see Ryan S Killian, *Faithfully Interpreting "Faithfully"* (Feb 17, 2014) (unpublished manuscript) (on file with the Harvard Law School Library) (concluding in a short essay drawing upon

these findings to the original meaning of Article II²⁸ We do not enter the debates about how heavily originalist findings should ultimately weigh in the calculus of contemporary constitutional meaning, or about the best form of originalism We are satisfied that our archaeological project here is justified by the fact that all, or nearly all, constitutional interpreters consider original textual meaning, informed by historical context, to be an important factor in constitutional interpretation,²⁹ and that all, or nearly all, varieties of originalists will find our methods reasonable³⁰

So what does our new history show? The Faithful Execution Clauses are linked not only by common words, but also by a common historical purpose to limit the discretion of public officials The language of “faithful execution” at the time of the framing was very commonly associated with the performance of public and private offices — especially but by no means only those in which the officer had some control over the public fisc The drafters at Philadelphia did not *ex nihilo* come up with the idea of having a chief magistrate who would take an oath of

contemporaneous usage that “faithful execution” was a “boilerplate term of art,” *id* at 10, but also an example of the “‘anti-corruption principle’ animating the Constitution,” *id* at 12)

²⁸ A search for original public meaning of the Constitution’s text is currently the most widely accepted form of originalist inquiry This method is sometimes also called “new originalism,” “new textualism,” or other names It seeks to discern, as of the time of ratification of the constitutional text, “the meaning actually communicated to the public by the words on the page” Randy E Barnett, *The Gravitational Force of Originalism*, 82 *FORDHAM L REV* 411, 413 (2013), *see also* Andrew Kent, *The New Originalism and the Foreign Affairs Constitution*, 82 *FORDHAM L REV* 757, 759 (2013) (stating that new originalism seeks to find “the objective linguistic meaning that the text of the Constitution would likely have had to an American audience at the time of adoption”)

²⁹ *See, e.g.*, PHILIP BOBBITT, *CONSTITUTIONAL FATE THEORY OF THE CONSTITUTION* 7–8 (1982), Michael C Dorf, *Integrating Normative and Descriptive Constitutional Theory: The Case of Original Meaning*, 85 *GEO L J* 1765, 1798–800 (1997), Richard H Fallon, Jr., *A Constructivist Coherence Theory of Constitutional Interpretation*, 100 *HARV L REV* 1189, 1244–45, 1252–58 (1987)

³⁰ Because we present overwhelming evidence that the Faithful Execution Clauses were written in the language of the law, *but see* John O McGinnis & Michael B Rappaport, *The Constitution and the Language of the Law*, 59 *WM & MARY L REV* 1321, 1371 n 229 (2018) (finding the Take Care Clause to be ambiguous rather than purely in the language of the law), “original methods” originalists will be able to interpret the clauses as lawyers at the time of the Founding would have understood their technical meanings *See, e.g.*, John O McGinnis & Michael B Rappaport, *Original Methods Originalism: A New Theory of Interpretation and the Case Against Construction*, 103 *NW U L REV* 751, 751–52 (2009) Moreover, because we show that the concept of faithful execution of office was so commonly used and well known, other public meaning originalists who seek to discern how informed lay people would have understood the Constitution should find our results valuable too *See, e.g.*, RANDY E BARNETT, *RESTORING THE LOST CONSTITUTION* 92 (2004) (looking to the “meaning that a reasonable listener would place on the words used in the constitutional provision at the time of its enactment”), Michael D Ramsey, *Missouri v Holland and Historical Textualism*, 73 *MO L REV* 969, 975 (2008) (discussing “educated and informed speakers of the time”) Finally, because most of the important drafters of the Constitution were lawyers or at least literate in law and government, *see Meet the Framers of the Constitution*, NAT’L ARCHIVES, <https://www.archives.gov/founding-docs/founding-fathers> [<https://perma.cc/NMJ4-JJ7D>], originalists who focus on the intentions of the drafters should find our research about the legal and political meaning of “faithful execution” useful

faithful execution and be bound to follow and execute legal authority faithfully. The models were everywhere: Governors of American colonies pre-independence, post-independence state governors, executive officers under the Articles of Confederation government, and other executives such as mayors and governors of corporations were required, before entering office, to take an oath for the due or faithful execution of their office. These officials were directed to follow the standing law and stay within their limited authority as they executed their offices — just as the British monarch was by an oath taken at coronation. Anyone experienced in law or government in 1787 would have been aware of this because it was so basic to what we might call the law of executive officeholding.

Yet one of our most interesting findings here is that commands of faithful execution with duties that parallel Article II applied not only to senior government officials who might have been plausible models for the presidency in Article II, but also to a vast number of less significant officers. It turns out that the U.S. President, who today bestrides the globe in the world's most powerful office, has the commands of fidelity with antecedents dating back centuries in humble offices like town constable, weigher of bricks, vestryman of the church, recorder of deeds, and inspector of flax and hemp. In fact, this history shows that the framers did not borrow the language of the English coronation oaths (which did not include the word “faithful” or its synonyms), but instead borrowed from the “faithfulness” oaths of midlevel or lower offices. This, we argue, has historical and legal implications for debates among proponents of royalist and republican understandings of the presidency.³¹

As we will trace below, this imposition of a duty of fidelity on officers — through oaths and otherwise — by the time of the framing had three basic components or substantive meanings. Our first finding, consistent with usage reported in contemporaneous dictionaries, is that faithful execution was repeatedly associated in statutes and other legal documents with true, honest, diligent, due, skillful, careful, good faith, and impartial execution of law or office. Second, the faithful execution duty was often imposed to prevent officeholders from misappropriating profits that the discretion inherent in their offices might afford them. Third, the duty was imposed because of a concern that officers might act *ultra vires*, the duty of faithful execution helped the officeholder internalize the obligation to obey the law, instrument, instruction, charter, or authorization that created the officer's power.

³¹ Compare PRAKASH, *supra* note 17, and ERIC NELSON, THE ROYALIST REVOLUTION MONARCHY AND THE AMERICAN FOUNDING (2014), with Julian Davis Mortenson, *Article II Vests Executive Power, Not the Royal Prerogative*, 119 COLUM. L. REV. (forthcoming 2019) (manuscript on file with authors).

What these three aspects of the duty of fidelity have in common is that they look a lot like *fiduciary* duties in the private law as they are understood today.³² The word “fiduciary” is derived from the Latin “fides,” meaning “faith,” and from “fiducia,” meaning “in trust”³³ or a “position of trust” or “confidence”³⁴ Although decades of scholarship have traced the idea of public offices as “trusts” — private law fiduciary instruments — from Plato through Cicero and Locke,³⁵ and several scholars have found ways to make points of contact between that tradition and our constitutional tradition,³⁶ the Faithful Execution Clauses are substantial textual and historical commitments to what we would today call fiduciary obligations of the President. We do not claim that the drafters at Philadelphia took ready-made fiduciary law off the shelf and wrote it into Article II. But we do assert that the best historical understanding of the meaning of the Faithful Execution Clauses is that they impose duties that we today — and some in the eighteenth century as well — would call fiduciary.

Our narrative history takes the following form. Part I retells the story of the role of the Faithful Execution Clauses at the Constitutional Convention and in the ratification debates in the states. We also pursue linguistic usage and social practice of the eighteenth century to clarify what the Founding generation would have thought was involved in swearing an oath or affirming to faithfully execute an office, and being commanded to ensure that the laws are faithfully executed. These traditional sources of original meaning remain insufficient, however.

Part II thus performs a deeper historical inquiry into the meaning of faithful execution in the centuries leading up to the framing of the U.S.

³² See Ethan J. Leib & Stephen R. Galoob, *Fiduciary Political Theory: A Critique*, 125 *YALE L.J.* 1820, 1822 (2016).

³³ See *Fiduciary*, BLACK’S LAW DICTIONARY (9th ed. 2009), 1 *BOUVIER LAW DICTIONARY* 1075–76 (Stephen Michael Sheppard ed., 2012), 2 HENRY JOHN ROBY, *ROMAN PRIVATE LAW IN THE TIMES OF CICERO AND OF THE ANTONINES* 98 & n.2 (1902), THE OXFORD DICTIONARY OF ENGLISH ETYMOLOGY 354 (C. T. Omons ed., 1966), ERNEST VINTER, *A TREATISE ON THE HISTORY AND LAW OF FIDUCIARY RELATIONSHIP AND RESULTING TRUSTS* 1 (3d ed. 1955).

³⁴ *Fiduciary*, BLACK’S LAW DICTIONARY (9th ed. 2009), 2 ROBY, *supra* note 33, at 98 & n.2, VINTER, *supra* note 33, at 1, see OXFORD LATIN DICTIONARY (P. G. W. Glare ed., 2d ed. 2012).

³⁵ See J. W. Gough, *John Locke’s Political Philosophy* 136 (2d ed. 1973); C. E. Vaughan, *Studies in the History of Political Philosophy* 143–57 (1939); Ethan J. Leib & Stephen R. Galoob, *Fiduciary Principles and Public Offices*, in *THE OXFORD HANDBOOK OF FIDUCIARY LAW* 303 (Evan Criddle et al. eds., 2019).

³⁶ See, e.g., GARY LAWSON & GUY SEIDMAN, “A GREAT POWER OF ATTORNEY” UNDERSTANDING THE FIDUCIARY CONSTITUTION 33–34 (2017); Paul Finn, *The Forgotten “Trust” The People and the State*, in *EQUITY ISSUES AND TRENDS* 131, 131 (Malcolm Cope ed., 1995); Paul Finn, *Public Trust and Public Accountability*, 3 *GRIFFITH L. REV.* 224, 228 (1994); Robert G. Natelson, *The Constitution and the Public Trust*, 52 *BUFF. L. REV.* 1077, 1078–88 (2004) [hereinafter Natelson, *The Public Trust*]; Robert G. Natelson, *Judicial Review of Special Interest Spending: The General Welfare Clause and the Fiduciary Law of the Founders*, 11 *TEX. REV. L. & POL.* 239, 245 (2007) [hereinafter Natelson, *Judicial Review*]; Robert G. Natelson, *The Legal Origins of the Necessary and Proper Clause*, in *THE ORIGINS OF THE NECESSARY AND PROPER CLAUSE* 52, 52–53 (2010) [hereinafter Natelson, *The Necessary and Proper Clause*].

Constitution. Our archaeology starts in English law in the period of Magna Carta and proceeds through the early modern era. We then explore the tumultuous seventeenth century of Stuart kings and two revolutions, where we can identify transitions in the meaning of “faithful execution” and the law of officeholding. We see this developed conception of faithful execution move through English law in Hanoverian Britain until 1787. We also focus attention on the other side of the Atlantic, studying North American colonial governments from their earliest days through the Revolution of 1776. We then examine post-independence governance in the U.S. states and at the national level under the Continental/Confederation Congress. On both sides of the Atlantic, then, we reveal oaths, commands, and bonds of faithfulness that have for centuries in the Anglo-American tradition applied to executive officers. We delineate which offices were given these duties of loyalty — and how the demand of faithfulness developed over time.

We then take these histories together in Part III to sketch an account of what the Faithful Execution Clauses in the U.S. Constitution would likely have been understood to mean in 1787. Our history supports readings of Article II of the Constitution that limit Presidents to exercise their power only when it is motivated in the public interest rather than in their private self-interest, consistent with fiduciary obligation in the private law. It also supports readings of Article II that tend to subordinate presidential power to congressional direction, requiring the President to follow the laws, instructions, and authorizations set in motion by the legislature. As a corollary, these conclusions tend to undermine imperial and prerogative claims for the presidency, claims that are sometimes, in our estimation, improperly traced to dimensions of the Take Care and Presidential Oath Clauses. What judicial precedent or historical “gloss”³⁷ after 1787 adds to the meaning of “faithful execution” is beyond the scope of our investigation here. But we think our historical reconstruction has continued relevance to ongoing debates about Article II.

It is, ultimately, not easy to know how to enforce the constitutional obligations we uncover. The correct method of interpreting and applying the Constitution in the present day is endlessly contested, because it is unclear how to evaluate a President’s subjective motives and what to do about mixed motive cases.³⁸ Moreover, the enforcement mechanisms we found for commands of faithful execution run the gamut from judicial enforcement via damages, fines, injunctions, bond forfeiture, and criminal penalties, to impeachment and removal from office. But on the substance of the President’s faithful execution duties in Article II, we

³⁷ See, e.g., Curtis A. Bradley & Trevor W. Morrison, *Historical Gloss and the Separation of Powers*, 126 HARV L. REV. 411, 413 (2012).

³⁸ For a recent example of these difficulties, see the conflicting views in the briefs and opinions of the Justices in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), the travel ban case, and see also Andrew Verstein, *The Jurisprudence of Mixed Motives*, 127 YALE L.J. 1106, 1108–14 (2018).

conclude that their original meaning includes at least 1) a strong concern about avoiding ultra vires action, 2) proscriptions against profit, bad faith, and self-dealing, and 3) a duty of diligence and carefulness

I FAITHFUL EXECUTION IN 1787-1788 EVIDENCE FROM THE CONVENTION, RATIFICATION, AND LINGUISTIC USAGE

The primary sources for discovering the original meaning of the Constitution — the records of debates about the framing and ratification of the Constitution, and documents evidencing contemporary linguistic usage, such as dictionaries — provide only some assistance with uncovering the meaning of the Faithful Execution Clauses. We briefly explore these sources here, both to emphasize some new findings and to motivate the need for deeper historical investigation. We also address the meaning of three other components of the clauses: the command to “take Care,”³⁹ just what counts as “the Laws,”⁴⁰ and the aspect of the presidential oath promising to “preserve, protect and defend the Constitution.”⁴¹

A *The Philadelphia Convention*

It is widely accepted that many delegates arrived in Philadelphia in the spring of 1787 convinced that the national government needed a strong executive.⁴² The government under the Articles of Confederation produced legislative resolves that were nominally binding on the states, but there were no means of enforcement, making them in practice precatory. After a few years of chaotic execution through ad hoc delegation and temporary committees, Congress placed management of war, diplomacy, public funds, and a postal system first in standing committees and then national-level officers or small departments answering directly to the Congress.⁴³ But the Continental Congress was a large multimember body with frequently changing membership,⁴⁴ meaning that executive management lacked stability, unity, efficiency, and secrecy.

The experience under post-independence state constitutions also convinced many Philadelphia Convention delegates and other nationalists that a strong executive was important to political stability. The new

³⁹ U.S. CONST. art. II, § 3

⁴⁰ *Id.*

⁴¹ *Id.* § 1

⁴² See, e.g., FORREST McDONALD, *THE AMERICAN PRESIDENCY: AN INTELLECTUAL HISTORY* 150-53, 160-63 (1994); CHARLES C. THACH, JR., *THE CREATION OF THE PRESIDENCY, 1775-1789: A STUDY IN CONSTITUTIONAL HISTORY* 65-70 (Liberty Fund 2007) (1923).

⁴³ See, e.g., EDMUND CODY BURNETT, *THE CONTINENTAL CONGRESS* 118-21, 488-92 (WW Norton & Co. 1964) (1941); JACK N. RAKOVE, *THE BEGINNINGS OF NATIONAL POLITICS: AN INTERPRETIVE HISTORY OF THE CONTINENTAL CONGRESS* 193-203, 282-84 (1979); JENNINGS B. SANDERS, *EVOLUTION OF EXECUTIVE DEPARTMENTS OF THE CONTINENTAL CONGRESS, 1774-1789*, at 70-71 (1935).

⁴⁴ See RAKOVE, *supra* note 43, at 198.

constitutions showed what Thomas Jefferson later called “jealousies of executive Magistrate[s]”⁴⁵ The legislatures dominated these governments Many governors were selected by state legislatures, most had short terms, restrictions on reeligibility, and shared executive authority with a governing council⁴⁶ Historians have traced how the lone early constitution with a strong executive — New York’s 1777 document — and the 1780 Massachusetts Constitution largely drafted by John Adams,⁴⁷ a believer in vigorous executive power, came to be seen as models for many Philadelphia framers because of concerns about legislative abuses and the need for an executive counterweight who would also vigorously execute the laws⁴⁸

Of course there were some who resisted a strong national executive, believing that fidelity to principles of the Revolution and republicanism mandated that, in Roger Sherman’s words to his Philadelphia colleagues, the Executive should be “nothing more” than an agent “for carrying the will of the Legislature” into effect,⁴⁹ and should be “absolutely dependent on that body”⁵⁰

As a result, there was vigorous disagreement at Philadelphia between people holding views like Sherman’s and the proponents of an independent, powerful Executive — men like James Wilson, Gouverneur Morris, and Alexander Hamilton⁵¹ They battled over whether the Executive would be single or plural, whether the Executive would be selected by the legislature or have an independent electoral base, whether the Executive should have a substantial salary, and whether the Executive would have elements of the old royal prerogative such as a veto over legislation or any ability to pardon⁵² We accept historians’ accounts of determined contestation at Philadelphia over these issues and a final result in which

⁴⁵ THOMAS JEFFERSON, *AUTOBIOGRAPHY* (1821), reprinted in 1 *THE WRITINGS OF THOMAS JEFFERSON* 1, 112 (Paul Leicester Ford ed., New York, G P Putnam’s Sons 1892)

⁴⁶ THACH, *supra* note 42, at 16–17, see also, e.g., WILLI PAUL ADAMS, *THE FIRST AMERICAN CONSTITUTIONS REPUBLICAN IDEOLOGY AND THE MAKING OF THE STATE CONSTITUTIONS IN THE REVOLUTIONARY ERA 270–72* (Rita & Robert Kimber trans., Rowman & Littlefield Publishers 2001) (1973), McDONALD, *supra* note 42, at 130–35, RICHARD B MORRIS, *THE FORGING OF THE UNION 1781–1789*, at 123–25 (1987), WOOD, *supra* note 7, at 138–43

⁴⁷ See JOHN ADAMS, *The Report of a Constitution, or Form of Government, for the Commonwealth of Massachusetts*, in ADAMS WRITINGS, *supra* note 1, at 295, 296

⁴⁸ See, e.g., ADAMS, *supra* note 46, at 294, THACH, *supra* note 42, at 76, WOOD, *supra* note 7, at 403–09, 431–36

⁴⁹ James Madison, Notes on the Constitutional Convention (June 1, 1787), in 1 *THE RECORDS OF THE FEDERAL CONVENTION OF 1787*, at 64, 65 (Max Farrand ed 1911) [hereinafter FARRAND’S RECORDS]

⁵⁰ *Id.* at 68

⁵¹ See, e.g., THACH, *supra* note 42, at 65–123

⁵² MORRIS, *supra* note 46, at 287–91, PRAKASH, *supra* note 17, at 54–55, THACH, *supra* note 42, at 65–123

the proponents of a strong Executive — desiring to preserve the structural unity and some powers of the British monarchy — got much but not all of what they wanted⁵³

In comparison, the disputes were mild with regard to the components of Article II central to our project. The Virginia Plan, presented at the outset of the Convention in May by the Virginia delegation — which included James Madison, George Washington, and Edmund Randolph⁵⁴ — proposed “a National Executive be instituted and that besides a general authority to execute the National laws, it ought to enjoy the Executive rights vested in Congress by the Confederation”⁵⁵. Adopted by the Convention as a basis for its opening discussions,⁵⁶ this plan proposed an oath for state officers, binding them to support the national government,⁵⁷ but contained no oath for national officials. Debate revealed that many but not all delegates believed that oaths were an important security that could help hold officers to their duty⁵⁸. A decade before, Revolutionary War leaders had confronted the problem that they and their soldiers were all legally committing treason against Britain, and they had no basis for requiring loyalty to the Continental Army and the nascent state and national governments⁵⁹. They turned to loyalty oaths as a legal solution, with more success for officers and soldiers than for the general populace⁶⁰. By 1778, each state had a loyalty oath,⁶¹ and it was unsurprising that Philadelphia delegates adopted a similar safeguard.

⁵³ See, e.g., MCDONALD, *supra* note 42, at 160–81. While Professor Eric Nelson’s account of the Convention debates about Article II aligns broadly with what we summarize in the main text, see NELSON, *supra* note 31, at 184–226, we think he sometimes over-reads — as a desire for monarchy — the views of Americans who desired only that the national chief executive have certain monarchical features or powers, such as the veto on legislation. See, e.g., *id.* at 222–24 (discussing aspects of Alexander Hamilton’s views on executive power that had attributes in common with royal prerogative).

⁵⁴ Journal of the Constitutional Convention (May 25, 1787), *in* 1 FARRAND’S RECORDS, *supra* note 49, at 1.

⁵⁵ James Madison, Notes on the Constitutional Convention (May 29, 1787), *in* 1 FARRAND’S RECORDS, *supra* note 49, at 17, 21.

⁵⁶ *Id.* at 23.

⁵⁷ *Id.* at 22 (“Resd that the Legislative Executive & Judiciary powers within the several States ought to be bound by oath to support the articles of Union[.]”).

⁵⁸ James Madison, Notes on the Constitutional Convention (June 11, 1787), *in* 1 FARRAND’S RECORDS, *supra* note 49, at 196, 203 (Edmund Randolph), James Madison, Notes on the Constitutional Convention (July 11, 1787), *in* 1 FARRAND’S RECORDS, *supra* note 49, at 578, 583–84 (Gouverneur Morris), James Madison, Notes on the Constitutional Convention (July 23, 1787), *in* 2 FARRAND’S RECORDS, *supra* note 49, at 87, 87 (Elbridge Gerry).

⁵⁹ HAROLD M. HYMAN, TO TRY MEN’S SOULS: LOYALTY TESTS IN AMERICAN HISTORY 73 (1959).

⁶⁰ See *id.* at 79–84.

⁶¹ *Id.* at 85.

Some delegates, like Wilson, voiced doubts about the efficacy of government-mandated oaths, however.⁶² As discussed in Part II below, oaths were used for centuries by the English state — and continued to be used at the time the U.S. Constitution was written — to exclude Catholics and dissenting (non-Anglican) Protestants from public office, to formally mandate allegiance to the Crown, and to assert royal control over church affairs. They were thus heartily disliked by many religious minorities. Wilson was born into a Presbyterian Scottish family and may have learned early that religious test oaths were oppressive.⁶³ In addition, some Protestant sects — including some Presbyterians and most Quakers, who were a large and powerful group in Pennsylvania (Wilson's adopted home state) — refused oaths because they found them to be a profane taking of the Lord's name in vain.⁶⁴ But the supporters of oaths in the Constitution greatly outnumbered opponents at Philadelphia.⁶⁵ Given the ubiquity of oaths of office in Anglo-American law, and widespread agreement that they should be included in the Constitution, it seems that many statesmen at the end of the eighteenth century still agreed with an earlier seventeenth-century author that an oath was “the safest knot of civil society, and the firmest band to tie all men to the performance of their several duties.”⁶⁶

Early in the Convention, the delegates took several votes that suggested a rejection of a presidency with broad prerogative powers over legislation. James Wilson's proposal for an absolute veto, for example, was decisively rejected,⁶⁷ as was an ambiguous proposal by Pierce Butler to grant the President some kind of suspending or temporary veto

⁶² James Madison, Notes on the Constitutional Convention (July 23, 1787), *supra* note 58, at 87.

⁶³ See CHARLES PAGE SMITH, JAMES WILSON: FOUNDING FATHER, 1742–1798, at 7–8 (1956); Alasdair Raffae, *Scottish State Oaths and the Revolution of 1688–1690*, in SCOTLAND IN THE AGE OF TWO REVOLUTIONS 181–82 (Sharon Adams & Julian Goodare eds., 2014) (discussing Scottish Presbyterian objections to the religious test oaths).

⁶⁴ These Protestant sects cited several parts of the New Testament, including the Sermon on the Mount. See *Matthew* 5:33–37 (King James) (“Again, ye have heard that it hath been said by them of old time, Thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths: but I say unto you, Swear not at all, neither by heaven, for it is God’s throne: nor by the earth, for it is his footstool: neither by Jerusalem, for it is the city of the great King: Neither shalt thou swear by thy head, because thou canst not make one hair white or black: But let your communication be, Yea, yea, Nay, nay, for whatsoever is more than these cometh of evil.”) But other Christians disagreed. “They noted that *Matthew* 5 could not be taken literally since God commanded his people to swear in the Old Testament (*Deut.* 6:13, 10:20) and the apostle Paul swore in his epistles (*Rom.* 9:1, *Gal.* 1:20, *Phil.* 1:8).” JONATHAN MICHAEL GRAY, OATHS AND THE ENGLISH REFORMATION 17 (2013).

⁶⁵ James Madison, Notes on the Constitutional Convention (July 23, 1787), *supra* note 58, at 88 (resolution on oaths adopted “nem. con.” — without dissent), *Journal* (Aug. 27, 1787), in 2 FARRAND’S RECORDS, *supra* note 49, at 422, 427 (presidential oath vote: 7 ayes, 1 no, 2 absent).

⁶⁶ J. C. D. Clark, *Religion and Political Identity: Samuel Johnson as a Nonjuror*, in SAMUEL JOHNSON IN HISTORICAL CONTEXT 79, 81 (Jonathan Clark & Howard Erskine-Hill eds., 2002) (quoting THE CASE OF CONCEALMENT OR MENTAL RESERVATION (1614)).

⁶⁷ See James Madison, Notes on the Constitutional Convention (June 4, 1787), in 1 FARRAND’S RECORDS, *supra* note 49, at 96, 98, 103. Ten states voted against, and none voted for it. *Id.* at 103.

power⁶⁸ These early decisions make it unlikely that the later additions of the Take Care Clause and the oath could have been understood as resurrecting any kind of a suspension power, a power withheld from the monarchy for a century by the time of the Convention⁶⁹

An amended Virginia Plan on June 13 contained a chief magistrate “with power to carry into execution the National Laws [and] removable on impeachment and conviction of mal practice or neglect of duty”⁷⁰ William Paterson for New Jersey introduced an alternate plan with a structurally weaker Executive, but one that still had “general authority to execute the federal acts”⁷¹ Hamilton proposed an elected “Governour” who would “serve during good behaviour,” and “have the execution of all laws passed”⁷² There was no oath for the chief magistrate and nothing resembling the Take Care Clause

In late July, a Committee of Detail was formed to produce a draft constitution based on the votes and discussions that had occurred to date⁷³ The Committee was chaired by John Rutledge of South Carolina and included Randolph, Oliver Ellsworth of Connecticut, Wilson, and Nathaniel Gorham of Massachusetts⁷⁴ Both Faithful Execution Clauses — the President’s oath of office and the Take Care Clause — emerged during this process from a draft by Wilson, edited by Rutledge⁷⁵ Wilson and Rutledge agreed that the draft should read “The Executive Power of the United States shall be vested in a single Person His Stile shall be, ‘The President of the United States of America’”⁷⁶ They also agreed on an oath “Before he shall enter on the Duties of his Department, he shall take the following Oath or Affirmation, ‘I — solemnly swear, — or affirm, — that I will faithfully execute the Office of President of the United States of America’”⁷⁷

⁶⁸ See *id* at 103–04, see also Josh Blackman, *The Constitutionality of DAPA Part II Faithfully Executing the Law*, 19 TEX REV L & POL 215, 222 (2015) (discussing Butler’s proposal)

⁶⁹ See PRAKASH, *supra* note 17, at 93–94 (acknowledging that “a few delegates favored [temporary suspensions]” but also emphasizing that “the state delegations unanimously rejected the idea” and that the “Crown had lacked these powers for almost a century”)

⁷⁰ The Virginia Plan as Amended in Committee (June 13, 1787), in 1 FARRAND’S RECORDS, *supra* note 49, at 228, 230

⁷¹ James Madison, Notes on the Constitutional Convention (June 15, 1787), in 1 FARRAND’S RECORDS, *supra* note 49, at 242, 244

⁷² James Madison, Notes on the Constitutional Convention (June 18, 1787), in 1 FARRAND’S RECORDS, *supra* note 49, at 282, 292 Hamilton’s longer outline from September reflecting the final draft has sometimes been mistakenly attributed to this June debate The editor of Hamilton’s papers estimated the date of this outline was around September 17, as the Convention was nearing completion See 4 THE PAPERS OF ALEXANDER HAMILTON 253 & n 2 (Harold C Syrett ed., 1962)

⁷³ William Ewald, *The Committee of Detail*, 28 CONST COMMENT 197, 202 (2012)

⁷⁴ *Id* at 202, 214

⁷⁵ Report of Committee of Detail, IX, in 2 FARRAND’S RECORDS, *supra* note 49, at 163 n 17

⁷⁶ *Id* at 171

⁷⁷ *Id* at 172 (one set of internal quotation marks omitted)

There was some difference about the wording of what would become the Take Care Clause. Wilson wrote, likely borrowing directly from his home state's constitution and William Penn's famous charter⁷⁸ "He shall take Care to the best of his Ability, that the Laws of the United States be faithfully executed"⁷⁹ Rutledge edited this to read "It shall be his duty to provide for the due & faithful exec — of the Laws of the United States to the best of his ability"⁸⁰ The Committee of Detail reported a version that hewed closer to Wilson's, stating that the President "shall take care that the laws of the United States be duly and faithfully executed"⁸¹ Both versions — by use of the passive voice in Wilson's formulation and by referring to a "duty to provide for" in Rutledge's — seem to convey that the President would have an oversight role, making certain that other officials faithfully execute the laws⁸² But this does not exclude direct law execution by the President, especially since "the executive power" was vested in this office by the first sentence of Article II⁸³ The conceptions of the office of President all seem to contemplate that the laws to be executed would include, at a minimum — and perhaps at a maximum — acts of the national legislature⁸⁴

After more debate, and an addition to the presidential oath of "preserve protect and defend" language on motion of Madison and George Mason,⁸⁵ a Committee of Style was commissioned to produce a new draft⁸⁶ In early September, the Committee — comprised of Hamilton, William Johnson of Connecticut, Rufus King of Massachusetts, Madison, and Gouverneur Morris — issued a draft with the following language

Before he enter on the execution of his office, he shall take the following oath or affirmation "I —, do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my judgment and power, preserve, protect and defend the constitution of the United States " [H]e shall take care that the laws be faithfully executed⁸⁷

⁷⁸ See sources cited *infra* notes 297 & 374

⁷⁹ Report of Committee of Detail, IX, *supra* note 75, at 171 (annotations omitted), see *id.* at 163 n 17 (identifying the annotations used to note editing of the text)

⁸⁰ *Id.* at 163, see *id.* at 163 n 17 and accompanying text (on authorship of Wilson and Rutledge)

⁸¹ James Madison, Notes on the Constitutional Convention (Aug 6, 1787), in 2 FARRAND'S RECORDS, *supra* note 49, at 177, 185

⁸² See, e.g., Metzger, *supra* note 17, at 1875-76 (making this point about the "take care" formulation)

⁸³ U.S. CONST. art. II, § 1, cl. 1. But the English monarch did not have authority to personally, directly execute the laws, see *infra* note 423 and accompanying text, a state of affairs that may be reflected in the passive voice of the Take Care Clause

⁸⁴ See *supra* notes 67-72 and *infra* section I D 2, pp. 2136-37

⁸⁵ James Madison, Notes on the Constitutional Convention (Aug 27, 1787), in 2 FARRAND'S RECORDS, *supra* note 49, at 426, 427

⁸⁶ Journal of the Constitutional Convention (Sept 8, 1787), in 2 FARRAND'S RECORDS, *supra* note 49, at 544, 547

⁸⁷ Report of Committee of Style (Sept 12, 1787), in 2 FARRAND'S RECORDS, *supra* note 49, at 590, 599-600, see also *id.* at 590 n 8

Two changes of interest were made before the faithful execution provisions were finalized. First, the Committee of Style deleted “duly and” before “faithfully” in the Take Care Clause, seemingly because duly executing was redundant with faithfully executing.⁸⁸ And on September 15, the Convention Journal reflects that the oath was changed so that the President did not promise to use his or her “best judgment and power,” but rather “the best of [his or her] ability.”⁸⁹ Convention notes do not reveal the reason for this change, but it does seem to eliminate some discretion by removing the words “judgment” and “power” and emphasizing instead a need for diligence and effort.

From the outset of its drafting, the presidential oath allowed affirming rather than swearing, showing that the framers were sensitive to the views of Protestant sects (such as the Quakers) who viewed oath-taking as profane. Also notable is the clause that ended up in Article VI that, while requiring all officers under the United States “be bound by oath or affirmation, to support the Constitution,” banned any “religious test” for those officers⁹⁰ — a short sentence that swept away centuries of English practice that had limited the holding of important government offices to people who would swear allegiance to and take the sacraments of the established Anglican Church.

Taking an oath of office was both commonplace and significant. In seventeenth-century England — even before the massive growth of government and offices of the eighteenth century⁹¹ — about one-twentieth of adult males held public office in a given year, and potentially about one-half did so in a given decade.⁹² Nearly all of these offices — whether constable, bailiff, alderman, recorder, ale taster, or something else — would have required oaths upon entry.⁹³ At the same time, one oath of office in particular had enormous constitutional importance for the country: The coronation oath, in which the new king or queen was

⁸⁸ Compare *id.* at 599 (omitting “duly”), with Proceedings of Convention Referred to the Committee of Style and Arrangement (Sept. 10, 1787), in 2 FARRAND’S RECORDS, *supra* note 49, at 565, 574 (previous version with “duly”). For a caution against relying too heavily on the surviving records of the Convention, see MARY SARAH BILDER, MADISON’S HAND *passim* (2015).

⁸⁹ Journal of the Constitutional Convention (Sept. 15, 1787), in 2 FARRAND’S RECORDS, *supra* note 49, at 621.

⁹⁰ U.S. CONST. art. VI, cl. 3.

⁹¹ See MAX M. EDLING, A REVOLUTION IN FAVOR OF GOVERNMENT ORIGINS OF THE U.S. CONSTITUTION AND THE MAKING OF THE AMERICAN STATE 64–65 (2003).

⁹² See Mark Goldie, *The Unacknowledged Republic: Officeholding in Early Modern England*, in THE POLITICS OF THE EXCLUDED, c. 1500–1800, at 153, 161 (Tim Harris ed., 2001).

⁹³ See sources cited *infra* notes 214–227, see also EDWARD VALLANCE, REVOLUTIONARY ENGLAND AND THE NATIONAL COVENANT STATE OATHS, PROTESTANTISM AND THE POLITICAL NATION, 1553–1682, at 17, 19 (2005) (“By the end of the sixteenth century, England had turned into a nation in which mass oath taking was an almost customary part of political life.”) *Id.* at 17. “The lowliest of occupations could carry an oath of office, binding the swearer to fulfill their duties. Midwives, forest rangers and ale tasters, along with lord lieutenants and judges, swore to faithfully serve the crown or the parish.” *Id.* at 19.)

required to pledge to govern according to law, was a conceptual key to England's uniquely limited monarchy⁹⁴ As we explore below, the drafters, notably, did not borrow language from the coronation oath but rather from the oaths of lesser officers, which frequently invoked faithful execution

There was a "dog that didn't bark" at the Philadelphia Convention In the recorded debates, we find almost no one arguing that either of the Faithful Execution Clauses somehow empower the President Instead, the clauses were discussed as duties or restrictions Legal scholarship has often overemphasized oaths as the basis for powers,⁹⁵ framed most famously by Chief Justice Marshall's invocation of his oath in *Marbury v Madison*⁹⁶ to underwrite the Court's power of judicial review⁹⁷ But the framing records, as well as prior history, reflect a belief that oaths were instead discretion-limiting, with significant binding effect in legal or political terms Even Wilson, who was skeptical of oaths' efficacy, acknowledged that he "was afraid they might too much trammel the Members of the Existing Govt in case future alterations should be necessary, and prove an obstacle" to amending the Constitution⁹⁸ As Wilson recognized, many people in the eighteenth century viewed oath-swearing as a solemn and momentous event with real binding power over men's souls and hence their actions as well

B Ratification Debates

As at Philadelphia, divergent views about the proper structure and power of a national Executive emerged during the ratification process in state conventions⁹⁹ But there was little discussion of the Faithful Execution Clauses, and neither clause generated any sustained controversy To the extent they were discussed, the clauses tended to be viewed as real limits on presidential power In a *Federalist* essay, Madison wrote that "the executive magistracy is carefully limited in the extent of its power"¹⁰⁰ Hamilton suggested in another *Publius* essay that, in the Take Care Clause, "the power of the President will resemble

⁹⁴ See MICHAEL J BRADDICK, *STATE FORMATION IN EARLY MODERN ENGLAND, C 1550-1700*, at 21-22 (2000), DAVID MARTIN JONES, *CONSCIENCE AND ALLEGIANCE IN SEVENTEENTH CENTURY ENGLAND: THE POLITICAL SIGNIFICANCE OF OATHS AND ENGAGEMENTS* 19 (1999), VALLANCE, *supra* note 93, at 19, see also *infra* notes 263-266 and accompanying text

⁹⁵ See, e.g., Paulsen, *supra* note 3, at 257-62

⁹⁶ 5 U.S. (1 Cranch) 137, 180 (1803)

⁹⁷ See, e.g., Patrick O. Gudridge, *The Office of the Oath*, 20 CONST. COMMENT 387, 403-04 (2003), Paulsen, *supra* note 3, at 272 The better reading is probably that Chief Justice Marshall invoked the oath to frame judicial review as an unavoidable duty and responsibility, not a power

⁹⁸ James Madison, Notes on the Constitutional Convention (July 23, 1787), *supra* note 58, at 87

⁹⁹ See, e.g., PAULINE MAIER, *RATIFICATION: THE PEOPLE DEBATE THE CONSTITUTION, 1787-1788*, at 151, 189-90, 286, 371 (2010)

¹⁰⁰ THE FEDERALIST NO. 48, at 306 (James Madison) (Clinton Rossiter, ed., 2003)

equally that of the king of Great Britain and of the governor of New York"¹⁰¹ — two officials who were bound by oath to follow and execute standing law and had no suspension authority. In a Virginia newspaper, "Americanus" ridiculed the claim that the President possessed "kingly" or "mighty powers," suggesting the Take Care Clause specifically was not such a power.¹⁰² James Wilson, in the Pennsylvania ratifying convention, did state that the Take Care Clause was a "power of no small magnitude," but that was in response to a claim that the President would be a mere "tool" of an overly powerful Senate.¹⁰³

At the Massachusetts ratifying convention, former governor James Bowdoin listed the Presidential Oath Clause as one of the "great checks" in the document against abuse of power.¹⁰⁴ "A Jerseyman" wrote in a Trenton newspaper that the presidential oath "guarded" against abuse of office.¹⁰⁵ "A Native of Virginia" published a pamphlet which called the oath "an additional check upon the President."¹⁰⁶

Oaths of office in general were discussed as real and meaningful checks on official behavior by figures such as Hamilton in a *Federalist*

¹⁰¹ THE FEDERALIST NO 69, *supra* note 100, at 416 (Alexander Hamilton)

¹⁰² *Americanus I*, VA INDEP CHRON, Dec 5, 1787, *reprinted in* 8 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 203 (John P. Kaminski & Gaspare J. Saladino eds., 1988) [hereinafter DHRC]

¹⁰³ Statement of James Wilson at the Pennsylvania Ratifying Convention (Dec 11, 1787), *in* 2 DHRC, *supra* note 102, at 550, 568. For more on Wilson's complex views at the Pennsylvania Convention, see *infra* notes 121–123 and accompanying text.

¹⁰⁴ Statement of James Bowdoin at the Massachusetts Ratifying Convention (Jan 23, 1788), *in* 6 DHRC, *supra* note 102, at 1321–22. *But see* Letter from William Symmes, Jr., to Peter Osgood, Jr. (Nov 15, 1787), *in* 4 DHRC, *supra* note 102, at 236, 242. In this letter, an antifederalist delegate to the Massachusetts ratifying convention expressed concern that Article II was "so brief, so general," that the "faithful execution" language was insufficiently clear to restrain or guide the President. *Id.* Symmes asked "And should ye Legislature direct ye mode of executing ye laws, or any particular law, is [the President] obliged to comply, if he does not think it will amount to a faithful execution?" *Id.* He concluded "Doubtless it is a very good thing to have wholesome laws faithfully executed — But where this power is given to a single person, it does not seem to me that either sufficient instructions, or a sufficient restraint, can be couched in two words." *Id.* For further discussion of this letter, see Steven G. Calabresi & Saikrishna B. Prakash, *The President's Power to Execute the Laws*, 104 YALE L J 541, 620–22 (1994), and Matthew Steil, *How to Think Constitutionally About Pre-ogative: A Study of Early American Usage*, 66 BUFF L REV 557, 631 n 269 (2018).

¹⁰⁵ A Jerseyman, *To the Citizens of New Jersey*, TRENTON MERCURY, Nov 6, 1787, *reprinted in* 3 DHRC, *supra* note 102, at 146, 149. "A Jerseyman" added that "faithfully execute" meant a command of active execution. *Id.* Similarly, William Maclaine, a delegate in the North Carolina ratifying convention, described the Take Care Clause as one of the Constitution's "best provisions," because "[i]f [the President] takes care to see the laws faithfully executed, it will be more than is done in any government on the continent." Statement of William Maclaine at the North Carolina Ratifying Convention (July 28, 1788), *in* 4 ELLIOT, *supra* note 8, at 135, 136. Professors Steven Calabresi and Saikrishna Prakash suggest that Maclaine's interpretation of the Take Care Clause "ensure[s] a vigorous execution of federal law" and "energetic presidential execution." Calabresi & Prakash, *supra* note 104, at 617.

¹⁰⁶ A Native of Virginia, Observations upon the Proposed Plan of Federal Government (Apr 2, 1788), *in* 9 DHRC, *supra* note 102, at 655, 680–81.

essay,¹⁰⁷ the influential essayist "Brutus" (likely Melancton Smith),¹⁰⁸ and others¹⁰⁹ There was some, but not much dissent from that theme¹¹⁰ And "no objection [was] made," Hamilton wrote in another *Federalist* essay, "nor could [it] possibly admit of any," to the requirement that the president faithfully execute the laws¹¹¹

There was some dissent about the presidential oath because it was not religious enough For example, a South Carolina pastor complained at that state's ratification convention that the sacred, Christian character of the oaths of office was undermined by the No Religious Test Clause¹¹² Similarly, Edmund Pendleton asked James Madison in a letter "why require an Oath from Public Officers, and yet interdict all Religious Tests, their only sanction"¹¹³ He noted that "a belief of a Future State of Rewards & Punishments" is what "give[s] conscientious Obligation to Observe an Oath" of office¹¹⁴ A few other people made similar points¹¹⁵ Oliver Wolcott of Connecticut, on the other hand, told his state's convention for ratifying the Constitution that an oath of office "is a direct appeal to that God who is the Avenger of Perjury Such an appeal to Him is a full acknowledgment of His being and providence"¹¹⁶

We found little evidence that either Faithful Execution Clause was viewed during ratification as allowing the President authority to suspend execution of the laws, whether based on his policy preferences or on his own interpretations of the Constitution, and a substantial amount of evidence cutting the other way Pendleton, for example, wrote that the President would "hav[e] no latent Prerogatives, nor any Powers but

¹⁰⁷ THE FEDERALIST NO 27, *supra* note 100, at 173 (Alexander Hamilton) (referencing "the sanctity of an oath" of office)

¹⁰⁸ Brutus VI, N Y J, Dec 27, 1787, *reprinted in* 15 DHRC, *supra* note 102, at 110, 112 (lamenting that state government officials "will be subordinate to the general government, and engaged by oath to support it"), *see also* 13 DHRC, *supra* note 102, at 411

¹⁰⁹ *See, e.g.*, Statement of John Smilie at the Pennsylvania Ratifying Convention (Nov 28, 1787), *in* 2 DHRC, *supra* note 102, at 407, 410 (giving as one reason that the national government will be too powerful that "[o]aths [are] to be taken to the general government")

¹¹⁰ *See* Statement of Benjamin Rush at the Pennsylvania Ratifying Convention (Nov 30, 1787), *in* 2 DHRC, *supra* note 102, at 433, 433 ("The constitution of Pennsylvania, Mr President, is guarded by an oath, which every man employed in the administration of the public business is compelled to take, and yet, sir, examine the proceedings of the Council of Censors and you will find innumerable instances of the violation of that constitution, committed equally by its friends and enemies")

¹¹¹ THE FEDERALIST NO 77, *supra* note 100, at 462 (Alexander Hamilton)

¹¹² Statement of Francis Cummins at the South Carolina Ratifying Convention (May 20, 1788), *in* 27 DHRC, *supra* note 102, at 359, 359 n 2, 360

¹¹³ Letter from Edmund Pendleton to James Madison (Oct 8, 1787), *in* 10 DHRC, *supra* note 102, at 1770, 1774

¹¹⁴ *Id.*

¹¹⁵ *See* MAIER, *supra* note 99, at 152

¹¹⁶ *Convention Proceedings and Debates*, CONN COURANT, Jan 14, 1788 (statement of Oliver Wolcott), *reprinted in* 3 DHRC, *supra* note 102, at 554, 558

such as are defined & given him by law”¹¹⁷ An anonymous writer during the New Jersey and Pennsylvania conventions stated similarly that the Take Care Clause meant “complete execution,” and then included the oath of office as a further command for full execution.¹¹⁸ Other observers explained that “faithful execution” was a legal limitation on executive discretion. One writer, “Cassius” (James Sullivan, a Massachusetts lawyer, later the governor¹¹⁹), explained that the oath of faithful execution distinguished the President from a monarch, and that violation of it would “arrest[]” his career (civilly, not criminally) and be justiciable.¹²⁰ In ambiguous remarks at the Pennsylvania Ratifying Convention, Wilson might have endorsed some kind of presidential nonenforcement. Wilson stated that after being enacted, laws could not be left “a dead letter” but must be “honestly and faithfully executed.”¹²¹ But later in the same lengthy speech, after endorsing the power of judicial review of legislation, Wilson added, “[i]n the same manner, the President of the United States could shield himself and refuse to carry into effect an act that violates the Constitution.”¹²² Wilson did not tie this claim to any clause of the Constitution. Some scholars view this statement as a departmentalist assertion that the President could refuse to execute laws that he viewed as unconstitutional.¹²³ That may be right, but Wilson may instead have been referring to the President’s veto or pardon powers, the expressly enumerated methods for the President to disagree with Congress about the constitutionality (or wisdom) of legislation.

A number of writers and speakers during ratification seem to have understood the Take Care Clause’s reference to “laws” to mean statutes of Congress,¹²⁴ but whether it meant more than that was not expressly debated.

A final point of interest is that the ratification debates were filled with references to public offices as “trusts,”¹²⁵ and officers as “servants,”

¹¹⁷ Letter from Edmund Pendleton, *supra* note 113, at 1772.

¹¹⁸ A Jerseyman, *supra* note 105, at 148–49 (emphasis omitted).

¹¹⁹ 4 DHRC, *supra* note 102, at 30.

¹²⁰ Cassius VI, *To the Inhabitants of this State*, MASS GAZETTE, Dec 21, 1787, reprinted in 5 DHRC, *supra* note 102, at 500, 500 (“[I]nstead of the president’s being vested with all the powers of a monarch he is under the immediate controul of the constitution, which if he should presume to deviate from, he would be immediately arrested in his career, and summoned to answer for his conduct before a federal court.”)

¹²¹ Statement of James Wilson at the Pennsylvania Ratifying Convention (Dec 1, 1787), in 2 DHRC, *supra* note 102, at 448, 450.

¹²² *Id.* at 451.

¹²³ See Frank H. Easterbrook, *Presidential Review*, 40 CASE W RES L REV 905, 920–22 (1990), see also Michael B. Rappaport, *The President’s Veto and the Constitution*, 87 NW U L REV 735, 767–68 (1993).

¹²⁴ See, e.g., Statement of James Wilson, *supra* note 121, at 450, A Jerseyman, *supra* note 105, at 148–49.

¹²⁵ THE FEDERALIST NO 57, *supra* note 100, at 348 (James Madison) (stating that rulers exercise a “public trust” for “the common good of the society”), Statement of Richard Harrison at the

"agents," "guardians," or "trustees" of the people,¹²⁶ language that implied a special obligation by the officeholder to act for the benefit of the public, not himself personally

C Linguistic Usage

Neither the phrase "faithfully execute" nor its variants (such as "faithful execution") is defined as a term of art in standard eighteenth-century legal dictionaries.¹²⁷ But general dictionaries did agree on the meaning of the component words — and, like the Convention and ratification evidence above, reinforce the narrative of "faithful execution" as limiting device

In some contexts, the word "faithfully" had a religious significance, but there is no reason to think that was the sense in which it was used in the Constitution. According to Samuel Johnson's dictionary, "faithfully" meant, in its nonreligious senses "With strict adherence to duty Without failure of performance Sincerely, with strong promises Honestly, without fraud Confidently, steadily"¹²⁸ Noah Webster's first dictionary, which slightly postdates the framing period, defines faithfully as "honestly, sincerely, truly, steadily"¹²⁹ Other dictionaries agree,¹³⁰ but with many omitting the usage as steadily or

New York Ratifying Convention, July 14, 1788, *in* 23 DHRC, *supra* note 102, at 2170, 2171 (calling the powers lodged in government officials by the proposed constitution "a sacred trust")

¹²⁶ See, e.g., THE FEDERALIST NO 40, *supra* note 100, at 251 (James Madison) (referring to the Constitution's drafters as "confidential servants of their country"), THE FEDERALIST NO 46, *supra* note 100, at 291 (James Madison) ("The federal and State governments are in fact but different agents and trustees of the people, constituted with different powers and designated for different purposes"), THE FEDERALIST NO 49, *supra* note 100, at 313 (James Madison) ("The nature of their public trust implies a personal influence among the people, and that they are more immediately the confidential guardians of the rights and liberties of the people"), Statement of Edmund Pendleton at the Virginia Ratifying Convention (June 2, 1788), *in* 9 DHRC, *supra* note 102, at 910, 911 (referring to ratifying convention delegates as "[t]rustees") One writer referred to the president as the "supreme conservator of laws" *Republicus*, KY GAZETTE, Mar 1, 1788, *reprinted in* 8 DHRC, *supra* note 102, at 448

¹²⁷ See, e.g., 2 MATTHEW BACON, A NEW ABRIDGEMENT OF THE LAW (London, E & R Nutt & R Gosling 1736), 1 RICHARD BURN & JOHN BURN, A NEW LAW DICTIONARY (London, A Strahan & W Woodfall 1792), JOHN COWEL & THO MANLEY, THE INTERPRETER OF WORDS AND TERMS, USED EITHER IN THE COMMON OR STATUTE LAWS OF THIS REALM, AND IN TENURES AND JOCLAR CUSTOMS (London, 1701), 2 TIMOTHY CUNNINGHAM, A NEW AND COMPLETE LAW-DICTIONARY, OR, GENERAL ABRIDGMENT OF THE LAW (London, His Majesty's Law Printers 2d ed 1771), GILES JACOB, A NEW LAW-DICTIONARY (London, W Strahan & W Woodfall 10th ed 1782)

¹²⁸ 1 SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (London, 7th ed 1783)

¹²⁹ NOAH WEBSTER, A COMPENDIOUS DICTIONARY OF THE ENGLISH LANGUAGE 112 (New Haven, Sidney's Press 1806)

¹³⁰ See, e.g., 1 JOHN ASH, THE NEW AND COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE (London, Edward & Charles Dilly 1775) ("with strict adherence to duty, sincerely, honestly, steadily, confidently"), FREDERICK BARLOW, THE COMPLETE ENGLISH DICTIONARY (London, 1772) ("With strict adherence to duty, loyalty, and the discharge of any obligation or promise Honestly, or without fraud Fervently, earnestly, confidently"), WILLIAM CRAKELT, ENTICK'S NEW

confidently, and focusing on the meaning as sincerely, honestly, or true to one's trust or duty¹³¹ In a vast number of English and colonial legal precedents imposing oaths for faithful execution or directions to faithfully execute,¹³² faithfulness is described as a "duty" being owed to a "trust" or to the intent and meaning of a law or other legal directive. Steadiness has resonance, too, because — as we will discuss — "diligently" was frequently used alongside faithfully to describe how officers should execute their office or laws.

To execute something meant in the eighteenth century, as it does today, to carry out or put into effect or force, to enforce, to administer¹³³ The oath requires the President to faithfully execute the office of the President. Implementing and carrying out the duties of the presidency, then, are what must be done faithfully. The Take Care Clause requires the President to faithfully execute "the laws" — to put them into force and effect. We discuss below whether "the laws" includes only statutes of Congress, or perhaps also the Constitution, international law, or various types of common law.

We note, before proceeding to other parts of the Faithful Execution Clauses, that the history we present below about their meaning supports and is supported by recent work of Professor Julian Mortenson on the meaning of the "executive Power" vested in the President by the first sentence of Article II.¹³⁴ Rejecting the prominent claim that this Executive Vesting Clause conveys a residuum of all domestic and foreign affairs prerogatives held by the British Crown, unless expressly vested elsewhere by the Constitution,¹³⁵ Mortenson shows convincingly that this opening clause of Article II would have been understood at the framing to vest merely a power to execute the law — a power that was inherently

SPELLING DICTIONARY 143 (London, Charles Dilly 1788) ("sincerely, honestly, truly, steadily"), WILLIAM PERRY, THE ROYAL STANDARD ENGLISH DICTIONARY 234 (Worcester, Mass., Isaiah Thomas 1st Am. ed. 1788) ("honestly, sincerely, steadily"), THOMAS SHERIDAN, A COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE (Philadelphia, William Young 4th ed. 1789) ("with strict adherence to duty, sincerely, honestly, confidently, steadily")

¹³¹ See, e.g., NATHAN BAILEY, DICTIONARIUM BRITANNICUM OR A MORE COMPLETE UNIVERSAL ETYMOLOGICAL ENGLISH DICTIONARY (London, T. Cox 2d ed. 1736) ("honestly, sincerely, trustily"), DANIEL BELLAMY, A NEW, COMPLETE, AND UNIVERSAL ENGLISH DICTIONARY (London, J. Fuller 4th ed. 1764) (faithful "loyal, just, upright, honest, sincere, true to one's trust"), A GENERAL AND COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE (London, W. Peacock 1785) ("sincerely, honestly")

¹³² See *infra* Part II, pp. 2141–78

¹³³ Mortenson, *supra* note 31 (manuscript at 91–96)

¹³⁴ U.S. CONST. art. II, § 1, cl. 1, see Mortenson, *supra* note 31

¹³⁵ See, e.g., Zivotofsky *ex rel.* Zivotofsky v. Kerry, 135 S. Ct. 2076, 2098–99 (2015) (Thomas, J., concurring in the judgment in part and dissenting in part), Saikrishna B. Prakash & Michael D. Ramsey, *The Executive Power over Foreign Affairs*, 111 YALE L.J. 231, 252–56 (2001)

subordinate to legislative authority¹³⁶. Both of these histories of linguistic use, therefore, emphasize the republican rather than the royal or imperial core of America's chief executive.

D. *The Other Components of the Clauses*

Each of the clauses imposing faithful execution obligations contains additional language that could affect its meaning. Based on historical research, we have concluded as follows:

1. *"Take Care"* — The original meaning of "take care" is relatively clear. A "take care" command is found in a vast number of legal documents in the centuries before 1787. In those contexts, "take care" was a directive from a superior to an agent, directing that special attention be paid to ensure that a command or duty was carried out. This usage is found in everything from corporate charters for businesses¹³⁷ and colonial settlements,¹³⁸ to orders of the Crown issued to colonial governors¹³⁹ and other officials,¹⁴⁰ to statutory commands to officers and statutory definitions of duties of an office,¹⁴¹ to directives of

¹³⁶ See Mortenson, *supra* note 31 (manuscript at 63–72).

¹³⁷ See, e.g., Grant of London Goldwire Drawers, Patent Rolls, 21 Jac. I, pt. 11 (June 14, 1623), in 28 THE PUBLICATIONS OF THE SELDEN SOCIETY SELECT CHARTERS OF TRADING COMPANIES, A.D. 1530–1707, at 122, 132 (Cecil T. Cair ed., 1913) (providing an oath to be administered to the governor of the corporation that he "take care (so far as in you lieth) that provision of bullion be duly made and brought in bonâ fide from foreign parts" (emphasis removed)).

¹³⁸ See, e.g., The Charter of Massachusetts Bay (1629), reprinted in 3 THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES 1846, 1852 (Francis Newton Thorpe ed., 1909) [hereinafter FEDERAL AND STATE CONSTITUTIONS] (directing that the governor and other corporate officers "shall apply themselves to take Care for the best disposing and ordering of the generall buynses and Affaires" of the colony and company). The 1663 Charter for Rhode Island contained the same provision. Rhode Island Charter Granted by King Charles II (July 8, 1663), at 2, reprinted in LIBRARY OF CONGRESS <https://www.loc.gov/resource/rbpe.16400100/?sp=1&st=text> [<https://perma.cc/72ZN-FQEH>].

¹³⁹ See, e.g., 1 ROYAL INSTRUCTIONS TO BRITISH COLONIAL GOVERNORS, 1670–1776 § 78, at 43–44 (Leonard Woods Labaree ed., 1935) [hereinafter LABAREE] (noting instruction to the governor of Virginia that "you are to take care that the Oaths of Obedience and Supremacy be administered to all persons whatsoever that bear any part of the government").

¹⁴⁰ See, e.g., The Earl of Nottingham to the Commissioners of the Great Seal (May 13, 1689), in CALENDAR OF STATE PAPERS, DOMESTIC SERIES, OF THE REIGN OF WILLIAM AND MARY 13TH FEB. 1689–APRIL 1690, at 102, 102 (William John Hardy ed., London, Eyre and Spottiswoode 1895) ("[H]is Majesty would have you take care that the rule heretofore observed by former Lord Chancellors or Lord Keepers, as to the payment of those fees before the passing of the patent, be punctually kept on all other occasions, without any variation from it").

¹⁴¹ See, e.g., An Act for the More Effectual Suppression of Piracy 1698/99, 11 Will. 3 c. 7, § 6 (providing that the register of an ad hoc admiralty court for trying pirates "shall prepare all Warrants and Articles and take care to provide all Things requisite for any Tiyall according to the substantiall and essentiall Parts of Proceedings in a Court of Admiralty"), An Act for the Laying Out, Regulating, Clearing, and Preserving Publick Common High-ways Throughout this Colony, reprinted in ACTS OF ASSEMBLY, PASSED IN THE PROVINCE OF NEW-YORK, FROM 1691, TO 1718, at 66, 68 (London, John Baskett 1719) (directing surveyors and commissioners "to take Care

the Continental Congress,¹⁴² and military orders of General George Washington¹⁴³ As noted above, a directive that magistrates “take care” that laws be faithfully executed was found in the postindependence constitutions of Vermont, New York, and Pennsylvania, and in a frame of government for colonial Pennsylvania from the 1680s¹⁴⁴

Descriptions of law execution power in both legal and popular sources sometimes also used the formulation¹⁴⁵ For example, a proclamation of James I against the sale of foreign tobacco noted “that such person or persons, whom Wee shall appoint, specially by Our Privie Seale, to take care and charge of the execution of Our pleasure in the premisses, shall have the one halfe of all the Fines, to bee imposed upon

that this Act, and every Clause, Matter, and Thing in the same contained, be duly, truly, and effectually performed, done, and put in Execution”), An Act for Amending, Explaining and Reducing into One Act of Parliament, the Laws Relating to the Government of His Majesty’s Ships, Vessels and Forces by Sea 1748/49, 22 Geo 2 c 33, *reprinted in* 1 THE LAWS, ORDINANCES, AND INSTITUTIONS OF THE ADMIRALTY OF GREAT BRITAIN, CIVIL AND MILITARY 539–40 (London, His Majesty’s Law-Printers 1767) (excerpting a statute providing that “[a]ll Commanders and Officers of his Majesty’s Ships of War shall take Care that Prayers and Preaching by the Chaplains of the Ships be performed diligently, and that the Lord’s Day be observed according to Law”)

¹⁴² 10 JOURNALS OF THE CONTINENTAL CONGRESS, 1774–1789, at 141 (Worthington Chauncey Ford ed., 1908) [hereinafter JOURNALS OF THE CONTINENTAL CONGRESS] (“*Resolved*, That the Board of War be directed to enquire into the conduct of all strangers of suspicious characters, or whose business is not known and approved, who may come to the place where Congress sits, and to take care that the public receive no damage by such persons”)

¹⁴³ See, e.g., George Washington, *General Orders*, 4 July 1775, FOUNDERS ONLINE, <http://founders.archives.gov/documents/Washington/03-01-02-0027> [<https://perma.cc/B3Y2-SJC5>] (“All Officers are required and expected to pay diligent Attention, to keep their Men neat and clean They are also to take care that Necessarys be provided in the Camps and frequently filled up to prevent their being offensive and unhealthy”)

¹⁴⁴ See *supra* note 26

¹⁴⁵ See ELIDAD BLACKWELL, A CAVEAT FOR MAGISTRATES IN A SERMON, PREACHED AT PAULS, BEFORE THE RIGHT HONORABLE THOMAS ATKIN, ESQUIRE, LORD MAJOR OF THE CITY OF LONDON, NOVEMBER THE THIRD, 1644, at 34 (London, Robert Leybun 1645) (“Never had any Kingdome better Lawes in that respect [caring for the poor], I beseech you take care that they be executed”), DANIEL DEFOE, THE POOR MAN’S PLEA, IN RELATION TO ALL THE PROCLAMATIONS, DECLARATIONS, ACTS OF PARLIAMENT, & C WHICH HAVE BEEN, OR SHALL BE MADE, OR PUBLISH’D, FOR A REFORMATION OF MANNERS, AND SUPPRESSING IMMORALITY IN THE NATION 25 (London, A Baldwin 1698) (“[T]he Vigour of the Laws consists in their Executive Power, Ten thousand Acts of Parhament signify no more than One single Proclamation, unless the Gentlemen, in whose hands the Execution of those Laws is placed, take care to see them duly made use of”), OBADIAH HULME, AN HISTORICAL ESSAY ON THE ENGLISH CONSTITUTION 29 (London, 1771) (“There were three things essentially necessary, to form a Saxon government and these were, a court of council, a court of law, and a chief magistrate [The] chief magistrate, who was vested with the executive authority to administer the constitution to the people, and whose duty it was to take care that every man, within his jurisdiction, paid a due obedience to the law”), 2 T RUTHERFORTH, INSTITUTES OF NATURAL LAW, BEING THE SUBSTANCE OF A COURSE OF LECTURES ON *GROTIUS DE JURE BELLI ET PACIS* 71 (Cambridge, J Archdeacon 2d ed 1779) (“The legislative is the joynt understanding of the society, directing what is proper to be done, and is therefore naturally superiour to the executive, which is the joynt strength of the society exerting itself in taking care, that what is so directed shall be done”) We thank Juhan Mortenson for the Defoe, Hulme, and Rutherford references

every offendour against this Our Proclamation, for their encouragement to bee diligent and faithfull, in, and about the performance of that service¹⁴⁶ John Selden's notes on his translation of an important work by Sir John Fortescue, Chief Justice of the King's Bench in the fifteenth century, attribute England's "excellent Constitution" in part to the fact that the king "is circumscribed with Laws which are calculated for the good of the Subject that is, to take care that the Laws be duly put in Execution, and that Right be done"¹⁴⁷

The phrase "take care" was also used in international treaties, in which one or both sovereigns promised to accomplish something specific¹⁴⁸ And it had meanings in everyday speech — to look out for or provide for another person or thing¹⁴⁹ — just as it does today

2 "[T]he Laws" — We have not reached a confident answer to the question whether, in its original meaning, the faithful execution of "the laws" commanded by the Take Care Clause encompasses only statutes of Congress, or something more — perhaps the Constitution, treaties, common law, or the law of nations, too The issue does not seem to have been taken up in recorded debates at Philadelphia or during ratification Some scholars have plausibly suggested that "the laws" in Article II cross-references the Supremacy Clause¹⁵⁰ But even if true, this does not definitively resolve the question because the cross-reference could include only "the Laws of the United States which shall be made in pursuance" to the Constitution,¹⁵¹ that is, statutes of Congress¹⁵² Or "the laws" in Article II might encompass the three kinds of federal law that constitute "the supreme Law of the Land" the Constitution, congressional statutes, and treaties¹⁵³ We think either answer is plausible, as is the claim first made during the Washington Administration that

¹⁴⁶ BY THE KING, A PROCLAMATION CONCERNING TOBACCO (London, Bonham Norton & John Bill 1624) We have modernized the spelling by replacing "u" with "v" where appropriate

¹⁴⁷ JOHN FORTESCUE, *DE LAUDIBUS LEGUM ANGLIAE* 133 (John Selden trans., London, 1775)

¹⁴⁸ See, e.g., Treaty of Peace Between Louis XIV, King of France and Navarre, and the Lord Protector of the Republic of England, Scotland, and Ireland, art XXIII, Nov. 3, 1655 (promising that both parties "shall take care that justice be done incorruptedly" to subjects of the other), reprinted in 1 A COLLECTION OF ALL THE TREATIES OF PEACE, ALLIANCE, AND COMMERCE, BETWEEN GREAT-BRITAIN AND OTHER POWERS 81, 84 (London, 1785)

¹⁴⁹ See, e.g., THE HARSHIPS OF THE ENGLISH LAWS IN RELATION TO WIVES 19 (London, W Bowyer 1735) (stating that a mother "is more inclined by Nature, to take Care of the Children")

¹⁵⁰ Goldsmith & Manning, *supra* note 23, at 1856–57; Michael D Ramsey, *Torturing Executive Power*, 93 GEO L J 1213, 1248 (2005)

¹⁵¹ U.S. CONST. art. VI, cl. 2 (emphasis added)

¹⁵² Recent work by Professor John Harrison suggests, based on a close reading of drafts of the Constitution, that "the Laws" most likely refers to statutes alone John Harrison, *The Constitution and the Law of Nations*, 106 GEO L J 1659, 1671–84 (2018) If "the Laws" in the Take Care Clause refers only to statutes, then the oaths and the Take Care Clause do meaningful work It would arguably be the oath only that would be the basis for limiting the pardon power, veto power, appointment power, removal power, and the like to faithful exercises thereof

¹⁵³ See, e.g., RAMSEY, *supra* note 17, at 163–64, 363–64

“the Laws” also includes the law of nations¹⁵⁴ We conclude that this question likely is one that will need to be resolved by interpretive methods other than original meaning — structural inferences, functional considerations, liquidation in post-framing practice,¹⁵⁵ later historical gloss, or judicial doctrine As we discuss below, whether “the Laws” to be faithfully executed include the Constitution in addition to statutes of Congress could have implications for how the history we present here impacts certain debates about presidential power¹⁵⁶

3 “*Preserve, Protect and Defend*” — The faithful execution aspect of the oath is conjoined with a promise to “preserve, protect and defend the Constitution” “to the best of [the President’s] ability”¹⁵⁷ As discussed above, this language was suggested to the Philadelphia Convention by James Madison and George Mason, and adopted without recorded debate (In fact, most of what was said at Philadelphia was probably not recorded¹⁵⁸) Scholars have not uncovered any clear precedents or determinate meanings of this language, and our investigations have been largely unavailing Unlike “faithful execution,” this is not a phrase with clear historical roots

The *exact* phrase seems to have been used only infrequently prior to the Philadelphia Convention The contexts in which we located the phrase were almost entirely religious — often describing God’s care for his church or for particular people¹⁵⁹ Similar but not identical

¹⁵⁴ See PRAKASH, *supra* note 17, at 88 (noting this argument by Secretary of Treasury Hamilton), Robert J Reinsten, *Executive Power and the Law of Nations in the Washington Administration*, 46 U RICH L REV 373, 379–80 (2012) (exploring how the Washington Administration took care to faithfully execute the law of nations)

¹⁵⁵ See THE FEDERALIST NO 37, *supra* note 100, at 225 (James Madison) (“All new laws, though penned with the greatest technical skill and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications” (emphasis added)), see also Letter from James Madison to Judge Spencer Roane (Sept 2, 1819), in 3 LETTERS AND OTHER WRITINGS OF JAMES MADISON 143, 145 (New York, R Wothington 1884) (explaining that ambiguities in the Constitution “might require a regular course of practice to liquidate and settle the meaning”)

¹⁵⁶ See *infra* pp 2186–87 referencing the discussion of whether a President can decline to enforce a statute on the ground that he or she believes it is unconstitutional

¹⁵⁷ U S CONST art II, § 1, cl 8

¹⁵⁸ See James H Hutson, *The Creation of the Constitution The Integrity of the Documentary Record*, 65 TEX L REV 1, 34 (1986)

¹⁵⁹ See, e g., WILLIAM DODD, REFLECTIONS ON DEATH 58 (Dublin, Thomas Walker 4th ed 1773) (recounting a prayer to God to “preserve, protect, [and] defend” orphans), THE CONFESSION AND CONVERSION OF THE CHIEFEST AND GREATEST OF SINNERS ¶ 109 (London, T Hayes 1662) (“But now I know (and for which I heartily and sincerely desire ever to praise thee) that thine angei is turned away, and that thine hand is stretched out still over me, to preserve, protect, defend, maintaine, and to do me good”), THOMAS WILSON & JOHN BAGWELL, A COMPLETE CHRISTIAN DICTIONARY 350 (Andrew Simson ed., London, E Cotes 7th ed 1661) (defining “to keep” as used in *Psalms* 121 4 (King James) — “Behold, he that keepeth Israel shall neither slumber nor sleep” — to mean “To preserve, protect, and defend against enemies and evils, spiritual and bodily”)

phrases — such as protect and defend, preserve and maintain, defend and preserve, support and protect — were used very commonly over many centuries, often in religious contexts¹⁶⁰

Similar language was used to establish and buttress the Protestant basis of the English monarchy. For example, the coronation oath of Stuart kings included a promise “to grant and to preserve” to the bishops and their churches “all Canonical Privileges, and due Law and Justice,” and to “protect and defend [them], as every good King in his Kingdoms ought to be Protector and Defender of the Bishops and the Churches”¹⁶¹. This was changed slightly by Parliament in the aftermath of the Glorious Revolution, so that monarchs were required to swear to “[m]aintaine the Laws of God the true Profession of the Gospell and the Protestant Reformed Religion Established by Law[,] [a]nd Preserve unto the Bishops and Clergy of this Realme all such Rights and Priviledges as by Law doe or shall appertaine unto them”¹⁶². Later statutes reinforcing the Protestant nature of the monarchy used similar language¹⁶³.

Language of protecting, defending, maintaining, supporting, or preserving was also used in the sense of military support or at least physical protection from harm¹⁶⁴. Letters of protection or safe conduct given by

¹⁶⁰ See, e.g., THOMAS DEACON, A BOOK OF COMMON PRAYER OR CLEMENTINE LITURGY ACCORDING TO THE USE OF THE PRIMITIVE CATHOLIC CHURCH (London, 1734) (reprinting a “Prayer of Benediction” “but sanctify and keep them, protect, defend, and deliver them from the Adversary and from every enemy, guard their habitations, and preserve them going out and their coming in”), EDWARD LEIGH, A SYSTEME OR BODY OF DIVINITY CONSISTING OF TEN BOOKS 651–52 (London, A.M. 1654) (defining the word “deliver” in the Lord’s Prayer — “And lead us not into temptation, but deliver us from evil,” *Matthew* 6:13 (King James) — to mean “keep and preserve, to protect and defend from evil, that we fall not into it”), WILLIAM SHERLOCK, SERMONS PREACH’D UPON SEVERAL OCCASIONS SOME OF WHICH WERE NEVER BEFORE PRINTED 76 (London, 1700) (“God will always preserve and protect the Christian Church, that the true Faith of Christ, and his true and sincere Worshippers shall never wholly fail in the World [W]e learn by that Example, how he will protect, defend, and support the Christian Church to the end of the world”).

¹⁶¹ THE HISTORY OF PUBLICK AND SOLEMN STATE OATHS 15–16 (London, 1716). Charles I echoed the coronation promise in a speech at Lincolnshire during the English Civil War. See BAEIAIKA [Basiliika] THE WORKS OF KING CHARLES THE MARTYR 179 (London, 2d ed. 1687) (“I assure you upon the Faith and Honor of a Christian King, I will be always as tender of any thing which may advance the true Protestant Religion, protect and preserve the Laws of the Land, and defend the just Privilege and Freedom of Parliament, as of My Life or My Crown”).

¹⁶² An Act for Establishing the Coronation Oath 1688, 1 W & M sess. 1 c. 6.

¹⁶³ See, e.g., Security of Succession Act (or Abjuration Oath Act) 1702, 13 & 14 Will. 3 c. 6 (requiring an oath to, among other things, “support maintain and defend the Limitation and Succession of the Crown against him the said James,” the Catholic pretender).

¹⁶⁴ See, e.g., *Novanglus*, No IV, in ADAMS WRITINGS, *supra* note 1, at 175, 178 (“[E]very farthing of expense which has been incurred, on pretence of protecting, defending, and securing America, since the last war, has been worse than thrown away. Keeping an army in America has been nothing but a public nuisance.”)

English monarchs used this language,¹⁶⁵ as did treaties of military alliance¹⁶⁶ Perhaps the most interesting examples of the latter usage are found in treaties of the United States negotiated in the preconstitutional period¹⁶⁷ Somewhat similarly, it was frequently said that monarchs had the duty to protect and defend (or synonyms) their subjects from violence or oppression¹⁶⁸

Finally, we see language evocative of the later Article II formulation in some oaths required of governors and other state and national officials in the post-independence era in America Some were directed to protecting and defending a constitution For example, the 1776 South Carolina Constitution required state officials to swear to “support, maintain and defend the constitution of South Carolina”¹⁶⁹ Other oaths, framed during the exigencies of civil war, had military and loyalty connotations Connecticut, for example, required state officeholders in 1776 to swear to “maintain and defend the Freedom, Independence, and

¹⁶⁵ See, e.g., 1 CALENDAR OF THE CLOSE ROLLS, EDWARD III, A.D. 1327–1330, at 201–02 (London, Eyre & Spottiswoode 1896) (“To the sheiff of Oxford and Berks Order to cause proclamation to be made prohibiting any one, under pain of forfeiture, from invading by armed force the abbey of Abyndon or any of its manors, or from attempting anything to the breach of the king’s peace, or from inflicting damage or annoyance upon the abbot and monks in their persons and goods The sheriff is ordered to maintain, protect, and defend the abbot and convent and men from such oppressions and wrongs to the best of his power”)

¹⁶⁶ Treaty of Mutual Defence Between King George I and Prince Charles VI, Emperor of Germany, May 25, 1716, art. II (printed by S. Buckley in London, 1718) (providing that if either’s territory was invaded, the other would come to aid so that territory “be preserved, defended and maintained inviolable, against all Aggressors,” *id.* at 4)

¹⁶⁷ See, e.g., Treaty of Amity and Commerce, U.S.–Fr., art. 6, Feb. 6, 1778, 8 Stat. 12 (“The Most Christian King shall endeavour by all the means in his power to protect and defend all vessels and the effects belonging to the subjects, people or inhabitants of the said United States”), *id.* art. 7 (“In like manner the said United States and their ships of war, sailing under their authority, shall protect and defend, conformable to the tenor of the preceding article, all the vessels and effects belonging to the subjects of the Most Christian King”) This “protect and defend” treaty language comes from the Model Treaty of 1776, adopted by the Continental Congress. See Plan of Treaties (Sept. 17, 1776), in 5 JOURNALS OF THE CONTINENTAL CONGRESS, *supra* note 142, at 768, 769

¹⁶⁸ For example, Algernon Sidney, the seventeenth-century republican martyr and writer in the Commonwealth tradition who was revered by many American framers, see BAILYN, *supra* note 7, at 34–35, wrote that government must be designed so that magistrates “might not be able to oppress and destroy those [the people] they ought to preserve and protect” ALGERNON SIDNEY, DISCOURSES CONCERNING GOVERNMENT 561 (Thomas G. West ed., Liberty Fund 1996) (1698)

¹⁶⁹ S.C. CONST. OF 1776, art. XXXIII, see also An Ordinance Prescribing the Oaths of Office to be Taken by the Governor and Privy Council, and Other Officers of the Commonwealth of Virginia ch. 3 (May 1776), reprinted in ORDINANCES PASSED AT A GENERAL CONVENTION OF DELEGATES AND REPRESENTATIVES, FROM THE SEVERAL COUNTIES AND CORPORATIONS 7, 7 (Richmond, Ritchie, Trueheart & Du-val 1816) (requiring the governor to swear to “execute the said office diligently and faithfully, according to law” and “to the utmost of my power, support, maintain and defend, the Commonwealth of Virginia, and the Constitution of the same”)

Privileges of this State against all open Enemies or traitorous Conspiracies whatsoever”¹⁷⁰ And the Continental Congress required first all army officers, and then also all civil officers of the national government, to take an oath “to the utmost of my power, [to] support, maintain, and defend” the United States.¹⁷¹

We discern no clear and determinate meaning emerging from these various predecessors of the “preserve, protect and defend” oath. As suggested by the plain or dictionary meaning of the words, the phrase seems to suggest both a conceptual fidelity to the Constitution and its principles and a kind of magisterial and even martial promise of physical protection as well. But since that protection is pledged to a document, rather than to a state, community, or particular persons, it is hard to say exactly how this protective sense should be understood. As discussed above, oaths were not generally viewed during framing and ratification as sources of power, but rather as restraints. Thus the power to carry out these meanings would likely have to come from other parts of the Constitution or other law.¹⁷²

* * *

Since the meaning of “take care” is clear, and since the meanings of “the Laws” and of “preserve, protect and defend” are not made determinate by historical antecedents, Philadelphia drafting history, or ratification debates, we proceed in the rest of this paper to focus solely on the language of “faithful execution” in the Take Care Clause and Presidential Oath Clause. We analyze the “faithful execution” component of these clauses together not only because they share diction (which “full faith and credit” does not) but also because we found such commands and oaths to occur in tandem often in our historical investigations.

The brief survey of the state of play during the Convention and ratification debates, and in American culture circa 1787 to 1788, illuminates something about the original meaning of the Faithful Execution Clauses. In the next Part we seek additional evidence of meaning in Anglo-American law prior to 1787.

¹⁷⁰ ACTS AND LAWS, MADE AND PASSED BY THE GENERAL COURT OR ASSEMBLY OF THE STATE OF CONNECTICUT 433 (New London, Conn., Timothy Green 1776) (Early American Imprints Series I [hereinafter EAI] no. 14691).

¹⁷¹ 6 JOURNALS OF THE CONTINENTAL CONGRESS, *supra* note 142, at 893–94, 10 *id.* at 114–15.

¹⁷² *But cf.* Goldsmith & Manning, *supra* note 23, at 1854 (“Although legal academics have often stressed that constitutionmakers framed the [Take Care Clause] as a duty rather than a grant of power, a well-known — and commonsensical — canon of textual interpretation instructs that the imposition of a duty necessarily implies a grant of power sufficient to see the duty fulfilled.”) One might argue that the same canon suggests that a duty imposed by oath also implies a grant of power

II FAITHFUL EXECUTION FROM MAGNA CARTA TO THE U S CONSTITUTION

A vast array of English public and private officers took oaths or were bound by commands of faithful execution of office and law. We start our history in the medieval period, around the time of Magna Carta. Oaths of office and directives to officeholders certainly long predate medieval England, having been found, for example, in both Greek and Roman contexts more than a millennium earlier.¹⁷³ But we are here concerned with English governance because that is most probative of the original meaning of the U S Constitution. We show that, over the centuries, a three-part meaning of faithful execution developed. The oath or command of faithful execution to an officeholder came to convey an affirmative duty to act diligently, honestly, skillfully, and impartially in the best interest of the public, a restraint against self-dealing and corruption, and a reminder that officeholders must stay within the authorization of the law and office.

A The Medieval Period and the Multiplicity of Oaths

Oaths to faithfully execute or perform the duties of an office date back in English law to at least the 1200s.¹⁷⁴ These oaths, which were taken by a diverse range of officeholders, typically associated “faithful” with words such as “diligent,” demanded “loyalty” akin to that in feudal oaths of fealty, and at times joined “faithful execution” with proscriptions against self-dealing. This section traces the nascent three-part meaning of “faithful execution.”

¹⁷³ See, e.g., Helen Silving, *The Oath I*, 68 YALE L J 1329 (1959).

¹⁷⁴ Surely there is an earlier history, but we are limited by a lack of surviving texts that have been translated from Latin, Norman, or other languages.

In the 1200s and 1300s, we see mayors,¹⁷⁵ bailiffs,¹⁷⁶ coroners,¹⁷⁷ wardens,¹⁷⁸ keepers of the rolls of Chancery,¹⁷⁹ tax collectors,¹⁸⁰ and many other officers required, as a condition of taking office, to swear an oath to execute it well and faithfully. Magna Carta required such an oath. The great charter imposed on King John in 1215 provided that barons would monitor the king's compliance with the charter's terms, declaring that "the said twenty-five [barons] shall swear that they shall faithfully observe" — *fideliter observabunt* — "all that is aforesaid, and cause it to be observed with all their might."¹⁸¹

It was not only persons holding what we would see as traditional public offices who were required to take such oaths. Holders of quasi-public offices like brokers of woad (a flowering plant valued for dye-

¹⁷⁵ See, e.g., BRITISH BOROUGH CHARTERS, 1216-1307, at 366 (Adolphus Ballard & James Tait eds., 1923) (provision of 1284 royal charter for Conway that the mayor "shall swear to faithfully do those things which pertain to the mayoralty in the same borough"), *id.* at 365 (provision of 1299 royal charter for Northampton that the mayor shall "take his oath to execute faithfully those things which pertain to the mayoralty of the aforesaid town"), CALENDAR OF LETTER-BOOKS PRESERVED AMONG THE ARCHIVES OF THE CORPORATION OF THE CITY OF LONDON AT THE GUILDHALL LETTER-BOOK C CIRCA A.D. 1291-1309, at 174 (Reginald R. Sharpe ed., 1901) (reporting a 1303 installation ceremony for mayor of London at which an oath was "there taken of him to keep the City well and faithfully to the use of Sir Edward, the illustrious King of England, and his heirs, &c., and to do right and justice to poor and rich alike, &c.")

¹⁷⁶ 1 STATUTES OF THE REALM 210 (Dawsons of Pall Mall 1963) (1810) (requiring bailiffs "to swear, that they will well and faithfully do that which they shall give them in charge on the King's behalf"), BRITISH BOROUGH CHARTERS, *supra* note 175, at 355 (provision of 1284 royal charter for Cardigan that the bailiff "shall take his oath for the performance and faithful execution of those things which pertain to the bailiwick of the same town")

¹⁷⁷ BRITISH BOROUGH CHARTERS, *supra* note 175, at 360 (provision of 1299 royal charter for Hull that the coroner "shall swear that he will faithfully do and keep those matters which pertain to the duty of a coroner in the borough aforesaid")

¹⁷⁸ *Id.* at 366 (provision of 1299 royal charter for Hull that the warden before assuming office "shall first take his corporeal oath before the aforesaid burgesses on the holy gospels of God that he will faithfully and diligently do all things pertaining to the office of warden in the aforesaid borough")

¹⁷⁹ 4 CALENDAR OF THE CLOSE ROLLS, EDWARD II, A.D. 1323-1327, at 386 (London, Eyre & Spottiswoode 1898) (recording that the king committed rolls of chancery to king's clerk Master Henry de Clyf who "took oath to execute the office well and faithfully"), 3 CALENDAR OF THE CLOSE ROLLS, EDWARD III, A.D. 1333-1337, at 295 (London, Eyre & Spottiswoode 1898) (recording that the king committed rolls, writs, and memoranda of chancery to Sir Michael de Wath, clerk, "to hold in the same manner as Master Henry de Clyf, deceased, had that custody," and Michael "took the oath to exercise that custody well and faithfully")

¹⁸⁰ 3 CALENDAR OF THE CLOSE ROLLS, EDWARD III, A.D. 1333-1337, *supra* note 179, at 676 (recording that the king had in letters patent appointed "John Dyn and John de Hemenhale to seek and receive the fifteenth and tenth granted to him by the laity in the last parliament at Westminster, in co. Essex, and to answer therefor at the exchequer at certain days about to come," and that the king had appointed "the abbot of Waltham Holy Cross to receive their oath to well and faithfully execute everything contained in the said letters")

¹⁸¹ Magna Carta ch. 61, reprinted in WILLIAM SHARPE MCKECHNIE, MAGNA CARTA: A COMMENTARY ON THE GREAT CHARTER OF KING JOHN 465, 466-67 (2d ed. 1914) (providing Latin original and English translation)

making),¹⁸² “weighers of the Great Balance” (the public scale in a town’s market square) appointed by a pepper and spice merchants guild,¹⁸³ and surgeons¹⁸⁴ also took oaths for the faithful execution or performance of office

Not all offices had simple oaths requiring only faithful or due execution. Members of the king’s council, for instance, took a detailed oath to “well and truly counsel the king,” “guard and maintam [and] preserve and restore the Rights of the King,” keep secrets discussed in council, act impartially, and eschew bribes.¹⁸⁵ Sheriffs took an oath that detailed specific responsibilities of the office, required impartiality, and barred self-dealing.¹⁸⁶ Justices of royal courts were directed to “do equal Law and Execution of right to all our Subjects, rich and poor, without having regard to any Person” and swore an oath to take no “Fee nor Robe of any Man, but of Ourself [the king], and that they shall take no Gift nor Reward by themselves, nor by other, privily nor apertly, of any

¹⁸² CALENDAR OF LETTER-BOOKS PRESERVED AMONG THE ARCHIVES OF THE CORPORATION OF THE CITY OF LONDON AT THE GUILDHALL LETTER-BOOK D CIRCA A D 1309–1314, at 258 (Reginald R. Sharpe ed., 1902) (recording that Fulbert Pedefer de Wytсанд, elected by merchants to be broker of woad, “was presented and sworn before the Mayor to faithfully execute the office between buyer and seller”)

¹⁸³ CALENDAR OF LETTER-BOOKS PRESERVED AMONG THE ARCHIVES OF THE CORPORATION OF THE CITY OF LONDON AT THE GUILDHALL LETTER-BOOK H CIRCA A D 1375–1399, at 22 (Reginald R. Sharpe ed., 1907) (recording “John Lokes elected by good men of the mystery of Pepperers to be weigher of the Great Balance, and sworn before John Warde, the Mayor, to faithfully execute the office”)

¹⁸⁴ MEMORIALS OF LONDON AND LONDON LIFE IN THE XIIITH, XIVTH, AND XVTH CENTURIES 337 (Henry Thomas Riley ed. & trans., London, Longmans, Green & Co. 1868) (reporting that in 1369 several named men were sworn as master surgeons of the City of London that “they would well and faithfully serve the people, in undertaking their cures” and “faithfully do all other things touching their calling”)

¹⁸⁵ 1 STATUTES OF THE REALM, *supra* note 176, at 248; see also James F. Baldwin, *Antiquities of the King’s Council*, 21 ENGLISH HIST. REV. 1, 2–4 (1906) (reprinting and discussing Latin and French versions of the oath). For Blackstone’s rendition of the eighteenth-century conciliar oath, which is quite similar to the earlier one in the main text, see 1 WILLIAM BLACKSTONE, COMMENTARIES *223.

¹⁸⁶ 1 STATUTES OF THE REALM, *supra* note 176, at 247 (requiring sheriffs to swear “well and truly you will serve the King in the Office of Sheriff, and to the Profit of the King will do in all Things which to you belong to do, and his Rights, and whatever to his Crown belongeth, you will truly guard, and that you will not assent to the Decrease or Concealment of the King’s Rights or Franchises, And the Debts of the King, neither for Gift nor for Favour will you respite, and that lawfully and rightfully you will treat the People of your Bailiwick, and to every one you will do right, as well to the Poor as the Rich, in that which to you belongeth”)

Man that hath to do before them by any Way"¹⁸⁷ These oaths effectively specified what it meant to faithfully execute that particular office¹⁸⁸

But at the same time that officers swore before God to faithfully execute their official duty, use of government office for private gain was widespread, many medieval officials paid the Crown for their offices and then farmed the offices out to deputies, while keeping most of the fees and emoluments of office for themselves¹⁸⁹ Although it would take centuries of institutional tinkering to figure out how to keep officers faithful in light of the private benefits office conferred, from very early on those who held offices had to invoke God and their honor to take oaths with legal and political consequences

Oaths — whether simple or more detailed — were sometimes supplemented by sovereign commands directing how officers were to execute their offices And faithfulness in the duties of the office was a frequent directive In 1299, for example, Parliament directed sheriffs in Somerset and Dorset, in order to prevent debased coin from entering England, in each port to “choose two good and lawful men who, together with the Bailiffs of the same Port, shall arrest and search, faithfully and without sparing, all those who shall arrive within their

¹⁸⁷ Ordinance for the Justices 1346, 20 Edw 3 c 1, reprinted in 1 STATUTES OF THE REALM, *supra* note 176, at 303, 303–04 English statutes were customarily dated according to the regnal year — the year of the king or queen’s reign — during which a Parliament sat and produced acts that received the assent of the monarch We think readers would benefit from a calendar year also, and so have supplied one But there are some complexities, as this brief note explains Regnal years did not correspond to calendar years, and Parliaments started and ended on no regular schedule For example, a statute dated “1 Eliz” in its standard citation could have been enacted in either 1558 or 1559 See THE OXFORD COMPANION TO ENGLISH LITERATURE app III at 944 (Paul Harvey ed, 4th ed 1967) Sometimes a Parliament sat during only one calendar year even though the regnal year spanned parts of two calendar years In those cases it is easy to consult a standard government source, see 1 CHRONOLOGICAL TABLE AND INDEX OF THE STATUTES TO THE END OF THE SESSION 4 EDW 7 (20th ed 1904), to date a statute to a precise calendar year But when the Parliament spanned calendar years, getting an authoritative date is more difficult Yet since we are giving calendar years not to precisely date historical events but simply to convey to readers the general time frame in which statutes were enacted, we have been satisfied to cite a two-year range when a Parliament spanned calendar years We have also been satisfied to accept as authoritative the dates given in the *Chronological Table*, notwithstanding the complexity caused by the fact that in 1751 Great Britain changed the start of its year from March 25 to January 1 See An Act for Regulating the Commencement of the Year 1751, 24 Geo 2 c 23

¹⁸⁸ Indeed, Fortescue wrote in his famous dialogue *De Laudibus Legum Angliae* (Commendation of the Laws of England, circa 1543) that a sheriff must swear “well, faithfully and indifferently to execute and do his duty” FORTESCUE, *DE LAUDIBUS LEGUM ANGLIAE* THE TRANSLATION INTO ENGLISH 81 (A Amos trans, Cambridge, J Smith 1825)

Philip Hamburger, writing about judicial oaths in English history, concludes that differing forms of oaths for different judges likely reflected policy concerns particular to certain offices, and that a failure in some judicial oaths to mention the baseline requirement of every judicial office — faithful adherence to English law — should not be understood to mean that this requirement had been dispensed with See PHILIP HAMBURGER, *LAW AND JUDICIAL DUTY* 110–11 (2008)

¹⁸⁹ See K W SWART, *SALE OF OFFICES IN THE SEVENTEENTH CENTURY* 45–48, 56–57 (1980)

Wards¹⁹⁰ The medieval treatise known as *Bracton* (entitled *De Legibus et Consuetudinibus Angliae*) reports that the king's writ to his justices ordered them to "faithfully and diligently apply yourself to the execution of these matters so that we ought deservedly to commend both your loyalty and your diligence in this matter"¹⁹¹

In the medieval period, these and like oaths and commands were not just widespread but had tremendous importance in legal, political, religious, and social life. In the feudal system, the obligation of vassal to lord was marked by an oath of fealty that, as *Bracton* relates, involved swearing before God that one's body, goods, and honor were at the disposal of the lord.¹⁹² According to *Bracton*, the oath often added that the vassal would serve his lord and his heirs "faithfully and without diminution, contradiction, impediment, or wrongful delay"¹⁹³ Vassalage to a specific lord can be seen as a kind of office, and so perhaps there is little real distinction between an oath of fealty and an oath of faithful execution of office. In addition to fealty to one's immediate lord, English law also imposed oaths of fealty to the king on all adult male subjects,¹⁹⁴ as well as specific commands of fealty to the Crown in many legal documents such as commissions and charters.¹⁹⁵

At the same time, leading men of the realm desired that monarchs respect custom and law, rather than rule arbitrarily. There thus emerged the practice of the coronation oath to which we alluded in Part I, a series of formal promises made at the time of monarchical investiture.¹⁹⁶ In 1216, Henry III's coronation oath, which apparently was quite similar to his predecessors', involved three promises (*tria precepta*) to "preserve peace and protect the church, to maintain good laws and abolish bad, to dispense justice to all"¹⁹⁷ But soon coronation oaths changed

¹⁹⁰ A Statute Concerning False Money 1299, 27 Edw 1, reprinted in 1 STATUTES OF THE REALM, *supra* note 176, at 132

¹⁹¹ 2 HENRICI DE BRACTON, DE LEGIBUS ET CONSUEUDINIBUS ANGLIAE 309 (George Woodbine ed & Samuel Thorne trans, Belknap Press 1968) (c 1230-1250)

¹⁹² *Id.* at 232. Coke reports the oath of homage or fealty from a vassal to his lord as follows: "I become your man from this day forward of life and limb, and of earthly worship, and unto you shall be true and faithful, and bear you faith for the Tenements that I claim to hold of you (saving the faith I owe unto our Sovereign Lord the King[])" EDWARD COKE, THE FIRST PART OF THE INSTITUTES OF THE LAWS OF ENGLAND bk II, ch I, § 85, at 64-65 (London, William Rawlins & Samuel Roycroft 10th ed 1703)

¹⁹³ 2 BRACTON, *supra* note 191, at 232

¹⁹⁴ Caroline Robbins, *Selden's Pills: State Oaths in England, 1558-1714*, 35 HUNTINGTON LIBR Q 303, 308 (1972) (oath of fealty to the monarch existed from the time of William the Conqueror until the Revolution)

¹⁹⁵ See, e.g., BRITISH BOROUGH CHARTERS, *supra* note 175, at 367

¹⁹⁶ See *supra* pp 2127-28

¹⁹⁷ H G Richardson, *The English Coronation Oath*, in 23 TRANSACTIONS OF THE ROYAL HIST SOC'Y 129, 129 (1941) (summarizing the oath), see also Coronation of Richard I (1189), in ENGLISH CORONATION RECORDS 46, 51-52 (Leopold G Wickham Legg ed, 1901)

somewhat¹⁹⁸ In addition to promising to preserve the church and clergy, do rightful justice with mercy and discretion, and strengthen and defend the laws concerning worship, monarchs were pointedly required to affirm that they would grant and keep both the people's and clergy's laws and customs¹⁹⁹ While monarchs and their intellectual defenders claimed that these duties made a king accountable only to his own conscience and God, an important strand of English thought contended that the king was subservient to the law and, as confirmed in the coronation oath, owed a contractual duty to the people to govern well and for their benefit²⁰⁰ On this view of the coronation oath, it undergirded and confirmed a constitutionally limited monarchy²⁰¹

*B The Early Modern Era, the Tudors,
and More Specification of Faithful Execution*

The early modern period saw many oaths for the faithful execution of office, both those contained in statutes and custom In reviewing a large number of oaths, we paid careful attention to which words and concepts were frequently associated with faithful execution in statutes, commissions, and similar documents, and cross-referenced those findings with dictionaries to help define faithful execution Clues to the evolving meaning of faithful execution are also found in background principles of law that defined the duties of officeholders, and in the words and actions of political authorities who shaped norms of officeholding Three strands of faithful execution emerged First, faithful was linked with words such as diligent, honest, due, careful, impartial, and skillful, suggesting an affirmative duty Second, oaths or commands of faithful execution were increasingly understood to proscribe self-dealing Third, these oaths or commands similarly proscribed *ultra vires* action

Whether in oaths or in other statutory directives to officeholders, Parliament continued to specify what faithful execution meant for various offices For example, commissioners charged with collecting taxes, building sewers, and readying castles and fortifications were obliged to

¹⁹⁸ See PERCY ERNEST SCHRAMM, A HISTORY OF THE ENGLISH CORONATION 203-13 (Leopold G Wickham Legg trans., 1937), Richardson, *supra* note 197, at 146-47

¹⁹⁹ See, e.g., Little Device for the Coronation of Henry VII, in ENGLISH CORONATION RECORDS, *supra* note 197, at 219, 230, see also ENGLISH CORONATION RECORDS, *supra* note 197, at xv, xxxi

²⁰⁰ See, e.g., JONES, *supra* note 94, at 18-20 Fortescue, the fifteenth-century jurist, was one of the chief sources of this view See JOHN FORTESCUE, ON THE LAWS AND GOVERNANCE OF ENGLAND 48 (Shelley Lockwood ed., Cambridge Univ Press 1997) ("[Y]ou have already heard how among the civil laws there is a famous sentence, maxim or rule, which runs like this, 'What pleased the prince has the force of law' The laws of England do not sanction any such maxim, since the king of that land rules his people not only royally [by prerogative] but also politically, and so he is bound by oath at his coronation to the observance of his law")

²⁰¹ See *supra* note 94 and *infra* notes 263-266 and accompanying text

act diligently, truly, effectually, and impartially²⁰² Parliament started adding requirements to oaths of office or specifications of duties that the holder stay within his authority and abide by the intent of the legislation empowering him²⁰³ Other statutes charged officeholders, usually by oath, to take no profits from the office beyond what was allowed by law or custom²⁰⁴ The important Sale of Offices Act of 1551/52 banned the sale of any public office relating to the administration of justice, taxation and customs, the surveying or auditing of the king's properties, or the keeping of castles and fortifications²⁰⁵ An earlier statute had barred any senior crown officeholder — “the Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King's House,” and the like — from appointing a lower officer “for any Gift or Brocage, Favour or Affection”²⁰⁶ And statutes or royal directives also sometimes specified that an officeholder's failure to well and faithfully execute the office — sometimes phrased as a failure to demean oneself well in office — were cause

²⁰² See, e.g., An Acte for the Reedyfieng of Castelles and Fortes, and for Thenclosing of Growndes from the Borders Towardes and Against Scotlande 1555, 2 & 3 Phil & M c 1, § 2 (providing that the Crown shall appoint commissioners in northern areas of England to inquire into the state of castles, fortresses, and the like, to plan their upkeep and to tax and assess landowners for that purpose, requiring commissioners take corporal oath that to your “cuning witt & power shall truly & indifferently execute thauthorite to you gyven by this Comission, w[ith]out any favour affecon corruption drede or malice to bee borne to any maner pson or psones”), A Genall Act Concyng Comissions of Sewers to Be Directed in All Parts Within This Realme 1531/32, 23 Hen 8 c 5, § 2 (instructing commissioner for sewers to take oath “[t]hat you to your connyng wite and power shall truly and indifferently execute the authoritie to you yoven by this Comission of Sewers, without any favour affecon corrupcion drede or malice to be borne to any manner psonne or psonnes”), The Subsidye 1514/15, 6 Hen 8 c 26, § 5 (stating that commissioners charged with raising the king's revenue “shall truly effectually and diligently without onysson favour affecon fere drede or malice execute” the office)

²⁰³ See, e.g., An Acte for a Subsidie to the Kyng and Que[en] Ma[jesty] 1555, 2 & 3 Phil & M c 23, § 6 (directing commissioners for examining value of people's holdings and assessing a tax to “truly effectually and diligently for their pte execute theffecte of this [present] Acte accordyng to the teno[r] thereof in ev[er]ly behalfe, and none otherwise, by any meanes, w[ith]out omission favor drede malice or any other thyng to be attempted and don by them or any of them to the contrary thereof”), An Acte for the Graunte of One Entier Subsidie and Twoe Fifteenes and Tenthes Graunted by the Temporalite 1586/87, 29 Eliz c 8, § 9 (same)

²⁰⁴ See, e.g., An Act for the Swearinge of Under Sherifes and Other Under Officers and Mynisters 1584/85, 27 Eliz c 12, §§ 1, 3 (providing that undersheriffs, bailiffs, and their deputies take a corporal oath that they “shall not use or exercise the office corruptly during the tyme that [they] shall remaine therein, neither shall or will accept receive or take by any Colour Meanes or Devise whatsoever, or consent to the taking of, any maner of Fee or Rewarde of any person or persons, for the impanelling or returning of any Inquest Jurie or Tales in any Court of Recorde for the Queene, or betwixt partie and partie, above Two shillings or the vaille thereof, or such Fees as are allowed and appoynted for the same by the Lawes and Statutes of this Realme,” *id.* § 1)

²⁰⁵ 5 & 6 Edw 6 c 16

²⁰⁶ 1388, 12 Rich 2 c 2 Brocage meant “[t]he corrupt farming or jobbing of offices, the price or bribe paid unlawfully for any office or place of trust” *Brocage*, OXFORD ENGLISH DICTIONARY, <https://www.oed.com/view/Entry/23630?redirectedFrom=brocage#id> [http://perma.cc/W89A-XS5G]

for removal²⁰⁷ Later, it would be said that this condition was implied by law in every public office²⁰⁸

In practice, public office was frequently abused for private gain, despite the safeguards just described and the common requirement of faithful execution Many officers had life tenure in their offices, which were treated as property interests²⁰⁹ In addition to or instead of salaries, offices often gave the holder streams of income from fees for service and gratuities or tips, as well as the opportunity to attempt to control who would succeed in the office²¹⁰ All of this produced many opportunities for private profit and corruption, whether legal or illegal²¹¹ Notwithstanding these widespread practices, it remains significant that in a highly religious era, so many officeholders were required to pledge before God to faithfully execute their duties

Finally, religious test oaths for officeholders were introduced during the Tudor period, spurred by Henry VIII's break from the Church of Rome²¹² Mandatory religious test oaths — enforcing Anglican orthodoxy, denying the power and jurisdiction of the Church of Rome, and pledging fealty to the English monarch as the head of both church and state — became an enormously significant part of English public life for centuries to come²¹³

²⁰⁷ See, e.g., Swearing of Under Sheriffs §§ 4–5 (providing that any undersheriff, bailiff, or deputy who violates the statute and its oaths forfeits the office, and this can be enforced by justices of the peace and justices of assize), The Charter of Queen Elizabeth for the East India Company (Dec 31, 1600), *reprinted in* COURTENAY ILBERT, *THE GOVERNMENT OF INDIA* 464, 472 (Oxford, Clarendon Press 1898) (“[The] Governor, not demeaning himself well in his said Office, we will to be removeable at the Pleasure of the said Company”) An earlier statute directed justices of the assizes to hear and determine complaints at the suit of the king or a private party against sheriffs, escheators, bailiffs, and other officers who abused their offices See Ordinance for the Justices 1346, 20 Edw 3 c 6, *reprinted in* 1 *STATUTES OF THE REALM*, *supra* note 176, at 303, 305

²⁰⁸ See 3 MATTHEW BACON, *A NEW ABRIDGEMENT OF THE LAW* 741 (Dublin, Luke White 6th ed 1793) (“It is laid down in general, that if an Officer acts contrary to the Nature and Duty of his Office, or if he refuses to act at all, that in these Cases the Office is forfeited for that in the Grant of every Office it is implied, that the Grantee execute it faithfully and diligently”)

²⁰⁹ See G E AYLMER, *THE KING'S SERVANTS THE CIVIL SERVICE OF CHARLES I*, 1625/42, at 106 (1961) [hereinafter AYLMER, *KING'S SERVANTS*], 2 BLACKSTONE, *supra* note 185, at *36

²¹⁰ See AYLMER, *KING'S SERVANTS*, *supra* note 209, at 160, 176, 179

²¹¹ See, e.g., G E AYLMER, *THE STATE'S SERVANTS THE CIVIL SERVICE OF THE ENGLISH REPUBLIC*, 1649–1660, at 78 (1973) [hereinafter AYLMER, *STATE'S SERVANTS*] As a result of this corruption, Professor G E Aylmer questions “how seriously these oaths [as a condition of taking office] were regarded” by officeholders AYLMER, *KING'S SERVANTS*, *supra* note 209, at 143

²¹² Emd Campbell, *Oaths and Affirmations of Public Office Under English Law An Historical Retrospect*, *J LEGAL HIST*, Dec 2000, at 1, 6–7

²¹³ See An Acte for Thassurance of the Quenes Majestys' Royall Power over All Estates and Subjectes Within her Highnes Dominions 1562/63, 5 Eliz c 1, An Acte Restoring to the Crowne Thaucyent Jurisdiction over the State Ecclesiasticall and [Spiritual], and Abolyshng all Forreine Power Repugnant to the Same (Act of Supremacy) 1558/59, 1 Eliz c 1, An Acte Extynguysshng the [Authority] of the [Bishop] of Rome 1536, 28 Hen 8 c 10, An Acte Ratyfienge the [Oath] that Everie of the Kynges Subjectes Hath Taken and Shall Hereaft[er] Be Bounde to Take for Due Obser[vac]yon of the Acte Made for the Suretie of the Successyon of the Kynges Highnes in the

*C Faithful Execution and Oaths of Office in
the Tumultuous Seventeenth Century*

1 *Within the Realm* — In the seventeenth century, many English offices continued to have requirements, by oath or otherwise, of faithful execution of duties. Examples of offices of this kind are varied, from officers of trading, merchant, or exploration corporations,²¹⁴ to wardens, porters, and keepers of the gates of London,²¹⁵ excise officers,²¹⁶ auditors

Crowne of the Realme 1534, 26 Hen 8 c 2, An Acte Concer[n]ynge the Kynges Highnes to be Supreme Heed of the Churche of Englande & to Have [Authority] to Refoume & Redresse All Errors Heresyces & Abuses yn the Same 1534, 26 Hen 8 c 1, An Acte for the Establishment of the Kynges Succession 1533/34, 25 Hen 8 c 22. The secondary literature on these issues is vast. For a recent work emphasizing the important role of oaths, see GRAY, *supra* note 64.

²¹⁴ Charter of 1605 for the Spanish Company, *reprinted in* THE SPANISH COMPANY 95, 106 (Pauline Croft ed., 1973) (providing that “assistants” of the corporation “before they be admitted to the execution of their offices shall take a corporal oath that they and every of them shall well and faithfully perform their offices of assistants in all things concerning the same”), The Charter of Queen Elizabeth for the East India Company, *supra* note 207, at 469–70 (providing that the governor must take an oath to “well and truly execute the Office of Governor of the said Company,” *id.* at 470, and the deputy to the governor to “well, faithfully and truly to execute his said Office,” *id.* at 469).

²¹⁵ 2 JOHN STOW, A SURVEY OF LONDON REPRINTED FROM THE TEXT OF 1603, at 146 (Charles Lethbridge Kingsford ed., 1908) (recording that these officials took an oath before assuming office “[t]hat they should well and faithfully keepe” the gates and ports of entry).

²¹⁶ An Act Takeing Away the Court of Wards and Liveries and Tenures in Capite and by Knights Service and Purveyance, and for Setling a Revenue upon his Majesty in Lieu Thereof 1660, 12 Car 2 c 24, § 34 (“That noe person or persons shall be capeable of intermedding with any Office or Employment relatinge to the Excise untill he or they shall” take the oath “You shall sweare to execute the Office of [_____] truly and faithfully without Favour or affection, and shall from [time] to tyme true Account make and deliver to such person or persons as his Majestie shall appoint to receive the same, and shall take noe Fee or Reward for the Execution of the said Office from any other person than from his Majestye”), A Grant of Certaine Impositions upon Beere Ale and Other Liquors for the Encrease of His Majestyes Revenue Dureing His Life 1660, 12 Car 2 c 23, § 22 (same oath), An Ordinance and Declaration Touching the Sallery and Allowance to Be Made to the Commissioners and Auditors for the Excise, (1643) 1 ACTS & ORDS INTERREGNUM 287, 288 (C H Firth & R S Rait eds., 1911) (“You shall sweare to be faithfull and true in your place of Commissionei for the Excise according to the Ordinance of both Houses of Parliament in that behalfe made. You shall according to your knowledge execute the same diligently and faithfully, having no private respect to your selfe in prejudice of the Common-wealth”).

of the kingdom's accounts,²¹⁷ surveyors of confiscated church lands,²¹⁸ customs officers,²¹⁹ tax assessors,²²⁰ brokers between merchants,²²¹ and officers of merchant or craft guilds.²²² In a development that would soon impact the Americas, the royal charters of some of the new overseas trading corporations also required oaths of faithful execution for their officers and directors.²²³ One can get some sense of what the relevant words meant by observing that in statutes and other legal commands, faithful execution was often linked during this time period with true, diligent, well, due, skillful, careful, and impartial discharge of the duties of office. One also sees misgovernment by ministers and other royal

²¹⁷ See An Ordinance for Taking and Receiving of the Accompts of the Whole Kingdom, (1643/44) 1 ACTS & ORDS INTERREGNUM 387, 388 ("I, A B, do swear, that according to my best skill and knowledge, I shall faithfully, diligently, and truly demean my self, in taking the Accompts of all such persons as shall come before me, in execution of an [ordinance], entituled [this act named], according to the tenour of the said Ordinance. And that I shall not for fear, favour, reward or affection, give any allowance to conceal, spare, or discharge any So help me God"), An Act for Appointing and Enabling Commissioners to Examine Take and State the Publicke Accounts of the Kingdome 1690, 2 W & M sess 2 c 11, § 4 (providing that, to ensure that moneys raised for war with France were expended for correct purposes, named individuals appointed "Commissioners for taking of the Accounts" shall "Swear That according to the best of my Skill and Knowledge I shall Faithfully Impartially and Truly demean mysel[e] in examining and taking the Accounts of all such Summe of Money and other Things brought or to be brought before me in Execution of one Act [this act named] according to the Tenour and Purpoit of the said Act")

²¹⁸ An Ordinance for the Abolishing of Archbishops and Bishops Within the Kingdom of England, and Dominion of Wales, and for Setting of Their Lands and Possessions upon Trustees, for the Use of the Commonwealt[h], (1646) 1 ACTS & ORDS INTERREGNUM 879, 881 ("I will faithfully and truly according to my best skill and knowledge, execute the place of a Surveyor, according to the purpoit of an Ordinance [this named act] this I shall justly and faithfully execute, without any gift or reward, directly or indirectly, from any person or persons whatsoever")

²¹⁹ An Act for Preventing Frauds and Regulating Abuses in His Majesties Customes 1662, 14 Car 2 c 11, § 31 (providing that no person "shall hereafter be employed or put in trust in the busines of the Customes untill he shall first have taken his Oath for the true and faithfull execution and discharge to the best of there knowledge and power of there several Trusts")

²²⁰ An Act for Granting a Subsidy to his Majestie for Supply of His Extraordinary Occasions 1670/71, 22 & 23 Car 2 c 3, § 15 (providing that assessors under this tax law must take an oath "well and truly to execute the Duty of an Assessor [and] you shall spare noe peison for Favour or Affection, nor any person greive for Hatred or ill Will")

²²¹ An Act to Restraine the Number and Ill Practice of Brokers and Stock-Jobbers 1696/97, 8 & 9 Will 3 c 32, § 2 (providing that brokers in London and Westminster must be licensed, must follow specified practices, must take a "Corporal Oath That I will truly and faithfully execute and performe the Office and Employment of a Broker betweene Party and Party without Fraud or Collusion to the best of my Skill and Knowledge and according to the Tenour and Purpoit of the Act [this act named]," and must "enter into one Obligation [bond] to the Lord Mayor Citizens and Comonalty of the City of London," the obligation of which is to "truly use execute and performe the Office and Employment of a Broker between Party and Party without Fraud Covin or any corrupt or crafty Devices according to the Purpoit true Intent and Meaning" of this statute)

²²² An Act for Regulateing the Makeing of Kidderminster Stuffes 1670/71, 22 & 23 Car 2 c 8, § 1 (providing that persons who are master weavers in the parish of Kidderminster will be appointed to "the Office of President or Warden or Assistant of the Trade of Clothiers and Stuffle-Weavers," so that cloth is not debased, and must take oath to "faithfully and honestly performe and discharge the Office")

²²³ See The Charter of Queen Elizabeth for the East India Company, *supra* note 207, at 469-71

officials condemned, during impeachment proceedings or in other fora, as “unfaithfulness and carelessness,”²²⁴ “contrary to his oath, and the faith and trust reposed in him,”²²⁵ and “contrary to the laws of this kingdom, and contrary to his oath” “for his faithful discharge of his said office”²²⁶ Reviews of parliamentary impeachments show a “public trust theory” at work, in which “acting contrary to oath, to the duty of the official position, to the great trust reposed in the accused by the King, and to the laws of the Realm” were key elements²²⁷

As always, there was a gap between the law’s ideals and the actual practices of men. Corruption under James I and Charles I was a flash-point for conflicts with Parliament. Public offices were sold, for the benefit of the king or those close to him, sometimes disguised as loans to the Crown.²²⁸ By investigation, remonstrance, and impeachment Parliament attempted to reduce this practice.²²⁹ At Parliament’s instance and by royal commission, the 1620s and 1630s also saw investigations and draft bills against the taking of excessive fees by officers.²³⁰ Royal commissions from 1629 to 1634 “found much amiss” in administration of the Navy and the Ordnance, and in 1635 the Privy Council ordered all officers there to take an oath “for the due and faithful execution of their places and charge respectively” as a remedy.²³¹

During Parliament’s long struggle with Charles I, which ended with his trial and execution in 1649,²³² Parliament frequently remonstrated that malicious ministers surrounding the king had failed to duly execute laws of the land²³³ and had betrayed their “trusts” by acting against

²²⁴ Resolutions on Religion Drawn by a Sub-committee of the House of Commons (Feb. 24, 1628/29), in *THE CONSTITUTIONAL DOCUMENTS OF THE PURITAN REVOLUTION, 1625-1660*, at 77, 77 (Samuel Rawson Gardiner ed., Oxford, Clarendon Press 1899) [hereinafter Gardiner].

²²⁵ Proceedings Against Sir Richard Gurney, [Knight and Baronet] Lord Mayor of London, on an Impeachment of High Crimes and Misdemeanors. 18 Charles I A.D. 1642, in 4 *A COMPLETE COLLECTION OF STATE TRIALS AND PROCEEDINGS FOR HIGH TREASON AND OTHER CRIMES AND MISDEMEANORS FROM THE EARLIEST PERIOD TO THE YEAR 1783*, at 160, 161 (T.B. Howell ed., London, T.C. Hansard 1816) [hereinafter Howell].

²²⁶ Articles of Impeachment Against Sir Thomas Gardiner, Recorder of the City of London, for High Crimes and Misdemeanors. 18 Charles I A.D. 1642, in Howell, *supra* note 225, at 167, 167.

²²⁷ E. Mabry Rogers & Stephen B. Young, *Public Office as a Public Trust: A Suggestion that Impeachment for High Crimes and Misdemeanors Implies a Fiduciary Standard*, 63 *GEO. L.J.* 1025, 1040 (1975).

²²⁸ See AYLMER, *KING’S SERVANTS*, *supra* note 209, at 228-29.

²²⁹ See *id.* at 188-90, 229-30.

²³⁰ See *id.* at 188-95, 199.

²³¹ *Id.* Not that this “remedy” had worked when the officers were required to take oaths previously — but this doubling down on oaths of faithful execution shows that at their core, such oaths were part of an anticorruption strategy.

²³² Philip Baker, *The Regicide*, in *THE OXFORD HANDBOOK OF THE ENGLISH REVOLUTION 154-154* (Michael J. Braddick ed., 2015) [hereinafter Braddick].

²³³ See, e.g., The Nineteen Propositions Sent by the Two Houses of Parliament to the King at York (1642), in Gardiner, *supra* note 224, at 249, 252 (“That the laws in force against Jesuits, priests,

Parliament and the common good²³⁴ And finally, Charles I was executed because, among other things, “trusted with a limited power to govern by and according to the laws of the land, and not otherwise, and by his trust, oath and office, being obliged to use the power committed to him, for the good and benefit of the people,” he instead acted tyrannically, violated his oath, failed to follow the law, made war on his people, and violated their rights and liberties²³⁵ A few weeks after Charles’s execution, the poet and republican theorist John Milton published *The Tenure of Kings and Magistrates*, which argued that the coronation oath was a “bond or Covnant” in which the people promised allegiance to the king and the king promised “to doe impartial justice by Law,” laws “which they the people had themselves made, or assented to”²³⁶ But the people were released from their allegiance “if the King prov’d unfaithfull to his trust,”²³⁷ and then might “depose and put to death th[e]r tyrannous King[]”²³⁸

Consistent with the findings discussed in section I C above, during this time period, several distinctive strands of faithful execution were reinforced, namely rules against self-dealing and unjustified profit from office, rules constraining the kinds of motives appropriate to executing an office, and the requirement of staying within authority and abiding by the intent of the legislation or other positive law empowering the officeholder

During the time in which England was ruled, effectively and then de jure, without a king — periods of the Civil War, Commonwealth, and Protectorate, from 1642 until 1660 — there was frequent linkage of a rule against self-dealing with faithful execution, particularly for offices dealing with the receipt, account, or payment of moneys²³⁹ Parliament, for example, directed oaths of faithful execution with the addendum that the oath-taking officeholder would have “no private respect to your selfe

and Popish recusants, be strictly put in execution, without any toleration or dispensation to the contrary.”²³⁹

²³⁴ See, e.g., Proceedings Against Sir Edward Herbert, [Knight] the King’s Attorney General, upon an Impeachment for High Crimes and Misdemeanors 17 Charles I AD 1642, in Howell, *supra* note 225, at 119, 120, 123

²³⁵ The Trial of Charles Stuart, King of England, Before the High Court of Justice, for High Treason 24 Charles I AD 1649, in Howell, *supra* note 225, at 990, 1070–71 For more on the charges and theories used to support the regicide, see SARAH BARBER, REGICIDE AND REPUBLICANISM POLITICS AND ETHICS IN THE ENGLISH REVOLUTION, 1646–1659 (1998), and Baker, *supra* note 232, at 154–69

²³⁶ JOHN MILTON, THE TENURE OF KINGS AND MAGISTRATES 11 (William Talbot Allison ed., Henry Holt & Co 1911) (1649)

²³⁷ *Id.*

²³⁸ *Id.* at 26 On Milton’s popularity with American patriots, see BAILYN, *supra* note 7, at 34

²³⁹ This period also saw the widespread use of loyalty oaths to attempt to bind and affect the behavior of officials and members of the public See John Walter, *Crowds and Popular Politics in the English Revolution*, in Braddick, *supra* note 232, at 330, 341–42

in prejudice of the Common-wealth",²⁴⁰ would not be diverted from duty by "fear, favour, reward or affection",²⁴¹ or would not take "any gift or reward, directly or indirectly, from any person or persons whatsoever" but what was allowed by law or superior officer²⁴² Perhaps reflecting the republican views of leading members,²⁴³ the Commonwealth and Protectorate parliaments also began to describe public offices as "trusts" much more frequently than previous parliaments,²⁴⁴ suggesting

²⁴⁰ An Ordinance and Declaration Touching the Sallery and Allowance to Be Made to the Commissioners and Auditors for the Excise, (1643) 1 ACTS & ORDS INTERREGNUM 287, 288, *see also supra* note 216, An Act for the Speedy Raising and Levying of Moneys by Way of New Impose or Excise, (1649) 2 ACTS & ORDS INTERREGNUM 213, 214 (providing that commissioners of the excise and impost "shall swear to be true and faithful to the Commonwealth of England" and "shall according to [their] knowledge, power and skill execute the same diligently and faithfully, having no private respect to [themselves], in prejudice of the Commonwealth")

²⁴¹ An Ordinance for Taking and Receiving of the Accompts of the Whole Kingdom, (1643/44) 1 ACTS & ORDS INTERREGNUM 387, 388, *see supra* note 217, An Act for Transferring the Powers of the Committee for Indempntiy, (1652) 2 ACTS & ORDS INTERREGNUM 588, 590 (providing that commissioners who would determine the indemnity due to persons who acted for Parliament during the civil wars must take an oath "That I will, according to my best skill and knowledge, faithfully discharge the Trust committed unto me, in relation to an Act [this act named] And that I will not for favor or affection, rewards or gifts, or hopes of reward or gift break the same")

²⁴² An Ordinance for the Abolishing of Archbishops and Bishops Within the Kingdom of England, and Dominion of Wales, and for Setling of Their Lands and Possessions upon Trustees, for the Use of the Commonwealth (1646), 1 ACTS & ORDS INTERREGNUM 879, 881, *see also supra* note 218, An Act for the Deafforestation, Sale and Improvement of the Forests and of the Honors, Manors, Lands, Tenements and Hereditaments Within the Usual Limits and Perambulations of the Same Heretofore Belonging to the Late King, Queen and Prince, (1653) 2 ACTS & ORDS INTERREGNUM 783, 789-90 (providing that surveyors of lands confiscated from the family of Charles I must take an oath "That I will, by the help of God, faithfully and truly, according to my best skill and knowledge, execute the place of Surveyor according to the purport of the Act [this act named] [a]nd this I shall justly and faithfully execute, without any Gift or Reward, or hope of Reward, directly or indirectly, from any person or persons whatsoever (Except such Allowances as the said Trustees or four or more of them shall think fit to make unto me, for my pains and charges in the executing of the said Place and Office)")

²⁴³ *See* J G A POCCOCK, *THE MACHIAVELLIAN MOMENT FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION* 361-422 (1975) *See generally* JONATHAN SCOTT, *COMMONWEALTH PRINCIPLES REPUBLICAN WRITING OF THE ENGLISH REVOLUTION* (2004), *REPUBLICANISM, LIBERTY, AND COMMERCIAL SOCIETY*, 1649-1776 (David Wootton ed., 1994)

²⁴⁴ The Sale of Offices Act of 1551/52, 5 & 6 Edw 6 c 16, had described as "Services of Truste" offices involved with receipt, account, or disbursement of public moneys, *see id* § 1, but that was an infrequent locution in parliamentary statutes of the medieval and early modern period. During the interregnum this descriptor became much more common, and its use seemed to broaden. *See, e.g.*, An Act for Subscribing the Engagement, (1649/50) 2 ACTS & ORDS INTERREGNUM 325, 325 (imposing a loyalty oath of "all and every person" holding "any Place or Office of Trust or Profit, or any Place or Employment of publique Trust whatsoever"), An Ordinance to Disable Any Person Within the City of London and Liberties Thereof, to Be of the Common-Council, or in Any Office of Trust Within the Said City, that Shall Not Take the Late Solemne League and Covenant, (1643) 1 ACTS & ORDS INTERREGNUM 359, 359 (describing London government offices as "publique Offices and places of Trust")

a special obligation to act for the good of the public.²⁴⁵ During the interregnum, Parliament also declared, in its statute announcing that England was a Commonwealth, that officers and ministers would be selected and appointed “for the good of the people,”²⁴⁶ that is, not for the good of the government or the private benefit of the officeholder. The famous Self-Denying Ordinance of 1645 required members of Parliament to resign any other civil or military offices they held, and declared that officeholders “shall have no profit out of any such office, other than a competent salary for the execution of the same, in such manner as both Houses of Parliament shall order and ordain.”²⁴⁷

Other reforms occurred during this time aimed at making the holders of public offices more accountable and trustworthy, and less likely to abuse office for private gain. Many offices were converted from life to either pleasure or good behavior tenure.²⁴⁸ The use of salaries to compensate officers increased, as did the amounts paid in salaries, because this was thought to make officers more honest and public-spirited.²⁴⁹ For the same reason, fee-taking by public officers was attacked, although reformers did not succeed in total abolition, many fees were reduced and made more transparent.²⁵⁰

Leading thinkers in the “Commonwealth” tradition, whose influence on the American revolutionary generation was immense, wrote and spoke repeatedly in favor of the public good being the measure of government policy and the aim of all government offices, and against various kinds of corruption and abuse of public office, including the use of office for private profit.²⁵¹

²⁴⁵ The idea of kingship as an office existing for the common good of the people was already an old one by this time. See, e.g., FORTESCUE, *supra* note 200, at 53 (“St Thomas [Aquinas], in the book which he wrote for the king of Cyprus, *On Princely Government*, says that ‘the king is given for the sake of the kingdom and not the kingdom for the sake of the king’”), see also CONAL CONDREN, *ARGUMENT AND AUTHORITY IN EARLY MODERN ENGLAND: THE PRESUPPOSITION OF OATHS AND OFFICES* 19–20, 101 (2006) (noting that in English thought officeholders were said to be shepherds who needed to protect and tend to their flocks).

²⁴⁶ An Act Declaring England to Be a Commonwealth (May 19, 1649), *reprinted in* Gardiner, *supra* note 224, at 388, 388.

²⁴⁷ The Self-Denying Ordinance (Apr. 3, 1645), *reprinted in* Gardiner, *supra* note 224, at 288.

²⁴⁸ See AYLMER, *STATE’S SERVANTS*, *supra* note 211, at 82.

²⁴⁹ See *id.* at 107, 110.

²⁵⁰ See *id.* at 113–15, 120. The process of moving away from fee-based remuneration of public officers to salaries took centuries to complete. See generally NICHOLAS R. FARRILLO, *AGAINST THE PROFIT MOTIVE: THE SALARY REVOLUTION IN AMERICAN GOVERNMENT, 1780–1940* (2013).

²⁵¹ Caroline Robbins wrote the classic study. See CAROLINE ROBBINS, *THE EIGHTEENTH CENTURY COMMONWEALTHMAN: STUDIES IN THE TRANSMISSION, DEVELOPMENT AND CIRCUMSTANCE OF ENGLISH LIBERAL THOUGHT FROM THE RESTORATION OF CHARLES II UNTIL THE WAR WITH THE THIRTEEN COLONIES* (1959). For statements by a leading Commonwealth theorist, see SIDNEY, *supra* note 168, at 91: “[C]ommon sense teaches, and all good men acknowledge, that governments are not set up for the advantage, profit, pleasure or glory of one or

Although acts and ordinances of the interregnum were treated as void upon the restoration of the monarchy in 1660,²⁵² Parliament and other lawmakers continued the Commonwealth practice of frequently linking faithful execution to anti-self-dealing directives, particularly for offices concerning the public fisc.²⁵³ After the restoration, important statutes about public employment continued the language of “trust” to describe offices,²⁵⁴ and Commonwealth-era ideas about increasing salarization, reducing life tenures in office, eliminating sales of office, and making fees transparent and fixed continued to influence public administration.²⁵⁵

Parliament and other lawmakers requiring faithful execution of office also continued to link this concept to the officer staying within legal authority and abiding by the intent of the legislation or other positive law empowering the officeholder. Statutes frequently recited that officeholders bound to faithfully execute must do so according to the “[t]enor” or “[p]urport” of the act,²⁵⁶ or “according to the true intent and

a few men, but for the good of the society. And we may from hence collect, that in all controversies concerning the power of magistrates, we are not to examine what conduces to their profit or glory, but what is good for the publick.” *Id.*

²⁵² 3 ACTS AND ORDINANCES OF THE INTERREGNUM, 1642–1660, at III, XXXII (C. H. Firth & R. S. Rait eds., 1911).

²⁵³ See sources cited *supra* note 217, see also, e.g., An Act for Granting to Their Majesties Certain Rates and Duties 1693, 5 W & M c 7, § 13 (providing that commissioners collecting duties on imported goods must take an oath “to execute [their] Office truly and faithfully without favour or affection and shall take noe Fee or Reward for the [execution] of the said Office from any other person then from their Majesties or those whom their Majesties shall appoint on that behalfe”), *id.* § 43 (creating a lottery scheme to raise public funds and providing that “Managers and Directors” of the lottery must “swear that I will faithfully execute the Trust reposed in me And that I will not use any indirect art or meanes or permit or direct any person to use any indirect art or meanes to obtaine a Prize or fortunate Lott for my self or for any other person whatsoever”), An Act for Granting a Subsidy to His Majestie for Supply of His Extraordinary Occasions 1670/71, 22 & 23 Car 2 c 3, § 15 (providing that tax assessors must take an oath “well and truly to execute the Duty of an Assessor [and] shall spare noe person for Favour or Affection, nor any person greive for Hatred or ill Will”).

²⁵⁴ See, e.g., An Act for Preventing Dangers Which May Happen from Popish Recusants 1672, 25 Car 2 c 2 (imposing loyalty and anti-Catholic oaths and declarations on anyone who received a salary or held any “Command or Place of Trust” from the king, *id.* § 1, except “inferiour Civill Office[s]” like constables, *id.* § 15), An Act for the Encouragement of Trade 1663, 15 Car 2 c 7, § 6 (referring to colonial governors as holding a “trust or charge” and requiring an oath to fully implement this navigation act), Corporation Act 1661, 13 Car 2 c 1 § 3 (imposing oaths on “persons then bearing any Office or Offices of Magistracy or Places or Trusts or other Employment relating to or concerning the Government of the said respective Cities Corporations and Burroughs and Cinque Ports and their Members and other Port Towns”).

²⁵⁵ See G. E. AYLMER, THE CROWN’S SERVANTS: GOVERNMENT AND CIVIL SERVICE UNDER CHARLES II, 1660–1685, at 93–94, 101, 110 (2002).

²⁵⁶ See source cited *supra* note 218, see also An Act for the Taking Examining and Stating the Publick Accounts 1695/96, 7 & 8 Will 3 c 8, § 2 (commissioners to examine public accounts shall “take an Oath [that] to the best of my Skill and Knowledge I shall faithfully impartially and truly demean my selfe in examinung & taking the Accounts of all such Sum or Sums of Money and other Things brought or to be brought before me in Execution of one Act [this one named] according to the Tenor and Purport of the said Act”).

meaning" of the act.²⁵⁷ The oaths of many officeholders during this period — for example, justices of the peace,²⁵⁸ constables,²⁵⁹ churchwardens,²⁶⁰ auditors of public accounts,²⁶¹ and corporate officers²⁶² — required following governing law and staying within that authority.

This emphasis on faithfulness of the officeholder to legislative supremacy and staying within granted authority created tension between Parliament and the senior-most magistrate in the kingdom, the monarch. The coronation oaths of the Stuart kings (James, Charles, Charles II, James II) contained the promise that they would "keep the Laws and rightful Customs, which the Commonalty of this your Kingdom have."²⁶³ But divine-rights arch-monarchists like Robert Filmer claimed that this only meant that, "in effect, the King doth swear to keep no Laws, but such as in His Judgment are Upright."²⁶⁴ Republicans such as Algernon Sidney excoriated these claims. He attacked

²⁵⁷ An Act for Preventing Frauds and Regulatng Abuses in the Plantation Trade 1695/96, 7 & 8 Will 3 c 22, § 3 (requiring all colonial governors to take a "solemn Oath to doe there utmost that all the Clauses Matters and Things contained [several listed acts of Parliament concerning the plantations and colonies] bee punctually and bona fide observed according to the true intent and meaning thereof"), see also *supra* note 221.

²⁵⁸ THE BOOK OF OATHS AND THE SEVERAL FORMS THEREOF, BOTH ANCIENT AND MODERN 176 (London, H. Twyford et al. 1689) ("[I]n all Articles, in the Kings Commission to you directed, you shall do equal right to the Poor, and to the Rich after your cunning, wit, and power, and after the Laws and Customs of the Realm, and Statutes thereof made.")

²⁵⁹ *Id.* at 43 ("[Y]e shall keep the peace of our Sovereign Lord the King well, and *loesfully* after your power" (emphasis added)).

²⁶⁰ ARTICLES OF VISITATION AND INQUIRY CONCERNING MATTERS ECCLESIASTICAL I (Warwick-lane [London], A. Baldwin 1700) (reporting that churchwardens and other officials in the Anglican church took oath to "faithfully Execute [their] several Offices according to Law, to the best of [their] Skill and Knowledge").

²⁶¹ See sources cited *supra* note 256.

²⁶² Grant of London Goldwiredrawers, *supra* note 137, at 132 (providing that the governor of the corporation shall take a corporal oath "well and truly to the uttermost of [their] power execute the office of Governour in all things to the said office appertaining. And that [they] shall well and truly to the uttermost of [their] power observe perform fulfill and keep in all points all such lawful reasonable and wholesome acts statutes laws and ordinances as are or shall from time to time be made by the Governour and Assistants of the said Company for the time being. So help you God").

²⁶³ THE HISTORY OF PUBLICK AND SOLEMN STATE OATHS, *supra* note 161, at 15 (coronation oath of James I). For Charles I, see THE ENTIRE CEREMONIES OF THE CORONATIONS OF HIS MAJESTY KING CHARLES II AND OF HER MAJESTY QUEEN MARY, CONSORT TO JAMES II 40 (Ashmole & Sandford eds., London, 1761). For Charles II, see *id.* at 12. For James II, see ENGLISH CORONATION RECORDS 296-97 (Leopold G. Wickham Legg ed., 1901).

²⁶⁴ ROBERT FILMER, PATRIARCHA, OR THE NATURAL POWER OF KINGS 96 (London, 1680) (emphasis omitted). In a work written and published when he was James VI of Scotland but not yet king of England, see Charles Howard McIlwain, *Introduction*, in THE POLITICAL WORKS OF JAMES I, at xv, xxxvii (Harvard Univ. Press 1918) (1616), the future King James I wrote that by the coronation oath a Christian king promises "to maintaine all the lowable" — praiseworthy, admirable — "and good Lawes," THE TREW LAW OF FREE MONARCHIES (1598), reprinted in THE POLITICAL WORKS OF JAMES I, *supra*, at 53, 55.

Filmer for promoting “perjury” and “a detestable practice of annihilating the force of Oaths and most solemn Contracts,” and asserted instead that the English kings “by taking the oath affirm[ed]” that the standing “Laws and Customs” of the country were “upright and good” and had entered into a contract of “mutual obligation” with the people to obey the laws.²⁶⁵ John Locke also wrote against Filmer about the coronation oath and the monarch’s relationship to standing law. Locke slyly drew upon the authority of James I, and quoted at length a 1609 speech to Parliament in which James asserted that the English king “expressly by his oath at his coronation” made a “paction to his people” for “the observation of the fundamental laws of his kingdom,” and that a king becomes a “tyrant[.]” and “perjured” unless he keeps his oath and — here Locke paraphrases — “makes the laws the bounds of his power, and the good of the public the end of his government.”²⁶⁶

In keeping with Filmer’s view of the coronation oath, the Stuarts asserted the prerogative to suspend acts of Parliament, in whole or part, and dispense with application of acts of Parliament to specific individuals. The controversy over the dispensing and suspending prerogative peaked during the short reign of James II (1685–88), the second post-restoration monarch. The story starts much earlier, however, with the oaths of supremacy and allegiance imposed under Elizabeth and James I, eventually covering all members of Parliament and all officers and other persons in the king’s service, and effectively barring Catholics and dissenting Protestants from high office.²⁶⁷ Under Charles II, religious tests and oaths were expanded and extended to many lesser offices as well.²⁶⁸

Charles II provoked conflict with Parliament by purporting to suspend some of these laws, before backing down,²⁶⁹ but his brother, James II, a Catholic, chose outright confrontation. He issued wide-ranging dispensations from the laws for certain favored persons, and then broad suspensions.²⁷⁰ In response, leading men in the kingdom invited the Protestant William of Orange from the Dutch Republic — a grandson

²⁶⁵ SIDNEY, *supra* note 168, at 410, 412, 417.

²⁶⁶ JOHN LOCKE, OF CIVIL GOVERNMENT SECOND TREATISE para 200, at 168–69 (Henry Regnery Co 1955) (1689).

²⁶⁷ Campbell, *supra* note 212, at 7–8.

²⁶⁸ See *id.* at 9–11.

²⁶⁹ See CROWN AND PARLIAMENT IN TUDOR-STUART ENGLAND: A DOCUMENTARY CONSTITUTIONAL HISTORY, 1485–1714, at 276–78 (Paul L. Hughes & Robert F. Frieds eds., 1959) (reprinting communications of Parliament denying the king’s power to suspend statutory law).

²⁷⁰ Campbell, *supra* note 212, at 12.

of Charles I who was married to James II's daughter Mary (also a Protestant) — to invade England and assume the crown. James II fled.²⁷¹

As part of the Glorious Revolution, Parliament enacted a new coronation oath. As this statute recalled, previous coronation oaths had "beene framed in doubtfull Words and Expressions" concerning whether the monarch would strictly maintain all "ancient Laws and Constitutions," or only those with which he or she agreed.²⁷² To counter this evasion, Parliament specified a new, clearer oath, through which William and Mary and subsequent monarchs would be required to pledge as follows: "Will You solemnly Promise and Swear to Govern the People of this Kingdome of England and the Dominions thereto belonging according to the Statutes in Parlyament Agreed on and the Laws and Customs of the same? I solemnly Promise soe to doe."²⁷³ This oath to govern according to law dovetailed with the statement in the Bill of Rights, also adopted as part of the Glorious Revolution settlement between Parliament and the new king and queen, that the monarchy had no prerogative to suspend the laws or dispense with the application of law to any individual.²⁷⁴ Later, foundational statutes reiterated this commitment to parliamentary supremacy.²⁷⁵

Of course, the fact that the English people had for the second time in a half century deposed their king because he had failed to rule for their benefit and according to the laws of the land went a long way toward solidifying the monarch's subordination to the public good as communicated via Parliament.²⁷⁶

²⁷¹ There is an enormous literature on the Glorious Revolution, including two recent, useful works. See RICHARD S. KAY, *THE GLORIOUS REVOLUTION AND THE CONTINUITY OF LAW* (2014); STEVE PINCUS, *THE FIRST MODERN REVOLUTION* (2009).

²⁷² An Act for Establishing the Coronation Oath 1688, 1 W & M sess 1 c 6, pmbl.

²⁷³ *Id.* § 3.

²⁷⁴ Bill of Rights 1688, 1 W & M sess 2 c 2 ("That the pretended Power of Suspending of Laws or the Execution of Laws by Regall Authority without Consent of Parlayment is illegall. That the pretended Power of Dispensing with Laws or the Execution of Laws by Regall Authoritie as it hath bene assumed and exercised of late is illegall.")

²⁷⁵ See An Act for the Further Limitation of the Crown and Better Securing the Rights and Liberties of the Subject 1700/01, 12 & 13 Will 3 c 2 (establishing the Protestant succession to the crown through Sophia, granddaughter of James I, wife of the Elector of Hanover, *id.* pmbl., and stating that "the Laws of England are the Birthright of the People thereof and all the Kings and Queens who shall ascend the Throne of this Realm ought to administer the Government of the same according to the said Laws and all their Officers and Minsters ought to serve them respectively according to the same," *id.* § 4), An Act to Provide for the Administration of the Government 1750/51, 24 Geo 2 c 24, § 8 (providing, in the event of a regency by Augusta, Princess Dowager of Wales, that she must take an oath "[t]hat I will truly and faithfully execute the Office of Regent of the Kingdom" and "that I will administer the Government of this Realm, and of all the Dommons thereunto belongng, according to the Laws, Customs and Statutes thereof"), An Act to Provide for the Administration of the Government 1765, 5 Geo 3 c 27, § 11 (similar).

²⁷⁶ See generally 1 BLACKSTONE, *supra* note 185, at *156 (describing the "omnipotence" and "absolute despotic power" of Parliament and stating that "[i]t can regulate or new model the succession to the crown, as was done in the reign of William III"). For a helpful monograph on

As Blackstone summarized the state of things brought about by these acts, the king had “the whole executive power of the laws,” a “great and extensive trust”²⁷⁷ But English law imposed a “limitation [on] the king’s prerogative,” which was “a guard upon the executive power, by restraining it from acting either beyond or in contradiction to the laws”²⁷⁸ Thus the Crown must do its duty to execute the laws “in subservience to the law of the land,” this for “the care and protection of the community”²⁷⁹ The Glorious Revolution settlement also involved Parliament specifying new, simpler versions of the oaths of allegiance and supremacy, which continued to deny the Church of Rome any authority or jurisdiction.²⁸⁰ The coronation oath now also required upholding “the Protestant Reformed Religion Established by Law,”²⁸¹ further cementing the Anglican basis of England’s monarchy and governing class, and making the upholding of statutory law and the established Protestant church keys to the monarch’s execution of office.

It is interesting that the coronation oath does not use the language of faithfulness, or a synonym, when it describes the monarch’s judicial and administrative law execution duties. The part of the Stuarts’ oath concerning execution, which was quite similar to ones dating back to the medieval period, required the king’s assent to the question “will you, to your Power, cause Law, Justice and Discretion, in Mercy and Truth, to be executed to your Judgment?”²⁸² Neither faithfulness nor a synonym was added by the Glorious Revolution Parliament.²⁸³ Section III A will discuss the significance of the framers opting not to use the coronation oath as the model for the presidential oath, but instead, adopting the “faithful” language that was commonly used in oaths for mid-level and more ministerial offices.

2 *The Early Settlements of American Colonies* — The English colonization of America in the seventeenth century called into existence many new polities, corporations, and offices, requiring specified conditions of officeholding. Both authorities in England and the colonists themselves articulated these conditions, which contain important foundational themes and language, some of which ultimately found their way into the

parliamentary supremacy, see generally JEFFREY GOLDSWORTHY, *THE SOVEREIGNTY OF PARLIAMENTARY HISTORY AND PHILOSOPHY* (1999)

²⁷⁷ 1 BLACKSTONE, *supra* note 185, at *257

²⁷⁸ *Id.* at *137

²⁷⁹ *Id.* at *183, *see also id.* at *229 (stating that by “contract” with the people of Great Britain, the monarch must “govern according to law”)

²⁸⁰ Bill of Rights 1688, 1 W & M sess 2 c 2

²⁸¹ An Act for Establishing the Coronation Oath 1688, 1 W & M sess 1 c 6, § 3, *see also* 1 BLACKSTONE, *supra* note 185, at *228 (describing the coronation oath to contain the requirement to “maintain the religion established by the law”)

²⁸² *THE HISTORY OF PUBLIC AND SOLEMN STATE OATHS*, *supra* note 161, at 15

²⁸³ *See* An Act for Establishing the Coronation Oath § 3 (“Will You to Your Power cause Law and Justice in Mercy to be Executed in all Your Judgments”)

1787 Constitution, including in Article II. Specifically, these new offices often contained directives of faithful performance and taking care that reflected the three precepts of faithfulness we found coalescing in the mid-seventeenth century. Thus, the corporate structure of the colonies not only contributed to the rise of constitutional judicial review,²⁸⁴ but also produced a basis for the inclusion of the “faithful execution” commands in the Constitution.

The earliest royal charters granted for exploration in America by Queen Elizabeth and then King James I were brief documents with no detail about executive management and no oaths. But in the first detailed charter, granted in 1629 by Charles I for Massachusetts Bay, we already see two important components of Article II — to execute office well and faithfully and to govern according to standing law — as well as additional language that prefigures Article II. The charter directed that the governor, along with his deputy and assistants, “shall applie themselves to *take Care* for the best disposing and ordering of the generall buysines and Affaires of, for, and concerning the Government of the People there.”²⁸⁵ The governor and other officers of the company must “take their Corporal Oathes for the due and faithfull Performance of their Duties in their severall Offices and Places.”²⁸⁶ And the executive powers of the governor and other officers could be exercised only according to law, and interpreted according to the intent of the lawgiver.²⁸⁷ Seventeenth-century charters for other colonies in America contained similar provisions.²⁸⁸

From the outset, the colonists were not content to have all of their political and legal arrangements dictated from England. Two colonist-written documents, both of which Professor Donald Lutz describes as “candidate[s] for being the earliest written constitution[s] in America,” “prominently display[] oaths for officeholders as . . . essential part[s] of

²⁸⁴ See Mary Sarah Bilder, *The Corporate Origins of Judicial Review*, 116 YALE L.J. 502, 504 (2006).

²⁸⁵ The Charter of Massachusetts Bay (1629), reprinted in 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 1846, 1852 (emphasis added).

²⁸⁶ *Id.* at 1854.

²⁸⁷ *Id.* at 1858 (providing that laws and ordinances made for the colony “shalbe carefullie and duhie observed, kept, performed, and putt in Execucon, according to the tue Intent and Meaning of the same”).

²⁸⁸ See, e.g., ACTS AND LAWS OF THE STATE OF CONNECTICUT, IN AMERICA (New London, Conn., Timothy Green 1784), reprinted in 1 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 529, 532, 534 (the 1662 Charter of Connecticut requiring officers to take the oaths of supremacy and obedience and a corporal oath “foi the due and faithful Performance of their Duties, in their severall Offices and Places,” *id.* at 532, and providing that “all such Laws, Statutes and Ordinances, Instructions, Impositions and Directons as shall be so made by the Governor, Deputy-Governor, and Assistants as aforesaid shall carefully and duly be observed, kept, performed, and put in Execution, according to the true Intent and Meaning of the same,” *id.* at 534).

the agreement[s]”²⁸⁹ Both documents bind a governor to faithfully execute his office and the laws for the common good, and to follow the law and stay within authority. The 1636 Pilgrim Code of Law for New Plymouth provided that “[t]he office of the governor consists in the execution of such laws and ordinances as are or shall be made and established for the good of this corporation”²⁹⁰ The governor’s oath required that

You shall swear to be truly loyal, also, according to that measure of wisdom, understanding, and discerning given unto you faithfully, equally, and indifferently, without respect of persons, to administer justice in all cases coming before you as the governor of New Plymouth. You shall, in like manner, faithfully, duly, and truly execute the laws and ordinances of the same.²⁹¹

The Fundamental Orders of Connecticut (1639) required an oath for the governor binding him

[T]o promote the publicke good and peace of the [colony], according to the best of [his] skill, as also will mayntayne all lawfull priuiledges of this Commonwealth as also that all wholesome lawes that are or shall be made by lawfull authority here established, be duly executed, and will further the execution of Justice according to the rule of Gods word.²⁹²

Some Protestants from dissenting sects who settled in America objected to oath swearing, believing that it involved the profane taking of the Lord’s name in vain.²⁹³ Yet even those unwilling to take oaths still commanded governors to abide by the laws, stay within their authorizations, and faithfully execute the laws. (Note that Article II later required faithful execution, not only by an oath, but also by an affirmation option and the direct command of the Take Care Clause.) Thus the colony that became Rhode Island, founded by Roger Williams, wrote a frame of government in 1642 that provided that the free men would “make or constitute Just Lawes, by which they will be regulated, and depute from among themselves such Ministers as shall see them faithfully executed between Man and Man”²⁹⁴ In 1647, the Acts and Orders of the Generall Court of Elections for Providence Colome (Rhode Island) required that officers, before taking office, “engage” — not swear an

²⁸⁹ COLONIAL ORIGINS OF THE AMERICAN CONSTITUTION: A DOCUMENTARY HISTORY 210 (Donald S. Lutz ed., 1998).

²⁹⁰ Pilgrim Code of Law (Nov. 15, 1636), reprinted in COLONIAL ORIGINS OF THE AMERICAN CONSTITUTION, *supra* note 289, at 61, 63.

²⁹¹ *Id.* at 63–64.

²⁹² Fundamental Orders of Connecticut (Jan. 14, 1639), reprinted in COLONIAL ORIGINS OF THE AMERICAN CONSTITUTION, *supra* note 289, at 210, 215.

²⁹³ See DAVID L. HOLMES, THE FAITHS OF THE FOUNDING FATHERS 5–7 (2006) (“[T]he Mennonites and all Anabaptists advocated the separation of church and state. [and] they opposed swearing oaths.” *Id.* at 6), DONALD S. LUTZ, THE ORIGINS OF AMERICAN CONSTITUTIONALISM 28 (1988), see also *supra* notes 8 & 64.

²⁹⁴ Organization of the Government of Rhode Island (Mar. 16–19, 1642), reprinted in COLONIAL ORIGINS OF THE AMERICAN CONSTITUTION, *supra* note 289, at 172, 173.

oath — “faithfully and truly to the utmost of your power to execute the commission committed vnto you, and do hereby promise to do neither more nor less in that respect than that which the Colome [authorized] you to do according to the best of your understanding”²⁹⁵

For the colony of New Jersey or New Caesarea, the proprietors agreed to a frame of government in 1664 that provided that the governor and his council shall “execute their several duties and offices respectively, according to the laws in force,” and “act and do all other things that may conduce to the safety, peace and well-government of the said Province so as they be not contrary to the laws of the said Province”²⁹⁶ William Penn wrote a frame of government for his new colony of Pennsylvania that provided that the governor and his council “shall take Care, that all Laws Statutes and Ordinances which shall at any time be made within the said Province be duly and diligently executed”²⁹⁷ As a Quaker, Penn believed that oaths were profane,²⁹⁸ and his frame did not contain any, instead he used a command that seems to have been copied by Pennsylvanian James Wilson into the Take Care Clause of Article II

Still, when early colonial outposts created lower offices, they often imposed oaths, affirmations, or commands of faithful execution and faithfulness in following the law In mid-seventeenth-century Massachusetts Bay, for example, the surveyor of training bands of militia and the general auditor of the colony were both required to take an oath “for the faithfull & diligent execution of his place”²⁹⁹ or “office”³⁰⁰ while a “publicke notary” in the colony took a slightly different oath — that the officeholder “shall demeane yorselفة diligently & faithfully, according to ye duty of yor office without dely or covin,” that is, without delay or fraud³⁰¹

²⁹⁵ Acts and Ordeis of 1647, *reprinted in* COLONIAL ORIGINS OF THE AMERICAN CONSTITUTION, *supra* note 289, at 178, 181 (alteration in original)

²⁹⁶ The Concession and Agreement of the Lords Proprietors of the Province of New Caesarea, or New Jelsey, to and with All and Every the Adventurers and All Such as Shall Settle or Plant There (1664), *reprinted in* 5 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 2535, 2539–40

²⁹⁷ Penn’s Charter of Liberties § 8 (1682), *reprinted in* 5 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 3047, 3049, *see also* Frame of Government of Pennsylvania § 6 (1683), *reprinted in* 5 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 3064, 3065 (“[T]he Governor shall take care that all laws, statutes and ordinances, which shall, at any time, be made within the said province and territories, be duly and diligently executed”)

²⁹⁸ Penn was one of the prominent English Quakers involved in publishing a 1675 book describing religious and policy objections to oaths. *See* A TREATISE OF OATHS CONTAINING SEVERAL WEIGHTY REASONS WHY THE PEOPLE CALL’D QUAKERS REFUSE TO SWEAR 194 (Dublin, E Ray 1713) (1675)

²⁹⁹ 2 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 74 (Nathaniel B Shurtleff ed., Boston, William White 1853)

³⁰⁰ *Id.* at 141

³⁰¹ *Id.* at 209

D Mature Governments in Colonial America

There were differences among American colonies in the form of government. For example, in the seventeenth century, some like Pennsylvania were proprietary, with the Crown delegating authority to an individual proprietor or group of proprietors to manage, some like Massachusetts Bay were governed by a chartered joint stock company, also exercising delegated power, and some like New York were controlled directly by the Crown.³⁰² By the eighteenth century, most had been converted to crown colonies.³⁰³ The degrees of self-government allowed to colonists through their elective assemblies also differed somewhat between colonies and over time. But despite these differences, officeholders from the lowest to the highest were bound to faithfully execute their offices and faithfully follow the law.

1 *Governors* — By the turn of the eighteenth century, when most American colonies had come to be governed directly by the Crown, there was great uniformity in the duties imposed on governors. There was a standard form of the governor's commission, issued through the Privy Council under the monarch's name, with advice of the Board of Trade. Each governor was commanded, *mutatis mutandis*, "to do and execute all Things in due manner that shall belong unto your said Command,"³⁰⁴ to govern according to standing law and directions from the Crown,³⁰⁵ and to take the oaths specified by parliamentary statutes (concerning allegiance to the Crown and support for the Protestant succession), as well as an "Oath for the due Execution of the Office and Trust."³⁰⁶ We

³⁰² For an overview of the different forms of colonial governments in North America, see EVARTS BOUTELL GREENE, *THE PROVINCIAL GOVERNOR IN THE ENGLISH COLONIES OF NORTH AMERICA 1-22* (Cambridge, Harvard Univ Press 1898), Mary Sarah Bilder, *English Settlement and Local Governance*, in 1 *THE CAMBRIDGE HISTORY OF LAW IN AMERICA* 63 (Michael Grossberg & Christopher Tomlins eds., 2008).

³⁰³ See GREENE, *supra* note 302, at 1, Bilder, *supra* note 302, at 79.

³⁰⁴ Lord Cornbury's Commission, reprinted in *THE GRANTS, CONCESSIONS, AND ORIGINAL CONSTITUTIONS OF THE PROVINCE OF NEW JERSEY* 647, 647 (Aaron Learning & Jacob Spicer eds., Philadelphia, W Bradford n.d.).

³⁰⁵ *Id.* at 648 ("according to [the] several Powers and Directions granted or appointed you by this present Commission, and the Instructions and Authorities herewith given you and according to such reasonable Laws and Statutes as shall be made and agreed upon by you, with the advice and consent of the Council and Assembly of our said Province, under your Government").

³⁰⁶ *Id.* For commissions to other governors using the same form and language, see, for example, HIS MAJESTY'S ROYAL COMMISSION TO WILLIAM COSBY 2 (New-York, 1736) (EAI no. 4020), Commission of Benjamin Fletcher to be Governor of New-York (1692), reprinted in 3 *DOCUMENTS RELATIVE TO THE COLONIAL HISTORY OF THE STATE OF NEW-YORK* 827, 827-33 (E B O'Callaghan ed. & trans., Albany, Weed, Parsons & Co. 1853), Commission of George Clinton, Esq., to be Governor of New-York (1741), reprinted in 6 *DOCUMENTS RELATIVE TO THE COLONIAL HISTORY OF THE STATE OF NEW-YORK, supra*, at 189, 189-95, Commission of Gov Benning Wentworth, from His Majesty, George the Third (1760), reprinted in 6 *PROVINCIAL PAPERS DOCUMENTS AND RECORDS RELATING TO THE PROVINCE OF NEW-HAMPSHIRE, FROM 1749 TO 1763*, at 908, 909 (Nathaniel Bouton ed., Manchester, N.H., James M. Campbell

read the words “due” or “duly execute” in oaths of office to be synonymous with “faithful” or “faithfully execute” for several reasons. Dictionaries report that the terms were synonyms,³⁰⁷ the words were often paired in oaths of office, and there are many instances where it appears that they are used interchangeably in oaths or commands specifying official duties.³⁰⁸

Commissions for colonial governors were required to be read to the governor’s council and published at the outset of every governor’s time in office, meaning that their content was widely known.³⁰⁹ Due to spotty enforcement of the various navigation acts in the colonies, Parliament also required that all colonial governors take an additional oath to enforce them. The version of the parliamentary oath found in the 1764 Sugar Act (an act loathed by American colonists) demanded that governors “do their utmost” to “punctually and bona fide observe[], according to the true Intent and Meaning thereof” “all the Clauses, Matters, and Things, contained in any Act of Parliament” concerning the colonies.³¹⁰ Crown records show that the Board of Trade frequently drafted, and the Privy Council sent under the monarch’s name, reminders to colonial governors to take their various oaths of office.³¹¹

2 *Officers of Chartered Corporations* — In chartered colonies, governors of the colony were corporate officers. Here, we discuss corporations that created municipalities and boroughs, charitable organizations, and business ventures. As in earlier periods, the officers of such chartered corporations continued to be given requirements to faithfully and diligently execute their offices, follow standing law, and stay within authority. It was also frequently specified that misconduct would result in loss of office.

The 1694 Charter of the City of New-York, for instance, required all city officers, recorders, town clerks, clerks of the market, aldermen, assistants,

1872), and Letter from Dunk Halifax et al. to King George III (1761), in 6 THE COLONIAL RECORDS OF NORTH CAROLINA 524, 524–25 (William L. Saunders ed., Raleigh, Josephus Daniels 1888) (proposing commission for Arthur Dobbs to be Governor of North Carolina). Commissions of all the colonial governors of Massachusetts Bay are reproduced at *Index*, COLONIAL SOC’Y MASS, <https://colonialsociety.org/node> [<https://perma.cc/J8AJ-H3P5>].

³⁰⁷ See *supra* section I C, pp. 2132–34.

³⁰⁸ See, e.g., *infra* notes 313 & 316 and accompanying text.

³⁰⁹ See GREENE, *supra* note 302, at 54; LABAREE, *supra* note 139, § 36, at 16–17; ALVIN RABUSHKA, TAXATION IN COLONIAL AMERICA 121 (2008).

³¹⁰ An Act for Granting Certain Duties in the British Colonies and Plantations in America 1764, 4 Geo. 3 c. 15, § 39 (Sugar Act). A nearly identical oath was required by several earlier navigation acts. See Preventing Frauds and Regulating Abuses in the Plantation Trade 1695/96, 7 & 8 Will. 3 c. 22, § 3; An Act for the Encouragement of Trade 1663, 15 Car. 2 c. 7, § 6; An Act for the Encouraging and Increasing of Shipping and Navigation 1660, 12 Car. 2 c. 18, § 2.

³¹¹ LABAREE, *supra* note 139, §§ 63, 69, 78, 2 *id.* § 925, see also 1 *id.* at viii (noting that the instructions were issued in the name of the monarch, reviewed by the Privy Council, and generally drafted by the Board of Trade).

chamberlains or treasurers, high constables, and petty constables, "[b]efore they, or any of them shall be admitted to enter upon and execute their respective Offices," to be "sworn, *faithfully to Execute the same*, before the Mayor"³¹² The mayor and sheriff had to take corporal oaths before the governor and his council "for the due Execution of their respective Offices"³¹³ The charter for the College of Wilham and Mary in Virginia required that the governing body, called the "Visitors and Governors," be sworn "well and faithfully to execute the said Office"³¹⁴ In New Jersey, the charter granted to Queen's College (today's Rutgers) by King George III required trustees to "take an oath for faithfully executing the office, or trust reposed in them"³¹⁵ The 1771 charter for the New-York Hospital in Manhattan (which still serves the city today) required that its officers and governors exercise power "according to the Laws and Regulations" governing the entity and take oaths or make affirmations "for the faithful and due Execution of their respective Offices," and also granted them the authority to remove officers and physicians who "become unfit or incapable to execute their said Offices, respectively, or shall misdemean themselves in their said Offices, respectively, contrary to any the Bye Laws or Regulations of our said Corporation, or refuse or neglect the Execution thereof"³¹⁶ And churches were sometimes incorporated, requiring oaths of faithful execution by vestrymen and other officials³¹⁷

3 *Other Colonial Public Officials* — In every colony, the assembly created offices and specified by oath or command that officeholders were bound to faithfully execute them We furnish some illustrative examples here to show the diversity of offices that had these requirements, but we could have chosen hundreds more

³¹² THE CHARTER OF THE CITY OF NEW-YORK 7 (New-York, 1686) (EAI no 706)

³¹³ *Id* at 6–7

³¹⁴ THE CHARTER AND STATUTES OF THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA 35 (Williamsburg, Va, Wilham Parks 1736) (EAI no 40109)

³¹⁵ CHARTER OF A COLLEGE TO BE ERRECTED IN NEW-JERSEY, BY THE NAME OF QUEEN'S-COLLEGE 4 (New-York, John Holt 1770) (EAI no 42168)

³¹⁶ CHARTER FOR ESTABLISHING AN HOSPITAL IN THE CITY OF NEW-YORK 7–8, 10 (New-York, H Game 1771) (EAI no 12161)

³¹⁷ *See, e g*, Act for the Establishment of Religious Woiship in this Province, According to the Church of England (1701), *reprinted in* ACTS OF ASSEMBLY, PASSED IN THE PROVINCE OF MARYLAND, FROM 1692, TO 1715, at 13, 14, 16 (London, John Baskett 1723) (requiring that vestrymen take an oath "[t]hat I will justly and truly execute the Trust or Office of a Vestryman of this Parish, according to my best Skill and Knowledge, without Prejudice, Favour or Affection," *id* at 14, and churchwardens take an oath "well and faithfully to execute that Office for the ensuing Year, according to the Laws and Usages of the said Province, to the best of his Skill and Powei," *id* at 16), An Act for Incorporating the Vestry of the Parish of St Thomas in Berkley County (circa 1733–1736), *reprinted in* ACTS PASSED BY THE GENERAL ASSEMBLY OF SOUTH-CAROLINA 52, 54 (Charles-Town, Lewis Timothy 1736) (providing that vestrymen must take an oath "that I will well and faithfully execute the Office and to the utmost of my Power, observe and follow the Directions of the Act of the General Assembly [this act named]")

In Massachusetts, for example, the gager of casks swore an oath to "diligently and faithfully discharge and execute the Office of a Gager impartially without Fear or Favour,"³¹⁸ and managers of the Massachusetts public lottery had a detailed oath to faithfully execute, eschew corruption, and follow the intent of the legislature,³¹⁹ as did lottery managers in other colonies like New York.³²⁰ The Rhode Island assembly required the general treasurer of the colony to post bond "for the faithful Execution of his Office, and the Trust reposed in him,"³²¹ while trustees charged with making loans with government-issued bills of credit were required to "give personal Security" "to the Amount of the several Sums by them receiv'd, for the faithful Execution of their Trust and Office"³²² In Connecticut, constables,³²³ town clerks,³²⁴ sergeants major of the militia,³²⁵

³¹⁸ An Act to Prevent Deceit in the Gage of Cask (1747), *reprinted in* ACTS AND LAWS OF HIS MAJESTY'S PROVINCE OF THE MASSACHUSETTS-BAY IN NEW-ENGLAND 52, 53 (n p 1763)

³¹⁹ An Act for Raising by a Lottery the Sum of Seven Thousand and Five Hundred Pounds for the Service of this Province in the Present Year (1744), *reprinted in* ACTS AND LAWS, PASSED BY THE GREAT AND GENERAL COURT OR ASSEMBLY OF HIS MAJESTY'S PROVINCE OF THE MASSACHUSETTS-BAY IN NEW-ENGLAND 142, 145 (Boston, Kneeland & Green 1745) ("I will faithfully execute the Trust reposed in me, and I will not use any indirect Art or Means to obtain a Prize or Benefit-Lot for my self or any other Person whatsoever and I will, to the best of my Judgment, declare to whom any Prize, Lot or Ticket does of Right belong, according to the true Intent and meaning of the Act of this Province made in the eighteenth Year of His Majesty's Reign in that Behalf So help me God") (EAI no 5628)

³²⁰ An Act for Ratifying the Sum of Two Thousand Two Hundred and Fifty Pounds, by a Publick Lottery for this Colony, for the Advancement of Learning, and Towards the Founding a College Within the Same (1746), *reprinted in* ANNO REGNI GEORGI II REGIS MAGNAE BRITANNIAE, FRANCIAE, & HIBERNIAE, VICISSIMO 37, 41 (New-York, James Parker 1746)

³²¹ An Act Stating the General Treasurer's Salary, and for Taking Security (1729), *reprinted in* ACTS AND LAWS, OF HIS MAJESTY'S COLONY OF RHODE-ISLAND, AND PROVIDENCE-PLANTATIONS, IN NEW-ENGLAND, IN AMERICA 146, 146 (Newport, Frankln 1745) (EAI no 5683)

³²² An Act for Promoting the Raising Flax and Wool, and Manufacturing the Same into Cloth (1750), *reprinted in* AT THE GENERAL ASSEMBLY OF THE GOVERNOR AND COMPANY OF THE ENGLISH COLONY OF RHODE-ISLAND, AND PROVIDENCE-PLANTATIONS, IN NEW-ENGLAND, IN AMERICA 77, 78 (Newport, 1751) (EAI no 40604)

³²³ An Act for the Establishing Forms of Oaths, *reprinted in* ACTS AND LAWS, OF HIS MAJESTIES COLONY OF CONNECTICUT IN NEW-ENGLAND 89 (Boston, Bartholomew Green & John Allen 1702) (requiring an oath that "you will faithfully Execute the place and Office of a Constable and will do your best endeavor to see all Watches and Wards executed and duly attended, and obey and execute all lawful Commands and Warrants as shall be committed to your care, according to your best skill")

³²⁴ *Id* (requiring an oath that "you will truly and faithfully attend and execute the place and Office of a Town Clerk according to your best skill and make Entry of all such Grants, Deeds of Sale, or of Gift, Town Votes, Mortgages and Alienations of Land, as shall be completed according to Law")

³²⁵ *Id* at 87 (requiring an oath that "according to your Commission, you Swear by the Ever-living God, that according to your best skill and ability, you will faithfully discharge the trust committed to you, and according to such Commands and directions as you shall receive from time to time, from the General Court, and Governour and Council, and according to the Laws and Orders of this Colony")

fence viewers,³²⁶ tything men,³²⁷ and many other officials took oaths to faithfully discharge or execute their office

In Pennsylvania, the keeper of an almshouse was required to give bond with sureties "for the due and faithful Execution of his Office, and for the Care and good Management of what shall be committed to his Trust,"³²⁸ while the register general for probating wills and granting letters of administration had to give bond with sufficient sureties "for the true and faithful Execution of his Office, and for the delivering up the Records, and other Writings belonging to the said Office"³²⁹ The Delaware assembly required the recorder of deeds to post bond, with at least one surety, "conditioned for the true and faithful Execution of his Office, and for delivering up the Records and other Writings belonging to the said Office"³³⁰ Sheriffs in Maryland had to post bond, the "Condition" of which was that they "well and faithfully execute the same Office, and also shall render His said Majesty, and His Officers, a true, faithful, and perfect Account of all and singular His said Majesty's Rights and Dues [and] a true and just Account of their Fees"³³¹

In Virginia, a surveyor of land took an oath to "truly and faithfully, to the best of His Knowledge and Power, discharge and execute his Trust, Office, and Employment," and enter into bond with sureties "for the true and faithful Execution and Performance of his Office"³³² In

³²⁶ This officer administered fence laws and settled disputes about fencing — for example, involving escaped livestock. For the oath, see *id.* at 89 (requiring an oath to "diligently and faithfully discharge and execute the Office")

³²⁷ This was a low-level elected office in England and New England, charged with overseeing the conduct of neighbors, policing taverns for drunkenness and rowdy behavior, and the like. For the oath, see *An Act for Prescribing, and Establishing Forms of Oaths in This Colony*, reprinted in *ACTS AND LAWS OF HIS MAJESTY'S ENGLISH COLONY OF CONNECTICUT IN NEW-ENGLAND IN AMERICA* 175, 181 (New London, Conn., Timothy Green 1750) (requiring an oath to "faithfully Execute the Place, and Office Impartially according to Law, without Fear, or Favour, according to your best Skill, and Knowledge")

³²⁸ *An Act for Amending the Laws Relating to the Poor*, reprinted in *ANNO REGNI GEORGI II REGIS, MAGNAE BRITANNIAE, FRANCIAE & HIBERNIAE, VIGESIMO TERTIO AT A GENERAL ASSEMBLY OF THE PROVINCE OF PENNSYLVANIA* 98, 104 (Philadelphia, B. Franklin 1749) (EAI no. 6395)

³²⁹ *An Act Concerning the Probates of Written and Nuncupative Wills, and for Confirming Deeds of Lands*, c. XIX, reprinted in *THE LAWS OF THE PROVINCE OF PENNSYLVANIA COLLECTED INTO ONE VOLUME* 45, 47–48 (Philadelphia, Andrew Bradford 1714)

³³⁰ *An Act for Acknowledging and Recording Deeds*, reprinted in *LAWS OF THE GOVERNMENT OF NEW-CASTLE, KENT AND SUSSEX UPON DELAWARE* 207 (Philadelphia, B. Franklin 1741)

³³¹ *An Act for the Direction of the Sheriff's Office, and Restraining Their Ill Practices Within this Province*, reprinted in *ACTS OF ASSEMBLY, PASSED IN THE PROVINCE OF MARYLAND, FROM 1692, TO 1715*, *supra* note 317, at 179

³³² *An Act Directing the Duty of Surveyors of Land*, ch. XIV (1748), reprinted in *THE ACTS OF ASSEMBLY, NOW IN FORCE, IN THE COLONY OF VIRGINIA* (Williamsburg, W. Rind, A. Purdie & J. Dixon 1769) (EAI no. 11511)

North Carolina, officers such as searchers for weapons among slaves,³³³ collectors of liquor duties,³³⁴ sheriffs,³³⁵ and commissioners to oversee the emission of public bills of credit³³⁶ took oaths or posted bonds to faithfully execute their offices. South Carolina also created many offices with that requirement, including the pilot of Charles-Town harbor,³³⁷ surveyors of hemp, flax, and silk,³³⁸ and the "public packer" of beef and pork for export.³³⁹ And finally, in the southern-most colony of Georgia, officers, such as the harbor master of Savannah and the "culler and inspector of lumber," took oaths of faithful execution as a condition of assuming office.³⁴⁰

³³³ An Additional Act, to an Act, Concerning Servants and Slaves (1753), *reprinted in* 2 A COLLECTION OF ALL THE ACTS OF ASSEMBLY OF THE PROVINCE OF NORTH-CAROLINA, NOW IN FORCE AND USE 16 (Newbern, N C, James Davis 1765) (requiring an oath to "faithfully discharge the Trust reposed in me, as the Law Directs, to the best of my Power")

³³⁴ An Act, for Granting to His Majesty, the Sum of Forty Thousand Pounds (1754), *reprinted in* 2 A COLLECTION OF ALL THE ACTS OF ASSEMBLY OF THE PROVINCE OF NORTH-CAROLINA, NOW IN FORCE AND USE, *supra* note 333, at 18, 25 (requiring posting bond "with Condition, that he will honestly, faithfully, and justly execute the Office and will fully account for and pay all such Sum or Sums of Money by him to be received and accounted for")

³³⁵ An Act, for Appointing Sheriffs, and Directing Their Duty in Office (1754), *reprinted in* 2 A COLLECTION OF ALL THE ACTS OF ASSEMBLY OF THE PROVINCE OF NORTH-CAROLINA, NOW IN FORCE AND USE, *supra* note 333, at 60, 61 ("I will, truly and faithfully, execute the Office of Sheriff of the County of [] to the best of my Knowledge and Ability, agreeable to Law, and that I will not take, accept, or receive, directly or indirectly, any Bribe, Gift, Fee or Reward, whatsoever, for returning any Man to serve as a Juror or for making any false Return of Process to me directed")

³³⁶ An Act for Granting to His Majesty, the Sum of Forty Thousand Pounds in Public Bills of Credit, ch 1, § 6 (1754), *reprinted in* ANNO REGNI GEORGII II, REGIS, MAGNAE BRITANNIAE, FRANCIAE, & HIBERNIAE, VICISSIMO SEPTIMO, AT A GENERAL ASSEMBLY, HELD AT WILMINGTON (requiring that commissioner "shall, before he enters upon the Execution of his Office, give Bond for the due and faithful Execution of his Office, according to the true Intent and Meaning of this Act and also shall take an Oath, for the due and faithful Execution of his Office of Commissioner aforesaid") (EAI no 7283)

³³⁷ An Act for the Better Settling and Regulating of Pilots, and for Erecting and Supporting of Beacons near the Barr and Harbour of Charles-Town (1734), *reprinted in* 2 THE LAWS OF THE PROVINCE OF SOUTH-CAROLINA, IN TWO PARTS 610, 611 (Nicholas Trott ed., Charles-Town, Lewis Timothy 1736) ("I will well and faithfully execute and discharge the Business and Duty of a Pilot")

³³⁸ An Act for Encouraging the Raising of Hemp, Flax and Silk, ch VI, *reprinted in* ACTS PASSED BY THE GENERAL ASSEMBLY OF SOUTH-CAROLINA 40, 41 (Charles-Town, Lewis Timothy 1736) (requiring an oath to "well & faithfully execute your said Office, after your best Skill and Cunning, with all Fidelity, and without any Partiality, Favour or Affection")

³³⁹ An Act to Prevent Frauds and Deceits in Selling Rice, Pitch, Tar, Rolin, Turpentune, Beef, Pork, Shingles, Staves, and Fire-wood (1746), *reprinted in* THE PUBLIC LAWS OF THE STATE OF SOUTH-CAROLINA FROM ITS FIRST ESTABLISHMENT AS A BRITISH PROVINCE DOWN TO THE YEAR 1790, INCLUSIVE 208, 210 (Philadelphia, R. Aitken & Son 1790) ("I will faithfully and impartially execute the business and duty of a packer without favour or prejudice to any person or party whatever, according to the best of my skill and judgment, and with the greatest expedition")

³⁴⁰ See An Act to Regulate and Ascertain the Rates of Wharfrage of Shipping and Merchandize, § 7 (1770), *reprinted in* ACTS PASSED BY THE GENERAL ASSEMBLY OF GEORGIA 488, 492 (Savannah, James Johnston 1770) ("I will, to the best of my skill, knowledge, and ability, without partiality or prejudice, execute the office, and perform the duty of Harbour-Master as directed

4 *Summing Up* — As in prior eras of English history, during the period of mature colonial governments in America the concept of faithful execution was frequently linked with adjectives (or adverbs, as the case may be) such as true, diligent, due, honest, well, skillful, careful, and impartial. This period was also consistent in showing that faithful execution was often tied to staying within authority and abiding by the law,³⁴¹ following the intent of the lawgiver,³⁴² and eschewing self-dealing and financial corruption.³⁴³ This tripartite meaning of faithful execution is consistent for both English and colonial office-holding.

One might argue, perhaps invoking the modern interpretive canon against surplusage, that seeing many oaths of faithful execution that also mention, for example, a rule against self-dealing is evidence that faithful execution does not itself prohibit self-dealing. We disagree. Prolixity, often including lots of repetition and surplusage, was the norm in early modern legal drafting. When one sees concepts repeatedly occurring together, that might just as well indicate similarity as difference in their meaning. In addition, dictionary definitions of faithful include the three strands we found. And finally, as discussed below, criminal and civil case law concerning officeholder duties and parliamentary impeachments is additional evidence that faithfully executing an office had come to have the three-part meaning we ascribe to it.

Throughout the eighteenth century, Parliament continued to create many executive offices with attached duties of faithful execution, frequently paired with these tripartite features, too. Many of these were internal acts that did not directly affect the overseas colonies³⁴⁴ —

in and by an act of the General Assembly entitled [this act named]), An Act to Regulate the Making of Cypress, Oak, and Pine Lumber, Staves and Shingles (1767), reprinted in ACTS PASSED BY THE GENERAL ASSEMBLY OF GEORGIA 6, 7–8 (Savannah, James Johnston 1767) (imposing oath that “I will faithfully, impartially, and without delay, execute the business and duty of a culler and inspector of lumber to the best of my skill and judgment, agreeable to an act of the general assembly [this act named]”) (EAI no. 41715).

³⁴¹ See sources cited *supra* notes 305, 317, 325, 327 & 333.

³⁴² See sources cited *supra* notes 319 & 336.

³⁴³ See sources cited *supra* notes 319, 331, 334 & 335.

³⁴⁴ See, e.g., An Act for the Better Carrying on and Regulating the Navigation of the Rivers Thames and Isis 1750/51, 24 Geo. 2 c. 8 (“I A B do swear, That I will without Favour or Affection, truly, faithfully and impartially execute, perform and discharge the Office and Duty of a Commissioner, according to the Powers, Authorities and Directions given and established by an Act of Parliament [this act named] according to the best of my Skill and Knowledge”), An Act for the Better Regulating the Office of Sheriffs and for Ascertaining Their Fees 1716/17, 3 Geo. c. 15, § X (imposing a new oath on sheriffs, including this provision “I will truly and diligently execute the good Laws and Statutes of this Realm and discharge the same according to the best of my Skill and Power”), An Act for Laying Certain Duties Upon Candles 1709, 8 Ann. c. 5, § 52 (“I will faithfully execute the Trust reposed in me pursuant to the Act of Parliament [this act named] without Fraud or Concealment and shall from time to time true Account make of my doings therein and shall take no Fee Reward or Profit for the Execution or Performance of the said Trusts or the Business relating thereto from any Person or Persons other than such as shall be paid or allowed by Her Majesty.”)

though they did generate complaints that resonated with colonial American concerns about the multiplication of crown offices, the corruption of members of Parliament and others by being given lucrative offices, and the growth of executive power.³⁴⁵ But some were important statutes governing the colonies that attracted widespread attention in America, such as the Stamp Act.³⁴⁶ In addition, extant laws from earlier centuries, such as those parliamentary statutes banning sales of office and corruption in official appointments, and those requiring all excise and customs officers to truly and faithfully execute their offices,³⁴⁷ continued to shape the law, culture, and politics of officeholding and helped define what it meant to be a faithful officer.

Both civil and criminal case law and Parliamentary impeachments also helped to define faithfulness in office. At common law, "any publick officer" was "indictable for misbehaviour in his office,"³⁴⁸ or could be pursued by criminal information at the suit of the Crown or a private prosecutor.³⁴⁹ The misdemeanors — failures to demean oneself appropriately in public office — that were actionable included knowing neglect of duty,³⁵⁰ speculation,³⁵¹ exercising official discretion with a "corrupt"³⁵² or "partial motive"³⁵³ rather than pursuing the public interest, and a breach of trust, such as taking a bribe to recommend a candidate for a crown office.³⁵⁴ Extortion was also a crime, "which consist[ed] in any officers' unlawfully taking, by colour of his office, from any man, any money or thing of value, that is not due to him, or more than is due, or before it is due."³⁵⁵

³⁴⁵ See EDLING, *supra* note 91, at 64–65; WOOD, *supra* note 7, at 143–46.

³⁴⁶ An Act for Granting Certain Stamp Duties, and Other Duties, in the British Colonies and Plantations in America 1765, 5 Geo 3 c 12, § 12 (Stamp Act) (providing that commissioners and other officers who will execute the act "shall take an Oath in the Words, or to the Effect following (that is to say) 'I A B do swear, That I will faithfully execute the Trust reposed in me, pursuant to an Act of Parliament [this act named], without Fraud or Concealment, and will from time to time true Account make of my Doing therein, and will take no Fee, Reward, or Profit, for the Execution or Performance of the said Trust, or the Business relating thereto, from any Person or Persons, other than such as shall be allowed by his Majesty, his Heirs, and Successors, or by some other Person or Persons under him or them to that Purpose authorized'")

³⁴⁷ See *supra* notes 216 & 219.

³⁴⁸ Anonymous (1704) 87 Eng Rep 853, 853, 6 Mod 96, 96.

³⁴⁹ See, e.g., Bassett v Godschall (1770) 95 Eng Rep 967, 968, 3 Wils KB 121, 123.

³⁵⁰ See, e.g., Crouther's Case (1599) 78 Eng Rep 893, 894, Cro Eliz 654, 654–55 (involving a constable who refused to make the hue and cry).

³⁵¹ Queen v Buck (1704) 87 Eng Rep 1046, 1046, 6 Mod 306, 307 (involving defendant tax assessors and collectors who imposed an "inequality of rates for the private advantage of some" and "put the money in their own pockets").

³⁵² Rex v Hann (1765) 97 Eng Rep 1062, 1062, 3 Burr 1716, 1716.

³⁵³ Rex v Justices of the Peace of the Corp of Rye (1752) 96 Eng Rep 791, 791, Sayer 25, 26.

³⁵⁴ Rex v Vaughan (1796) 98 Eng Rep 308, 310, 4 Burr 2495, 2498. On the crime of misbehavior in public office, see RAOUL BERGER, *IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS* 63–66 (1973).

³⁵⁵ 4 BLACKSTONE, *supra* note 185, at *141.

Civil actions could also be used to remove an officer who himself failed, or whose inferior failed, to take or abide by his oath of office. For instance, in 1767, a Pennsylvania court upon petition removed a recorder of deeds who had farmed his office to a deputy without ensuring that the deputy “was under any Oath of Office” or had “given any Security for the faithfull Discharge of [the] Office”³⁵⁶

In addition to judicial proceedings, widely noticed impeachments also conveyed information about the contours of faithful officeholding. As noted above, these examples reflect a public trust theory of impeachment, in which acting contrary to oath, duty, and office are key elements.³⁵⁷ For instance, Thomas Parker, Earl of Macclesfield, the Lord High Chancellor of Great Britain, was impeached for allowing the misappropriation of court and litigant property in his chancery office.³⁵⁸ Macclesfield was deemed to have failed in “the faithful vigorous Discharge of the great Trust reposed” in him, having breached his oath of “due and faithful discharge and execution of [his] Duty”³⁵⁹

As the concept of faithful execution gained definition and coherence in the legal and political realms, it also radiated out into the larger culture, in which it was likely to have been understood in a looser, colloquial sense. Translations of Greek and Roman classics used the term to describe diligent, honest, or otherwise praiseworthy behavior by public agents.³⁶⁰ Sir Walter Raleigh’s *History of the World*, written during his

³⁵⁶ Petition of Parr (Phila. Cty. Pa. Quarter Sess. Ct. Sept. 1767) (manuscript in possession of Philadelphia City Archives and digital photographs on file with authors), see WILLIAM E. NELSON, *THE COMMON LAW IN COLONIAL AMERICA: LAW AND THE CONSTITUTION ON THE EVE OF INDEPENDENCE, 1735-1776*, at 70 (2018).

³⁵⁷ See *supra* p. 2151, see also BERGER, *supra* note 354, at 67-70 (reviewing English impeachments and noting themes including “corruption,” “abuse of official power,” “misapplication of funds,” and “neglect of duty,” *id.* at 70).

³⁵⁸ See Joshua Getzler, *Fiduciary Principles in English Common Law*, in *THE OXFORD HANDBOOK OF FIDUCIARY LAW*, *supra* note 35, at 471.

³⁵⁹ The Trial of Thomas, Earl of Macclesfield, Lord High Chancellor of Great Britain, Before the House of Lords, for High Crimes and Misdemeanors in the Execution of his Office (May 6, 1725), in 6 *A COMPLETE COLLECTION OF STATE-TRIALS AND PROCEEDINGS UPON HIGH-TREASON, AND OTHER CRIMES AND MISDEMEANORS* 477, 618, 659 (London, 3d ed. 1742). In 1771, historians uncovered the secret Treaty of Dover of 1670, which revealed bad faith by chief executives Charles II and James II received bribes from France’s Louis XIV and promised secret conversion to Catholicism and to enter a military alliance. See Jed Handelsman Shugerman & Gautham Rao, *Emoluments, Zones of Interests, and Political Questions: A Cautionary Tale*, 45 *HASTINGS CONST. L.Q.* 651, 661 (2018).

³⁶⁰ See, e.g., CICERO AGAINST CATILINE, in *IV INVECTIVE ORATIONS CONTAINING THE WHOLE MANNER OF DISCOVERING THAT NOTORIOUS CONSPIRACY* 93 (Christopher Wase trans., London, TN 1671) (stating that Lucius Valerius Flaccus and Caius Pomptinus, the praetors at the time of Cataline’s conspiracy, “are deservedly and justly praised, because they had courageously and faithfully executed what I committed to their Charge”), *THE HISTORY OF POLYBIUS THE MEGALOPOLITAN: THE FIVE FIRST BOOKS ENTIRE* 293 (Edward Grimeston trans., London, Nicholas Okes 1634) (describing the organizing of the Roman legion “[E]very Tribune draws together his Legion, and in choosing one of the most sufficient, they take an Oath from him

imprisonment in the Tower of London, described the ideal department of governors of ancient Athens as “faithful execution of that which was committed to them in trust”³⁶¹. And John Donne, the poet, scholar, and churchman, praised a “Good Minister” as one who “faithfully execute[s] the office of his Ministrie”³⁶². By the eighteenth century, faithful execution was widely used to describe the proper role of a magistrate — to duly, impartially, and vigorously execute the laws³⁶³.

E. The Revolution and the Critical Period

The importance of oaths to Americans can be seen clearly during the break from Great Britain. Among the first things that new state governments did after independence were to set up new governments — sometimes temporary, sometimes more durable — and require oaths of allegiance and faithful execution for state officials. During the War for Independence and after, many states also legislated new oaths for citizens, abjuring any allegiance to King George III and Great Britain, and pledging allegiance to the new state and, sometimes, the United States as well³⁶⁴. Over the next few years, as state governments matured, every state created many offices that had faithful execution oaths or affirmations. The national government also created offices with faithful execution obligations.

to obey his Captaines faithfully, and to execute their Commandments”), PLINY THE ELDER, *THE HISTORIE OF THE WORLD* 178 (Philemon Holland trans., London, Adam Iship 1634) (discussing the “faithfull execution of his Censorship” by a Roman official).

³⁶¹ WALTER RALEIGH, *The Thrd Book of the First Part, in THE HISTORY OF THE WORLD* 419 (London, 1687).

³⁶² JOHN DOWNE, *An Amulet or Preservative Against the Contempt of the Ministry, in CERTAINE TREATISES OF THE LATE REVEREND AND LEARNED DIVINE, MR JOHN DOWNE* 26 (Oxford, John Lichfield 1633).

³⁶³ See, e.g., A LETTER TO A MEMBER OF PARLIAMENT, ON THE IMPORTANCE OF THE AMERICAN COLONIES 21 (London, Black Swan 1757) (“[L]et us not forget the Government that is best administered is best, in a proper Care to appoint such Officers as will faithfully execute the Laws, and punish those that neglect their Duty”), WILLIAM VINAL, SERMON ON THE ACCURSED THING THAT HINDERS SUCCESS AND VICTORY IN WAR 6 (Newport, RI, James Frankln 1735) (“[A] vigorous and faithful Execution of the Laws of the Country is the Magistrate’s Province”), JOHN WEBB, *THE GREAT CONCERN OF NEW-ENGLAND. A SERMON PREACHED AT THE THURSDAY LECTURE IN BOSTON, FEBRUARY 11TH 1730*, at 31 (Boston, Thomas Fleet 1730) (“[T]he best Body of Laws, without a *faithful Execution of them*, will necessarily prove *ineffectual*”).

In databases of eighteenth-century legal materials — such as Gale’s Eighteenth Century Collections and Virginia’s Founders Early Access — search results for the term “faithful execution” (and variants) are dominated by references to public offices and oaths. Somewhat less common were uses in private contexts that we would now call fiduciary instruments, like wills and guardianship. Least common was use in ordinary private contracts. These findings come with the caveat that these databases are not clearly representative of the era, so these observations are offered in a tentative and confirmatory spirit.

³⁶⁴ For a rich discussion, see HYMAN, *supra* note 59, at 61–117.

1 *Chief Magistrates of the Newly Independent States* — Most relevant for purposes of understanding Article II, the states through constitutions and statutes created chief magistrates — generally called governors or presidents — to be the primary executive officials. These officers, along with the British monarch and colonial governors, are the most probable models for the presidency that were in the minds of the drafters of Article II. We have already seen that oaths of office were critical for the monarch and colonial governors. The monarch was required to pledge during the coronation oath to govern according to parliamentary statutes. An oath-bound requirement to follow standing law was also required of colonial governors, who in addition pledged to duly execute their offices. Nearly every state replicated these requirements for their governors. The only exceptions were the two “charter states” of Connecticut and Rhode Island, which did not draft new constitutions but simply continued under their old charters, with some updated laws.³⁶⁵ All of the remaining states, plus one entity that was not yet a state — Vermont — imposed by law the twin securities on the executive power later found in Article II requiring that the chief magistrate govern according to law and take an oath of faithful execution of office.

One of the first states to act was Virginia. In the spring of 1776, before independence was formally declared,³⁶⁶ a general convention met and passed an ordinance prescribing the oath of office for the Virginia governor and other officials:

I will, to the best of my skill and judgment, execute the said office diligently and faithfully, according to law, without favour, affection, or partiality, that I will, to the utmost of my power, support, maintain, and defend, the commonwealth of Virginia, and the constitution of the same and will constantly endeavour that the laws and ordinances of the commonwealth be duly observed, and that law and justice, in mercy, be executed in all judgments.³⁶⁷

The state’s new constitution, drafted soon afterward in the summer of 1776, provided that the governor “shall, with the advice of a Council of State, exercise the executive powers of government, according to the

³⁶⁵ HANNIS TAYLOR, *THE ORIGIN AND GROWTH OF THE ENGLISH CONSTITUTION* 23 (Boston & New York, Houghton, Mifflin & Co 1890) (“The charter granted to Connecticut by Charles II in 1662 was continued as her organic law until 1818, while the charter granted in 1663 to Rhode Island was continued as her organic law down to 1842.”)

³⁶⁶ On May 15, 1776, the Continental Congress resolved that governments should be formed “under the authority of the people of the colonies.” 4 *JOURNALS OF THE CONTINENTAL CONGRESS*, *supra* note 142, at 358. This spurred states to begin deliberating about new constitutions.

³⁶⁷ An Ordinance Prescribing the Oaths of Office to be Taken by the Governour and Privy Council, and Other Officers of the Commonwealth, *reprinted in* *ORDINANCES PASSED AT A GENERAL CONVENTION OF DELEGATES AND REPRESENTATIVES, FROM THE SEVERAL COUNTIES AND CORPORATIONS OF VIRGINIA, HELD AT THE CAPITOL, IN THE CITY OF WILLIAMSBURG, ON MONDAY THE 6TH OF MAY, ANNO DOM 1776*, at 13, 13 (Williamsburg, Va., Alexander Purdie 1776) (EAI no. 15199).

laws of this Commonwealth³⁶⁸ The famous Bill of Rights of Virginia contained a declaration against execution, suspension, or dispensation of the laws,³⁶⁹ which reappeared in near-identical language in the later constitutions of Maryland, North Carolina, Massachusetts, and New Hampshire³⁷⁰

Other states, such as Delaware in fall 1776³⁷¹ and Maryland in late 1776,³⁷² followed with constitutions and statutes requiring that the chief magistrate govern according to standing law and take an oath of faithful execution of office Many of the early state constitutions were heavily slanted toward legislative power, giving selection of the chief magistrate to the legislature, and requiring consultation and sometimes approval of a council before the chief magistrate could take certain acts Pennsylvania probably had the least powerful chief magistrate, because that officer merely headed an executive committee "The supreme executive power shall be vested in a president and council"³⁷³ "The president with the council are to correspond with other states, and transact business with the officers of government, civil and military, they are also to take care that the laws be faithfully executed"³⁷⁴ The president and council, along with other government officers, were required by the constitution to swear or affirm "that I will faithfully execute the office of [office named] and will do equal right and justice to all men, to the best of my judgment and abilities, according to law"³⁷⁵

³⁶⁸ VA CONST of 1776, *reprinted in* 7 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 3812, 3816

³⁶⁹ VA CONST of 1776 (Bill of Rights), § 7, *reprinted in* 7 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 3812, 3813 ("That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised")

³⁷⁰ See MD CONST of 1776 (Declaration of Rights), § VII, *reprinted in* 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 1686, 1687, MASS CONST of 1780, pt 1, art XX, *reprinted in* 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 1888, 1892, N C CONST of 1776 (Declaration of Rights), § V, *reprinted in* 5 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 2787, 2787, N H CONST of 1784, pt I, art XXIX, *reprinted in* 4 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 2453, 2457

³⁷¹ DEL CONST of 1776, arts 7 & 22, *reprinted in* 1 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 562, 563, 566, 6 PAPERS OF THE HISTORICAL SOCIETY OF DELAWARE MINUTES OF THE COUNCIL OF DELAWARE STATE FROM 1776 TO 1792, at 210 (Wilmington, Historical Society of Delaware 1887) (oath of President Caesar Rodney, taken April 2, 1778), *see also id.* at 676, 679 (same oath taken by President John Dickinson on November 13, 1781)

³⁷² MD CONST of 1776, art XXXVIII, *reprinted in* 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 1686, 1697, An Act to Direct the Forms of the Commissions to the Judges and Justices, ch 5 (1777), *reprinted in* 1 THE LAWS OF MARYLAND 323, 323 (Virgil Maxcy ed., Baltimore, Philip H Nicklin & Co 1811)

³⁷³ PA CONST of 1776, § 3, *reprinted in* 5 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 3081, 3084

³⁷⁴ *Id.* § 20, at 3087-88

³⁷⁵ *Id.* § 40, at 3090

Two important constitutions that gave more power and independence to chief executives — including an independent electoral base — and thus provided models for the presidency were those of New York (1777) and Massachusetts (1780). But both states had the same restrictions on gubernatorial power: a faithful execution requirement and a directive to enforce and abide by the law.³⁷⁶ Like Pennsylvania and Vermont,³⁷⁷ New York used the language “take care that the laws are faithfully executed” to command its chief magistrate to enforce and follow the law.³⁷⁸

States made choices that differed from one another, and from the choices made by drafters of Article II in 1787, about whether the chief magistrate should preside alone, or with the mere advice of a council, or only with the approval of a council, by whom and for how long a term the chief magistrate would be elected, whether that officer could serve multiple terms, and whether the chief magistrate would have no power, a qualified power, or an absolute power to veto legislation or to pardon convicted criminals. But all states agreed that a chief magistrate should be under oath to faithfully execute the office, should be required to both abide by and faithfully apply the law, and had no power to suspend the

³⁷⁶ MASS CONST. OF 1780, pt. 2, ch. II, § 1, arts. I & IV, reprinted in 3 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 1888, 1899–1900 (providing that the governor, called the “supreme executive magistrate,” *id.* art. I, would, along with his council, “order[] and direct[] the affairs of the commonwealth, agreeably to the constitution and the laws of the land,” *id.* art. IV), *id.* pt. 2, ch. VI, art. I, at 1909 (requiring the governor and other state officers to take an oath (or affirmation if Quaker) to “faithfully and impartially discharge and perform all the duties incumbent on me according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution and the laws of the commonwealth. So help me, God.”), N.Y. CONST. OF 1777, arts. XVII & XIX, reprinted in 5 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 2623, 2632–33 (providing that “the supreme executive power and authority of this State shall be vested in a governor,” *id.* art. XVII, who shall “take care that the laws are faithfully executed to the best of his ability,” *id.* art. XIX), Plan for Organizing the Government, in 1 JOURNALS OF THE PROVINCIAL CONGRESS, PROVINCIAL CONVENTION, COMMITTEE OF SAFETY AND COUNCIL OF SAFETY OF THE STATE OF NEW-YORK, 1775–1776–1777, at 916–17 (Albany, Thurlow Weed 1842) (requiring the governor, before taking office, to take an oath “in the presence of that Almighty and eternal God,” to swear “that I will in all things, to the best of my knowledge and ability, faithfully perform the trust, so as aforesaid reposed in me, by executing the laws, and maintaining the peace, freedom, honour and independence of the said State, in conformity to the powers unto me delegated by the constitution”), An Act Requiring All Persons Holding Offices or Places Under the Government of this State, to Take the Oaths, Therein Described and Directed, ch. 7, § 2 (Mar. 5, 1778), reprinted in LAWS OF THE STATE OF NEW-YORK, COMMENCING WITH THE FIRST SESSION OF THE SENATE AND ASSEMBLY AFTER THE DECLARATION OF INDEPENDENCY 8 (Poughkeepsie, N.Y., John Holt 1782) (providing that future governors and lieutenant governors shall take an oath to “faithfully perform the Trust reposed in me, as [office named], by executing the Laws, and maintaining the Peace, Freedom and Independence of the said State, in Conformity unto the Powers delegated unto me by the Constitution of the said State. So help me God.”)

³⁷⁷ VT. CONST. OF 1777, ch. II, § XVIII, reprinted in 6 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 3737, 3745.

³⁷⁸ N.Y. CONST. OF 1777, art. XIX, reprinted in 5 FEDERAL AND STATE CONSTITUTIONS, *supra* note 138, at 2623, 2633.

laws or dispense with their application to specific persons³⁷⁹ These requirements replicate what was imposed on colonial governors and the British monarch, with the exception that the coronation oath did not use the specific language of faithful or due execution When the framers expressly required that the President faithfully execute his office and the laws, they almost certainly imported the same package of restrictions into Article II, with all the meaning it had acquired over the centuries

2 *Executive Offices Created by the Continental Congress* — In looking for models for Article II, the framers also must have considered important executive offices created by the Continental/Confederation Congress in 1774–1787 The Congress repeatedly created executive offices with faithful execution duties, used oaths and affirmations to solidify those obligations, and specified or implied that faithful execution included abiding by standing law, staying within authority, and refraining from self-dealing

Even before independence, the Continental Congress created offices such as “treasurers of the United Colonies,” who were required to “give bond for the faithful performance of their office,”³⁸⁰ and a paymaster general and quartermaster general for the army, who were on oath “truly and faithfully to discharge the duties of their respective stations”³⁸¹ In October 1776, the Congress ordered that all officers of the Continental Army take an oath pledging allegiance to the thirteen colonies, abjuring allegiance to King George III, and promising “to the utmost of my power, [to] support, maintain, and defend” the United States³⁸² — language sounding very similar to the second part of the President’s oath of Article II Some months later, when the positions of secretary to the Congress and assistants were created, the army oaths were required for them, along with a promise of secrecy and an oath to “well and faithfully execute the trust”³⁸³ The same package of oaths was required for the office of secretary of the Committee of Secret Correspondence,³⁸⁴

³⁷⁹ In addition to the states discussed in *supra* notes 367–378 and accompanying text — Delaware, Maryland, Massachusetts, New York, Pennsylvania, and Vermont — all other states, with the exception of the “charter states” of Connecticut and Rhode Island, imposed the same requirements See, e.g., GA CONST of 1777, § 19 (“The governor shall, with the advice of the executive council, exercise the executive powers of government, according to the laws of this state and the constitution thereof”), *id.* § 24 (requiring the governor and president of the executive council to swear an oath “to the best of my skill and judgment, execute the said office faithfully and conscientiously, according to law, without favor, affection, or partiality, that I will, to the utmost of my power, support, maintain, and defend the state of Georgia, and the constitution of the same, and use my utmost endeavors to protect the people thereof, in the secure enjoyment of all their rights, franchises and privileges, and that the laws and ordinances of the state be duly observed”)

³⁸⁰ 2 JOURNALS OF THE CONTINENTAL CONGRESS, *supra* note 142, at 221

³⁸¹ *Id.* at 223

³⁸² 6 *id.* at 893–94

³⁸³ 7 *id.* at 193–94

³⁸⁴ *Id.* at 274

filled in 1777 by Thomas Paine of *Common Sense* and *The American Crisis* fame

In early 1778, the Congress enacted a long resolve reaffirming or updating many oaths. The oath for army officers remained essentially the same and was now also imposed on “all persons, holding any civil office of trust, or profit, under the Congress of these United States”³⁸⁵. Additional promises were required of “every officer, having the disposal of public money,” to “faithfully, truly and impartially execute the office,” “render a true account,” and “discharge the trust reposed in me with justice and integrity”³⁸⁶.

As the war neared an end in 1781, the Congress began to reorganize itself to address deficiencies, particularly flaws in execution. The major executive-type offices frequently were bound by oaths of faithful execution. The Secretary of Foreign Affairs, a position filled by John Jay for several years, took an oath of fidelity to the United States and an oath “for the faithful execution” of his trust³⁸⁷. The Agent of the Marine (a single officer replacing the previous multimember board handling naval affairs) took an oath “well and faithfully to execute the trust” and was required to be bonded “for the due and faithful performance of his office”³⁸⁸. Finance officers took oaths “for the faithful execution of the trust reposed in them respectively”³⁸⁹. The resolve creating the Post Office in 1782 required the Postmaster General and his deputies, clerks, and riders to swear to “well and faithfully do, execute, perform and fulfill every duty,” and subjected them to civil and criminal penalties for defaults³⁹⁰. The Secretary of War, and his clerks and assistants, took an oath or affirmation of fidelity to the United States, to “support, maintain and defend” the United States, and to “faithfully, truly, and impartially execute the office”³⁹¹. When the U.S. Mint was created in 1786, officers were required to enter into bonds “for the faithful execution of the trust respectively reposed in them”³⁹².

There can be no doubt that the framers of the Constitution at Philadelphia in 1787 were intimately familiar with oaths of faithful execution. A great majority of the delegates must have taken such oaths, either

³⁸⁵ 10 *id.* at 115, *see also id.* at 114–16

³⁸⁶ *Id.* at 116

³⁸⁷ 19 *id.* at 44, *see also id.* at 43–44, 22 *id.* at 92. As Secretary of the Department, Jay wrote to Congress regarding negotiations of a treaty with Spain: “I know that it is with Congress to give Instructions, and that it is my Business faithfully to execute and obey them.” 29 *id.* at 629, *see also id.* at 627–29

³⁸⁸ 21 *id.* at 920, *see also id.* at 919

³⁸⁹ *Id.* at 950, *see also id.* at 245 (similar oath for inspector charged with auditing the army)

³⁹⁰ 23 *id.* at 670–72

³⁹¹ 28 *id.* at 23, *see also id.* at 22–23

³⁹² 31 *id.* at 877

for national, state, or local office, under the Crown or post-independence³⁹³ Most of the delegates in Philadelphia had served in the Continental/Confederation Congress,³⁹⁴ a body very active in specifying that offices be faithfully executed. And resolves and draft resolves of the Congress imposing oaths of faithful execution were drafted or even directly penned by the hands of future Philadelphia Convention delegates Elbridge Gerry,³⁹⁵ Gouverneur Morris,³⁹⁶ John Rutledge,³⁹⁷ James Madison,³⁹⁸ Roger Sherman,³⁹⁹ Hugh Williamson,⁴⁰⁰ and John Dickinson.⁴⁰¹

* * *

In sum, we contend that late-eighteenth-century Anglo-Americans who were conversant in the language of law and government would have understood a legal instrument (such as Article II) that imposed an oath and command of faithful execution to be conveying three interrelated meanings (1) diligent, careful, good faith, and impartial execution of law or office, (2) a duty not to misuse the office's funds or take unauthorized profits, and (3) a duty not to act *ultra vires*, that is, beyond the scope of one's office.

III WHAT IT ALL MEANS A FIDUCIARY THEORY OF ARTICLE II

Our history supports three core original meanings of the Constitution's commands of faithful execution. First, the Faithful Execution Clauses clarify how important it was to constitutional designers that the President stay within his authorizations and not act *ultra vires*. This meaning of the clauses may have implications for the relationship between the Executive and the legislature.⁴⁰² Second, the President is constitution-

³⁹³ See generally FORREST McDONALD, *NOVUS ORDO SECLORUM: THE INTELLECTUAL ORIGINS OF THE CONSTITUTION* 1 (1985) ("[P]robably more Americans had participated directly in government at one level or another than had any other people on earth.")

³⁹⁴ *Id.* at 187.

³⁹⁵ 6 *JOURNALS OF THE CONTINENTAL CONGRESS*, *supra* note 142, at 939 & n.1.

³⁹⁶ 11 *id.* at 784, *see id.* at 779 n.1.

³⁹⁷ 23 *id.* at 728.

³⁹⁸ *Id.*

³⁹⁹ 27 *id.* at 479-80 & 480 n.1.

⁴⁰⁰ *Id.* at 479-80.

⁴⁰¹ John Dickinson's Notes on Marine Affairs (Sept. 1779), in 13 *LETTERS OF DELEGATES TO CONGRESS, 1774-1789*, *supra*, at 599, 599-600; John Dickinson's Proposed Resolutions (July 9, 1779), in 13 *LETTERS OF DELEGATES TO CONGRESS, 1774-1789*, at 170, 171-72 (Paul H. Smith ed., 1986).

⁴⁰² Because our view of the likely modest reach of the Executive Vesting Clause, *see* U.S. CONST. art. II, § 1 ("The executive Power shall be vested in a President of the United States of America"), is informed by Professor Julian Mortenson's recent historical support for a subordinate view of the Executive, *see* Mortenson, *supra* note 31, an *ultra vires* limitation embedded in the Faithful Execution Clauses implies a fair bit of legislative supremacy and executive deference to the work

ally prohibited from using his office to profit himself and engage in financial transactions that primarily benefit himself. Although the Compensation Clause⁴⁰³ and the Emoluments Clause⁴⁰⁴ in Article II (as well as the Foreign Emoluments Clause for all officers in Article I⁴⁰⁵) can be said to reinforce this intuitive conclusion, the history of the language of faithful execution suggests this reading, too. The faithful execution requirement in the Presidential Oath Clause, which appears right after the Compensation and Emoluments Clauses, may be seen, perhaps, as a belt-and-suspenders effort⁴⁰⁶ to help police conflicts of interests and proscribe self-dealing. More generally, faithful execution demands that the President act for reasons associated primarily with the public interest rather than his self-interest. Third, the Faithful Execution Clauses reinforce that the President must act diligently and in good faith, taking affirmative steps to pursue what is in the best interest of his national constituency. Whereas the prohibitions on self-dealing sound in proscription, the command of diligence, care, and good faith contain an affirmative, prescriptive component.

Our historical findings about the original meaning of the Faithful Execution Clauses align with core features of modern fiduciary law,

of Congress. However, we are mindful that Mortenson's findings are controversial. Specifically, some read the Executive Vesting Clause as a conferral of nearly royalist authority, given some framers' concerns about the corruption of Parliament and the need for a strong executive. See generally PRAKASH, *supra* note 17 (arguing for a more monarchical vision of the presidency conferred through the Executive Vesting Clause). Ultimately, we do not need to rely on one view of the Executive Vesting Clause to find that the Faithful Execution Clauses are their own hints that the Executive was designed to be substantively constrained. That is, even if the Article II Vesting Clause arms the President with some substantial powers beyond law execution, the Faithful Execution Clauses still subordinate the President, whose discretionary powers are limited by the authorizing document and entities like the legislature. That said, it seems to us rather unlikely that a super energetic executive was granted huge amounts of nearly kingly power only to be bound by an oath and command that was, as we show, usually imposed upon largely ministerial officials.

⁴⁰³ U.S. CONST. art. II, § 1 ("The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected.") Although Benjamin Franklin had wanted to take what he thought would be further anticorruption precautions by making the presidency an unpaid position to make sure no one was taking the job to enrich himself, see Journal of the Constitutional Convention (June 2, 1787), in 1 FARRAND'S RECORDS, *supra* note 49, at 76, 77–78, 81–85; that view was obviously rejected in favor of an adequate salary to ensure the President's "vigor" and "independence" — and to protect against "weaken[ing] his fortitude by operating on his necessities" or "corrupt[ing] his integrity, by appealing to his avarice," THE FEDERALIST NO. 73, *supra* note 100, at 439–40 (Alexander Hamilton).

⁴⁰⁴ U.S. CONST. art. II, § 1 ("[A]nd he shall not receive within that Period any other Emolument from the United States, or any of them.")

⁴⁰⁵ *Id.* art. I, § 9.

⁴⁰⁶ On belt-and-suspenders in legal design, see Ethan J. Leib & James J. Brudney, *The Belt-and-Suspenders Canon*, 105 IOWA L. REV. (forthcoming 2020).

what the three meanings we can attribute to the Clauses have in common is that they are all part of the basic ways the private law constrains fiduciary discretion and power

It is worth noting again a linguistic link between “faith” and “fiduciary”⁴⁰⁷ Our historical account does not suggest that private fiduciary law was the background for Article II or that it was incorporated by reference Although some fiduciary theorists of governmental authority have assumed that the framers of the Constitution drew upon prevalent private law ideas in fashioning their laws of public officeholding,⁴⁰⁸ our own evidence suggests something slightly different As Part II demonstrates, the fiduciary-like obligations of officeholders have their roots in medieval and early modern England in a law of offices This law of offices developed significantly during the seventeenth century, and did not seem to change dramatically over the eighteenth century, leading up to the revolutionary and framing periods Most of the offices involved had a clearly public cast: sheriff, constable, tax assessor, customs officer, governor, and the like But other offices looked like what we would now call private offices (yet in those days were set in motion by public laws)⁴⁰⁹ In either case, faithful execution duties applied to such offices By contrast, the “private” fiduciary law we would recognize today does not seem to have crystallized until the early eighteenth century in England, and closer to the end of that century in America,⁴¹⁰ though its

⁴⁰⁷ See *supra* 2119 for a discussion of the Roman law origins of the concept

⁴⁰⁸ See sources cited *supra* note 36

⁴⁰⁹ A simple example is that corporate directors are paradigmatic private fiduciaries under modern law, of course, but because historically incorporation required the consent of a sovereign authority, corporate directors had something like quasi-public offices (and were routinely bound by oath and faithful execution duties) Another example might be guardians or trustees for the incompetent Today, we would likely treat such guardians as private fiduciaries But in the colonies, state legislatures would pass laws to install people in these offices See, e.g., An Act to Appoint a Trustee to Take Care of the Person and Property of George Shipley, reprinted in MD CHRON., Feb. 22, 1786

⁴¹⁰ The seminal case for the fiduciary law of “private” offices is *Keech v. Sandford* (1726) 25 Eng. Rep. 223 This decision of the Court of Exchequer at Westminster cleanly and clearly imposed the basic no-conflict and no-profit proscriptions in a case concerning the law of private trusts But by then the law of public office already had a deep concern with abuse of the public trust and corruption through self-dealing Lord Chancellor King, who wrote the *Keech* opinion, was surely influenced by an earlier impeachment trial over which he had presided, which removed his predecessor, the Earl of Macclesfield See *supra* notes 358–359 and accompanying text And Lord Chancellor King is very likely to have been fluent in the political theory of John Locke, his cousin and routine correspondent for whom King served as a literary executor Joshua Getzler, *Rumford Market and the Genesis of Fiduciary Obligations*, in MAPPING THE LAW: ESSAYS IN MEMORY OF PETER BIRKS 577, 583–84 (Andrew Burrows & Alan Rodger eds., 2006) Locke is often credited as having laid out a fiduciary theory of governmental authority See LOCKE, *supra* note 266 The relevant passages are discussed and analyzed in Ethan J. Leib, David L. Ponet & Michael Serota, *A Fiduciary Theory of Judging*, 101 CALIF. L. REV. 699, 714–15 (2013) It was not until seven decades after *Keech*, and some years after the U.S. Constitution was framed, that the House of Lords fully embraced the *Keech* principles See *York Buildings v. Mackenzie* (1795) 3 Eng. Rep. 432, 446 Moir

early roots are many centuries older⁴¹¹. So a fiduciary law of “private” offices was unlikely to have been plucked off-the-rack by the Philadelphia Convention drafters and applied to public offices. Instead, they applied the law of offices, which already contained what we might today call duties of loyalty and care. This suggests, then, not that the project of fiduciary constitutionalism is misguided — because something like core fiduciary obligations were imposed on the President by the Presidential Oath Clause and Take Care Clause — but that it needs to be revised to accommodate the fact that the fiduciary obligations entailed by the Faithful Execution Clauses flow at least as much from the law of public office as they do from inchoate private fiduciary law from England. Indeed, one might argue that what presents to us as private fiduciary law today had some of its genesis in the law of public officeholding. In the remainder of this Part, we will show how the three historical meanings of faithful execution provide insights about pressing contemporary debates on executive authority, even if they cannot alone dispose of those controversies.

A Ultra Vires Restrictions and Legislative Supremacy

For centuries, commands and oaths of faithful execution established relational hierarchy — and subordinated an officeholder to a principal or purpose. Whether it was a command to trustees of a lottery⁴¹² or officers who kept almshouses for the poor,⁴¹³ faithful execution established relationships of commander and executor. Today, we might very well call such a mix of empowerment with office and subordination to

work is needed to understand when and how modern-looking fiduciary law fully crystallized in the United States.

We did, however, find a few references to faith and faithfulness in private fiduciary instruments in the records of the law practice of James Wilson, the primary drafter of the Faithful Execution Clauses. See, e.g., Last Will and Testament of Thomas Callahan, at 2 (Aug 7, 1783) (Vol 5, pp 19–20) (unpublished James Wilson Papers, Box 13, Folder 4) (located at the Historical Society of Pennsylvania) (directing that the will be “well and faithfully to administer[ed]”), Will of Amos Strettell (Feb 6, 1776) (Vol 7, p 126) (unpublished James Wilson Papers, Box 14, Folder 26) (located at the Historical Society of Pennsylvania) (“Alexander Willcocks will faithfully apply as I may appoint and direct”), Will of Hugh Wright (Aug 24, 1770) (Vol 7, p 128) (unpublished James Wilson Papers, Box 14, Folder 26) (located at the Historical Society of Pennsylvania) (“All things therein concerned be faithfully performed in every respect”).

⁴¹¹ See, e.g., David J. Seipp, *Trust and Fiduciary Duty in the Early Common Law*, 91 B U L REV 1011, 1011–12 (2011).

⁴¹² See *supra* notes 319–320 and accompanying text.

⁴¹³ See *supra* note 328 and accompanying text.

principal or purpose fiduciary,⁴¹⁴ reinforcing another dimension of the fiduciary theory of Article II.⁴¹⁵

Others have argued that officeholding under the U.S. Constitution is sufficiently similar to a private law agency relationship⁴¹⁶ or is analogous to acting under a power of attorney,⁴¹⁷ and have found some historical sources that tend to strictly limit such actors to their authorizing instruments. Perhaps the most deliciously on-point piece of evidence is from an antifederalist writer, “A Citizen of Maryland”

My idea of government . . . to speak as a lawyer would do, is, that the legislatures are the *trustees* of the people, the constitution the *deed of gift*, wherein they stood seized to *uses* only, and *those uses being named*, they cannot depart from them, but for their due performance are accountable to those by whose conveyance the trust was made. The *right* is therefore *fiduciary*, the power *limited*.⁴¹⁸

Indeed, the general legal idea that agents had an obligation to hew closely to their authorization and not veer outside it was well established in the common law at the time of the framing.⁴¹⁹ But where other fiduciary constitutionalists have struggled is in figuring out how to get from analogy to clear legal duty, the Faithful Execution Clauses and their history root the legal concern about acting *ultra vires* right in Article II — at least with respect to the President. Whatever else is true about the law of office, the Office of President explicitly requires faithful execution, subordinating the President to those who authorize what he is supposed to execute.

The reasonable legal implication here is that the language of faithful execution is for the most part a language of limitation, subordination, and proscription, not a language of empowerment and permission.⁴²⁰ Gaming the office is obviously a kind of empowerment that confers some important types of discretion specified by the settling instrument

⁴¹⁴ For the distinction between a “service” fiduciary like an agent for a principal and a “governance” fiduciary like a director of a charitable nonprofit that serves a purpose, see Paul B. Miller & Andrew S. Gold, *Fiduciary Governance*, 57 WM & MARY L. REV. 513, 519–27 (2015).

⁴¹⁵ Natelson finds the “[d]uty to [f]ollow [i]nstructions and [r]emain [w]ithin [a]uthority” to apply to all officeholders by virtue of them all being agents. Natelson, *The Necessary and Proper Clause*, *supra* note 36, at 57.

⁴¹⁶ See, e.g., Natelson, *The Public Trust*, *supra* note 36, at 1137–42. As we discuss *supra* note 402, even if the Vesting Clause grants powers, they are limited by the commands of faithful execution hewing closely to authorizations, not pursuing self-interest, and acting only in good faith.

⁴¹⁷ See LAWSON & SEIDMAN, *supra* note 36, at 23–25.

⁴¹⁸ A Citizen of the State of Maryland, *Remarks Relative to a Bill of Rights*, reprinted in 17 DHRC, *supra* note 102, at 91, 92.

⁴¹⁹ See Natelson, *Judicial Review*, *supra* note 36, at 255–57.

⁴²⁰ Thus, Edward Corwin’s meditation on the presidential oath expends too much effort exploring potential powers conferred by the oath rather than limitations it imposes. See EDWARD S. CORWIN, *THE PRESIDENT OFFICE AND POWERS, 1787–1957*, at 62–64 (4th ed. 1957).

of the U S Constitution, but that power and discretion are constrained by the oath and requirement of faithful execution

This historical background may offer more weight in favor of executive deference to the legislature. As discussed above in section II C 1, the royal coronation oaths did not include the word “faithfully” or its recurring synonyms. Stuart kings were made to swear an affirmative answer when asked “will you, to your Power, cause Law, Justice and Discretion, in Mercy and Truth, to be executed to your Judgment?”⁴²¹ Neither faithfulness nor a synonym was added later by the Glorious Revolution Parliament.⁴²² A possible explanation is that the monarch did not — and indeed lawfully could not — personally execute the law but had to act only through the Crown’s courts of justice or ministers and administrators.⁴²³ The purely directing and superintending role in law execution perhaps did not require the strictures of faithfulness imposed on frontline law executors. We have seen, though, that privy councilors and the justices of the great royal courts at Westminster also did not pledge faithful execution in their oaths of office.⁴²⁴ It appears that it was lower-level, purely executive officials who were bound by this oath — officials who would have lacked any royal prerogative,⁴²⁵ have had relatively little discretion, and have been more hemmed in by a combination of law, oath, and superior direction. Seen in this light, the fact that the American President was required to swear or affirm

⁴²¹ THE HISTORY OF PUBLICK AND SOLEMN STATE OATHS, *supra* note 161, at 15.

⁴²² See An Act for Establishing the Coronation Oath 1688, 1 W & M sess 1 c 6, § 3 (“Will You to Your Power cause Law and Justice in Mercy to be Executed in all Your Judgments?”)

⁴²³ See, e.g., EDWARD BAGSHAW, THE RIGHTS OF THE CROWN OF ENGLAND AS IT IS ESTABLISHED BY LAW 105 (London, A M 1660) (stating that the English monarch “neither speaketh, nor acteth, nor judgeth, nor executeth, but by his Writt, by his Laws, by his Judges, and Ministers, and both these sworne to him to judge a right, and to execute justice to his People. For the King doth nothing in his own Person”), 1 BLACKSTONE, *supra* note 185, at *257 (“[F]or, though the constitution of the kingdom hath entrusted [the king] with the whole executive power of the laws, it is impossible, as well as improper, that he should personally carry into execution this great and extensive trust”), SIR MATTHEW HALE, THE PREROGATIVES OF THE KING, *reprinted in* 28 THE PUBLICATIONS OF THE SELDEN SOCIETY 106–07 (D E C Yale ed, Selden Society 1976) (stating that the king’s council of “the great officers of state and justice” “are the distributors of the king’s judgment and will according to rule, for he neither speaks nor doth anything in the public administration of this realm but what he doth by these or some of these”).

⁴²⁴ See *supra* notes 185 & 187 and accompanying text.

⁴²⁵ Note that royal governors of North American colonies did, by delegation from the Crown and under the supervision of the Privy Council and later the Board of Trade, exercise some features of the prerogative such as “proroguing and dissolving assemblies” and “vetoing laws or suspending their operation.” JACK N RAKOVE, ORIGINAL MEANINGS POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION 212 (1996). For a comprehensive review of the powers and supervision of colonial governors, see GREENE, *supra* note 302. Prior to the Glorious Revolution, some colonial governors were given the power to issue dispensations and indulgences to exempt select persons from Parliament’s penal laws targeting non-Anglican religious practice. See Michael W McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV L REV 1409, 1428 (1990).

“faithful execution” suggests a constrained and republican rather than imperial and regal view of that office. This textual choice is consistent with recent work suggesting that the presidency does not implicitly include broad royal prerogative powers,⁴²⁶ and it is one counterweight to recent historical and legal claims about the royalism of the presidency and the Founding era.⁴²⁷

A counterargument may be that while the coronation oaths lacked the word “faithfully” and its synonyms, the post-Glorious Revolution coronation oaths offered an even more explicit commitment to legislative power than the Article II oath: “Will You solemnly Promise and Swear to Govern the People of this Kingdome of England and the Dominions thereto belonging according to the Statutes in Parlyament Agreed on and the Laws and Customs of the same? I solemnly Promise soe to doe.”⁴²⁸

If the framers had wanted an explicit command to always abide by Congress’s laws, they had the language of these coronation oaths available. But the absence of such language in Article II probably should not be viewed as surprising or as giving rise to a negative inference in favor of a President’s freedom to defy statutory law for policy reasons. That a chief magistrate of a republican government lacked authority to dispense with the application of law to particular individuals, or to suspend law entirely, was so thoroughly settled in Anglo-American constitutional law by the Glorious Revolution and its aftermath that the principle most likely would have gone without saying.⁴²⁹ Only a few of the early U.S. state constitutions expressly barred suspensions and dispensations, but that was not understood in the other states to leave the governors free to do so.⁴³⁰ And in any event, the faithful execution language conveyed this idea.

Over the past few decades, there has been increasing debate about the President’s power of nonenforcement,⁴³¹ disregard,⁴³² or waiver (even “Big Waiver”⁴³³) of statutes. Examples include the increasing use

⁴²⁶ See Mortenson, *supra* note 31 (manuscript at 5).

⁴²⁷ See sources cited *supra* note 31.

⁴²⁸ An Act for Establishing the Coronation Oath 1688, 1 W & M sess 1 c 6, § 3.

⁴²⁹ See PRAKASH, *supra* note 17, at 93 (“By the late eighteenth century, few would have thought that chief executives could exercise [suspension or dispensation] powers without a statutory delegation or a specific grant of constitutional authority. After all, the Crown had lacked these powers for almost a century.”)

⁴³⁰ *Id.* at 93–94.

⁴³¹ See, e.g., Dawn E. Johnsen, *Faithfully Executing the Laws: Internal Legal Constraints on Executive Power*, 54 UCLA L REV 1559, 1591–95 (2007); Dawn E. Johnsen, *Presidential Non-Enforcement of Constitutionally Objectionable Statutes*, 63 LAW & CONTEMP PROBS 7, 8–14 (2000).

⁴³² See, e.g., Prakash, *supra* note 3, at 1615–18.

⁴³³ See David J. Barron & Todd D. Rakoff, *In Defense of Big Waiver*, 113 COLUM L REV 265, 267 (2013).

of presidential signing statements,⁴³⁴ President Bush's "deregulation through nonenforcement,"⁴³⁵ President Obama's delays of provisions of the Affordable Care Act (ACA),⁴³⁶ his waiver of aspects of welfare laws and the No Child Left Behind Act,⁴³⁷ his nonenforcement of marijuana offenses,⁴³⁸ and his policy of nonenforcement of some immigration laws.⁴³⁹ More recently, the Trump Administration has declined to enforce the individual mandate and other provisions of the ACA.⁴⁴⁰ Our lessons about the original meaning of faithful execution might illuminate these contested areas of executive authority.

There are perhaps four categories of executive nonenforcement: nonenforcement for policy reasons (suspensions or dispensations in English legal history), inability to enforce because of budgetary limitations or unclear congressional commands, nonenforcement for constitutional reasons, and prosecutorial discretion.⁴⁴¹ The historical evidence in this Article does not conclusively address the legitimacy of all of these powers, but it provides some clues.

Nonenforcement for policy reasons sits most at odds with the historical meaning of the Faithful Execution Clauses. Faithful execution was understood as requiring good faith adherence to and execution of national laws, according to the intent of the lawmaker. Waivers or refusals to enforce for policy reasons without clear congressional authorizations, then, appear to be invalid under the clauses.

By contrast, inability to enforce a congressional command because the command is essentially unfunded or is too vague to be enforced does not seem obviously implicated by our findings. Thus, the Supreme Court's willingness to defer to executive discretion in "failure to act" claims under the Administrative Procedure Act⁴⁴² (APA) in those cases

⁴³⁴ See Daniel B. Rodriguez et al., *Executive Opportunism, Presidential Signing Statements, and the Separation of Powers*, 8 J. LEGAL ANALYSIS 95, 100–01 (2016).

⁴³⁵ See Daniel T. Deacon, Note, *Deregulation Through Nonenforcement*, 85 N.Y.U. L. REV. 795, 796 (2010).

⁴³⁶ See Simon Lazarus, *Delaying Parts of Obamacare "Blatantly Illegal" or Routine Adjustment?*, THE ATLANTIC (July 17, 2013), <https://www.theatlantic.com/national/archive/2013/07/delaying-parts-of-obamacare-blatantly-illegal-or-routine-adjustment/277873/> [https://perma.cc/43S2-X28K].

⁴³⁷ See Martha Derthick & Andy Rotherham, *Obama's NCLB Waivers: Are They Necessary or Illegal?*, EDUC. NEXT, Spring 2012, at 57; Molly Ball, *What Obama Really Did to Welfare Reform*, THE ATLANTIC (Aug. 9, 2012), <https://www.theatlantic.com/politics/archive/2012/08/what-obama-really-did-to-welfare-reform/260931/> [https://perma.cc/WGB2-UJ2N].

⁴³⁸ See Price, *supra* note 26, at 757–59.

⁴³⁹ See Josh Blackman, *The Constitutionality of DAPA Part I: Congressional Acquiescence to Deferred Action*, 103 GEO. L.J. ONLINE 96, 96–97 (2015); Blackman, *supra* note 68, at 216–19.

⁴⁴⁰ Nicholas Bagley & Abbe R. Gluck, Opinion, *Trump's Sabotage of Obamacare Is Illegal*, N.Y. TIMES (Aug. 14, 2018), <https://nytimes.com/2018/08/14/us/politics/trump-obamacare-is-illegal/> [https://perma.cc/AX9F-QG5L].

⁴⁴¹ A fifth might be nonspending of appropriated funds on policy grounds. Because there could be unique constitutional considerations about the roles of the legislature and the Executive in spending decisions, we will not offer an opinion about the issue here.

⁴⁴² See 5 U.S.C. § 706(1) (2012) (providing courts the power to "compel agency action . . . withheld").

of underfunding, imprecision, or lack of specificity by congressional command is consistent with the history of faithful execution⁴⁴³ So too is judicial deference to interstitial executive interpretation of ambiguous statutes in run-of-the-mill *Chevron* cases, in which courts allow the Executive a range of discretion to develop statutory meaning in cases where Congress has not clearly spoken on the matter⁴⁴⁴ Although faithful execution does seem to require the Executive to follow *in good faith* what he takes to be Congress's instructions,⁴⁴⁵ there obviously remains an area of discretion in cases where Congress does not provide adequate funding or guidance⁴⁴⁶ Indeed, the faithful execution command is imposed precisely because the President retains plenty of discretion in his office — and the framers worried about when that discretion could too easily bleed into ultra vires action

Many supporters of a purported presidential power not to enforce a command based on his own interpretation of the Constitution rely on the presidential oath to “faithfully execute” the office and to “preserve” the Constitution⁴⁴⁷ The reliance on faithful execution for a theory of “departmentalism” in which each branch gets its say on the meaning of the Constitution, however, may be misplaced In light of our evidence that oaths in general — and the faithful execution command in particular — tended to limit rather than enlarge an official's power and discretion, and that faithful execution obligations were often required of mid- and lower-level officials who would not plausibly be thought to have many (or any) legal rights of nonenforcement, the record we uncovered cuts against presidential nonexecution on the basis of independent constitutional interpretation Indeed, our history seems like a thumb on the scale in favor of the view that the President must carry out federal statutes⁴⁴⁸ That said, resolving this issue definitively would seem to require knowing whether the Constitution is part of “the Laws” that

⁴⁴³ See, e.g., *Norton v S Utah Wilderness All*, 542 U S 55, 66–67 (2004)

⁴⁴⁴ See *Chevron USA Inc v Nat Res Def Council, Inc*, 467 U S 837, 843–44 (1984) Although *Chevron* did not cite the command of faithful execution, some courts have rooted the Executive's power to interpret ambiguous statutes in the Take Care Clause See, e.g., *Garfias-Rodriguez v Holder*, 702 F3d 504, 515 (9th Cir 2012)

⁴⁴⁵ See Aaron Sager, *Agencies' Obligation to Interpret the Statute*, 69 VAND L REV 1231, 1253 (2016)

⁴⁴⁶ *Myers v United States*, 272 U S 52, 291–92 (1926) (Brandeis, J, dissenting) (“Obviously the President cannot secure full execution of the laws, if Congress denies to him adequate means of doing so Full execution may be defeated because Congress declines to make the indispensable appropriation The President performs his full constitutional duty, if, with the means and instruments provided by Congress and within the limitations prescribed by it, he uses his best endeavors to secure the faithful execution of the laws enacted”)

⁴⁴⁷ See, e.g., Paulsen, *supra* note 3, at 257–62

⁴⁴⁸ See *supra* notes 121–124 and accompanying text (discussing James Wilson and presidential nonenforcement)

must be faithfully executed by the President, a point on which we remain unsure as a matter of the historical record up through 1788.⁴⁴⁹

Does our evidence address prosecutorial discretion? What if an administration adopts a broad policy of prosecutorial discretion as a means of nonenforcement, triggering concerns about faithful execution? The historical evidence here does not answer such a question definitively, but it does offer some support for the argument against systematic executive discretion to effectively “suspend” laws through an assertion of categorical prosecutorial discretion.⁴⁵⁰

As the Supreme Court has acknowledged, quoting the Take Care Clause, “[u]nder our system of government, Congress makes laws and the President ‘faithfully execute[s]’ them.”⁴⁵¹ The Faithful Execution Clauses thus underscore that “[t]he Constitution does not confer upon [the President] any power to enact laws or to suspend or repeal such as the Congress enacts.”⁴⁵² This lesson is as basic as it is relevant to contemporary disputes about presidential power to undermine Obamacare without a congressional repeal,⁴⁵³ presidential power to underenforce congressional regulation of marijuana,⁴⁵⁴ and presidential power to underenforce or overenforce immigration laws.⁴⁵⁵ It may also be relevant to controversial case law on standing, which has relied on the idea of faithful execution to question the ability of Congress to write citizen suit provisions in its laws to help vindicate the “public interest” through “individual right[s]” to bring lawsuits against the Executive.⁴⁵⁶ Although *Lujan v. Defenders of Wildlife*⁴⁵⁷ clearly suggested this kind of congressional action to be in tension with “the Chief Executive’s most

⁴⁴⁹ See *supra* section I D 2, pp 2136–37.

⁴⁵⁰ One might further ask whether our evidence helps analyze recent presidential choices to enforce congressional laws but not defend them in court. See generally Joseph Landau, *DOMA and Presidential Discretion: Interpreting and Enforcing Federal Law*, 81 *FORDHAM L. REV.* 619 (2012) (exploring and defending the Obama Administration’s policy to enforce the Defense of Marriage Act but not defend it in courts as a form of “faithful execution”). As a matter of original meaning, the “enforce but not defend” strategy, *id.* at 639, seems consistent with the core requirements of faithful execution as they would have been understood at the time of the framing.

⁴⁵¹ *Utah Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2446 (2014) (alteration in original) (quoting U.S. CONST. art. II, § 3).

⁴⁵² *United States v. Midwest Oil Co.*, 236 U.S. 459, 505 (1915) (Day, J., dissenting).

⁴⁵³ See, e.g., Complaint for Declaratory and Injunctive Relief at 6–7, *City of Columbus v. Trump*, No. 18-cv-2364 (D. Md. Aug. 2, 2018), 2018 WL 3655066 (citing the President’s duty of faithful execution in suit by cities trying to enjoin presidential efforts to undermine the ACA).

⁴⁵⁴ See, e.g., Price, *supra* note 26, at 757–59.

⁴⁵⁵ See, e.g., Brief for the Cato Institute, Professor Randy E. Barnett, and Professor Jeremy Rabkin as Amici Curiae Supporting Respondents at 20, *United States v. Texas*, 136 S. Ct. 2271 (2016) (No. 15-674) (“It bears emphasis how strong the language of the Take Care Clause is. It is pitched at the highest register of constitutional obligation. The president *shall* — not *may*. He shall *take care* — not merely attempt. And he shall take care that they are executed *faithfully*. No other constitutional provision mandates that any branch execute a power in a specific manner.”)

⁴⁵⁶ *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 577 (1992).

⁴⁵⁷ 504 U.S. 555.

important constitutional duty, to ‘take Care that the Laws be faithfully executed,’⁴⁵⁸ that suggestion looks less convincing in light of our findings here about the relational structure imposed by faithful execution

B *The President’s Duty of Loyalty Against Self-Dealing*

Our findings vindicate what we have previously called the “fiduciary reading” of Article II⁴⁵⁹ because the three major propositions we identify as the substantive original meaning of faithful execution — a subordination of the President to the laws, barring ultra vires action, a no-self-dealing restriction, and a requirement of affirmative diligence and good faith — taken together reflect fundamental obligations that are imposed upon fiduciaries of all kinds.⁴⁶⁰

What then can it mean to say that the Faithful Execution Clauses evidence what we would now see as fiduciary law’s primary concern to avoid conflicts of interest and the misappropriation of profits?⁴⁶¹ It cannot mean, for example, that as a matter of original meaning, presidents are disabled from campaigning for their own reelections. Nor can it mean that they are prohibited from trying to help the fate of their political parties, even though presidents do of course have important personal stakes in party success. But it still is likely to have constitutional relevance that has been underappreciated because the history of the Faithful Execution Clauses has not heretofore been known.

First, the Faithful Execution Clauses reinforce that “presidential actions motivated by self-protection, self-dealing, or an intent to corrupt the legal system are unauthorized by and contrary to Article II of the Constitution.”⁴⁶² In light of the framers’ preoccupation with corruption, taking bribes, and the misappropriation of financial resources by officeholders,⁴⁶³ it is no surprise that they sought to bind the President to a requirement of faithful execution. That is how the law of office for centuries — sometimes with more success than others — sought to constrain officeholders’ self-dealing. As we show in Part II, oaths and commands of faithful execution were often paired with requirements of

⁴⁵⁸ *Id.* at 577 (quoting U.S. CONST. art. II, § 3).

⁴⁵⁹ Kent, Leib & Shugerman, *supra* note 21.

⁴⁶⁰ See Robert G. Natelson, *The Framing and Adoption of the Necessary and Proper Clause, in THE ORIGINS OF THE NECESSARY AND PROPER CLAUSE*, *supra* note 36, at 84, 107; see also Leib & Galoob, *supra* note 35, at 313–15.

⁴⁶¹ See MATTHEW CONAGLEN, FIDUCIARY LOYALTY PROTECTING THE DUE PERFORMANCE OF NON-FIDUCIARY DUTIES 39–40 (2010).

⁴⁶² *Law Professor Letter on President’s Article II Powers*, PROTECT DEMOCRACY (June 4, 2018), <https://protectdemocracy.org/law-professor-article-ii/> [<http://perma.cc/6VU6-SF6Y>].

⁴⁶³ This republican concern of the framers has been widely discussed in, *inter alia*, BAILYN, *supra* note 7, at 130–31; ZEPHYR TEACHOUT, CORRUPTION IN AMERICA FROM BENJAMIN FRANKLIN’S SNUFF BOX TO CITIZENS UNITED 37–38 (2014); WOOD, *supra* note 7, at 144.

bonds or sureties⁴⁶⁴ In our view, the lack of any similar requirement in Article II does not undermine our claim that the President is barred from financial self-dealing An anticorruption reading is supported by the choice to pay the President with a salary set by law and to bar the President from taking other emoluments⁴⁶⁵ Since the President, unlike many Anglo-American officers, would not directly collect revenue himself and would not be paid by fees for services rendered to the public — two features of some offices that encouraged corruption⁴⁶⁶ — bonding or surety requirements were probably superfluous

There is a reasonable question about how we can link “faithfulness” to a no-self-dealing limitation, given its use during eras when offices were clearly bought and sold and holding an office was a lucrative business The impressive works of both Professor G E Aylmer and Professor Nicholas Parrillo have explored the ways offices could easily serve to enrich their holders⁴⁶⁷ But this institutional context simply underscores the importance of a “faithfulness” limitation Because so many offices were premised on fees and profit motives, it was all the more difficult to regulate the line between legitimate and permissible profits versus exploitative self-dealing A “faithfulness” oath was one tool the English and colonials used to police those abuses in an era of office profiteering

It may be, secondarily, that the President’s duty of faithful execution limits some of his other powers in Article II that otherwise look discretionary For example, notwithstanding that the President is empowered by the Constitution to be the “Commander in Chief” with no reservations in Article II, Section 2, the presidential oath of faithful execution in Article II, Section 1 probably prohibits him as a matter of original meaning from choosing defense contractors that line his own personal pockets in derogation of the public interest The seemingly plenary pardon power in Section 2 may similarly be curtailed by the duty of faithful execution, prohibiting (at least) self-pardons⁴⁶⁸ And it may also restrict the President’s power to dismiss officials for primarily self-protective

⁴⁶⁴ See *supra* section II D 3, pp 2165–68

⁴⁶⁵ U S CONST art II, § 1

⁴⁶⁶ See *supra* notes 209–211 & 255 and accompanying text Professor Nicholas Parrillo has recently explored these dynamics See generally PARRILLO, *supra* note 250, at 111–24 It seems to us that Parrillo’s recent effort to apply the lessons of his findings to “fiduciary thinking about public office,” Nicholas R Parrillo, *Fiduciary Government and Public Officers’ Incentives*, in *FIDUCIARY GOVERNMENT* 146, 146 (Evan J Criddle et al eds, 2018), too quickly assumes that without “salariation,” we cannot have officeholders with fiduciary obligations, see *id* at 152 Just because an officer has incentives for self-dealing does not mean she is not a fiduciary Indeed, it is precisely the poor incentives for self-control and the difficulty of monitoring officer performance that often serve as the justification for strict fiduciary obligations in the first place See Kenneth B Davis, Jr, *Judicial Review of Fiduciary Decisionmaking — Some Theoretical Perspectives*, 80 *NW U L REV* 1, 4–5 (1985)

⁴⁶⁷ See *supra* notes 248–250 & 255 and accompanying text

⁴⁶⁸ See sources cited *supra* notes 21–22

purposes against the public interest, especially given that removal power is not explicitly mentioned in the text, while the requirement of faithful execution is, doubly.⁴⁶⁹

Ultimately, our effort here is not to develop clear rules of constitutional law. But the finding of a fiduciary duty of loyalty in the Faithful Execution Clauses is an important development and must be considered along with other modalities of constitutional interpretation in finding answers to pressing modern problems.⁴⁷⁰ We do not opine here on the way the framers envisioned enforcing the President's duty of loyalty and avoiding self-dealing. But certainly impeachment was a common method to enforce public fiduciary obligations, and one featured prominently in the U.S. Constitution.⁴⁷¹

C. *The President's Affirmative Obligation of Diligence*

Our historical findings in Part II revealed not only proscriptive dimensions of the duty of faithful execution but prescriptive ones as well. Considering the meanings of faithfulness disclosed by dictionaries at the time of the framing, we were able to highlight that faithful execution requires not only the absence of bad faith through honesty⁴⁷² but also the presence of forms of "steadiness." The implication here is that faithful execution requires affirmative effort on the part of the President to pursue diligently and in good faith the interests of the principal or purpose specified by the authorizing instrument or entity. This is in keeping with many conceptions of fiduciary obligations, which treat loyalty and care as forming the core of fiduciary obligation.⁴⁷³ And this makes sense of why, although the standard of review for executive inaction is very deferential (as we just discussed), the APA does make inaction reviewable: diligence will often require action to be compelled.

⁴⁶⁹ See Leib & Shugerman, *supra* note 22; Shugerman & Leib, *This Overlooked Part of the Constitution Could Stop Trump from Abusing his Pardon Power*, *supra* note 21.

⁴⁷⁰ Natelson's fiduciary constitutionalism applies similar fiduciary obligations to many other governmental actors. See Natelson, *The Public Trust*, *supra* note 36, at 1146–58. But our argument here flows from the Faithful Execution Clauses, which apply only to the President. This does not mean other officeholders are not also bound by fiduciary obligations of loyalty. But, based on the historical findings we report here, the Constitution clearly imposes this set of fiduciary obligations on the President in Article II.

⁴⁷¹ See, e.g., Robert G. Natelson, *Impeachment: The Constitution's Fiduciary Meaning of "High Misdemeanors"*, 19 *FEDERALIST SOC'Y REV.* 68, 68–69 (2018). There is evidence for many different enforcement mechanisms, even if impeachment is the most obvious and salient in the historical materials.

⁴⁷² See generally Pozen, *supra* note 3.

⁴⁷³ To be sure, some see only the duty of loyalty at the core and the duty of care as a sideshow. See CONAGLEN, *supra* note 461, at 59 (noting the common view that "fiduciary duties are proscriptive rather than prescriptive"). But most conventional approaches to fiduciary obligation mention the duty of care as among the most common of fiduciary duties. See, e.g., Stephen R. Galoob & Ethan J. Leib, *The Core of Fiduciary Political Theory*, in *RESEARCH HANDBOOK ON FIDUCIARY LAW* 401, 404–05 (D. Gordon Smith & Andrew S. Gold eds., 2018).

What might this command mean for constitutional law? It likely means that when the Executive acts or refrains from acting, he must be motivated by the right kinds of reasons⁴⁷⁴. Not only is the proscription on self-dealing relevant, but the Executive must also ensure (“take Care”) that anyone under his command in the business of executing the law is doing so only in the best interests of his national constituency. Thus, the Faithful Execution Clauses do ultimately have lessons for how the administrative state must be run as a constitutional matter (if original meaning is relevant here) the President as the head of the executive branch needs to follow the commands of Congress at the same time as he diligently ensures that the entire apparatus of the office and the executive branch is properly oriented in a steadfast and steady manner⁴⁷⁵. It is a derogation of duty not to pursue with diligence what Congress wants executed and that which is in the public interest⁴⁷⁶. Although the President, like all fiduciaries, has significant discretion, there is still an affirmative obligation not to abuse discretion to fail to pursue or act against the beneficiary’s best interests.

The constellation of proscription and prescription that our history reveals also means that there is likely an interstitial duty traceable to the obligation of diligence — something like a President’s completion authority — that the Faithful Execution Clauses support⁴⁷⁷. This limited affirmative prescription gives the President authority to fill in incomplete legislative schemes to promote the best interests of the people, the ultimate beneficiaries of his fiduciary obligation, whose interests are usually mediated through their representatives.

CONCLUSION

The Constitution’s twin clauses in Article II that require faithful execution from the President are the sources of a lot of rhetoric in law and politics. Much of that rhetoric gives the impression that the Faithful Execution Clauses confer upon the President immense, discretionary powers that consolidate substantial authority within the executive

⁴⁷⁴ On the role of the right kinds of reasons in analyzing a fiduciary’s conduct, see Galoob & Leib, *supra* note 473, at 409–10.

⁴⁷⁵ The fiduciary theory of administrative governance, *see generally* Evan J. Cuddle, *Fiduciary Administration: Rethinking Popular Representation in Agency Rulemaking*, 88 *TEX. L. REV.* 441 (2010); Evan J. Cuddle, *Fiduciary Foundations of Administrative Law*, 54 *UCLA L. REV.* 117 (2006), gains further support from our historical findings about the Faithful Execution Clauses.

⁴⁷⁶ The focus on the public interest is something generations of “republicans” have also traced to the framing period. *See* JOYCE APPLEBY, *LIBERALISM AND REPUBLICANISM IN THE HISTORICAL IMAGINATION* 165 (1992) (“Because of the critical importance of virtue [to republican ideology], the proponents of the mixed constitution analyzed the ways to enhance men’s capacity to place the public weal before their own self-interest.”)

⁴⁷⁷ *See* *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 701–04 (1952) (Vinson, C.J., dissenting); Goldsmith & Manning, *supra* note 15, at 2303–04. Both sources allude to the Take Care Clause in their arguments for something like a “completion power” but neither supports their view with the original meaning of “faithful execution” we develop here.

branch. We have shown here that this rhetoric is radically disconnected from centuries of history that furnish a rather different substantive set of meanings to the Faithful Execution Clauses. That history points to faithful execution being a restrictive duty rather than an expansive power — and this requirement was as likely to be imposed on high-level officeholders as it was upon low-level officers, who were ordered not to veer from their assigned jobs, not to self-deal, and to do their jobs with diligence and care. This tripartite specification of faithful execution, tracking emerging fiduciary law, was well understood by the time of the framing of the U.S. Constitution.

The original meaning of the Faithful Execution Clauses does not cleanly dispose of many of the most significant and pressing contemporary issues implicated by assertions of presidential authority. But our findings here at least suggest that the President — by original design — is supposed to be like a fiduciary, who must pursue the public interest in good faith republican fashion rather than pursuing his self-interest, and who must diligently and steadily execute Congress's commands.⁴⁷⁸ Now that this original meaning is more clear, the Constitution can be applied more faithfully to the vision of the framers.

⁴⁷⁸ For an effort to link republicanism and fiduciary theory, see Evan J. Criddle, *Liberty in Loyalty: A Republican Theory of Fiduciary Law*, 95 TEX. L. REV. 993 (2017). Our Article shows these connections as a matter of constitutional history.

2. Defendants VIKTOR BORISOVICH NETYKSHO, BORIS ALEKSEYEVICH ANTONOV, DMITRIY SERGEYEVICH BADIN, IVAN SERGEYEVICH YERMAKOV, ALEKSEY VIKTOROVICH LUKASHEV, SERGEY ALEKSANDROVICH MORGACHEV, NIKOLAY YURYEVICH KOZACHEK, PAVEL VYACHESLAVOVICH YERSHOV, ARTEM ANDREYEVICH MALYSHEV, ALEKSANDR VLADIMIROVICH OSADCHUK, and ALEKSEY ALEKSANDROVICH POTEMKIN were GRU officers who knowingly and intentionally conspired with each other, and with persons known and unknown to the Grand Jury (collectively the “Conspirators”), to gain unauthorized access (to “hack”) into the computers of U.S. persons and entities involved in the 2016 U.S. presidential election, steal documents from those computers, and stage releases of the stolen documents to interfere with the 2016 U.S. presidential election.

3. Starting in at least March 2016, the Conspirators used a variety of means to hack the email accounts of volunteers and employees of the U.S. presidential campaign of Hillary Clinton (the “Clinton Campaign”), including the email account of the Clinton Campaign’s chairman.

4. By in or around April 2016, the Conspirators also hacked into the computer networks of the Democratic Congressional Campaign Committee (“DCCC”) and the Democratic National Committee (“DNC”). The Conspirators covertly monitored the computers of dozens of DCCC and DNC employees, implanted hundreds of files containing malicious computer code (“malware”), and stole emails and other documents from the DCCC and DNC.

5. By in or around April 2016, the Conspirators began to plan the release of materials stolen from the Clinton Campaign, DCCC, and DNC.

6. Beginning in or around June 2016, the Conspirators staged and released tens of thousands of the stolen emails and documents. They did so using fictitious online personas, including

“DCLeaks” and “Guccifer 2.0.”

7 The Conspirators also used the Guccifer 2.0 persona to release additional stolen documents through a website maintained by an organization (“Organization 1”), that had previously posted documents stolen from U.S. persons, entities, and the U.S. government. The Conspirators continued their U.S. election-interference operations through in or around November 2016.

8 To hide their connections to Russia and the Russian government, the Conspirators used false identities and made false statements about their identities. To further avoid detection, the Conspirators used a network of computers located across the world, including in the United States, and paid for this infrastructure using cryptocurrency.

Defendants

9 Defendant VIKTOR BORISOVICH NETYKSHO (Нетыкшо Виктор Борисович) was the Russian military officer in command of Unit 26165, located at 20 Komsomolskiy Prospekt, Moscow, Russia. Unit 26165 had primary responsibility for hacking the DCCC and DNC, as well as the email accounts of individuals affiliated with the Clinton Campaign.

10. Defendant BORIS ALEKSEYEVICH ANTONOV (Антонов Борис Алексеевич) was a Major in the Russian military assigned to Unit 26165. ANTONOV oversaw a department within Unit 26165 dedicated to targeting military, political, governmental, and non-governmental organizations with spearphishing emails and other computer intrusion activity. ANTONOV held the title “Head of Department.” In or around 2016, ANTONOV supervised other co-conspirators who targeted the DCCC, DNC, and individuals affiliated with the Clinton Campaign.

11 Defendant DMITRIY SERGEYEVICH BADIN (Бадин Дмитрий Сергеевич) was a Russian military officer assigned to Unit 26165 who held the title “Assistant Head of Department.” In or around 2016, BADIN, along with ANTONOV, supervised other co-conspirators who targeted the DCCC, DNC, and individuals affiliated with the Clinton Campaign.

12 Defendant IVAN SERGEYEVICH YERMAKOV (Ермаков Иван Сергеевич) was a Russian military officer assigned to ANTONOV's department within Unit 26165. Since in or around 2010, YERMAKOV used various online personas, including "Kate S Milton," "James McMorgans," and "Karen W Millen," to conduct hacking operations on behalf of Unit 26165. In or around March 2016, YERMAKOV participated in hacking at least two email accounts from which campaign-related documents were released through DCLeaks. In or around May 2016, YERMAKOV also participated in hacking the DNC email server and stealing DNC emails that were later released through Organization 1.

13 Defendant ALEKSEY VIKTOROVICH LUKASHEV (Лукашев Алексей Викторович) was a Senior Lieutenant in the Russian military assigned to ANTONOV's department within Unit 26165. LUKASHEV used various online personas, including "Den Katenberg" and "Yuliana Martynova." In or around 2016, LUKASHEV sent spearphishing emails to members of the Clinton Campaign and affiliated individuals, including the chairman of the Clinton Campaign.

14 Defendant SERGEY ALEKSANDROVICH MORGACHEV (Моргачев Сергей Александрович) was a Lieutenant Colonel in the Russian military assigned to Unit 26165. MORGACHEV oversaw a department within Unit 26165 dedicated to developing and managing malware, including a hacking tool used by the GRU known as "X-Agent." During the hacking of the DCCC and DNC networks, MORGACHEV supervised the co-conspirators who developed and monitored the X-Agent malware implanted on those computers.

15 Defendant NIKOLAY YURYEVICH KOZACHEK (Козачек Николай Юрьевич) was a Lieutenant Captain in the Russian military assigned to MORGACHEV's department within Unit 26165. KOZACHEK used a variety of monikers, including "kazak" and "blablabla1234565." KOZACHEK developed, customized, and monitored X-Agent malware used to hack the DCCC

and DNC networks beginning in or around April 2016

16 Defendant PAVEL VYACHESLAVOVICH YERSHOV (Ершов Павел Вячеславович) was a Russian military officer assigned to MORGACHEV's department within Unit 26165. In or around 2016, YERSHOV assisted KOZACHEK and other co-conspirators in testing and customizing X-Agent malware before actual deployment and use.

17 Defendant ARTEM ANDREYEVICH MALYSHEV (Мальшев Артем Андреевич) was a Second Lieutenant in the Russian military assigned to MORGACHEV's department within Unit 26165. MALYSHEV used a variety of monikers, including "djangomagicdev" and "realblat." In or around 2016, MALYSHEV monitored X-Agent malware implanted on the DCCC and DNC networks.

18 Defendant ALEKSANDR VLADIMIROVICH OSADCHUK (Осадчук Александр Владимирович) was a Colonel in the Russian military and the commanding officer of Unit 74455. Unit 74455 was located at 22 Kirova Street, Khimki, Moscow, a building referred to within the GRU as the "Tower." Unit 74455 assisted in the release of stolen documents through the DCLeaks and Guccifer 2.0 personas, the promotion of those releases, and the publication of anti-Clinton content on social media accounts operated by the GRU.

19. Defendant ALEKSEY ALEKSANDROVICH POTEKIN (Потемкин Алексей Александрович) was an officer in the Russian military assigned to Unit 74455. POTEKIN was a supervisor in a department within Unit 74455 responsible for the administration of computer infrastructure used in cyber operations. Infrastructure and social media accounts administered by POTEKIN's department were used, among other things, to assist in the release of stolen documents through the DCLeaks and Guccifer 2.0 personas.

Object of the Conspiracy

20. The object of the conspiracy was to hack into the computers of U.S. persons and entities involved in the 2016 U.S. presidential election, steal documents from those computers, and stage releases of the stolen documents to interfere with the 2016 U.S. presidential election

Manner and Means of the Conspiracy

Spearphishing Operations

21 ANTONOV, BADIN, YERMAKOV, LUKASHEV, and their co-conspirators targeted victims using a technique known as spearphishing to steal victims' passwords or otherwise gain access to their computers. Beginning by at least March 2016, the Conspirators targeted over 300 individuals affiliated with the Clinton Campaign, DCCC, and DNC.

- a For example, on or about March 19, 2016, LUKASHEV and his co-conspirators created and sent a spearphishing email to the chairman of the Clinton Campaign. LUKASHEV used the account "john356gh" at an online service that abbreviated lengthy website addresses (referred to as a "URL-shortening service"). LUKASHEV used the account to mask a link contained in the spearphishing email, which directed the recipient to a GRU-created website. LUKASHEV altered the appearance of the sender email address in order to make it look like the email was a security notification from Google (a technique known as "spoofing"), instructing the user to change his password by clicking the embedded link. Those instructions were followed. On or about March 21, 2016, LUKASHEV, YERMAKOV, and their co-conspirators stole the contents of the chairman's email account, which consisted of over 50,000 emails.
- b Starting on or about March 19, 2016, LUKASHEV and his co-conspirators sent spearphishing emails to the personal accounts of other individuals affiliated with

the Clinton Campaign, including its campaign manager and a senior foreign policy advisor. On or about March 25, 2016, LUKASHEV used the same john356gh account to mask additional links included in spearphishing emails sent to numerous individuals affiliated with the Clinton Campaign, including Victims 1 and 2. LUKASHEV sent these emails from the Russia-based email account hi.mymail@yandex.com that he spoofed to appear to be from Google.

c. On or about March 28, 2016, YERMAKOV researched the names of Victims 1 and 2 and their association with Clinton on various social media sites. Through their spearphishing operations, LUKASHEV, YERMAKOV, and their co-conspirators successfully stole email credentials and thousands of emails from numerous individuals affiliated with the Clinton Campaign. Many of these stolen emails, including those from Victims 1 and 2, were later released by the Conspirators through DCLeaks.

d. On or about April 6, 2016, the Conspirators created an email account in the name (with a one-letter deviation from the actual spelling) of a known member of the Clinton Campaign. The Conspirators then used that account to send spearphishing emails to the work accounts of more than thirty different Clinton Campaign employees. In the spearphishing emails, LUKASHEV and his co-conspirators embedded a link purporting to direct the recipient to a document titled "hillary-clinton-favorable-rating.xlsx." In fact, this link directed the recipients' computers to a GRU-created website.

22. The Conspirators spearphished individuals affiliated with the Clinton Campaign throughout the summer of 2016. For example, on or about July 27, 2016, the Conspirators

attempted after hours to spearfish for the first time email accounts at a domain hosted by a third-party provider and used by Clinton's personal office. At or around the same time, they also targeted seventy-six email addresses at the domain for the Clinton Campaign.

Hacking into the DCCC Network

23 Beginning in or around March 2016, the Conspirators, in addition to their spearphishing efforts, researched the DCCC and DNC computer networks to identify technical specifications and vulnerabilities.

- a For example, beginning on or about March 15, 2016, YERMAKOV ran a technical query for the DNC's internet protocol configurations to identify connected devices.
- b On or about the same day, YERMAKOV searched for open-source information about the DNC network, the Democratic Party, and Hillary Clinton.
- c On or about April 7, 2016, YERMAKOV ran a technical query for the DCCC's internet protocol configurations to identify connected devices.

24 By in or around April 2016, within days of YERMAKOV's searches regarding the DCCC, the Conspirators hacked into the DCCC computer network. Once they gained access, they installed and managed different types of malware to explore the DCCC network and steal data.

- a On or about April 12, 2016, the Conspirators used the stolen credentials of a DCCC Employee ("DCCC Employee 1") to access the DCCC network. DCCC Employee 1 had received a spearphishing email from the Conspirators on or about April 6, 2016, and entered her password after clicking on the link.
- b Between in or around April 2016 and June 2016, the Conspirators installed multiple versions of their X-Agent malware on at least ten DCCC computers, which allowed them to monitor individual employees' computer activity, steal passwords, and maintain access to the DCCC network.

c X-Agent malware implanted on the DCCC network transmitted information from the victims' computers to a GRU-leased server located in Arizona. The Conspirators referred to this server as their "AMS" panel. KOZACHEK, MALYSHEV, and their co-conspirators logged into the AMS panel to use X-Agent's keylog and screenshot functions in the course of monitoring and surveilling activity on the DCCC computers. The keylog function allowed the Conspirators to capture keystrokes entered by DCCC employees. The screenshot function allowed the Conspirators to take pictures of the DCCC employees' computer screens.

d For example, on or about April 14, 2016, the Conspirators repeatedly activated X-Agent's keylog and screenshot functions to surveil DCCC Employee 1's computer activity over the course of eight hours. During that time, the Conspirators captured DCCC Employee 1's communications with co-workers and the passwords she entered while working on fundraising and voter outreach projects. Similarly, on or about April 22, 2016, the Conspirators activated X-Agent's keylog and screenshot functions to capture the discussions of another DCCC Employee ("DCCC Employee 2") about the DCCC's finances, as well as her individual banking information and other personal topics.

25 On or about April 19, 2016, KOZACHEK, YERSHOV, and their co-conspirators remotely configured an overseas computer to relay communications between X-Agent malware and the AMS panel and then tested X-Agent's ability to connect to this computer. The Conspirators referred to this computer as a "middle server." The middle server acted as a proxy to obscure the connection between malware at the DCCC and the Conspirators' AMS panel. On or about April

20, 2016, the Conspirators directed X-Agent malware on the DCCC computers to connect to this middle server and receive directions from the Conspirators

Hacking into the DNC Network

26 On or about April 18, 2016, the Conspirators hacked into the DNC's computers through their access to the DCCC network. The Conspirators then installed and managed different types of malware (as they did in the DCCC network) to explore the DNC network and steal documents.

a On or about April 18, 2016, the Conspirators activated X-Agent's keylog and screenshot functions to steal credentials of a DCCC employee who was authorized to access the DNC network. The Conspirators hacked into the DNC network from the DCCC network using stolen credentials. By in or around June 2016, they gained access to approximately thirty-three DNC computers.

b In or around April 2016, the Conspirators installed X-Agent malware on the DNC network, including the same versions installed on the DCCC network. MALYSHEV and his co-conspirators monitored the X-Agent malware from the AMS panel and captured data from the victim computers. The AMS panel collected thousands of keylog and screenshot results from the DCCC and DNC computers, such as a screenshot and keystroke capture of DCCC Employee 2 viewing the DCCC's online banking information.

Theft of DCCC and DNC Documents

27 The Conspirators searched for and identified computers within the DCCC and DNC networks that stored information related to the 2016 U.S. presidential election. For example, on or about April 15, 2016, the Conspirators searched one hacked DCCC computer for terms that included "hillary," "cruz," and "trump." The Conspirators also copied select DCCC folders, including "Benghazi Investigations." The Conspirators targeted computers containing information

such as opposition research and field operation plans for the 2016 elections.

28 To enable them to steal a large number of documents at once without detection, the Conspirators used a publicly available tool to gather and compress multiple documents on the DCCC and DNC networks. The Conspirators then used other GRU malware, known as “X-Tunnel,” to move the stolen documents outside the DCCC and DNC networks through encrypted channels

a For example, on or about April 22, 2016, the Conspirators compressed gigabytes of data from DNC computers, including opposition research. The Conspirators later moved the compressed DNC data using X-Tunnel to a GRU-leased computer located in Illinois

b On or about April 28, 2016, the Conspirators connected to and tested the same computer located in Illinois. Later that day, the Conspirators used X-Tunnel to connect to that computer to steal additional documents from the DCCC network

29 Between on or about May 25, 2016 and June 1, 2016, the Conspirators hacked the DNC Microsoft Exchange Server and stole thousands of emails from the work accounts of DNC employees. During that time, YERMAKOV researched PowerShell commands related to accessing and managing the Microsoft Exchange Server

30 On or about May 30, 2016, MALYSHEV accessed the AMS panel in order to upgrade custom AMS software on the server. That day, the AMS panel received updates from approximately thirteen different X-Agent malware implants on DCCC and DNC computers

31. During the hacking of the DCCC and DNC networks, the Conspirators covered their tracks by intentionally deleting logs and computer files. For example, on or about May 13, 2016, the Conspirators cleared the event logs from a DNC computer. On or about June 20, 2016, the

Conspirators deleted logs from the AMS panel that documented their activities on the panel, including the login history

Efforts to Remain on the DCCC and DNC Networks

32 Despite the Conspirators' efforts to hide their activity, beginning in or around May 2016, both the DCCC and DNC became aware that they had been hacked and hired a security company ("Company 1") to identify the extent of the intrusions. By in or around June 2016, Company 1 took steps to exclude intruders from the networks. Despite these efforts, a Linux-based version of X-Agent, programmed to communicate with the GRU-registered domain linuxkml.net, remained on the DNC network until in or around October 2016.

33 In response to Company 1's efforts, the Conspirators took countermeasures to maintain access to the DCCC and DNC networks.

- a On or about May 31, 2016, YERMAKOV searched for open-source information about Company 1 and its reporting on X-Agent and X-Tunnel. On or about June 1, 2016, the Conspirators attempted to delete traces of their presence on the DCCC network using the computer program CCleaner.
- b On or about June 14, 2016, the Conspirators registered the domain actblues.com, which mimicked the domain of a political fundraising platform that included a DCCC donations page. Shortly thereafter, the Conspirators used stolen DCCC credentials to modify the DCCC website and redirect visitors to the actblues.com domain.
- c On or about June 20, 2016, after Company 1 had disabled X-Agent on the DCCC network, the Conspirators spent over seven hours unsuccessfully trying to connect to X-Agent. The Conspirators also tried to access the DCCC network using previously stolen credentials.

34 In or around September 2016, the Conspirators also successfully gained access to DNC computers hosted on a third-party cloud-computing service. These computers contained test applications related to the DNC's analytics. After conducting reconnaissance, the Conspirators gathered data by creating backups, or "snapshots," of the DNC's cloud-based systems using the cloud provider's own technology. The Conspirators then moved the snapshots to cloud-based accounts they had registered with the same service, thereby stealing the data from the DNC.

Stolen Documents Released through DCLeaks

35 More than a month before the release of any documents, the Conspirators constructed the online persona DCLeaks to release and publicize stolen election-related documents. On or about April 19, 2016, after attempting to register the domain electionleaks.com, the Conspirators registered the domain dcleaks.com through a service that anonymized the registrant. The funds used to pay for the dcleaks.com domain originated from an account at an online cryptocurrency service that the Conspirators also used to fund the lease of a virtual private server registered with the operational email account dirbinsaabol@mail.com. The dirbinsaabol email account was also used to register the john356gh URL-shortening account used by LUKASHEV to spearphish the Clinton Campaign chairman and other campaign-related individuals.

36 On or about June 8, 2016, the Conspirators launched the public website dcleaks.com, which they used to release stolen emails. Before it shut down in or around March 2017, the site received over one million page views. The Conspirators falsely claimed on the site that DCLeaks was started by a group of "American hacktivists," when in fact it was started by the Conspirators.

37 Starting in or around June 2016 and continuing through the 2016 U.S. presidential election, the Conspirators used DCLeaks to release emails stolen from individuals affiliated with the Clinton Campaign. The Conspirators also released documents they had stolen in other spearphishing operations, including those they had conducted in 2015 that collected emails from individuals

affiliated with the Republican Party

38 On or about June 8, 2016, and at approximately the same time that the dcleaks.com website was launched, the Conspirators created a DCLeaks Facebook page using a preexisting social media account under the fictitious name “Alice Donovan.” In addition to the DCLeaks Facebook page, the Conspirators used other social media accounts in the names of fictitious U.S. persons such as “Jason Scott” and “Richard Gingrey” to promote the DCLeaks website. The Conspirators accessed these accounts from computers managed by POTEMKIN and his co-conspirators.

39 On or about June 8, 2016, the Conspirators created the Twitter account @dcleaks_. The Conspirators operated the @dcleaks_ Twitter account from the same computer used for other efforts to interfere with the 2016 U.S. presidential election. For example, the Conspirators used the same computer to operate the Twitter account @BaltimoreIsWhr, through which they encouraged U.S. audiences to “[j]oin our flash mob” opposing Clinton and to post images with the hashtag #BlacksAgainstHillary.

Stolen Documents Released through Guccifer 2.0

40 On or about June 14, 2016, the DNC—through Company 1—publicly announced that it had been hacked by Russian government actors. In response, the Conspirators created the online persona Guccifer 2.0 and falsely claimed to be a lone Romanian hacker to undermine the allegations of Russian responsibility for the intrusion.

41 On or about June 15, 2016, the Conspirators logged into a Moscow-based server used and managed by Unit 74455 and, between 4:19 PM and 4:56 PM Moscow Standard Time, searched for certain words and phrases, including:

Search Term(s)
“some hundred sheets”
“some hundreds of sheets”
dcleaks
illuminati
широко известный перевод [widely known translation]
“worldwide known”
“think twice about”
“company’s competence”

42 Later that day, at 7 02 PM Moscow Standard Time, the online persona Guccifer 2 0 published its first post on a blog site created through WordPress. Titled “DNC’s servers hacked by a lone hacker,” the post used numerous English words and phrases that the Conspirators had searched for earlier that day (bolded below)

Worldwide known cyber security company [Company 1] announced that the Democratic National Committee (DNC) servers had been hacked by “sophisticated” hacker groups

I’m very pleased the company appreciated my skills so highly))) []

Here are just a few docs from many thousands I extracted when hacking into DNC’s network []

Some hundred sheets! This’s a serious case, isn’t it? []

I guess [Company 1] customers should **think twice about company’s competence**

F[***] the **Iluminati** and their conspracies!!!!!!!!!!!! F[***]
[Company 1]!!!!!!!!!!!!

43 Between in or around June 2016 and October 2016, the Conspirators used Guccifer 2.0 to release documents through WordPress that they had stolen from the DCCC and DNC. The Conspirators, posing as Guccifer 2.0, also shared stolen documents with certain individuals

a On or about August 15, 2016, the Conspirators, posing as Guccifer 2.0, received a

request for stolen documents from a candidate for the U.S. Congress. The Conspirators responded using the Guccifer 2.0 persona and sent the candidate stolen documents related to the candidate's opponent.

- b. On or about August 22, 2016, the Conspirators, posing as Guccifer 2.0, transferred approximately 2.5 gigabytes of data stolen from the DCCC to a then-registered state lobbyist and online source of political news. The stolen data included donor records and personal identifying information for more than 2,000 Democratic donors.
- c. On or about August 22, 2016, the Conspirators, posing as Guccifer 2.0, sent a reporter stolen documents pertaining to the Black Lives Matter movement. The reporter responded by discussing when to release the documents and offering to write an article about their release.

44 The Conspirators, posing as Guccifer 2.0, also communicated with U.S. persons about the release of stolen documents. On or about August 15, 2016, the Conspirators, posing as Guccifer 2.0, wrote to a person who was in regular contact with senior members of the presidential campaign of Donald J. Trump, "thank u for writing back . . . do u find anyt[h]ing interesting in the docs i posted?" On or about August 17, 2016, the Conspirators added, "please tell me if i can help u anyhow . . . it would be a great pleasure to me ." On or about September 9, 2016, the Conspirators, again posing as Guccifer 2.0, referred to a stolen DCCC document posted online and asked the person, "what do u think of the info on the turnout model for the democrats entire presidential campaign ." The person responded, "[p]retty standard . . ."

45 The Conspirators conducted operations as Guccifer 2.0 and DCLeaks using overlapping computer infrastructure and financing.

- a. For example, between on or about March 14, 2016 and April 28, 2016, the

Conspirators used the same pool of bitcoin funds to purchase a virtual private network (“VPN”) account and to lease a server in Malaysia. In or around June 2016, the Conspirators used the Malaysian server to host the dleaks.com website. On or about July 6, 2016, the Conspirators used the VPN to log into the @Guccifer_2 Twitter account. The Conspirators opened that VPN account from the same server that was also used to register malicious domains for the hacking of the DCCC and DNC networks.

- b On or about June 27, 2016, the Conspirators, posing as Guccifer 2.0, contacted a U.S. reporter with an offer to provide stolen emails from “Hillary Clinton’s staff.” The Conspirators then sent the reporter the password to access a nonpublic, password-protected portion of dleaks.com containing emails stolen from Victim 1 by LUKASHEV, YERMAKOV, and their co-conspirators in or around March 2016.

46 On or about January 12, 2017, the Conspirators published a statement on the Guccifer 2.0 WordPress blog, falsely claiming that the intrusions and release of stolen documents had “totally no relation to the Russian government.”

Use of Organization 1

47. In order to expand their interference in the 2016 U.S. presidential election, the Conspirators transferred many of the documents they stole from the DNC and the chairman of the Clinton Campaign to Organization 1. The Conspirators, posing as Guccifer 2.0, discussed the release of the stolen documents and the timing of those releases with Organization 1 to heighten their impact on the 2016 U.S. presidential election.

- a On or about June 22, 2016, Organization 1 sent a private message to Guccifer 2.0 to “[s]end any new material [stolen from the DNC] here for us to review and it will

have a much higher impact than what you are doing” On or about July 6, 2016, Organization 1 added, “if you have anything hillary related we want it in the next two [sic] days preface [sic] because the DNC [Democratic National Convention] is approaching and she will solidify bernie supporters behind her after” The Conspirators responded, “ok . . . i see” Organization 1 explained, “we think trump has only a 25% chance of winning against hillary so conflict between bernie and hillary is interesting”

- b After failed attempts to transfer the stolen documents starting in late June 2016, on or about July 14, 2016, the Conspirators, posing as Guccifer 2.0, sent Organization 1 an email with an attachment titled “wk dnc link1 txt gpg” The Conspirators explained to Organization 1 that the encrypted file contained instructions on how to access an online archive of stolen DNC documents On or about July 18, 2016, Organization 1 confirmed it had “the 1Gb or so archive” and would make a release of the stolen documents “this week”

48 On or about July 22, 2016, Organization 1 released over 20,000 emails and other documents stolen from the DNC network by the Conspirators This release occurred approximately three days before the start of the Democratic National Convention Organization 1 did not disclose Guccifer 2.0’s role in providing them The latest-in-time email released through Organization 1 was dated on or about May 25, 2016, approximately the same day the Conspirators hacked the DNC Microsoft Exchange Server

49 On or about October 7, 2016, Organization 1 released the first set of emails from the chairman of the Clinton Campaign that had been stolen by LUKASHEV and his co-conspirators. Between on or about October 7, 2016 and November 7, 2016, Organization 1 released

approximately thirty-three tranches of documents that had been stolen from the chairman of the Clinton Campaign. In total, over 50,000 stolen documents were released.

Statutory Allegations

50 Paragraphs 1 through 49 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

51 From at least in or around March 2016 through November 2016, in the District of Columbia and elsewhere, Defendants NETYKSHO, ANTONOV, BADIN, YERMAKOV, LUKASHEV, MORGACHEV, KOZACHEK, YERSHOV, MALYSHEV, OSADCHUK, and POTEMKIN, together with others known and unknown to the Grand Jury, knowingly and intentionally conspired to commit offenses against the United States, namely

- a To knowingly access a computer without authorization and exceed authorized access to a computer, and to obtain thereby information from a protected computer, where the value of the information obtained exceeded \$5,000, in violation of Title 18, United States Code, Sections 1030(a)(2)(C) and 1030(c)(2)(B), and
- b To knowingly cause the transmission of a program, information, code, and command, and as a result of such conduct, to intentionally cause damage without authorization to a protected computer, and where the offense did cause and, if completed, would have caused, loss aggregating \$5,000 in value to at least one person during a one-year period from a related course of conduct affecting a protected computer, and damage affecting at least ten protected computers during a one-year period, in violation of Title 18, United States Code, Sections 1030(a)(5)(A) and 1030(c)(4)(B)

52 In furtherance of the Conspiracy and to effect its illegal objects, the Conspirators committed the overt acts set forth in paragraphs 1 through 19, 21 through 49, 55, and 57 through

64, which are re-alleged and incorporated by reference as if fully set forth herein.

53 In furtherance of the Conspiracy, and as set forth in paragraphs 1 through 19, 21 through 49, 55, and 57 through 64, the Conspirators knowingly falsely registered a domain name and knowingly used that domain name in the course of committing an offense, namely, the Conspirators registered domains, including dcleaks.com and actblues.com, with false names and addresses, and used those domains in the course of committing the felony offense charged in Count One.

All in violation of Title 18, United States Code, Sections 371 and 3559(g)(1).

COUNTS TWO THROUGH NINE
(Aggravated Identity Theft)

54 Paragraphs 1 through 19, 21 through 49, and 57 through 64 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein

55 On or about the dates specified below, in the District of Columbia and elsewhere, Defendants VIKTOR BORISOVICH NETYKSHO, BORIS ALEKSEYEVICH ANTONOV, DMITRIY SERGEYEVICH BADIN, IVAN SERGEYEVICH YERMAKOV, ALEKSEY VIKTOROVICH LUKASHEV, SERGEY ALEKSANDROVICH MORGACHEV, NIKOLAY YURYEVICH KOZACHEK, PAVEL VYACHESLAVOVICH YERSHOV, ARTEM ANDREYEVICH MALYSHEV, ALEKSANDR VLADIMIROVICH OSADCHUK, and ALEKSEY ALEKSANDROVICH POTEMKIN did knowingly transfer, possess, and use, without lawful authority, a means of identification of another person during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), namely, computer fraud in violation of Title 18, United States Code, Sections 1030(a)(2)(C) and 1030(c)(2)(B), knowing that the means of identification belonged to another real person.

Count	Approximate Date	Victim	Means of Identification
2	March 21, 2016	Victim 3	Username and password for personal email account
3	March 25, 2016	Victim 1	Username and password for personal email account
4	April 12, 2016	Victim 4	Username and password for DCCC computer network
5	April 15, 2016	Victim 5	Username and password for DCCC computer network
6	April 18, 2016	Victim 6	Username and password for DCCC computer network
7	May 10, 2016	Victim 7	Username and password for DNC computer network
8	June 2, 2016	Victim 2	Username and password for personal email account
9	July 6, 2016	Victim 8	Username and password for personal email account

All in violation of Title 18, United States Code, Sections 1028A(a)(1) and 2

COUNT TEN
(Conspiracy to Launder Money)

56. Paragraphs 1 through 19, 21 through 49, and 55 are re-alleged and incorporated by reference as if fully set forth herein

57 To facilitate the purchase of infrastructure used in their hacking activity—including hacking into the computers of U S persons and entities involved in the 2016 U.S presidential election and releasing the stolen documents—the Defendants conspired to launder the equivalent of more than \$95,000 through a web of transactions structured to capitalize on the perceived anonymity of cryptocurrencies such as bitcoin

58 Although the Conspirators caused transactions to be conducted in a variety of currencies, including U S dollars, they principally used bitcoin when purchasing servers, registering domains, and otherwise making payments in furtherance of hacking activity Many of these payments were

processed by companies located in the United States that provided payment processing services to hosting companies, domain registrars, and other vendors both international and domestic. The use of bitcoin allowed the Conspirators to avoid direct relationships with traditional financial institutions, allowing them to evade greater scrutiny of their identities and sources of funds.

59 All bitcoin transactions are added to a public ledger called the Blockchain, but the Blockchain identifies the parties to each transaction only by alpha-numeric identifiers known as bitcoin addresses. To further avoid creating a centralized paper trail of all of their purchases, the Conspirators purchased infrastructure using hundreds of different email accounts, in some cases using a new account for each purchase. The Conspirators used fictitious names and addresses in order to obscure their identities and their links to Russia and the Russian government. For example, the dcleaks.com domain was registered and paid for using the fictitious name “Carrie Feehan” and an address in New York. In some cases, as part of the payment process, the Conspirators provided vendors with nonsensical addresses such as “usa Denver AZ,” “ghfgh ghfghgh fdgfdg WA,” and “1 2 dwd District of Columbia.”

60 The Conspirators used several dedicated email accounts to track basic bitcoin transaction information and to facilitate bitcoin payments to vendors. One of these dedicated accounts, registered with the username “gfadel47,” received hundreds of bitcoin payment requests from approximately 100 different email accounts. For example, on or about February 1, 2016, the gfadel47 account received the instruction to “[p]lease send *exactly* 0.026043 bitcoin to” a certain thirty-four character bitcoin address. Shortly thereafter, a transaction matching those exact instructions was added to the Blockchain.

61 On occasion, the Conspirators facilitated bitcoin payments using the same computers that they used to conduct their hacking activity, including to create and send test spearphishing emails.

Additionally, one of these dedicated accounts was used by the Conspirators in or around 2015 to renew the registration of a domain (linuxknl net) encoded in certain X-Agent malware installed on the DNC network

62. The Conspirators funded the purchase of computer infrastructure for their hacking activity in part by “mining” bitcoin. Individuals and entities can mine bitcoin by allowing their computing power to be used to verify and record payments on the bitcoin public ledger, a service for which they are rewarded with freshly-minted bitcoin. The pool of bitcoin generated from the GRU’s mining activity was used, for example, to pay a Romanian company to register the domain dcleaks.com through a payment processing company located in the United States.

63. In addition to mining bitcoin, the Conspirators acquired bitcoin through a variety of means designed to obscure the origin of the funds. This included purchasing bitcoin through peer-to-peer exchanges, moving funds through other digital currencies, and using pre-paid cards. They also enlisted the assistance of one or more third-party exchangers who facilitated layered transactions through digital currency exchange platforms providing heightened anonymity.

64. The Conspirators used the same funding structure—and in some cases, the very same pool of funds—to purchase key accounts, servers, and domains used in their election-related hacking activity.

- a. The bitcoin mining operation that funded the registration payment for dcleaks.com also sent newly-minted bitcoin to a bitcoin address controlled by “Daniel Farrell,” the persona that was used to renew the domain linuxknl.net. The bitcoin mining operation also funded, through the same bitcoin address, the purchase of servers and domains used in the GRU’s spearphishing operations, including accounts-gooqle.com and account-goooogle.com.

- b. On or about March 14, 2016, using funds in a bitcoin address, the Conspirators purchased a VPN account, which they later used to log into the @Guccifer_2 Twitter account. The remaining funds from that bitcoin address were then used on or about April 28, 2016, to lease a Malaysian server that hosted the dcleaks.com website.
- c. The Conspirators used a different set of fictitious names (including “Ward DeClaur” and “Mike Long”) to send bitcoin to a U.S. company in order to lease a server used to administer X-Tunnel malware implanted on the DCCC and DNC networks, and to lease two servers used to hack the DNC’s cloud network.

Statutory Allegations

65 From at least in or around 2015 through 2016, within the District of Columbia and elsewhere, Defendants VIKTOR BORISOVICH NETYKSHO, BORIS ALEKSEYEVICH ANTONOV, DMITRIY SERGEYEVICH BADIN, IVAN SERGEYEVICH YERMAKOV, ALEKSEY VIKTOROVICH LUKASHEV, SERGEY ALEKSANDROVICH MORGACHEV, NIKOLAY YURYEVICH KOZACHEK, PAVEL VYACHESLAVOVICH YERSHOV, ARTEM ANDREYEVICH MALYSHEV, ALEKSANDR VLADIMIROVICH OSADCHUK, and ALEKSEY ALEKSANDROVICH POTEKIN, together with others, known and unknown to the Grand Jury, did knowingly and intentionally conspire to transport, transmit, and transfer monetary instruments and funds to a place in the United States from and through a place outside the United States and from a place in the United States to and through a place outside the United States, with the intent to promote the carrying on of specified unlawful activity, namely, a violation of Title 18, United States Code, Section 1030, contrary to Title 18, United States Code, Section 1956(a)(2)(A)

All in violation of Title 18, United States Code, Section 1956(h)

COUNT ELEVEN
(Conspiracy to Commit an Offense Against the United States)

66 Paragraphs 1 through 8 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

Defendants

67. Paragraph 18 of this Indictment relating to ALEKSANDR VLADIMIROVICH OSADCHUK is re-alleged and incorporated by reference as if fully set forth herein

68 Defendant ANATOLIY SERGEYEVICH KOVALEV (Ковалев Анатолий Сергеевич) was an officer in the Russian military assigned to Unit 74455 who worked in the GRU's 22 Kirova Street building (the Tower).

69 Defendants OSADCHUK and KOVALEV were GRU officers who knowingly and intentionally conspired with each other and with persons, known and unknown to the Grand Jury, to hack into the computers of U S persons and entities responsible for the administration of 2016 U S. elections, such as state boards of elections, secretaries of state, and U.S. companies that supplied software and other technology related to the administration of U.S. elections

Object of the Conspiracy

70. The object of the conspiracy was to hack into protected computers of persons and entities charged with the administration of the 2016 U S elections in order to access those computers and steal voter data and other information stored on those computers

Manner and Means of the Conspiracy

71 In or around June 2016, KOVALEV and his co-conspirators researched domains used by U S state boards of elections, secretaries of state, and other election-related entities for website vulnerabilities KOVALEV and his co-conspirators also searched for state political party email addresses, including filtered queries for email addresses listed on state Republican Party websites

72 In or around July 2016, KOVALEV and his co-conspirators hacked the website of a state board of elections (“SBOE 1”) and stole information related to approximately 500,000 voters, including names, addresses, partial social security numbers, dates of birth, and driver’s license numbers.

73 In or around August 2016, KOVALEV and his co-conspirators hacked into the computers of a U.S. vendor (“Vendor 1”) that supplied software used to verify voter registration information for the 2016 U.S. elections. KOVALEV and his co-conspirators used some of the same infrastructure to hack into Vendor 1 that they had used to hack into SBOE 1.

74. In or around August 2016, the Federal Bureau of Investigation issued an alert about the hacking of SBOE 1 and identified some of the infrastructure that was used to conduct the hacking. In response, KOVALEV deleted his search history. KOVALEV and his co-conspirators also deleted records from accounts used in their operations targeting state boards of elections and similar election-related entities.

75 In or around October 2016, KOVALEV and his co-conspirators further targeted state and county offices responsible for administering the 2016 U.S. elections. For example, on or about October 28, 2016, KOVALEV and his co-conspirators visited the websites of certain counties in Georgia, Iowa, and Florida to identify vulnerabilities.

76 In or around November 2016 and prior to the 2016 U.S. presidential election, KOVALEV and his co-conspirators used an email account designed to look like a Vendor 1 email address to send over 100 spearphishing emails to organizations and personnel involved in administering elections in numerous Florida counties. The spearphishing emails contained malware that the conspirators embedded into Word documents bearing Vendor 1’s logo.

Statutory Allegations

77 Between in or around June 2016 and November 2016, in the District of Columbia and

elsewhere, Defendants OSADCHUK and KOVALEV, together with others known and unknown to the Grand Jury, knowingly and intentionally conspired to commit offenses against the United States, namely.

- a To knowingly access a computer without authorization and exceed authorized access to a computer, and to obtain thereby information from a protected computer, where the value of the information obtained exceeded \$5,000, in violation of Title 18, United States Code, Sections 1030(a)(2)(C) and 1030(c)(2)(B), and
- b To knowingly cause the transmission of a program, information, code, and command, and as a result of such conduct, to intentionally cause damage without authorization to a protected computer, and where the offense did cause and, if completed, would have caused, loss aggregating \$5,000 in value to at least one person during a one-year period from a related course of conduct affecting a protected computer, and damage affecting at least ten protected computers during a one-year period, in violation of Title 18, United States Code, Sections 1030(a)(5)(A) and 1030(c)(4)(B)

78. In furtherance of the Conspiracy and to effect its illegal objects, OSADCHUK, KOVALEV, and their co-conspirators committed the overt acts set forth in paragraphs 67 through 69 and 71 through 76, which are re-alleged and incorporated by reference as if fully set forth herein

All in violation of Title 18, United States Code, Section 371

FORFEITURE ALLEGATION

79 Pursuant to Federal Rule of Criminal Procedure 32.2, notice is hereby given to Defendants that the United States will seek forfeiture as part of any sentence in the event of Defendants' convictions under Counts One, Ten, and Eleven of this Indictment Pursuant to Title 18, United

States Code, Sections 982(a)(2) and 1030(i), upon conviction of the offenses charged in Counts One and Eleven, Defendants NETYKSHO, ANTONOV, BADIN, YERMAKOV, LUKASHEV, MORGACHEV, KOZACHEK, YERSHOV, MALYSHEV, OSADCHUK, POTEMKIN, and KOVALEV shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds obtained directly or indirectly as a result of such violation, and any personal property that was used or intended to be used to commit or to facilitate the commission of such offense. Pursuant to Title 18, United States Code, Section 982(a)(1), upon conviction of the offense charged in Count Ten, Defendants NETYKSHO, ANTONOV, BADIN, YERMAKOV, LUKASHEV, MORGACHEV, KOZACHEK, YERSHOV, MALYSHEV, OSADCHUK, and POTEMKIN shall forfeit to the United States any property, real or personal, involved in such offense, and any property traceable to such property. Notice is further given that, upon conviction, the United States intends to seek a judgment against each Defendant for a sum of money representing the property described in this paragraph, as applicable to each Defendant (to be offset by the forfeiture of any specific property)

Substitute Assets

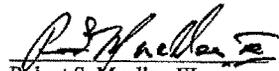
80 If any of the property described above as being subject to forfeiture, as a result of any act or omission of any Defendant --

- a cannot be located upon the exercise of due diligence;
- b has been transferred or sold to, or deposited with, a third party;
- c has been placed beyond the jurisdiction of the court;
- d has been substantially diminished in value, or
- e has been commingled with other property that cannot be subdivided without difficulty,

it is the intent of the United States of America, pursuant to Title 18, United States Code, Section

982(b) and Title 28, United States Code, Section 2461(c), incorporating Title 21, United States Code, Section 853, to seek forfeiture of any other property of said Defendant

Pursuant to 18 U.S.C. §§ 982 and 1030(i); 28 U.S.C. § 2461(c).


Robert S. Mueller, III
Special Counsel
U.S. Department of Justice

A TRUE BILL:

Foreperson

Date: July 13, 2018

20076

877

S HRG 116-75

**OPEN HEARING: WORLDWIDE THREAT ASSESS-
MENT OF THE U.S. INTELLIGENCE COMMUNITY**

HEARING
BEFORE THE
SELECT COMMITTEE ON INTELLIGENCE
OF THE
UNITED STATES SENATE
ONE HUNDRED SIXTEENTH CONGRESS
FIRST SESSION

—————
TUESDAY, JANUARY 29, 2019
—————

Printed for the use of the Select Committee on Intelligence



Available via the World Wide Web <http://www.govinfo.gov>

—————
U S GOVERNMENT PUBLISHING OFFICE

34-697 PDF

WASHINGTON 2019

SELECT COMMITTEE ON INTELLIGENCE

[Established by S Res 400, 94th Cong, 2d Sess]

RICHARD BURR, North Carolina, *Chairman*

MARK R WARNER, Virginia, *Vice Chairman*

JAMES E RISCH, Idaho
MARCO RUBIO, Florida
SUSAN COLLINS, Maine
ROY BLUNT, Missouri
TOM COTTON, Arkansas
JOHN CORNYN, Texas
BEN SASSE, Nebraska

DIANNE FEINSTEIN, California
RON WYDEN, Oregon
MARTIN HEINRICH, New Mexico
ANGUS KING, Maine
KAMALA HARRIS, California
MICHAEL L BENNET, Colorado

MITCH McCONNELL, Kentucky, *Ex Officio*

CHUCK SCHUMER, New York, *Ex Officio*

JAMES INHOFE, Oklahoma, *Ex Officio*

JACK REED, Rhode Island, *Ex Officio*

CHRIS JOYNER, *Staff Director*

MICHAEL CASEY, *Minority Staff Director*

KELSEY STROUD BAILEY, *Chief Clerk*

CONTENTS

JANUARY 29, 2019

OPENING STATEMENTS

Burr, Hon Richard, Chairman, a U S Senator from North Carolina	1
Warner, Mark R , Vice Chairman, a U S Senator from Virginia	3

WITNESSES

Coats, Daniel R , Director of National Intelligence, Accompanied by Haspel, Gina, Director of the Central Intelligence Agency, Nakasone, Gen Paul, Director of the National Security Agency, Askley, Lt Gen Robert, Director of the Defense Intelligence Agency, Wray, Christopher, Director of the Federal Bureau of Investigation, and Cardillo, Robert, Director of the National Geospatial-Intelligence Agency	5
Prepared statement	11

SUPPLEMENTAL MATERIAL

Responses to Questions for the Record	86
---------------------------------------	----

**OPEN HEARING: WORLDWIDE THREAT
ASSESSMENT OF THE U.S. INTELLIGENCE
COMMUNITY**

TUESDAY, JANUARY 29, 2019

U S SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC

The Committee met, pursuant to notice, at 9.34 a.m., in Room SH-216, Hart Senate Office Building, Hon Richard Burr (Chairman of the Committee) presiding

Present Senators Burr, Warner, Risch, Rubio, Collins, Blunt, Cotton, Cornyn, Sasse, Feinstein, Wyden, Heinrich, King, Harris, and Bennet

**OPENING STATEMENT OF HON. RICHARD BURR, CHAIRMAN, A
U.S. SENATOR FROM NORTH CAROLINA**

Chairman BURR I'd like to call this hearing to order. I'd like to welcome our witnesses today, Director of National Intelligence, Dan Coats, Director of the Central Intelligence Agency, Gina Haspel, Director of the Defense Intelligence Agency, General Robert Ashley, Director of the Federal Bureau of Investigation, Chris Wray, Director of the National Security Agency, General Paul Nakasone, and Director of the National Geospatial-Intelligence Agency, Robert Cardillo I thank all of you for being here this morning

I'd also like to welcome the Committee's new—two newest members, who in typical Senate fashion, are not here yet, Senator Ben Sasse of Nebraska and Senator Michael Bennet of Colorado They're both great additions, and I look forward to working with them and with you to fulfill the Committee's critical oversight mandates

Before I go to my formal remarks, I want to extend my condolences of this Committee to General Ashley and his workforce at the Defense Intelligence Agency, as well as General Nakasone and his workforce at NSA On January 16th, a DIA employee and a naval chief cryptology technician were killed in northern Syria alongside two other Americans This is a stark and sobering reminder of the dangerous work that the men and women of the Intelligence Community do around the world on the behalf of the country every single day, often with no public acknowledgment We thank you for your leadership of this community, and more importantly, for what your officers do and the sacrifices they make on behalf of our Nation

This Committee has met in open forum to discuss the security threats facing the United States since 1995. The nature, scale, and scope of those threats have evolved greatly over the last 25 years. Hostile nation states, terrorist organizations, malign cyber actors, and even infectious disease and natural disasters at different times have been the focus of the Intelligence Community's efforts. Our intelligence officers have repeatedly proven themselves equal to the task of refocusing, reconfiguring, and relearning the business of intelligence to keep pace with a threat landscape that's never static. When this Nation was attacked on September the 11th, counterterrorism rightly became our Nation's security focus, and the Intelligence Community responded by shifting resources and attention. We learned the ways of our new enemy, and we learned how to defeat it.

We're now living in yet another new age, a time characterized by hybrid warfare, weaponized disinformation—all occurring within the context of a world producing more data than mankind has ever seen. Tomorrow it's going to be deepfakes, artificial intelligence, a 5G-enabled Internet of Things with billions of internet connections on consumer devices. What I hope to get out of this morning is a sense of how well prepared the Intelligence Community is to take on this new generation of technologically advanced security threats. Countering these threats requires making information available to those who can act, and doing so with speed and agility. Sometimes the key actors will be the Federal Government. Other times it will be a city. Many times, it will be a social media company, or a start-up, or a biotech firm.

I see a world where greater collaboration between Government and the private sector is necessary, while still protecting sensitive sources and methods. We have to share what we can, trust who we can, and collaborate because we must. The objective of our enemies has not changed. They want to see the United States weakened, if not destroyed. They want to see us abandon our friends and our allies. They want to see us lessen our global presence. They want to see us squabble and divide. But their tools are different.

I don't need to remind anyone in the room when this country's democracy was attacked in 2016, it wasn't with a bomb, or a missile or a plane. It was with social media accounts that any 13-year-old can establish for free. The enemies of this country aren't going to take us on a straight up fight, because they know they'd lose. They're going to keep finding new ways of attacking us, ways that exploit the openness of our society, and slip through the seams of a national security architecture designed for the Cold War.

What this means is that we can't afford to get complacent. We can't find comfort in being good at doing the same things that we've been doing for 50 years. Those who would seek to harm this Nation are creative, adaptive, and resolute. They're creating a new battlefield, and we have been playing catch-up. Defeating them demands that we, as members of your oversight committee, make sure you have the resources and the authorities you need to win.

Director Coats, I'd appreciate your perspective on how to best strike the balance between satisfying existing intelligence requirements and preparing the IC to take on the technological challenge of the future.

I'd like to recognize that this will be Director Cardillo's last appearance before the Committee Robert, since 2014 you've served as the consummate ambassador for NGA, and this Committee thanks you for your more than 35 years of honorable service to NGA, the Intelligence Community, and more importantly, to the country

I'll close here because we have a lot of ground to cover today, but I want to thank you again, and more importantly your officers, for the selfless sacrifices that help keep this Nation safe Yours is an exceptional mission in that so few will ever truly know how much you do in the service of so many

Before turning to the distinguished Vice Chairman, I'd like to highlight for my colleagues on the Committee, we'll be convening again at 1:00 p.m. this afternoon, promptly, for the afternoon for a classified continuation of this hearing Please reserve any questions that delve into classified matters until then, and don't take offense if our witnesses find the need to delay their answers to questions that might be on the fringe for the closed session

With that, I turn to the Vice Chairman

**OPENING STATEMENT OF HON. MARK R. WARNER, VICE
CHAIRMAN, A U.S. SENATOR FROM VIRGINIA**

Vice Chairman WARNER Well, thank you, Mr Chairman And let me also welcome our witnesses Let me extend my condolences, as well, for their loss Let me also echo what the Chairman has said, Robert, about your service Your leadership at NGA, your willingness to always push, push, push, and your recognition that in many ways we need to change our models and how we make sure we make better use of our commercial and other partners

Today's open hearing comes at an important time for our Nation and the world As I look over the witnesses' statements for the record, I'm struck by the multiplicity of threats our Nation continues to face, from new threats like cyber and online influence, to those that we're more familiar with, like terrorism, extremism, proliferation of WMDs, rogue actors like Iran and North Korea, and regional instability

We've also seen, and see on a regular basis, daily basis with some of the news yesterday, an increasingly adversarial stance of major powers like Russia and China At the forefront of our Nation's defenses against these threats stand the professional men and women of the Intelligence Community who you represent It is, I believe, unconscionable that some of these men and women, and in particular the FBI, Department of Homeland Security, State Department, and others were forced to work without pay for five weeks because of the Government shutdown This is no way to run a country We count on the intelligence and law enforcement professionals to protect us We cannot ask them to do so with no pay and facing threats of eviction or losing their health insurance The method of running government via shutdown brinkmanship must come to an end

The myriad threats we face must also be faced in tandem with our allies and partners around the world As former Secretary of Defense Mattis wrote in his resignation letter, quote, while the U S remains the indispensable Nation in the free world, we cannot protect our interests or serve the role effectively without maintain-

ing strong alliances and showing respect to those allies, end quote. I think that is a lesson we all need to take to heart.

Of the multiple threats we face, I would highlight two that I hope we can especially dive into. First, Russia's use of social media to amplify divisions in our society and to influence our democratic process. This is an area that I know was highlighted in our worldwide threat hearing last year, and the concern that we and the IC have that Russia would continue its malign activities to try to influence the 2018 elections. While we did see Russia continue to try to divide Americans on social media, and we saw cyber activities by unknown actors targeting our election infrastructure in 2018, the good news—in particular General Nakasone, I commend you—is, I think, we did a much better job.

The question, though, is how do we prepare ourselves for 2020? How do we make sure that we're fully organized? What is the IC's role in fighting this disinformation threat? And how can we build upon public-private partnerships with online social media companies in a way that works for both sides? This is a problem, as the Chairman has mentioned, with the question around deepfakes and other areas that technology is only going to make more difficult.

The second issue I'd hope that you would all address today is the threat from China, particularly in the field of technology. I think we all saw the Justice Department announcement yesterday about Huawei. I have to say as a former entrepreneur and venture capitalist, I long held the view that an economically advanced China would eventually become a responsible global citizen that would join the World Trade Organization, and whose system would ultimately be liberalized by market-based economies.

Unfortunately, what we've seen, particularly in the last two or three years, is the opposite. With the consolidation of power by the Communist Chinese party and with President Xi emphasizing nationalistic tendencies, an aggressive posture towards those nations on China's periphery, and an economic policy that seeks by hook or by crook to catch up to and surpass the United States economically—especially in the areas of technology like AI, machine learning, biotech, 5G, and other related areas. Especially concerning have been the efforts of big Chinese tech companies which are beholden to the Communist Chinese party to acquire sensitive technology, replicate it, and undermine the market share of US firms with the help of the Chinese state.

I want to thank DNI Director Coats and FBI Director Wray as well as DHS for working with the Committee to take seriously the threat from China's whole-of-society approach to technology acquisition and to jointly reach out to our business community with whom we must work in partnership to begin to address these issues. Unfortunately, we've still got a long way to go and while Director Coats particularly you—we've gone on some of these roadshows together with the Chairman—I think we need much more of those going forward.

I want to ensure that the IC is tracking the direction of China's tech giants and to make sure that we counter those efforts, particularly as so many of them are beholden to the Chinese government. The truth is this is a challenge that will only continue to grow.

I also in closing want to thank not only you but all of the men and women who stand behind your organizations, who work day in and day out to keep our Nation safe. I look forward to this public hearing.

Thank you, Mr. Chairman. I yield.

Chairman BURR: I thank the Vice Chairman. Before I recognize Director Coats for his testimony, let me say to our witnesses: a number of the members of this Committee have competing committee meetings right now on very important things, so members are going to be in and out. Please don't take that as a sign of any disinterest in your testimony or your answers, but there are a lot of things going on on the Hill today that are priorities from a standpoint of legislative activity.

Director Coats, it is my understanding you are going to give one opening statement for the entire group and then we'll move to questions?

Director COATS: Yes, sir.

Chairman BURR: The floor is yours.

STATEMENT OF DANIEL R. COATS, DIRECTOR OF NATIONAL INTELLIGENCE; ACCOMPANIED BY: GINA HASPEL, DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY; GEN. PAUL NAKASONE, DIRECTOR OF THE NATIONAL SECURITY AGENCY; LT. GEN. ROBERT ASKLEY, DIRECTOR OF THE DEFENSE INTELLIGENCE AGENCY; CHRISTOPHER WRAY, DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION; AND ROBERT CARDILLO, DIRECTOR OF THE NATIONAL GEOSPATIAL- INTELLIGENCE AGENCY

Director COATS: Mr. Chairman and Mr. Vice Chairman, members of the Committee, we are here today and I'm here today with these exceptional people who I have the privilege to work with. We are a team that works together in making sure that we can do everything we possibly can to bring the intelligence necessary to our policymakers, to this Committee, and others relative to what decisions they might have to make given this ever-changing world that we are facing right now.

During my tenure as DNI, now two years in, I have told our workforce over and over that our mission was to seek the truth and speak the truth and we work to enhance, to agree with, and enforce that mission on a daily basis. I want our people to get up in the morning to work to think that this is what our job is. Despite the swirl of politics that swirls around on not only the Capitol but the world, our mission is to keep our heads down, our focus on the mission that we have to achieve in order to keep American people safe, and our policy makers aware of what's happening.

So truly the efforts of people sitting here at this table and all of their employees and all of our components is not really released for the public to know well about, but we continue to value our relationship with this Committee in terms of how we share information, how we respond to your legitimate questions that you bring to us and tasks for us, and we value very much the relationship that we have with this Committee.

My goal today is to responsibly convey to you and the American people in this unclassified hearing the true nature of the current

environment and in the interest of time I'd also like to refer you to my statement for the record for a more complete threat picture. As I stated in my recent remarks during the release of the National Intelligence Strategy, we face significant changes in the domestic and global environment that have resulted in an increasingly complex and uncertain world and we must be ready. We must be ready to meet 21st-century challenges and recognize the emerging threats.

The composition of the current threats we face is a toxic mix of strategic competitors, regional powers, weak or failed states, and non-state actors using a variety of tools in overt and subtle ways to achieve their goals. The scale and scope of the various threats facing the United States and our immediate interest worldwide is likely to further intensify this year. It is increasingly a challenge to prioritize which threats are of greatest importance.

I first would like to mention election security. This has been and will continue to be a top priority for the Intelligence Community. We assess that foreign actors will view the 2020 U.S. elections as an opportunity to advance their interests. We expect them to refine their capabilities and add new tactics as they learn from each other's experiences and efforts in previous elections. On the heels of our successful efforts to protect the integrity of the 2018 midterm elections, we are now focused on incorporating lessons learned in preparation for the 2020 elections.

I would now like to turn to the variety of threats that currently exist and may materialize in the coming year. I would like to begin with remarks on what I would describe as the big four: China, Russia, North Korea, and Iran—all of which pose unique threats to the United States and our partners. China's actions reflect a long-term strategy to achieve global superiority. Beijing's global ambition continues to restrict the personal freedoms of its citizens while strictly enforcing obedience to Chinese leadership with very few remaining checks on President Xi's power.

In its efforts to diminish U.S. influence and extend its own economic, political, and military reach, Beijing will seek to tout a distinctly Chinese fusion of strongman autocracy and a form of Western-style capitalism as a development model and implicit alternative to democratic values and institutions. These efforts will include the use of its intelligence and influence apparatus to shape international views and gain advantages over its competitors including especially the United States.

China's pursuit of intellectual property, sensitive research and development plans, and the U.S. person data remains a significant threat to the United States Government and the private sector. China's military capabilities and reach will continue to grow as it invests heavily in developing and fielding advanced weapons, and Beijing will use its military clout to expand its footprint and complement its broadening political and economic influence as we have seen with its One Belt One Road Initiative. As part of this trend we anticipate China will attempt to further solidify and increase its control within its immediate sphere of influence in the South China Sea and its global presence further abroad.

Whereas with China we must be concerned about the methodological and long-term efforts to capitalize on its past decade of a

growing economy and to match or overtake our superior global capabilities, Russia's approach relies on misdirection and obscuration as it seeks to destabilize and diminish our standing in the world.

Even as Russia faces a weakening economy, the Kremlin is stepping up its campaign to divide Western political and security institutions and undermine the post-World War II international order. We expect Russia will continue to wage its information war against democracies and to use social media to attempt to divide our societies. Russia's attack against Ukrainian naval vessels in November is just the latest example of the Kremlin's willingness to violate international norms, to coerce its neighbors and accomplish its goals. We also expect Russia will use cyber techniques to influence Ukraine's upcoming presidential election. The Kremlin has aligned Russia with repressive regimes in Cuba, Iran, North Korea, Syria, and Venezuela. And Moscow's relationship with Beijing is closer than it has been in many decades.

The Kremlin is also stepping up its engagement in the Middle East, Africa, and Southeast Asia, using weapons sales, private security firms, and energy deals to advance its global influence. Regarding North Korea, the regime has halted its provocative behavior related to its WMD program. North Korea has not conducted any nuclear-capable missile or nuclear tests in more than a year and it has dismantled some of its nuclear infrastructure. As well, Kim Jong-Un continues to demonstrate openness to the denuclearization of the Korean Peninsula.

Having said that, we currently assess that North Korea will seek to retain its WMD capabilities and is unlikely to completely give up its nuclear weapons and production capabilities because its leaders ultimately view nuclear weapons as critical to regime survival. Our assessment is bolstered by our observations of some activity that is inconsistent with full denuclearization. While we assess that sanctions on exports have been effective and largely maintained, North Korea seeks to mitigate the effects of the U.S.-led pressure campaign through diplomatic engagement, counter-pressure against the sanction's regime, and direct sanctions evasion.

Now let me discuss Iran. The Iranian regime will continue pursuing regional ambitions and improved military capabilities, even while its own economy is weakening by the day. Domestically, regime hardliners will be more emboldened to challenge rivals' interests and we expect more unrest in Iran in recent months. Tehran continues to sponsor terrorism as the recent European arrests of Iranian operatives plotting attacks in Europe demonstrate. We expect Iran will continue supporting the Houthis in Yemen and Shia militants in Iraq while developing indigenous military capabilities that threaten U.S. forces and allies in the region.

Iran maintains the largest inventory of ballistic missiles in the Middle East. And while we do not believe Iran is currently undertaking activities we judge necessary to produce a nuclear device, Iranian officials have publicly threatened to push the boundaries of the JCPOA restrictions if Iran does not gain the tangible financial benefits it expected from the deal. Iran's efforts to consolidate its influence in Syria and arm Hezbollah have prompted Israeli airstrikes. These actions underscore our concerns for a long-term tra-

jectory of Iranian influence in the region and the risk of conflict escalation

All four of these states that I have just mentioned—China, Russia, North Korea, and Iran—are advancing their cyber capabilities, which are relatively low-cost and growing in potency and severity. This includes threatening both minds and machines in an expanding number of ways, such as stealing information, attending to influence populations, or developing ways to disrupt critical infrastructures. As the world becomes increasingly interconnected, we expect these actors and others to rely more and more on cyber capabilities when seeking to gain political, economic, and military advantages over the United States and its allies and partners.

Now that I've covered the big four, I'll quickly hit on some regional and transnational threats. In the Middle East, President Bashar al-Assad has largely defeated the opposition and is now seeking to regain control over all of Syrian territory. Remaining pockets of ISIS and opposition fighters will continue, we assess, to stoke violence as we have seen in incidents happening in the Idlib Province of Syria. The regime will focus on retaking territory while seeking to avoid conflict with Israel and Turkey.

And with respect to Turkey, we assess it is in the midst of a transformation of its political and national identity that will make Washington's relations with Ankara increasingly difficult to manage during the next five years. Turkey will continue to see the PKK and related Kurdish groups as the main threat to their sovereignty. Under President Erdogan, U.S./Turkey relations will be important but not necessarily decisive for Ankara.

In Iraq, the underlying political and economic factors that facilitated the rise of ISIS persist, and Iraqi Shia militants' attempts to further entrench their role in the state with the assistance of Iran will increase the threat to U.S. personnel. In Yemen, where 75 percent of the population is reliant on foreign assistance, neither side of the conflict seems committed to end the fighting, and the humanitarian impact of the conflict in 2019 will further compound already acute problems.

In Saudi Arabia, public support for the royal family appears to remain high, even in the wake of the murder of journalist Jamal Khashoggi and the Kingdom's continued involvement in the Yemen conflict that has generated global pushback. In South Asia, the focus of the region will be centered on the potential turmoil surrounding Afghanistan's upcoming presidential election, ongoing negotiations with the Taliban, and the Taliban's large-scale recent attacks.

We assess neither the Afghan government nor the Taliban will be able to gain a strategic advantage in the Afghan war in the coming war year, even if Coalition support remains at current levels. However, current efforts to achieve an agreement with the Taliban and decisions on a possible withdrawal of U.S. troops could play a key role in shaping the direction of the country in the coming years. Militant groups supported by Pakistan will continue to take advantage of their safe haven in Pakistan to plan and conduct attacks in neighboring countries and possibly beyond, and we remain concerned about Pakistan's continued development and control of nuclear weapons.

In Africa, several countries are facing significant challenges that threaten their stability, which could reverberate throughout the region. Libya remains unstable in various groups—and various groups continue to be supported by a variety of foreign actors and competing goals. In the Democratic Republic of Congo, a new government will be challenged to deal with ongoing violence by multiple armed groups and the outbreak of your Ebola in the east of the country. And instability is growing in Sudan, where the population is angry at the country's direction and President Bashir's leadership.

In Europe, political, economic, and social trends will increase political uncertainty and complicate efforts to push back against some autocratic tendencies. Meanwhile, the possibility of a no deal Brexit, in which the UK exits the EU without an agreement, remains. This would cause economic disruptions that could substantially weaken the UK and Europe. We anticipate that the evolving landscape in Europe will lead to additional challenges to US interests as Russia and China intensify their efforts to build influence there at the expense of the United States.

In the Western Hemisphere, flagging economies, migration flows, corruption, narcotics, trafficking, and anti-US autocrats will challenge US interests.

Venezuela is at a crossroads as its economy faces further cratering and political leaders vie for control, all of which are likely to contribute to the unprecedented migration of Venezuelans. We expect the attempts by Cuba, Russia, and to some extent China to prop up the Maduro regime's security or financing will lead to additional efforts to exploit the situation in exchange for access, mostly to Venezuelan oil.

We assessed that Mexico, under new leadership, will pursue cooperation with the United States as it tries to reduce violence and address socioeconomic issues, but authorities still do not have the capability to fully address the production, the flow, and trafficking of the drug cartels. High crime rates and weak job markets will continue to spur U.S.-bound migrants from El Salvador, Guatemala, and Honduras.

To close my remarks, I would like to address several challenges that span the globe. I already mentioned the increased use of cyber capabilities by nefarious actors, but we must be mindful of the proliferation of other threats beginning with weapons of mass destruction. In addition to nuclear weapons, we have heightened concerns about chemical and biological weapons. We assess that North Korea, Russia, Syria, and ISIS have all used chemical weapons over the past two years, which threatens international norms and may portend future use.

The threat from biological weapons has become more diverse as they can be employed in a variety of ways and their development is made easier by dual use technologies. We expect foreign governments to expand their use of space-based reconnaissance, communications, and navigation systems, and China and Russia will continue training and equipping their military space forces and fielding new anti-satellite weapons to hold US and allied space services at risk. Space has become the new global frontier, with competition from numerous nations.

Terrorism remains a persistent threat and, in some ways, is positioned to increase in 2019. The conflicts in Iraq and Syria have generated a large pool of skilled and battle-hardened fighters who remained dispersed throughout the region.

While ISIS is nearing territorial defeat in Iraq and Syria, the group has returned to its guerrilla warfare roots while continuing to plot attacks and direct its supporters worldwide. ISIS is intent on resurging and still commands thousands of fighters in Iraq and Syria. Meanwhile, al-Qaeda is showing signs of confidence as its leaders work to strengthen their networks and encourage attacks against Western interests. We saw this most recently in Kenya as Al-Shabaab attacked a hotel frequented by tourists and Westerners.

Lastly—and this is important because both the Chairman and Vice Chairman have stated this, and it's something that I think is a challenge to the IC and to the American people—the speed and adaptation of new technology will continue to drive the world in which we live in ways we have yet to fully understand. Advances in areas such as artificial intelligence, communication technologies, biotechnology, and materials sciences are changing our way of life, but our adversaries are also investing heavily into these technologies, and they are likely to create new and unforeseen challenges to our health, economy, and security.

Mr. Chairman and Mr. Vice Chairman and members of the Committee, this becomes a major challenge to the IC community to stay ahead of the game and to have the resources directed toward how we need to address these threats to the United States. We look forward to spending more time discussing this issue as both of you have raised. With that, I'll leave it there. We look forward to answering your questions about these and other unmentioned threats.

[The prepared joint statement of the witnesses follows.]

20089

890

11



STATEMENT FOR THE RECORD

WORLDWIDE THREAT ASSESSMENT
OF THE US INTELLIGENCE COMMUNITY

Daniel R. Coats
Director of National Intelligence

Senate Select Committee on Intelligence

29 JANUARY 2019

20090

891

12

STATEMENT FOR THE RECORD

WORLDWIDE THREAT ASSESSMENT of the US INTELLIGENCE COMMUNITY

January 29, 2019

INTRODUCTION

Chairman Burr, Vice Chairman Warner, Members of the Committee, thank you for the invitation to offer the United States Intelligence Community's 2019 assessment of threats to US national security. My statement reflects the collective insights of the Intelligence Community's extraordinary women and men, whom I am privileged and honored to lead. We in the Intelligence Community are committed every day to providing the nuanced, independent, and unvarnished intelligence that policymakers, warfighters, and domestic law enforcement personnel need to protect American lives and America's interests anywhere in the world.

The order of the topics presented in this statement does not necessarily indicate the relative importance or magnitude of the threat in the view of the Intelligence Community.

Information available as of 17 January 2019 was used in the preparation of this assessment.

ATTENTION This product contains US persons information, which has been included consistent with applicable laws, directives, and policies. Handle in accordance with recipient's intelligence oversight and/or information handling procedures.

CONTENTS

INTRODUCTION	2
CONTENTS	3
FOREWORD	4
GLOBAL THREATS	5
CYBER	5
ONLINE INFLUENCE OPERATIONS AND ELECTION INTERFERENCE	7
WEAPONS OF MASS DESTRUCTION AND PROLIFERATION	8
TERRORISM	10
COUNTERINTELLIGENCE	13
EMERGING AND DISRUPTIVE TECHNOLOGIES AND THREATS TO ECONOMIC COMPETITIVENESS	15
SPACE AND COUNTERSPACE	16
TRANSNATIONAL ORGANIZED CRIME	18
ECONOMICS AND ENERGY	19
HUMAN SECURITY	21
REGIONAL THREATS	24
CHINA AND RUSSIA	24
EAST ASIA	24
MIDDLE EAST AND NORTH AFRICA	29
SOUTH ASIA	35
RUSSIA AND EURASIA	36
EUROPE	38
AFRICA	39
THE WESTERN HEMISPHERE	40

FOREWORD

Threats to US national security will expand and diversify in the coming year, driven in part by China and Russia as they respectively compete more intensely with the United States and its traditional allies and partners. This competition cuts across all domains, involves a race for technological and military superiority, and is increasingly about values. Russia and China seek to shape the international system and regional security dynamics and exert influence over the politics and economies of states in all regions of the world and especially in their respective backyards.

- China and Russia are more aligned than at any point since the mid-1950s, and the relationship is likely to strengthen in the coming year as some of their interests and threat perceptions converge, particularly regarding perceived US unilateralism and interventionism and Western promotion of democratic values and human rights.
- As China and Russia seek to expand their global influence, they are eroding once well-established security norms and increasing the risk of regional conflicts, particularly in the Middle East and East Asia.
- At the same time, some US allies and partners are seeking greater independence from Washington in response to their perceptions of changing US policies on security and trade and are becoming more open to new bilateral and multilateral partnerships.

The post-World War II international system is coming under increasing strain amid continuing cyber and WMD proliferation threats, competition in space, and regional conflicts. Among the disturbing trends are hostile states and actors' intensifying online efforts to influence and interfere with elections here and abroad and their use of chemical weapons. Terrorism too will continue to be a top threat to US and partner interests worldwide, particularly in Sub-Saharan Africa, the Middle East, South Asia, and Southeast Asia. The development and application of new technologies will introduce both risks and opportunities, and the US economy will be challenged by slower global economic growth and growing threats to US economic competitiveness.

- Migration is likely to continue to fuel social and interstate tensions globally, while drugs and transnational organized crime take a toll on US public health and safety. Political turbulence is rising in many regions as governance erodes and states confront growing public health and environmental threats.
- Issues as diverse as Iran's adversarial behavior, deepening turbulence in Afghanistan, and the rise of nationalism in Europe all will stoke tensions.

GLOBAL THREATS

CYBER

Our adversaries and strategic competitors will increasingly use cyber capabilities—including cyber espionage, attack, and influence—to seek political, economic, and military advantage over the United States and its allies and partners China, Russia, Iran, and North Korea increasingly use cyber operations to threaten both minds and machines in an expanding number of ways—to steal information, to influence our citizens, or to disrupt critical infrastructure

At present, China and Russia pose the greatest espionage and cyber attack threats, but we anticipate that all our adversaries and strategic competitors will increasingly build and integrate cyber espionage, attack, and influence capabilities into their efforts to influence US policies and advance their own national security interests. In the last decade, our adversaries and strategic competitors have developed and experimented with a growing capability to shape and alter the information and systems on which we rely. For years, they have conducted cyber espionage to collect intelligence and targeted our critical infrastructure to hold it at risk. They are now becoming more adept at using social media to alter how we think, behave, and decide. As we connect and integrate billions of new digital devices into our lives and business processes, adversaries and strategic competitors almost certainly will gain greater insight into and access to our protected information.

China

China presents a persistent cyber espionage threat and a growing attack threat to our core military and critical infrastructure systems. China remains the most active strategic competitor responsible for cyber espionage against the US Government, corporations, and allies. It is improving its cyber attack capabilities and altering information online, shaping Chinese views and potentially the views of US citizens—an issue we discuss in greater detail in the Online Influence Operations and Election Interference section of this report.

- Beijing will authorize cyber espionage against key US technology sectors when doing so addresses a significant national security or economic goal not achievable through other means. We are also concerned about the potential for Chinese intelligence and security services to use Chinese information technology firms as routine and systemic espionage platforms against the United States and allies.
- China has the ability to launch cyber attacks that cause localized, temporary disruptive effects on critical infrastructure—such as disruption of a natural gas pipeline for days to weeks—in the United States.

Russia

We assess that Russia poses a cyber espionage, influence, and attack threat to the United States and our allies. Moscow continues to be a highly capable and effective adversary, integrating cyber espionage, attack, and influence operations to achieve its political and military objectives. Moscow is now staging cyber attack assets to allow it to disrupt or damage US civilian and military infrastructure during a crisis and poses a significant cyber influence threat—an issue discussed in the Online Influence Operations and Election Interference section of this report.

- Russian intelligence and security services will continue targeting US information systems, as well as the networks of our NATO and Five Eyes partners, for technical information, military plans, and insight into our governments' policies
- Russia has the ability to execute cyber attacks in the United States that generate localized, temporary disruptive effects on critical infrastructure—such as disrupting an electrical distribution network for at least a few hours—similar to those demonstrated in Ukraine in 2015 and 2016. Moscow is mapping our critical infrastructure with the long-term goal of being able to cause substantial damage.

Iran

Iran continues to present a cyber espionage and attack threat. Iran uses increasingly sophisticated cyber techniques to conduct espionage, it is also attempting to deploy cyber attack capabilities that would enable attacks against critical infrastructure in the United States and allied countries. Tehran also uses social media platforms to target US and allied audiences, an issue discussed in the Online Influence Operations and Election Interference section of this report.

- Iranian cyber actors are targeting US Government officials, government organizations, and companies to gain intelligence and position themselves for future cyber operations.
- Iran has been preparing for cyber attacks against the United States and our allies. It is capable of causing localized, temporary disruptive effects—such as disrupting a large company's corporate networks for days to weeks—similar to its data deletion attacks against dozens of Saudi governmental and private-sector networks in late 2016 and early 2017.

North Korea

North Korea poses a significant cyber threat to financial institutions, remains a cyber espionage threat, and retains the ability to conduct disruptive cyber attacks. North Korea continues to use cyber capabilities to steal from financial institutions to generate revenue. Pyongyang's cybercrime operations include attempts to steal more than \$1.1 billion from financial institutions across the world—including a successful cyber heist of an estimated \$81 million from the New York Federal Reserve account of Bangladesh's central bank.

Nonstate and Unattributed Actors

Foreign cyber criminals will continue to conduct for-profit, cyber-enabled theft and extortion against US networks. We anticipate that financially motivated cyber criminals very likely will expand their targets in the United States in the next few years. Their actions could increasingly disrupt US critical infrastructure in the health care, financial, government, and emergency service sectors, based on the patterns of activities against these sectors in the last few years.

Terrorists could obtain and disclose compromising or personally identifiable information through cyber operations, and they may use such disclosures to coerce, extort, or to inspire and enable physical attacks against their victims. Terrorist groups could cause some disruptive effects—defacing websites or executing denial-of-service attacks against poorly protected networks—with little to no warning.

The growing availability and use of publicly and commercially available cyber tools is increasing the overall volume of unattributed cyber activity around the world. The use of these tools increases the risk of misattributions and misdirected responses by both governments and the private sector

ONLINE INFLUENCE OPERATIONS AND ELECTION INTERFERENCE

Our adversaries and strategic competitors probably already are looking to the 2020 US elections as an opportunity to advance their interests. More broadly, US adversaries and strategic competitors almost certainly will use online influence operations to try to weaken democratic institutions, undermine US alliances and partnerships, and shape policy outcomes in the United States and elsewhere. We expect our adversaries and strategic competitors to refine their capabilities and add new tactics as they learn from each other's experiences, suggesting the threat landscape could look very different in 2020 and future elections.

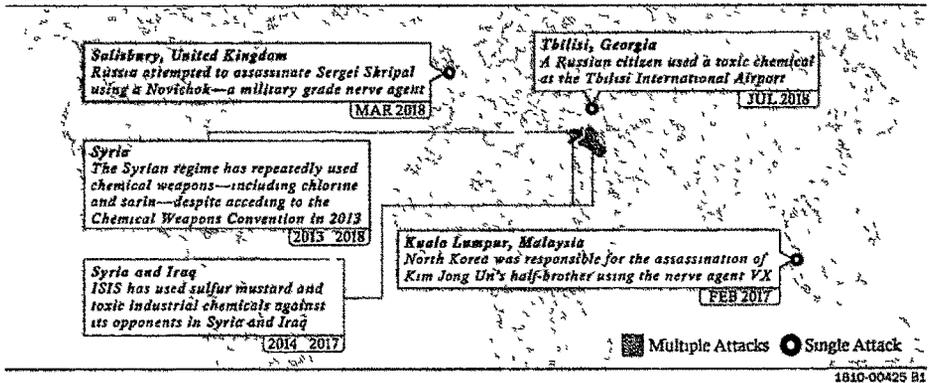
- Russia's social media efforts will continue to focus on aggravating social and racial tensions, undermining trust in authorities, and criticizing perceived anti-Russia politicians. Moscow may employ additional influence toolkits—such as spreading disinformation, conducting hack-and-leak operations, or manipulating data—in a more targeted fashion to influence US policy, actions, and elections
- Beijing already controls the information environment inside China, and it is expanding its ability to shape information and discourse relating to China abroad, especially on issues that Beijing views as core to party legitimacy, such as Taiwan, Tibet, and human rights. China will continue to use legal, political, and economic levers—such as the lure of Chinese markets—to shape the information environment. It is also capable of using cyber attacks against systems in the United States to censor or suppress viewpoints it deems politically sensitive
- Iran, which has used social media campaigns to target audiences in both the United States and allied nations with messages aligned with Iranian interests, will continue to use online influence operations to try to advance its interests
- Adversaries and strategic competitors probably will attempt to use deep fakes or similar machine-learning technologies to create convincing—but false—image, audio, and video files to augment influence campaigns directed against the United States and our allies and partners

Adversaries and strategic competitors also may seek to use cyber means to directly manipulate or disrupt election systems—such as by tampering with voter registration or disrupting the vote tallying process—either to alter data or to call into question our voting process. Russia in 2016 and unidentified actors as recently as 2018 have already conducted cyber activity that has targeted US election infrastructure, but we do not have any intelligence reporting to indicate any compromise of our nation's election infrastructure that would have prevented voting, changed vote counts, or disrupted the ability to tally votes

WEAPONS OF MASS DESTRUCTION AND PROLIFERATION

We expect the overall threat from weapons of mass destruction (WMD) to continue to grow during 2019, and we note in particular the threat posed by chemical warfare (CW) following the most significant and sustained use of chemical weapons in decades. This trend erodes international norms against CW programs and shifts the cost-benefit analysis such that more actors might consider developing or using chemical weapons.

Chemical Attacks Since 2013



We assess that North Korea, Russia, Syria, and ISIS have used chemical weapons on the battlefield or in assassination operations during the past two years. These attacks have included traditional CW agents, toxic industrial chemicals, and the first known use of a Novichok nerve agent.

The threat from biological weapons has also become more diverse as BW agents can be employed in a variety of ways and their development is made easier by dual-use technologies.

North Korea

Pyeongyang has not conducted any nuclear-capable missile or nuclear tests in more than a year, has declared its support for the denuclearization of the Korean Peninsula, and has reversibly dismantled portions of its WMD infrastructure. However, North Korea retains its WMD capabilities, and the IC continues to assess that it is unlikely to give up all of its WMD stockpiles, delivery systems, and production capabilities. North Korean leaders view nuclear arms as critical to regime survival. For more explanation of the North Korea-WMD issue, see the Regional Threats section of this report.

- In his 2019 New Year's address, Kim Jong Un pledged North Korea would "go toward" complete denuclearization and promised not to make, test, use, or proliferate nuclear weapons. However, he conditioned progress on US "practical actions." The regime tied the idea of denuclearization in the past to changes in diplomatic ties, economic sanctions, and military activities.
- We continue to observe activity inconsistent with full denuclearization. In addition, North Korea has for years underscored its commitment to nuclear arms, including through an order in 2018 to mass-produce weapons and an earlier law—and constitutional change—affirming the country's nuclear status.

North Korea Dismantles Portions of Its Nuclear Test Site

North Korea invited foreign press representatives to witness its explosive destruction of portions of its nuclear test site on 24 May 2018.



1810 00425 A U

Russia

We assess that Russia will remain the most capable WMD adversary through 2019 and beyond, developing new strategic and nonstrategic weapons systems.

- Russian President Vladimir Putin used his annual address in March 2018 to publicly acknowledge several of these weapons programs, including a new ICBM designed to penetrate US missile defense systems, an intercontinental-range, hypersonic glide vehicle, a maneuverable, air-launched missile to strike regional targets, a long-range, nuclear-powered cruise missile, and a nuclear-powered, transoceanic underwater vehicle.
- Russia has also developed and fielded a ground-launched cruise missile (GLCM) that the United States has determined violates the Intermediate-Range Nuclear Forces (INF) Treaty.
- Moscow probably believes that the new GLCM provides sufficient military advantages to make it worth the risk of political repercussions from a violation.

China

We assess that China will continue to expand and diversify its WMD capabilities.

- China continues its multiyear effort to modernize its nuclear missile forces, including deploying sea-based weapons, improving its road-mobile and silo-based weapons, and testing hypersonic glide vehicles. These new capabilities are intended to ensure the viability of China's strategic deterrent by providing a second-strike capability and a way to overcome missile defenses. The Chinese have also publicized their intent to form a nuclear triad by developing a nuclear-capable, next-generation bomber.

Iran

We continue to assess that Iran is not currently undertaking the key nuclear weapons-development activities we judge necessary to produce a nuclear device. However, Iranian officials have publicly threatened to reverse some of Iran's Joint Comprehensive Plan of Action (JCPOA) commitments—and resume nuclear activities that the JCPOA limits—if Iran does not gain the tangible trade and investment benefits it expected from the deal.

- In June 2018, Iranian officials started preparations, allowable under the JCPOA, to expand their capability to manufacture advanced centrifuges
- Also in June 2018, the Atomic Energy Organization of Iran (AEOI) announced its intent to resume producing natural uranium hexafluoride (UF₆) and prepare the necessary infrastructure to expand its enrichment capacity within the limits of the JCPOA
- Iran continues to work with other JCPOA participants—China, the European Union, France, Germany, Russia, and the United Kingdom—to find ways to salvage economic benefits from its continued implementation of the JCPOA. Iran has extended the amount of time it would need to produce enough fissile material for a nuclear weapon from a few months to about one year

Iran's ballistic missile programs, which include the largest inventory of ballistic missiles in the region, continue to pose a threat to countries across the Middle East. Iran's work on a space launch vehicle (SLV)—including on its Smorgh—shortens the timeline to an ICBM because SLVs and ICBMs use similar technologies

The United States determined in 2018 that Iran is in noncompliance with its obligations under the Chemical Weapons Convention (CWC), and we remain concerned that Iran is developing agents intended to incapacitate for offensive purposes and did not declare all of its traditional CW agent capabilities when it ratified the CWC

South Asia

The continued growth and development of Pakistan and India's nuclear weapons programs increase the risk of a nuclear security incident in South Asia, and the new types of nuclear weapons will introduce new risks for escalation dynamics and security in the region Pakistan continues to develop new types of nuclear weapons, including short-range tactical weapons, sea-based cruise missiles, air-launched cruise missiles, and longer range ballistic missiles India this year conducted its first deployment of a nuclear-powered submarine armed with nuclear missiles

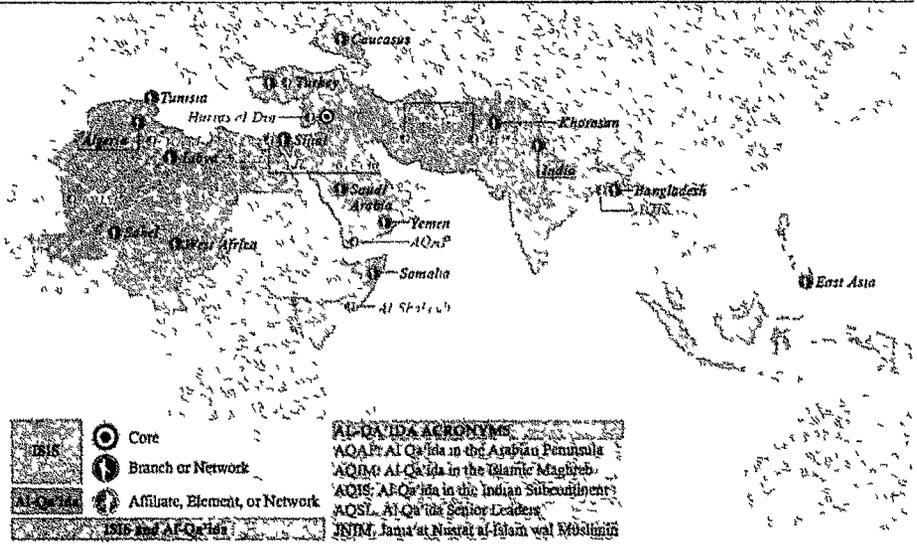
TERRORISM

Sunni Violent Extremists

Global jihadists in dozens of groups and countries threaten local and regional US interests, despite having experienced some significant setbacks in recent years, and some of these groups will remain intent on striking the US homeland. Prominent jihadist ideologues and media platforms continue to call for and justify efforts to attack the US homeland.

- Global jihadist groups in parts of Africa and Asia in the last year have expanded their abilities to strike local US interests, stoke insurgencies, and foster like-minded networks in neighboring countries
- The conflicts in Iraq and Syria have generated a large pool of battle-hardened fighters with the skills to conduct attacks and bolster terrorist groups' capabilities

Al-Qa'ida and ISIS as of 2018



NOTE: Groups are not present in all parts of identified countries.

1810-00428 B-U

ISIS

ISIS still commands thousands of fighters in Iraq and Syria, and it maintains eight branches, more than a dozen networks, and thousands of dispersed supporters around the world, despite significant leadership and territorial losses. The group will exploit any reduction in CT pressure to strengthen its clandestine presence and accelerate rebuilding key capabilities, such as media production and external operations. ISIS very likely will continue to pursue external attacks from Iraq and Syria against regional and Western adversaries, including the United States.

- ISIS is perpetrating attacks in Iraq and Syria to undermine stabilization efforts and retaliate against its enemies, exploiting sectarian tensions in both countries. ISIS probably realizes that controlling new territory is not sustainable in the near term. We assess that ISIS will seek to exploit Sunni grievances, societal instability, and stretched security forces to regain territory in Iraq and Syria in the long term.

Al-Qa'ida

Al-Qa'ida senior leaders are strengthening the network's global command structure and continuing to encourage attacks against the West, including the United States, although most al-Qa'ida affiliates' attacks to date have been small scale and limited to their regional areas. We expect that al-Qa'ida's global network will remain a CT challenge for the United States and its allies during the next year.

- Al-Qa'ida media continues to call for attacks against the United States, including in statements from regional al-Qa'ida leaders, reflecting the network's enduring efforts to pursue or inspire attacks in the West
- All al-Qa'ida affiliates are involved in insurgencies and maintain safe havens, resources, and the intent to strike local and regional US interests in Africa, the Middle East, and South Asia
- Al-Qa'ida affiliates in East and North Africa, the Sahel, and Yemen remain the largest and most capable terrorist groups in their regions. All have maintained a high pace of operations during the past year, despite setbacks in Yemen, and some have expanded their areas of influence. Al-Qa'ida elements in Syria, meanwhile, continue to undermine efforts to resolve that conflict, while the network's affiliate in South Asia provides support to the Taliban

Homegrown Violent Extremists

Homegrown violent extremists (HVEs) are likely to present the most acute Sunni terrorist threat to the United States, and HVE activity almost certainly will have societal effects disproportionate to the casualties and damage it causes.

- The United States' well-integrated Muslim population, fragmented HVE population, and high level of vigilance will ensure the United States remains a generally inhospitable operating environment for HVEs compared to many other Western countries. The isolated nature of self-radicalizing individuals, however, poses a continual challenge to law enforcement to identify them before they engage in violence. The frequency of attacks most likely will be very low compared to most other forms of criminal violence in the US, as long as US CT and law enforcement efforts remain constant
- Despite territorial losses in Iraq and Syria, ISIS's past actions and propaganda probably will inspire future HVE attacks, similar to the enduring influence of deceased al-Qa'ida ideologists, especially if ISIS can retain its prominence among global jihadist movements and continue to promote its violent message via social and mainstream media

Shia Actors

Iran

Iran almost certainly will continue to develop and maintain terrorist capabilities as an option to deter or retaliate against its perceived adversaries.

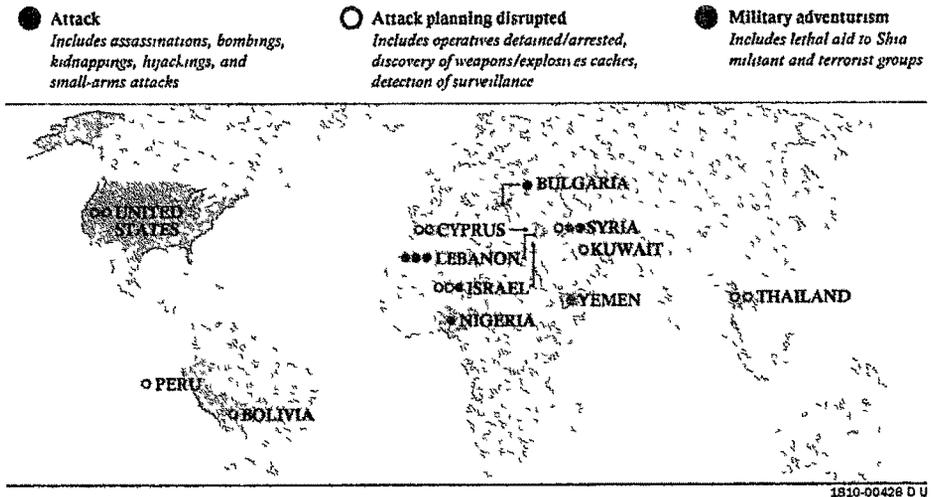
- In mid-2018, Belgium and Germany foiled a probable Iranian Ministry of Intelligence and Security (MOIS) plot to set off an explosive device at an Iranian opposition group gathering in Paris—an event that included prominent European and US attendees

Lebanese Hizballah

During the next year, Hizballah most likely will continue to develop its terrorist capabilities, which the group views as a valuable tool and one it can maintain with plausible deniability

- Hizballah most likely maintains the capability to execute a range of attack options against US interests worldwide

Lebanese Hizballah: Select Worldwide Operational Activity, 2012–18



Violent Ethno-supremacist and Ultranationalist Groups

Some violent ethno-supremacist and ultranationalist groups in Europe will employ violent tactics as they seek ways to cooperate against immigration and the perceived Islamization of Europe, posing a potential threat to US and allied interests.

- In the past two years, individuals with ties to violent ethno-supremacist groups in France, Sweden, and the United Kingdom have either carried out attacks on minorities and politicians or had their plots disrupted by authorities

COUNTERINTELLIGENCE

The United States faces a complex global foreign intelligence threat environment in 2019. Russia and China will continue to be the leading state intelligence threats to US interests, based on their services' capabilities, intent, and broad operational scopes. Other states also pose persistent threats, notably Iran and Cuba. Geopolitical, societal, and technological changes will increase opportunities for foreign

intelligence services and other entities—such as terrorists, criminals, and cyber actors—to collect on US activities and information to the detriment of US interests

- Penetrating the US national decisionmaking apparatus and the Intelligence Community will remain a key objective for numerous foreign intelligence services and other entities. In addition, targeting of national security information and proprietary technology from US companies and research institutions will remain a sophisticated and persistent threat

Russia

We expect that Russia's intelligence services will target the United States, seeking to collect intelligence, erode US democracy, undermine US national policies and foreign relationships, and increase Moscow's global position and influence.

China

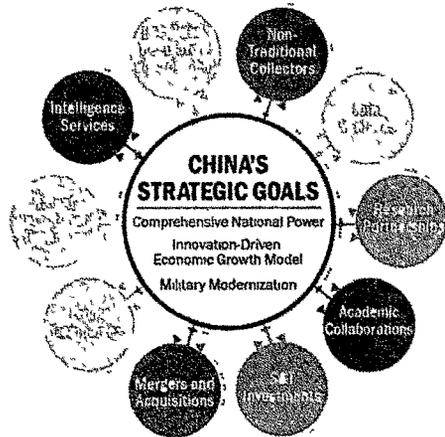
We assess that China's intelligence services will exploit the openness of American society, especially academia and the scientific community, using a variety of means

Iran and Cuba

We assess that Iran and Cuba's intelligence services will continue to target the United States, which they see as a primary threat. Iran continues to unjustly detain US citizens and has not been forthcoming about the case of former FBI agent Robert Levinson (USPER)

China's Technology Development Strategy

China takes a multifaceted, long-term, whole-of-government approach to foreign technology acquisition and indigenous technology development



1810-00427 B

Nonstate Actors

We assess that nonstate actors—including hacktivist groups, transnational criminals, and terrorist groups—will attempt to gain access to classified information to support their objectives. They are likely to improve their intelligence capabilities—to include recruiting sources and performing physical and technical surveillance—and they will use human, technical, and cyber means to perform their illicit activities and avoid detection and capture

EMERGING AND DISRUPTIVE TECHNOLOGIES AND THREATS TO ECONOMIC COMPETITIVENESS

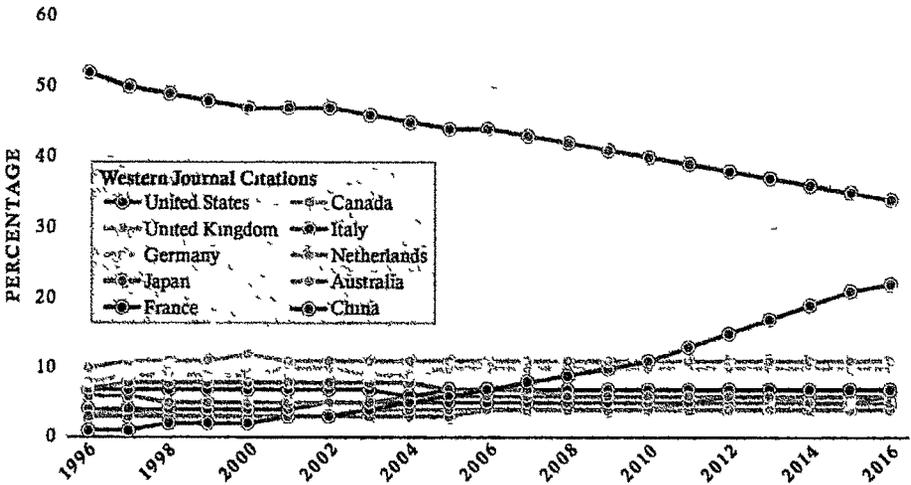
Strategic Outlook

For 2019 and beyond, the innovations that drive military and economic competitiveness will increasingly originate outside the United States, as the overall US lead in science and technology (S&T) shrinks, the capability gap between commercial and military technologies evaporates, and foreign actors increase their efforts to acquire top talent, companies, data, and intellectual property via licit and illicit means. Many foreign leaders, including Chinese President Xi Jinping and Russian President Vladimir Putin, view strong indigenous science and technology capabilities as key to their country's sovereignty, economic outlook, and national power.

Researchers Worldwide Citing More Foreign and Less US Research

During the past two decades, the US lead in S&T fields has been significantly eroded, most predominantly by China, which is well ahead in several areas, according to an analysis of Western journal publications.

However, the United States maintains an overall lead largely because we are at the forefront of the medical sciences, which account for almost a third of S&T publications worldwide.



1810 00427-A

Artificial Intelligence and Autonomy

The global race to develop artificial intelligence (AI)—systems that imitate aspects of human cognition—is likely to accelerate the development of highly capable, application-specific AI systems with national security implications. As academia, major companies, and large government programs continue to develop and deploy AI capabilities, AI-enhanced systems are likely to be trusted with increasing levels of autonomy and decisionmaking, presenting the world with a host of economic, military, ethical, and

privacy challenges. Furthermore, interactions between multiple advanced AI systems could lead to unexpected outcomes that increase the risk of economic miscalculation or battlefield surprise.

Information and Communications

Foreign production and adoption of advanced communication technologies, such as fifth-generation (5G) wireless networks, most likely will challenge US competitiveness and data security, while advances in quantum computing foreshadow challenges to current methods of protecting data and transactions. US data will increasingly flow across foreign-produced equipment and foreign-controlled networks, raising the risk of foreign access and denial of service. Foreign deployment of a large-scale quantum computer, even 10 or more years in the future, would put sensitive information encrypted with today's most widely used algorithms at greatly increased risk of decryption.

Biotechnology

Rapid advances in biotechnology, including gene editing, synthetic biology, and neuroscience, are likely to present new economic, military, ethical, and regulatory challenges worldwide as governments struggle to keep pace. These technologies hold great promise for advances in precision medicine, agriculture, and manufacturing, but they also introduce risks, such as the potential for adversaries to develop novel biological warfare agents, threaten food security, and enhance or degrade human performance.

Materials and Manufacturing

A global resurgence in materials science and manufacturing technology is likely to enable advanced states to create materials with novel properties and engineer structures not previously possible, while placing high-end manufacturing capabilities within reach of small groups and individuals. These developments are already supplementing or displacing traditional methods in most areas of manufacturing, from complex rocket-engine components to plastic desktop-printed toys, and they are enabling the development of a new generation of engineered materials that combine different materials in complex geometries to alter the overall material properties.

SPACE AND COUNTERSPACE

We assess that commercial space services will continue to expand; countries—including US adversaries and strategic competitors—will become more reliant on space services for civil and military needs, and China and Russia will field new counterspace weapons intended to target US and allied space capabilities.

Evolving, Accessible Space Capabilities

We continue to assess that the expansion of the global space industry will further extend space-enabled capabilities and space situational awareness to government, nonstate, and commercial actors in the next several years. All actors will increasingly have access to space-derived information services, such as imagery, weather, communications, and positioning, navigation, and timing (PNT).

- Global access to space services has expanded for civil, commercial, intelligence, and military purposes, in part because of technological innovation, private-sector investment, international partnerships, and demand from emerging markets

Adversary Use of Space

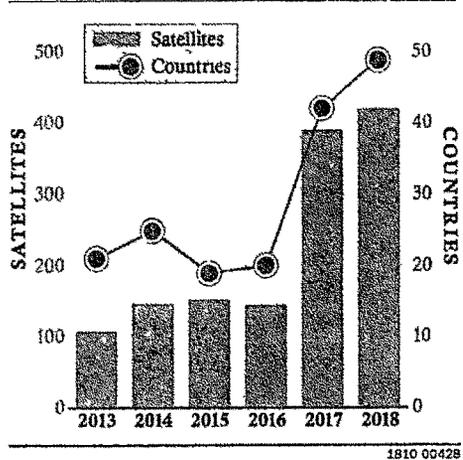
We expect foreign governments will continue efforts to expand their use of space-based reconnaissance, communications, and navigation systems—including by increasing the number of satellites, quality of capabilities, and applications for use. China and Russia are seeking to expand the full spectrum of their space capabilities, as exemplified by China's launch of its highest-resolution imagery satellite, Gaofen-11, in July 2018

Space Warfare and Counterspace Weapons

We assess that China and Russia are training and equipping their military space forces and fielding new antisatellite (ASAT) weapons to hold US and allied space services at risk, even as they push for international agreements on the nonweaponization of space

- Both countries recognize the world's growing reliance on space and view the capability to attack space services as a part of their broader efforts to deter an adversary from or defeat one in combat.
- The People's Liberation Army (PLA) has an operational ground-based ASAT missile intended to target low-Earth-orbit satellites, and China probably intends to pursue additional ASAT weapons capable of destroying satellites up to geosynchronous Earth orbit
- Russia is developing a similar ground-launched ASAT missile system for targeting low-Earth orbit that is likely to be operational within the next several years. It has fielded a ground-based laser weapon, probably intended to blind or damage sensitive space-based optical sensors, such as those used for remote sensing
- China's and Russia's proposals for international agreements on the nonweaponization of space do not cover multiple issues connected to the ASAT weapons they are developing and deploying, which has allowed them to pursue space warfare capabilities while maintaining the position that space must remain weapons free

Satellites Launched and Countries Owning the Satellites (2013–18)



TRANSNATIONAL ORGANIZED CRIME

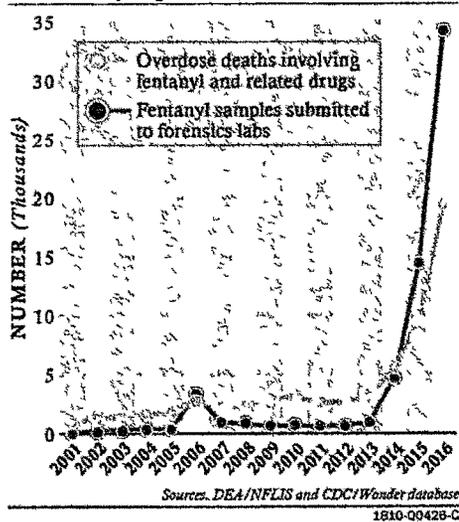
Global transnational criminal organizations and networks will threaten US interests and allies by trafficking drugs, exerting malign influence in weak states, threatening critical infrastructure, orchestrating human trafficking, and undermining legitimate economic activity.

Drug Trafficking

The foreign drug threat will pose continued risks to US public health and safety and will present a range of threats to US national security interests in the coming year. Violent Mexican traffickers, such as members of the Sinaloa Cartel and New Generation Jalisco Cartel, remain key to the movement of illicit drugs to the United States, including heroin, methamphetamine, fentanyl, and cannabis from Mexico, as well as cocaine from Colombia. Chinese synthetic drug suppliers dominate US-bound movements of so-called designer drugs, including synthetic marijuana, and probably ship the majority of US fentanyl, when adjusted for purity

- Approximately 70,000 Americans died from drug overdoses in 2017, a record high and a 10-percent increase from 2016, although the rate of growth probably slowed in early 2018, based on Centers for Disease Control (CDC) data

US Fentanyll Epidemic, 2001–16



- Increased drug fatalities are largely a consequence of surging production of the synthetic opioid fentanyl, in 2017, more than 28,000 Americans died from synthetic opioids other than methadone, including illicitly manufactured fentanyl. The CDC reports synthetic opioid-related deaths rose 846 percent between 2010 and 2017, while DHS reports that US seizures of the drug increased 313 percent from 2016 to 2017

Other Organized Crime Activities

Transnational criminal organizations and their affiliates are likely to expand their influence over some weak states, collaborate with US adversaries, and possibly threaten critical infrastructure

- Mexican criminals use bribery, intimidation, and violence to protect their drug trafficking, kidnapping-for-ransom, fuel-theft, gunrunning, extortion, and alien-smuggling enterprises
- Gangs based in Central America, such as MS-13, continue to direct some criminal activities beyond the region, including in the United States

Transnational organized crime almost certainly will continue to inflict human suffering, deplete natural resources, degrade fragile ecosystems, drive migration, and drain income from the productive—and taxable—economy.

- Human trafficking generates an estimated \$150 billion annually for illicit actors and governments that engage in forced labor, according to the UN’s International Labor Organization
- Wildlife poaching and trafficking, illegal, unregulated, unlicensed fishing, illicit mining, timber pilfering, and drug-crop cultivation harm biodiversity, as well as the security of the food supply, water quality and availability, and animal and human health
- One think tank study estimates that cybercrime, often facilitated by cryptocurrencies, and intellectual property theft resulted in \$600 million in losses in 2017, such crimes threaten privacy, harm economic safety, and sap intellectual capital

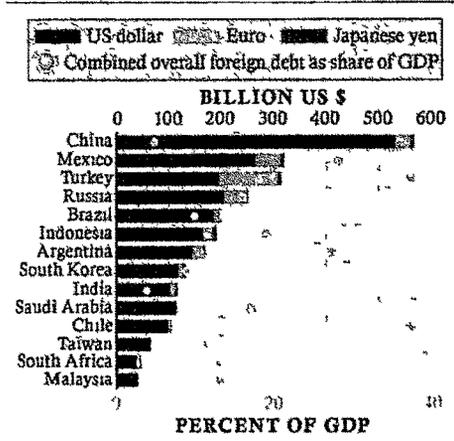
ECONOMICS AND ENERGY

Global growth—projected by the IMF to remain steady in 2019—faces downside risks as global trade tensions persist, many countries contend with high debt levels, and geopolitical tensions continue Average real growth in advanced economies, operating at close to full capacity, is projected by the IMF to slow in 2019, while emerging markets, key US trading partners, and China’s growth face headwinds

Emerging Markets

Uncertainty about global economic growth will challenge emerging markets—such as Argentina, Brazil, China, Mexico, South Africa, and Turkey—and especially those with weak fundamentals, heavy foreign financing, or close trade linkages with advanced economies. Commodity exporters will remain particularly vulnerable to downward pressure on prices from dampened demand.

Selected Emerging Market Foreign-Denominated Borrowing



Source: Bank for International Settlements
1810 00429

- Since early 2018, investors have pulled capital out of Brazil, India, Indonesia, and Turkey, among others, exacerbating large currency depreciations in those countries and making it more difficult for them to service their US-dollar-denominated debt during the next year
- Austerity measures imposed by countries to offset budget deficits could prove to be politically difficult to maintain, leading to risks of destabilizing protests, such as occurred in July 2018, when Haiti attempted to comply with an IMF program by reducing fuel subsidies and set off

nationwide protests that forced the Prime Minister and his cabinet to resign Argentina has agreed to IMF recommendations for austerity, reducing the risk to investors, and Turkey is pursuing its own austerity measures

Key US Trading Partners

Among major US trading partners the outlook is mixed, with progress being made on US-Canada-Mexico trade discussions but US-China trade frictions and Brexit posing risks to European growth and US-EU trade

- Mexico and Canada, whose economic prospects are tied closely to the United States-Mexico-Canada Agreement (USMCA), remain concerned about steel and aluminum tariffs and may delay ratifying the USMCA until those concerns are addressed
- US-EU trade, valued at \$1.2 trillion in 2017, would almost certainly suffer disruptions from a no-deal Brexit, which would further dampen UK—and to a lesser extent EU—economic growth Uncertainty stemming from London's pending exit from the EU is already hurting UK economic growth and the strength of the pound sterling
- Financial conditions and economic performance generally remain favorable in both Japan and South Korea However, both countries' economies are dependent on exports, which puts them at continued risk of downward pressure from China's economic slowdown

China's Economy

China's economic growth is likely to slow in 2019, and a worse-than-expected slowdown could exacerbate trade and budget pressures in emerging-market countries and key commodity exporters, who rely on Chinese demand.

- Since 2017, Beijing has been largely focused on stemming risks in China's financial system, reducing bank credit growth to the lowest rate in a decade, while trying to bolster growth by cutting taxes, calling on banks to lend to private firms, and requiring local governments to plan measures to sustain employment
- US-China trade tensions had not significantly affected China's total exports as of late 2018, but firms in China have reported a slowdown in new export orders, suggesting China's export sector will suffer in 2019 Some multinational companies are wary of bilateral tensions and have begun to move production to other countries, especially in Southeast Asia, for lower-value-added goods

Energy and Commodities

Slower economic growth combined with a rising US dollar could lower demand for energy and other commodities, hurting exporters. However, low global spare capacity or a supply disruption might still put upward pressure on oil prices in the coming year, which would further slow overall global economic growth

- As of December 2018, the US Energy Information Administration forecast that 2019 oil prices would decline 17 percent and 15 percent for West Texas Intermediate and Brent, respectively Prices for other key commodities declined in 2018 Food prices decreased 6.4 percent in 2018,

and metals prices decreased 11.7 percent, according to the IMF's primary commodities index, reflecting tariffs, sanctions on the Russian company Rusal, and increasing uncertainty about trade policy

- Production challenges in some oil-exporting countries—notably Libya, Nigeria, and Venezuela—as well as export losses from Iran, would limit benefits of increased oil prices to those countries. Saudi Arabia, other Persian Gulf oil exporters, and Russia could enjoy increased revenues, but they might also backtrack on the economic reforms they began during periods of lower oil prices
- In the past year, strong demand for liquefied natural gas (LNG) in China and India, as well as higher oil prices, kept the spot price for LNG close to its highest level in three years, according to the IMF, despite new supplies from the United States and Australia

HUMAN SECURITY

The United States will probably have to manage the impact of global human security challenges, such as threats to public health, historic levels of human displacement, assaults on religious freedom, and the negative effects of environmental degradation and climate change.

Global Health

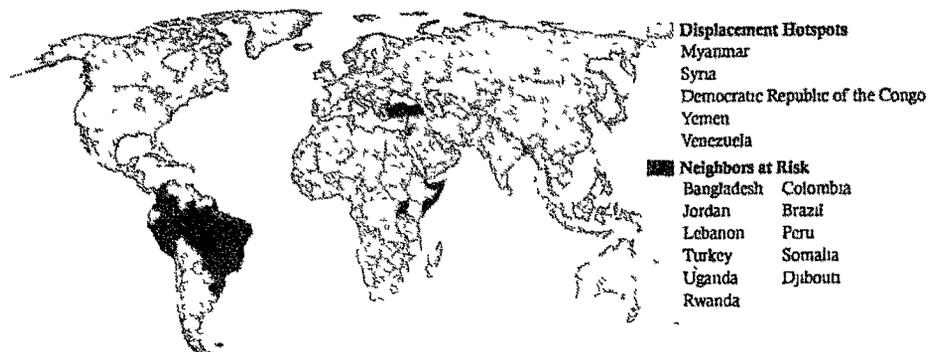
We assess that the United States and the world will remain vulnerable to the next flu pandemic or large-scale outbreak of a contagious disease that could lead to massive rates of death and disability, severely affect the world economy, strain international resources, and increase calls on the United States for support. Although the international community has made tenuous improvements to global health security, these gains may be inadequate to address the challenge of what we anticipate will be more frequent outbreaks of infectious diseases because of rapid unplanned urbanization, prolonged humanitarian crises, human incursion into previously unsettled land, expansion of international travel and trade, and regional climate change.

- The ongoing crisis in Venezuela has reversed gains in controlling infectious diseases, such as diphtheria, malaria, measles, and tuberculosis, increasing the risk that these diseases could spread to neighboring countries, particularly Brazil, Colombia, and Trinidad and Tobago. Similarly, the ongoing Ebola outbreak in the Democratic Republic of the Congo—the country's largest ever—underscores the risks posed by the nexus of infectious disease outbreaks, violent conflict, and high population density, including large numbers of internally displaced persons (IDPs)
- In the past two years, progress against malaria has halted after more than 15 years of steady reductions, in part because mosquitoes and the pathogen have developed a resistance to insecticides and to antimalarial drugs, respectively, while global funding to combat the disease has plateaued
- The growing proximity of humans and animals has increased the risk of disease transmission. The number of outbreaks has increased in part because pathogens originally found in animals have spread to human populations

Displacement Hotspots Increase Risk of Infectious Disease Outbreaks

Countries with high internal and regional displacement due to conflict or political instability are at an increased risk for the spread of infectious

diseases such as measles, cholera, diphtheria, and Ebola. Highlighted below are some key displacement hotspots and regions at risk



1810 00430 A

Human Displacement

Global displacement almost certainly will remain near record highs, and host countries are unlikely to see many refugees or internally displaced persons return home, increasing humanitarian needs and the risk of political upheaval, health crises, and recruitment and radicalization by militant groups The number of people becoming displaced within their own national borders continues to increase, according to the United Nations, placing fiscal and political strain on governments' ability to care for their domestic populations and mitigate local discontent

Religious Freedom

Violations of religious freedom by governments and nonstate actors—particularly in the Middle East, China, and North Korea—will fuel the growth of violent extremist groups and lead to societal tensions, protests, or political turmoil.

- According to the Pew Research Center's global indexes, the average score for government restrictions on religion rose 39 percent from 2007 to 2016, and the number of states with high or very high government restrictions grew from 40 to 55
- Since 2017, Chinese authorities have detained hundreds of thousands and possibly millions of Turkic Muslim Uighurs in extrajudicial detainment centers. Beijing has also reached beyond its borders to pursue this campaign, including by pressuring ethnic Uighurs overseas, some of whom are American citizens, to return to China so it can more easily control them. Chinese security services have contacted Uighurs abroad and coerced them to act as informants by threatening to keep Xinjiang-based family members in detention

Environment and Climate Change

Global environmental and ecological degradation, as well as climate change, are likely to fuel competition for resources, economic distress, and social discontent through 2019 and beyond. Climate hazards such as extreme weather, higher temperatures, droughts, floods, wildfires, storms, sea level rise, soil degradation, and acidifying oceans are intensifying, threatening infrastructure, health, and water and food security. Irreversible damage to ecosystems and habitats will undermine the economic benefits they provide, worsened by air, soil, water, and marine pollution.

- Extreme weather events, many worsened by accelerating sea level rise, will particularly affect urban coastal areas in South Asia, Southeast Asia, and the Western Hemisphere. Damage to communication, energy, and transportation infrastructure could affect low-lying military bases, inflict economic costs, and cause human displacement and loss of life.
- Changes in the frequency and variability of heat waves, droughts, and floods—combined with poor governance practices—are increasing water and food insecurity around the world, increasing the risk of social unrest, migration, and interstate tension in countries such as Egypt, Ethiopia, Iraq, and Jordan.
- Diminishing Arctic sea ice may increase competition—particularly with Russia and China—over access to sea routes and natural resources. Nonetheless, Arctic states have maintained mostly positive cooperation in the region through the Arctic Council and other multilateral mechanisms, a trend we do not expect to change in the near term. Warmer temperatures and diminishing sea ice are reducing the high cost and risks of some commercial activities and are attracting new players to the resource-rich region. In 2018, the minimum sea ice extent in the Arctic was 25 percent below the 30-year average from 1980 to 2010.

REGIONAL THREATS

CHINA AND RUSSIA

China and Russia will present a wide variety of economic, political, counterintelligence, military, and diplomatic challenges to the United States and its allies. We anticipate that they will collaborate to counter US objectives, taking advantage of rising doubts in some places about the liberal democratic model.

Chinese-Russian Relations

China and Russia are expanding cooperation with each other and through international bodies to shape global rules and standards to their benefit and present a counterweight to the United States and other Western countries

- The two countries have significantly expanded their cooperation, especially in the energy, military, and technology spheres, since 2014
- China has become the second-largest contributor to the UN peacekeeping budget and the third-largest contributor to the UN regular budget. It is successfully lobbying for its nationals to obtain senior posts in the UN Secretariat and associated organizations, and it is using its influence to press the UN and member states to acquiesce in China's preferences on issues such as human rights and Taiwan
- Russia is working to consolidate the UN's counterterrorism structures under the UN Under Secretary General for Counterterrorism, who is Russian
- Both countries probably will use the UN as a platform to emphasize sovereignty narratives that reflect their interests and redirect discussions away from human rights, democracy, and good governance
- China and Russia also have increased their sway in the International Telecommunication Union through key leadership appointments and financial and technical assistance. They seek to use the organization to gain advantage for their national industries and move toward more state-controlled Internet governance

EAST ASIA

The United States will see mounting threats in Asia, including a variety of challenges from China and North Korea, and rising authoritarianism in the region

China

The Chinese Communist Party's Concentration of Power

China is deepening its authoritarian turn under President Xi Jinping, and the resulting hardening of Chinese politics and governance probably will make it more difficult for the leadership to recognize and correct policy errors, including in relations with the United States and our allies and partners.

- President Xi removed one of the few remaining checks on his authority when he eliminated presidential term limits in March 2018, and the Chinese Communist Party has reasserted control over the economy and society, tightened legal and media controls, marginalized independent voices, and intensified repression of Chinese Muslims, Christians, and other religious minorities
- The Chinese Government also is harnessing technology, including facial recognition, biometrics, and vehicle GPS tracking, to bolster its apparatus of domestic monitoring and control
- Beijing's increasing restrictions on scholars' and researchers' freedom of movement and communication with US counterparts may increase the prospects for misunderstanding and misinterpretation of US policies

Expanding Global Reach

We assess that China's leaders will try to extend the country's global economic, political, and military reach while using China's military capabilities and overseas infrastructure and energy investments under the Belt and Road Initiative to diminish US influence. However, Beijing is likely to face political pushback from host governments in many locations, and the overall threat to US and partner interests will depend on the size, locations, and offensive military capabilities of the eventual Chinese presence.

- China has built its first overseas military facility in Djibouti and probably is exploring bases, support facilities, or access agreements in Africa, Europe, Oceania, Southeast Asia, and South Asia
- In most instances, China has not secured explicit permanent basing rights but is using commercial development and military ties to lay the groundwork for gaining future military access
- Successful implementation of the Belt and Road Initiative could facilitate PLA access to dozens of additional ports and airports and significantly expand China's penetration of the economies and political systems of participating countries

The Coming Ideological Battle

Chinese leaders will increasingly seek to assert China's model of authoritarian capitalism as an alternative—and implicitly superior—development path abroad, exacerbating great-power competition that could threaten international support for democracy, human rights, and the rule of law.

- The actions of Xi and his advisers—doubling down on authoritarianism at home and showing they are comfortable with authoritarian regimes abroad—along with China's opaque commercial and development practices, reward compliant foreign leaders and can be corrosive to civil society and the rule of law
- At the 2018 Central Foreign Affairs Work Conference, Xi stated his desire to lead the reform of the global governance system, driving a period of increased Chinese foreign policy activism and a Chinese worldview that links China's domestic vision to its international vision

- Beijing has stepped up efforts to reshape the international discourse around human rights, especially within the UN system. Beijing has sought not only to block criticism of its own system but also to erode norms, such as the notion that the international community has a legitimate role in scrutinizing other countries' behavior on human rights (e.g., initiatives to proscribe country-specific resolutions), and to advance narrow definitions of human rights based on economic standards.

South China Sea and Taiwan

We assess that China will continue increasing its maritime presence in the South China Sea and building military and dual-use infrastructure in the Spratly Islands to improve its ability to control access, project power, and undermine US influence in the area. A body of open-source reporting shows that China seeks to achieve effective control over its claimed waters with a whole-of-government strategy, compel Southeast Asian claimants to acquiesce in China's claims—at least tacitly—and bolster Beijing's narrative in the region that the United States is in decline and China's preeminence is inevitable.

- Meanwhile, Beijing almost certainly will continue using pressure and incentives to try to force Taipei to accept the One China framework and ultimately Chinese control, and it will monitor the US reaction as an indicator of US resolve in the region.
- Since 2016, Beijing has persuaded six of Taiwan's 23 diplomatic partners, most recently Burkina Faso and El Salvador, to recognize China instead of Taiwan.

Military Capabilities

The People's Liberation Army (PLA) continues to develop and field advanced weapons and hardware while honing its ability to fight in all military domains. The force is undergoing its most comprehensive restructuring ever to realize China's long-held goal of being able to conduct modern, rapid military operations based on high technology to assert and defend China's regional and growing global interests.

- PLA reforms seek to reinforce the Chinese Communist Party's control of the military, improve the PLA's ability to perform joint operations, increase combat effectiveness, and curb corruption.
- As China's global footprint and international interests have grown, its military modernization program has become more focused on investments and infrastructure to support a range of missions beyond China's periphery, including a growing emphasis on the maritime domains, offensive air operations, and long-distance mobility operations.

North Korea

Nuclear Ambitions

Pyongyang has not conducted any nuclear-capable missile or nuclear tests in more than a year, has declared its support for the denuclearization of the Korean Peninsula, and has reversibly dismantled portions of its WMD infrastructure. However, *we continue to assess that North Korea is unlikely to give up all of its nuclear weapons and production capabilities, even as it seeks to negotiate partial denuclearization steps to obtain key US and international concessions.* North Korean leaders view nuclear arms as critical to regime survival, according to official statements and regime-controlled media.

- In his 2019 New Year's address, North Korean President Kim Jong Un pledged that North Korea would "go toward" complete denuclearization and promised not to make, test, use, or proliferate nuclear weapons. However, he conditioned progress on US "practical actions." The regime tied the idea of denuclearization in the past to changes in diplomatic ties, economic sanctions, and military activities.
- In Singapore in June 2018, Kim said he sought the "complete denuclearization of the Korean Peninsula"—a formulation linked to past demands that include an end to US military deployments and exercises involving advanced US capabilities.
- We continue to observe activity inconsistent with full denuclearization. North Korea has underscored its commitment to nuclear arms for years, including through an order to mass-produce weapons in 2018 and an earlier law—and constitutional change—that affirmed the country's nuclear status.

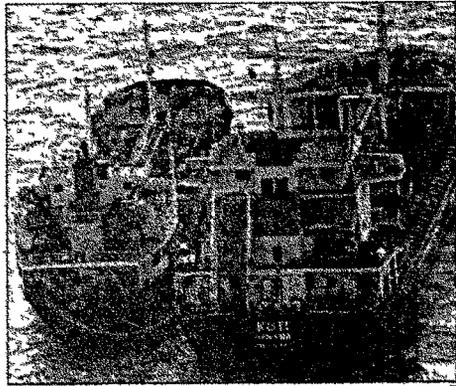
Foreign Engagement

North Korea will continue its efforts to mitigate the effects of the US-led pressure campaign, most notably through diplomatic engagement, counterpressure against the sanctions regime, and direct sanctions evasion.

- Kim Jong Un has sought sanctions relief through a campaign of diplomatic engagement that included his first summits with foreign leaders since taking power in 2011. He met with South Korean President Moon Jae-in three times in 2018, leading to agreements to reconnect roads

North Korea Conducting Ship-to-Ship Transfers

This image is of the *Koti*, a Panamanian-flagged vessel seized by South Korea in December 2017 for illicitly transferring refined petroleum to North Korean vessels. North Korea is using ship-to-ship transfers to circumvent UN sanctions that were designed to bring pressure on Pyongyang to give up its nuclear and WMD programs.



1810 00432 8

and rail lines, establish new military parameters, promote reforestation, and facilitate cultural exchanges

- Kim has also sought to align the region against the US-led pressure campaign in order to gain incremental sanctions relief, and North Korean statements have repeatedly indicated that some sanctions relief is necessary for additional diplomacy to occur. In his annual New Year's address, Kim linked US sanctions to diplomatic progress and threatened to resume nuclear and missile testing.

Sanctions Evasion

We assess that sanctions continue to pressure the North Korean regime, despite North Korean sanctions evasion efforts. By late 2018, the enforcement of new UN sanctions had led to a precipitous decline in North Korea's monthly export revenue compared with 2017, a change that also reduced imports

- North Korea generates revenue through overseas labor, cyber-theft operations, and illicit commercial exports of UN Security Council-prohibited goods
- Throughout 2018, the United States and its allies observed North Korean maritime vessels using at-sea, ship-to-ship transfers of petroleum from third-country tankers to acquire additional refined petroleum as a way to mitigate the effects of UNSC sanctions

Conventional Military Capabilities

North Korea's conventional capabilities continue to pose a threat to South Korea, Japan, and US forces in the region. As a way to offset adversary military advantages, Kim Jong Un continues to pursue advanced conventional weapon programs and capabilities, including more accurate artillery and ballistic missile strike capabilities and UAVs

Southeast Asia and the Pacific

We expect democracy and civil liberties in many Southeast Asian countries to remain fragile and China to increase its engagement in the region to build its influence while diminishing the influence of the United States and US allies. Russia may also continue its diplomatic and military cultivation of Southeast Asian partners, and some countries will be receptive to Moscow as a balance against China's push for hegemony

- In the wake of Washington's withdrawal from the Trans-Pacific Partnership, China is promoting a unified stance with the Association of Southeast Asian Nations (ASEAN) in defense of multilateralism and the WTO reform process, while also fostering a shared perception of US freedom of navigation operations through Chinese-claimed waters in the South China Sea as threats to regional stability
- China is currying favor with numerous Pacific Island nations through bribery, infrastructure investments, and diplomatic engagement with local leaders while intervening in Burma—including by shielding Burma from UNSC sanctions in response to the humanitarian crisis and alleged ethnic cleansing in Rakhine State

- Russia, too, has been increasing its diplomatic and military cultivation of Southeast Asian partners, some of which have been receptive to Moscow as a power capable of diluting China's nascent hegemony and helping them diversify their hedging options
- Cambodia's slide toward autocracy, which culminated in the Cambodian People's Party's retention of power and complete dominance of the national legislature, opens the way for a constitutional amendment that could lead to a Chinese military presence in the country Thailand's coup-installed regime has promised elections in 2019 but appears set to help ensure that its proxy party retains power by tightly controlling the political space ahead of the vote Burma's civilian authorities continue to make scant progress toward resolving the crisis in Rakhine State, advancing economic reforms, or ending longstanding insurgencies by ethnic minority groups

MIDDLE EAST AND NORTH AFRICA

Political turmoil, economic fragility, and civil and proxy wars are likely to characterize the Middle East and North Africa in the coming year, as the region undergoes a realignment of the balance of regional power, wealth and resource management, and the relationships among governments, nonstate political groups, and wider populations

Iran

Iran's regional ambitions and improved military capabilities almost certainly will threaten US interests in the coming year, driven by Tehran's perception of increasing US, Saudi, and Israeli hostility, as well as continuing border insecurity, and the influence of hardliners.

Iran's Objectives in Iraq, Syria, and Yemen

We assess that Iran will attempt to translate battlefield gains in Iraq and Syria into long-term political, security, social, and economic influence while continuing to press Saudi Arabia and the UAE by supporting the Huthis in Yemen

In Iraq, Iran-supported Popular Mobilization Committee-affiliated Shia militias remain the primary threat to US personnel, and we expect that threat to increase as the threat ISIS poses to the militias recedes, Iraqi Government formation concludes, some Iran-backed groups call for the United States to withdraw, and tension between Iran and the United States grows We continue to watch for signs that the regime might direct its proxies and partners in Iraq to attack US interests

Iran's efforts to consolidate its influence in Syria and arm Hizballah have prompted Israeli airstrikes as recently as January 2019 against Iranian positions within Syria and underscore our growing concern about the long-term trajectory of Iranian influence in the region and the risk that conflict will escalate.

- Iran's retaliatory missile and UAV strikes on ISIS targets in Syria following the attack on an Iranian military parade in Ahvaz in September were most likely intended to send a message to potential adversaries, showing Tehran's resolve to retaliate when attacked and demonstrating Iran's improving military capabilities and ability to project force
- Iran continues to pursue permanent military bases and economic deals in Syria and probably wants to maintain a network of Shia foreign fighters there despite Israeli attacks on Iranian

positions in Syria. We assess that Iran seeks to avoid a major armed conflict with Israel. However, Israeli strikes that result in Iranian casualties increase the likelihood of Iranian conventional retaliation against Israel, judging from Syrian-based Iranian forces' firing of rockets into the Golan Heights in May 2018 following an Israeli attack the previous month on Iranians at Tiyas Airbase in Syria.

In Yemen, Iran's support to the Huthis, including supplying ballistic missiles, risks escalating the conflict and poses a serious threat to US partners and interests in the region. Iran continues to provide support that enables Huthi attacks against shipping near the Bab el Mandeb Strait and land-based targets deep inside Saudi Arabia and the UAE, using ballistic missiles and UAVs.

Domestic Politics

Regime hardliners will be more emboldened to challenge rival centrists by undermining their domestic reform efforts and pushing a more confrontational posture toward the United States and its allies. Centrist President Hasan Ruhani has garnered praise from hardliners with his more hostile posture toward Washington but will still struggle to address ongoing popular discontent.

Nationwide protests, mostly focused on economic grievances, have continued to draw attention to the need for major economic reforms and unmet expectations for most Iranians. We expect more unrest in the months ahead, although the protests are likely to remain uncoordinated and lacking central leadership or broad support from major ethnic and political groups. We assess that Tehran is prepared to take more aggressive security measures in response to renewed unrest while preferring to use nonlethal force.

- Ruhani's ability to reform the economy remains limited, given pervasive corruption, a weak banking sector, and a business climate that discourages foreign investment and trade.

Military Modernization and Behavior

Iran will continue to develop military capabilities that threaten US forces and US allies in the region. It also may increase harassment of US and allied warships and merchant vessels in the Persian Gulf, Strait of Hormuz, and Gulf of Oman.

- Iran continues to develop, improve, and field a range of military capabilities that enable it to target US and allied military assets in the region and disrupt traffic through the Strait of Hormuz. These systems include ballistic missiles, unmanned explosive boats, naval mines, submarines and advanced torpedoes, armed and attack UAVs, antiship and land-attack cruise missiles, antiship ballistic missiles, and air defenses. Iran has the largest ballistic missile force in the Middle East and can strike targets as far as 2,000 kilometers from Iran's borders. Russia's delivery of the SA-20c SAM system in 2016 provided Iran with its most advanced long-range air defense system. Iran is also domestically producing medium-range SAM systems and developing a long-range SAM.
- In September 2018, Iran struck Kurdish groups in Iraq and ISIS in Syria with ballistic missiles in response to attacks inside Iran, demonstrating the increasing precision of Iran's missiles, as well as Iran's ability to use UAVs in conjunction with ballistic missiles.

- We assess that unprofessional interactions conducted by the Iranian Islamic Revolutionary Guards Corps (IRGC) Navy against US ships in the Persian Gulf, which have been less frequent during the past year, could resume should Iran seek to project an image of strength in response to US pressure. Most IRGC interactions with US ships are professional, but in recent years the IRGC Navy has challenged US ships in the Persian Gulf and flown UAVs close to US aircraft carriers during flight operations. Moreover, Iranian leaders since July have threatened to close the Strait of Hormuz in response to US sanctions targeting Iranian oil exports.

Saudi Arabia

Saudi Crown Prince Muhammad bin Salman continues to control the key levers of power in Saudi Arabia, but his simultaneous push for economic and social reform creates potential flashpoints for internal opposition. Saudi public support for the royal family appears to remain high, even in the wake of the murder of journalist Jamal Khashoggi. Moreover, we assess that the Saudi Government remains well positioned to stifle small-scale protests and discontent, it has preemptively arrested or forcibly detained clerics, business leaders, and civil society activists who could be nodes for discontent.

The Kingdom will seek to make progress on its Vision 2030 plan of structural reforms, spearheaded by Crown Prince Muhammad bin Salman and aimed at reducing dependence on oil revenues. The plan's initiatives include reducing subsidies, building a robust private sector, and instituting taxes, all of which upend the longstanding social contract. Some of these reforms have aggravated segments of the Saudi public, including government workers, religious conservatives.

Iraq

Iraq is facing an increasingly disenchanted public. The underlying political and economic factors that facilitated the rise of ISIS persist, and Iraqi Shia militias' attempts to further entrench their role in the state increase the threat to US personnel.

- The Iraqi Government will confront a high level of societal discontent, institutional weakness, and deep-seated divisions, as well as protests over a lack of services, high unemployment, and political corruption. Baghdad lacks the resources or institutional capacity to address longstanding economic development and basic services challenges, and it faces reconstruction costs in the aftermath of the counter-ISIS campaign, estimated by the World Bank at \$88 billion. Iraq's Kurdistan region is still dealing with political discontent over economic and territorial losses to Baghdad last year.
- ISIS remains a terrorist and insurgent threat and will seek to exploit Sunni grievances with Baghdad and societal instability to eventually regain Iraqi territory against Iraqi security forces that are stretched thin.

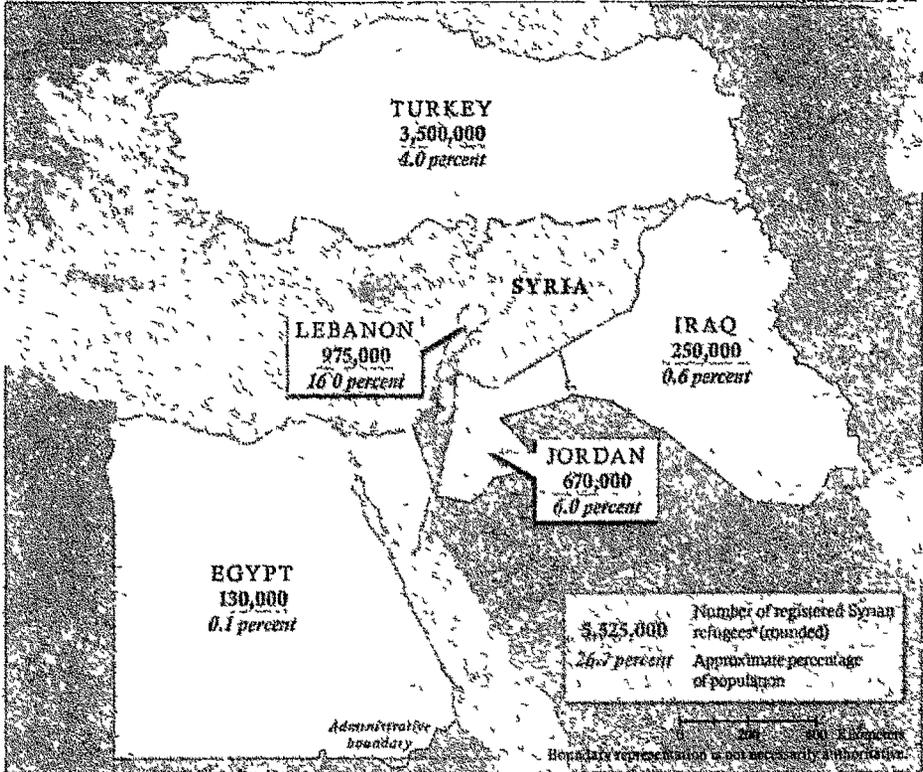
Iraqi Shia militants conducted several attacks against US diplomatic facilities in Iraq in September and December 2018. Militias—some of which are also part of the Iraqi Government Popular Mobilization Committee—plan to use newfound political power gained through positions in the new government to reduce or remove the US military presence while competing with the Iraqi security forces for state resources

Syria

As the Syrian regime consolidates control, the country is likely to experience continued violence. We expect the regime to focus on taking control of the remaining rebel-held territory and reestablishing control of eastern Syria, consolidating gains, rebuilding regime-loyal areas, and increasing its diplomatic ties through 2019 while seeking to avoid conflicts with Israel and Turkey. Russia and Iran probably will attempt to further entrench themselves in Syria

- The regime's momentum, combined with continued support from Russia and Iran, almost certainly has given Syrian President Bashar al-Asad little incentive to make anything more than token concessions to the opposition or to adhere to UN resolutions on constitutional changes that Asad perceives would hurt his regime
- Opposition groups, which rely on Turkey for continued support, probably are not capable of repelling a regime military operation to retake Idlib Province but may retain enough resources to foment a low-level insurgency in areas the regime recaptures in the coming year
- The regime probably will focus increasingly on reasserting control over Kurdish-held areas. Damascus probably will seek to exploit any security vacuum and Turkish pressure on the Kurds in order to strike a favorable deal with the Kurds while also seeking to limit Turkey's presence and influence in Syria and reclaim territory in northwestern Syria held by Turkey
- The regime is unlikely to immediately focus on clearing ISIS from remote areas that do not threaten key military, economic, and transportation infrastructure, judging from previous regime counter-ISIS efforts
- Damage to the Syrian economy and its infrastructure has reached almost \$400 billion, according to UN estimates, and reconstruction could take at least a decade to complete. The effects of the Syrian civil war will continue to be felt by its neighbors, with approximately 5.6 million Syrian refugees registered in neighboring countries as of October 2018. Russia and Iran will try to secure rights to postwar contracts to rebuild Syria's battered infrastructure and industry in exchange for sustained military and economic support

Syrian Refugees in the Middle East and North Africa



a. The number of refugees for each country is the number registered with the UN. National governments often report higher estimates for the number of Syrian refugees they host.

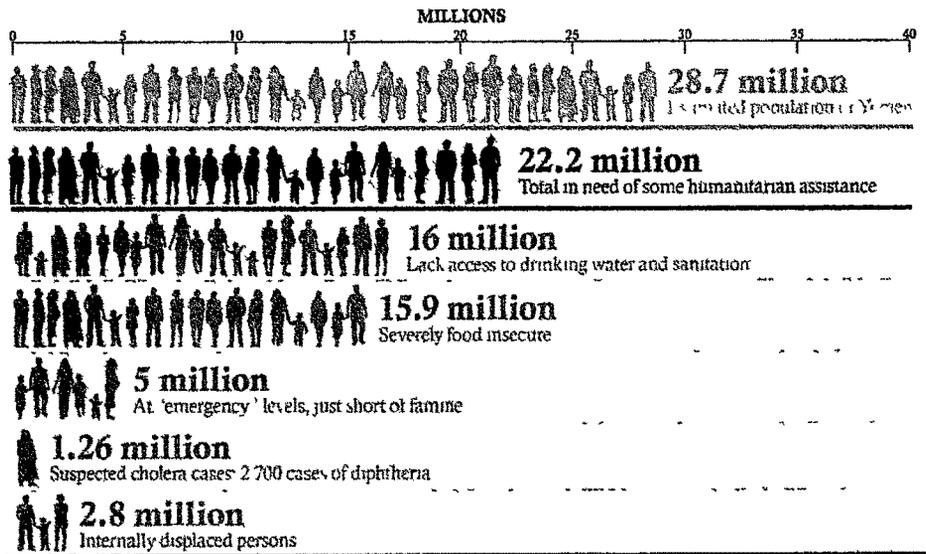
1810 00433 B U

Yemen

The Huthi movement in Yemen and the Saudi-led coalition, which supports the Yemeni Government, remain far apart in negotiating an end to the conflict, and neither side seems prepared for the kind of compromise needed to end the fighting, suggesting the humanitarian crisis will continue. The coalition, buoyed by military gains in the past year, seems fixed on a Huthi withdrawal from Sanaa and significant Huthi disarmament. These terms remain unacceptable to the Huthis, who believe they can use external attacks to threaten Saudi Arabia and the UAE, undercut Saudi and UAE public support for the conflict, and draw international condemnation of the coalition's intervention in Yemen.

- The humanitarian impacts of the conflict in Yemen—including, famine, disease, and internal displacement—will be acute in 2019 and could easily worsen if the coalition cuts key supply lines to Sanaa. The fighting has left more than 22 million people, or approximately 75 percent of the population, in need of assistance, with millions of people at severe risk of famine by the UN definition—numbers that are likely to rise quickly if disruptions to aid access continue.

Yemen Humanitarian Figures as of 3 December 2018



1810 00433-G

Libya

Libya is poised to remain unstable into 2019, with poor prospects for reconciliation between competing factions and ongoing threats from ISIS-Libya. Militias aligned with Libya's key political factions fight intermittently for influence and control of resources, resulting in a high-risk security environment that threatens both rival governments and Western interests. The UN-backed, Tripoli-based Government of National Accord (GNA) and eastern-based House of Representatives (House) remain unable to agree on key posts and government structure. ISIS-Libya's capabilities have been degraded, but it is still capable of conducting attacks on local and Western targets in Libya and possibly elsewhere in the region.

SOUTH ASIA

The challenges facing South Asian states will grow in 2019 because of Afghanistan's presidential election in mid-July and the Taliban's large-scale attacks, Pakistan's recalcitrance in dealing with militant groups, and Indian elections that risk communal violence

Afghanistan Stalemate

We assess that neither the Afghan Government nor the Taliban will be able to gain a strategic military advantage in the Afghan war in the coming year if coalition support remains at current levels. Afghan forces generally have secured cities and other government strongholds, but the Taliban has increased large-scale attacks, and Afghan security suffers from a large number of forces being tied down in defensive missions, mobility shortfalls, and a lack of reliable forces to hold recaptured territory

Pakistan Recalcitrance

Militant groups supported by Pakistan will continue to take advantage of their safe haven in Pakistan to plan and conduct attacks in India and Afghanistan, including against US interests. Islamabad's narrow approach to counterterrorism cooperation—using some groups as policy tools and confronting only the militant groups that directly threaten Pakistan—almost certainly will frustrate US counterterrorism efforts against the Taliban

Indian Elections and Ethnic Tensions

Parliamentary elections in India increase the possibility of communal violence if Indian Prime Minister Narendra Modi's Bharatiya Janata Party (BJP) stresses Hindu nationalist themes. BJP policies during Modi's first term have deepened communal tensions in some BJP-governed states, and Hindu nationalist state leaders might view a Hindu-nationalist campaign as a signal to incite low-level violence to animate their supporters. Increasing communal clashes could alienate Indian Muslims and allow Islamist terrorist groups in India to expand their influence

India-Pakistan Tensions

We judge that cross-border terrorism, firing across the Line of Control (LoC), divisive national elections in India, and Islamabad's perception of its position with the United States relative to India will contribute to strained India-Pakistan relations at least through May 2019, the deadline for the Indian election, and probably beyond. Despite limited confidence-building measures—such as both countries recommitting in May 2018 to the 2003 cease-fire along the disputed Kashmir border—continued terrorist attacks and cross-border firing in Kashmir have hardened each country's position and reduced their political will to seek rapprochement. Political maneuvering resulting from the Indian national elections probably will further constrain near-term opportunities for improving ties

India-China Tensions

We expect relations between India and China to remain tense, despite efforts on both sides to manage tensions since the border standoff in 2017, elevating the risk of unintentional escalation. Chinese President Xi Jinping and Indian Prime Minister Narendra Modi held an informal summit in April 2018 to defuse tension and normalize relations, but they did not address border issues. Misperceptions of military movements or construction might result in tensions escalating into armed conflict

RUSSIA AND EURASIA

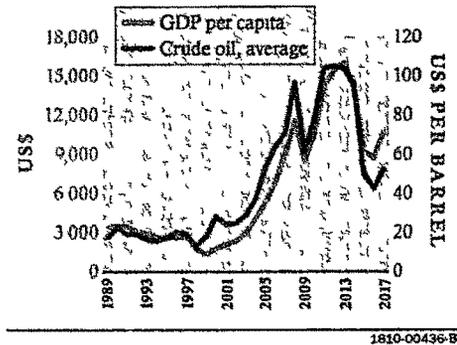
Russian President Vladimir Putin has the tools to navigate challenges to his rule, and he is likely to sustain an assertive, opportunistic foreign policy to advance Russia's interests beyond its borders and contest US influence

Russia's Domestic Politics

The Russian economy's slow growth and most Russians' disapproval of government officials' performance will foster a more challenging political environment for the Kremlin, although its centralized power structure and the resonance of anti-American themes will buoy Putin, sustaining his push for international stature and challenging US global leadership.

We assess that slow growth and depressed wages are eroding the higher living standards that many Russians once saw as Putin's greatest accomplishment, and corruption is a major issue that Putin cannot attack because his political system rests on it. Following his support for an unpopular pension reform in 2018, Putin's public approval fell to levels not seen since before Russia's illegal annexation of Crimea in 2014. Nevertheless, the Kremlin can rely on its traditional instruments of persuasion to navigate challenges to Putin's control—including the media and the distribution of financial benefits—and it can turn to its security services to impede protests, crack down on the opposition, and intimidate elites.

Russian Economic Performance Highly Dependent on Oil Prices



Although we judge that Putin and other elites would like to see cooperation with the United States where US and Russian interests overlap, they view publicly blaming the United States for internal challenges as good politics. Moscow believes it can weather the impact of sanctions, and we expect Putin to remain active on the international stage because the public narrative that he has restored Russia's great-power status remains a pillar of his domestic support.

Global Ambitions

Russia's efforts to expand its global military, commercial, and energy footprint and build partnerships with US allies and adversaries alike are likely to pose increasing challenges. Moscow will continue to emphasize its strategic relationship with Beijing, while also pursuing a higher profile in the Middle East, Southeast Asia, Africa, and Latin America.

We assess that Moscow will continue pursuing a range of objectives to expand its reach, including undermining the US-led liberal international order, dividing Western political and security institutions, demonstrating Russia's ability to shape global issues, and bolstering Putin's domestic legitimacy. Russia seeks to capitalize on perceptions of US retrenchment and power vacuums, which it views the United States is unwilling or unable to fill, by pursuing relatively low-cost options, including influence campaigns, cyber tools, and limited military interventions

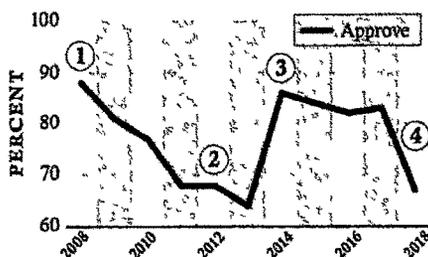
- We assess that Moscow has heightened confidence, based on its success in helping restore the Assad regime's territorial control in Syria, but translating what have largely been military wins into a workable settlement in Syria will be one of Moscow's key challenges in the years ahead
- Russia seeks to boost its military presence and political influence in the Mediterranean and Red Seas, increase its arms sales, expand information operations in Europe, and mediate conflicts, including engaging in the Middle East Peace Process and Afghanistan reconciliation

Military Capabilities

Moscow views military force as key to safeguarding its vital interests and supporting its foreign policy; it is becoming more modernized and capable across all military domains and maintains the world's largest operational nuclear stockpile.

- After decades of increased spending to support modernization, Russia's defense budget is decreasing to about 3.8 percent of GDP in 2019, from a peak of about 5.4 percent in 2016. Because of momentum in military acquisitions, we judge that the budget is normalizing to pre-peak spending levels

Putin's Popularity Slides Following Short, Victorious Wars and Reelection



MILESTONES

- 1 2008* End of second term, victory in Georgia war
- 2 2012: Returns to presidency
- 3 2014: Illegally seizes Crimea
- 4 2018: Reelected, enacts pension reforms

1810-00436-G

- In 2019, we assess that Russia will continue to modernize the entire military but particularly will make progress in its air defense, submarine, and electronic warfare capabilities

Russia and Its Neighbors

The Kremlin will seek to maintain and, where possible, expand its influence throughout the former Soviet Union countries, which it asserts are within its sphere of influence.

We assess that a major offensive by either Ukraine or Russian proxy forces is operationally feasible but unlikely in 2019, unless one side perceives the other is seriously challenging the status quo. Bilateral tensions will continue to rise in the Black and Azov Seas as each side asserts its sovereignty and naval capabilities. Russia will continue its military, political, and economic destabilization campaign against Ukraine to try to stymie Kyiv's efforts to integrate with the EU and strengthen ties to NATO. Russia's interception of Ukrainian ships in the Kerch Strait and detention of the ships' sailors in November 2018 demonstrates Russia's willingness to limit Ukrainian freedom of navigation in the area and exert political pressure on the country's leadership, particularly in advance of Ukraine's elections this year.

- Ukraine will hold a presidential election in March 2019 and legislative elections in the fall. The large field of presidential candidates, high levels of distrust in political elites, and lack of a clear frontrunner may provide Ukrainian President Petro Poroshenko's rivals, as well as lesser known candidates and political newcomers, an opportunity to appeal to the largely undecided Ukrainian electorate.
- Russia is taking steps to influence these elections, applying a range of tools to exert influence and exploit Kyiv's fragile economy, widespread corruption, cyber vulnerabilities, and public discontent in hopes of ousting Poroshenko and bringing to power a less anti-Russia parliament.

The ruling coalition of Moldova, Ukraine's neighbor, is focused on maintaining power in the legislative election planned for February 2019 and probably will seek to limit Russian influence and preserve a veneer of commitment to EU integration.

Tension between Armenia and Azerbaijan over the Nagorno-Karabakh region remains a potential source for a large-scale military conflict that might draw in Russia.

Russia will continue pressing Central Asia's leaders to support Russian-led economic and security initiatives and reduce engagement with Washington. At the same time, China probably will continue to expand its outreach to Central Asia, largely to promote economic initiatives because of Beijing's concern that regional instability could undermine China's economic interests and create a permissive environment for extremists. Uzbekistan's political opening under President Shavkat Mirziyoyev will improve prospects for intraregional cooperation, but poor governance and vulnerable economics will raise the risk of radicalization.

EUROPE

The United Kingdom's scheduled exit from the EU on 29 March 2019, European Parliament elections in late May, and the subsequent turnover in EU institutional leadership will limit the ability of EU and

national leaders to contend with increased Russian and Chinese efforts to divide them from one another and from the United States

- If the United Kingdom’s exit from the EU takes place as scheduled, it would remove one of the institution’s key voices for strong sanctions policy toward Russia and market liberalism, as well as one of its most capable foreign and security policy actors
- Russia and China are likely to intensify efforts to build influence in Europe at the expense of US interests, benefiting from the economic fragility of some countries, transatlantic disagreements, and a probable strong showing by anti-establishment parties in the European Parliament elections in late May 2019. Some member states favor a softening of Russian sanctions and probably will resist efforts to tighten investment screening

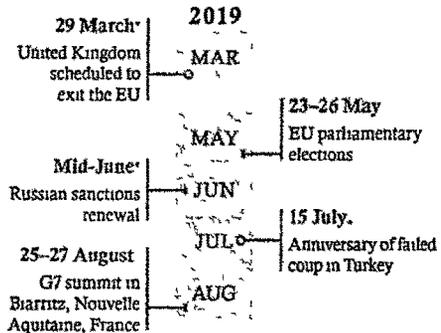
Turkey

Turkey’s regional ambitions, a distrust of the United States, and the growing authoritarianism of Turkey’s leaders are complicating bilateral relations and making Ankara more willing to challenge US regional goals. Turkey will continue to view as existential threats the Kurdistan Workers’ Party (PKK), including its People’s Protection Units (YPG) militia in Syria, and the movement led by Fethullah Gulen (USPER), a former AKP ally who Turkish leaders claim is responsible for the failed coup of 2016

Balkans

The Western Balkans almost certainly will remain at some risk of low-level violence and possibly open military conflict throughout 2019. Russia will seek to exploit ethnic tensions and high levels of corruption to hinder the ability of countries in this region to move toward the EU and NATO

Key Events in Europe During 2019



1810-00437

AFRICA

Several countries and regions in Sub-Saharan Africa are likely to face significant security, counterterrorism, democratization, economic, and humanitarian challenges. Recent political unrest in countries such as Zimbabwe and Sudan highlight the ongoing challenges facing many governments across the continent. African countries’ outreach and cooperation with external actors—such as China and Russia—will increase this year.

The Sahel

Countries in the Sahel—particularly Chad, Burkina Faso, Mali, Mauritania, and Niger—almost certainly will be vulnerable to an increase in terrorist attacks in 2019 as they struggle to contain terrorist groups and improve governance and security. Al-Qa’ida-affiliated Jama’at Nusrat al-Islam wal-Musulmin (JNIM)

and its extremist allies present a growing threat, with attacks increasing during the past year. Implementation of Mali's peace accord—an essential step for extending governance into terrorist safe havens in northern and central Mali—probably will be difficult because remaining steps are politically and financially sensitive.

Nigeria

Nigeria, Africa's most populous country and the largest economy, probably will face a contentious presidential election in February 2019 and sustained attacks from Boko Haram and ISIS-West Africa (ISIS-WA). Abuja is also facing continued violence in the politically sensitive Middle Belt region.

Sudan and South Sudan

Violence and the humanitarian crisis in South Sudan are likely to persist this year, while Sudan probably wants to improve relations with the United States but will continue reaching out to other partners to boost its economy. In South Sudan, the peace agreement signed between the government and opposition groups in September 2017 faces delays and implementation difficulties. Acute food insecurity and constraints on aid access—resulting from poor infrastructure, seasonal rains, active hostilities, and government- and opposition-imposed impediments—are likely to contribute to an ongoing humanitarian crisis. Meanwhile, Khartoum, despite facing antigovernment protests over its poor economic situation, is committed to pursuing efforts to improve its relationship with the United States and wants to be removed from the US State Sponsors of Terrorism List. Sudan also will strengthen ties to other partners—including Russia and Turkey—in an effort to diversify its partnerships and improve its economic situation.

Horn of Africa

The states of East Africa will confront internal tension and a continuing threat from al-Shabaab, despite improved intergovernmental relations and Ethiopian-Eritrean rapprochement. Elite competition, corruption, and poor coordination among security services in Somalia will hamper efforts to tamp down violence. The African Union Mission in Somalia (AMISOM) is unlikely to engage in aggressive offensive operations against al-Shabaab in advance of the mission's scheduled withdrawal from Somalia by 2021. Ethiopia and Eritrea will struggle to balance political control with demands for reform from domestic constituencies.

Central Africa

Political unrest across Central Africa is likely to persist through 2019, compounding humanitarian challenges and armed conflict. The Democratic Republic of the Congo (DRC) is recovering from its contentious presidential election in December 2018, as well as dealing with an ongoing Ebola outbreak and internal displacement crisis. Meanwhile, violence among armed groups in several regions of the DRC threatens regional and national stability, and violence in eastern DRC impedes efforts to respond to the Ebola outbreak. The Central African Republic (CAR) is struggling to make progress toward a peace agreement between the government and multiple armed groups.

THE WESTERN HEMISPHERE

Flagging economies, migration flows, corruption, narcotics trafficking, and anti-US autocrats will present continuing challenges to US interests, as US adversaries and strategic competitors seek greater influence in the region. The hemisphere will see several presidential elections this year, including in Argentina,

Bolivia, El Salvador, Guatemala, Panama, and Uruguay, providing opportunities for outside candidates to exploit public frustration with stagnant economic growth, high crime, and corruption. China and Russia will pursue efforts to gain economic and security influence in the region.

Mexico

Newly inaugurated Mexican President Andres Manuel Lopez Obrador almost certainly will focus on meeting steep public expectations for improvements on anticorruption and security following his landslide electoral victory in July. He is likely to pursue mostly practical approaches to US cooperation that complement his ambitious domestic agenda. Lopez Obrador has promised to reduce violence, in part by addressing socioeconomic causes, but he has publicly conceded that Mexico's military must keep up its public security role in the near term, despite his initial preference to end it. Lopez Obrador has supported the US-Mexico-Canada Agreement (USMCA) trade deal, probably hoping to reduce trade-related uncertainty, allowing him to focus on his domestic economic agenda. However, Mexico's \$1.15 trillion economy remains vulnerable to investor uncertainty that could weaken the export sector and slow economic growth, which was just 2 percent in 2017. Declining oil revenue will limit the Mexican Government's ability to fund Lopez Obrador's ambitious social programs and infrastructure projects.

Central America

We assess that high crime rates and weak job markets will spur additional US-bound migrants from the Northern Triangle—El Salvador, Guatemala, and Honduras—while a political crackdown in Nicaragua dims that country's already bleak economic outlook. Illicit migration northward from the region shows no signs of abating, despite increased messaging by governments to dissuade potential migrants and stepped-up immigration enforcement by Mexico. Many migrants apparently perceive that traveling in caravans on the journey north affords a certain level of security, and the decision to do so appears to result from a combination of individual motivation, encouragement from social media postings, and politically motivated efforts by some individuals and organizations.

- Nicaraguan President Daniel Ortega's refusal to heed calls for negotiation amid his political crackdown, which has left more than 300 people dead and contributed to allegations of human rights abuses, threatens to deepen a recession in one of the region's weakest economies.

Venezuela

Although the regime of Nicolas Maduro will continue to try to maintain power, he is facing persistent opposition. Falling oil production, economic mismanagement, and legal challenges almost certainly will compound the worsening economic pressure on the country. Living standards have collapsed, and hyperinflation and shortages in basic goods have gripped the country. Since 2014, the UN International Organization for Migration estimates that 2-3 million Venezuelans have left the country. Maduro continues to crack down on the political and military opposition after a failed assassination attempt against him in August 2018 and disrupted coup plots in the past 12 months, but the opposition has shown resilience, as indicated by its challenge to Maduro's rule emerging in late January 2019.

Colombia

Colombian President Ivan Duque faces a fraying peace accord with the former Revolutionary Armed Forces of Colombia (FARC) while he is working to stem violence in Colombia's rural departments, carry out his coca eradication ambitions, and manage growing tensions with Caracas. Duque has ordered increased security operations to curb common crime, threats from Colombia's insurgent and criminal groups, and address coca cultivation and trafficking. Coca cultivation in Colombia was at a record 209,000 hectares in 2017, and crop substitution and eradication programs face coordination challenges and local resistance.

Cuba

Cuban President Miguel Diaz-Canel will adhere to former President Raul Castro's blueprint for institutionalizing one-party rule and socialism in Cuba through constitutional reforms. Diaz-Canel has acknowledged that Raul Castro, who still commands the ruling Communist Party, remains the dominant voice on public policy.

Estimated Venezuelan Migrants and Asylum Seekers by Country (2015-18)

Recipient Nations	Venezuelan Migrants
Colombia	1,000,000
Peru	400,000-580,000
Chile	85,000-300,000
Ecuador	250,000
Panama	21,000-88,000
Brazil	76,000
Argentina	70,000
Dominican Republic	20,000-46,000
Trinidad and Tobago	40,000
Mexico	26,000-33,000
Costa Rica	9,000-23,000
Canada	21,000
Aruba	10,000-20,000
Guyana	12,000
Uruguay	8,500
Bolivia	3,000-7,000
Curacao	5,000

1810 00439-U

Chairman BURR Director Coats, thank you for that very thorough testimony Every year this hearing has geographically increased, and I think this year you have left no region of the world untouched with the concern that we might have. And this year especially, the threat landscape continues to increase from a standpoint of the tools used. I'm sure that much of that will be the subject of questions, both this morning and this afternoon

I want to acknowledge that we have a distinguished group joining us this morning from Austria, who represent their government I'm not going to ask them to stand or anything, not to distinguish them out of the group, but we're delighted to have them with us—being part of the United States Senate today.

I want to notice members that you will be recognized by seniority for five minutes. We intend to do one round, and I would say sorry to Senator Sasse and Senator Bennet because they will be last, and had they been here on time, they would have heard the great comments that I made about their addition to the Committee

[Laughter]

Vice Chairman WARNER. Of course, they still would have been last on questioning

[Laughter]

Chairman BURR. With that the Chair would recognize himself for five minutes

General Nakasone, this is probably directed at you. This Committee requested independent third-party researchers to produce two reports that comprehensively detail the leveraging of U.S. social media companies by Russia with based actors to conduct a disinformation and influence campaign in the 2016 election. Without speaking to sources and methods under your current authorities, would the IC be able to conduct the same analysis and produce comparable finished intelligence?

General NAKASONE Mr. Chairman, thank you very much for the question, and thank you for your recognition of Chief Petty Officer Kent.

In terms of the work that was done by the two organizations that the Senate Select Committee on Intelligence had asked, they looked at an internal study with a number of social media groups, which is something, as you know, is outside our authorities, but was very, very effective for us As we prepared for the 2018 midterm, we took a very, very close look at the information that was provided there We understood our adversary very well, and we understood where their vulnerabilities also lie.

Chairman BURR Good This to Director Wray and to yourself, General Nakasone is it the IC's assessment that this country's adversaries continue to use U S social media platforms as a vehicle for weaponizing disinformation and spreading foreign influence in the United States?

Director Wray

Director WRAY Yes, that's certainly the FBI's assessment, not only did the Russians continue to do it in 2018, but we've seen indication that they're continuing to adapt their model and that other countries are taking a very interested eye in that approach

Chairman BURR General Nakasone

General NAKASONE It is certainly NSA's assessment as well, Mr Chairman

Chairman BURR An area of increasing concern for this Committee is how the production, storage, and usage of data is a national security issue In 2013, IBM estimated that we were producing 2.5 billion GB of data every day And that data growth has not been linear IBM similarly reported that 90 percent of the world's data had been created in the last two years That data is now being aggregated, curated, and trafficked to enable and enhance data-hungry artificial intelligence algorithms How much of a concern should we have about protecting data from foreign adversaries? I'll probably turn it to Director Wray and General Nakasone on this again

Director WRAY Well, I think it's a great concern Certainly we see strong interest from a computer intrusion dimension, both from nation states, but also from criminal hackers, and increasingly the two in a blended threat way So, we see nation states enlisting the help of criminal hackers, which just is a form of outsourcing that makes it even more of a menace So, it's something that we're extremely focused on and should be a high priority

Chairman BURR General

General NAKASONE Mr Chairman, I concur with the importance of data It's the coin of the realm today If you think the power of data, not only for information that it can provide us, but also, as you indicated, the weaponization of it We see our adversaries very interested in being able to procure data And obviously as Director Wray mentioned, this is something that we're very, very focused on, as well, as the National Security Agency

Chairman BURR I'll throw out to whoever would like to answer what applications of big data by foreign adversaries have you most concerned today?

Director COATS Well, certainly China has the capacity and the resources to be able to do a lot, but that has not deterred other major nations like Russia and others to be aggressive in doing this You have identified this as a significant threat We are awash in data We have to understand how our adversaries use that data against our interests, and how we can prevent that from happening, as well as use it for our own purposes relative to know what is going on around the world and what influence efforts are being thrown at the United States So that was why we hold as a very, very high priority, as you mentioned in your opening statement, in terms of how we resource our community, Intelligence Community, with the kind of tools and weapons needed to address this issue

Chairman BURR Director

Director WRAY I was just going to add that as the challenges of encryption become bigger and bigger on the SIGINT side, we're more and more dependent on human sources, and the more big data can be exploited by our adversaries, the harder it is to recruit and retain human sources And I suspect Director Haspel may have a view on that, as well

Chairman BURR Director Haspel.

Director HASPEL I think Director Wray captured that exactly, and I would just add from the CIA perspective that a big focus for

us is finding out how our adversaries are using big data against us and sharing that with our partners

Chairman BURR I'm going to exercise the Chair for just a second for one last question, and this is your opportunity to recruit Your agencies do cutting-edge research on every technology you could imagine, from classic spycraft like disguising to communications technology that would blow James Bond and Q Branch away What pitch would you make to those in school now, or perhaps those working in tech and looking to serve a greater purpose, that they should come apply their engineering degrees, coding skills, and creativity and work in the IC?

Director Wray

Director WRAY. I would say there is nothing more rewarding than protecting the American people And we've seen with some of our smartest high-tech folks—I can think of one office in particular where two of our brightest stars with great talent briefly left for what they thought would be greener pastures in the private sector, and I was very pleased to see them both independently come back only about eight months later when they realized the grass was browner

General ASHLEY If I could Mr Chairman, I would have probably asked you to release the tape of what you just said, in terms of really how innovative and how creative and the opportunities that the folks in the IC get a chance to engage in, far outstrip anything that you see in a Hollywood movie And the other thing I would add to that is imagine when you get up every morning that your task, your responsibility is to defend the hopes and dreams of 320 million Americans and that's something that we relish the opportunity to do that every single day and people would want to join that team

General NAKASONE Mr Chairman, our mission sells itself when we talk to our people I would offer as we talk to young people at the National Security Agency, I saw a big data, artificial intelligence, machine learning, cloud computing in places like Baghdad and Kabul in support of our forces long before we ever called it that That's the selling point that we emphasize to our people because if it's cutting-edge, we will be doing it at the National Security Agency

Chairman BURR Robert

Director CARDILLO Mr. Chairman, we are proud of our ability to recruit some of the talent you just described We don't do it often on fiscal terms, we do it on psychic terms and so serving something greater than oneself for a cause to protect the Nation and our interests is one that both attracts and retains the lifeblood of our agency, which is our people

Chairman BURR. Director Haspel, do you want to take a shot at selling something that not many people know about?

Director HASPEL Well, like my colleagues, CIA officers come to Langley for the mission and they stay because of the mission and it's really about being part of something that's bigger than yourself And in terms of advanced technologies it's a chance to be on the cutting edge and make a difference

Chairman BURR Well, let me just conclude by saying the disciplines that come out of higher education and community colleges

today, all of those disciplines are applicable to the agencies that sit before us today. There should be no student that doesn't look at this as a way to apply what they've learned or the degree that they have. That didn't used to be the case. It was all specialized but now it applies to everything.

Director Coats

Director COATS: Well, Mr. Chairman, as somewhat of an older generation here who has to turn to his grandson to get the TV on the right channel, I'm continually amazed—as I get around the country talking to colleges and graduates and people that are in these STEM positions and studying—of their incredible talent. They bring those kind of talents and skills to our agencies as you have heard. And it is extremely rewarding to see the young people who know they could have a better financial deal, a more settled lifestyle, easier and so forth and so on, they want to serve this country and they see this as meaningful and it exceeds what financial gains they could get on the outside. Plus they are able to do some really cool stuff in all of these agencies, which we can't talk about here, but it is attractive to it. But their commitment to the country and commitment to the mission as has been demonstrated here is awfully rewarding when you go out and see what these young people have and what they are willing to do for their country.

Chairman BURR: I thank all of you.

Vice Chairman

Vice Chairman WARNER: Well, thank you, Mr. Chairman.

And I agree that the people who work with all of you are extraordinarily special Americans, and the mission is critically important. I would personally add one other item, that if they work for the United States Government they actually ought to be paid on time. And I question—I have seen the number of Federal employees who worked five weeks plus without pay. I'm not sure many folks in the private sector would show up five weeks plus without pay on an ongoing basis. And while I'm appreciative of the fact that particularly the FBI, that your agents will be reimbursed, I do worry, the FBI has a number of contractors. Under our current setting, they will come out of this five week plus, 35-day shutdown with nothing to show.

And if we cannot guarantee that people that work for the United States Government are going to be not used as hostages for either side of the political debate, then I think our ability to recruit and retain will go down dramatically. I don't know if Director Wray, if you want to make any comments on that or maybe just punt. But it is something I saw FBI agents, I saw Homeland Security agents, I saw air traffic controllers working double shifts and then going and driving an Uber. I'm not sure I want somebody showing up maintaining the safety of our airways with four hours of sleep. But I'd be happy to take your comment there.

Director WRAY: Mr. Vice Chairman, needless to say we are still assessing the overall operational impact of the shutdown, but what's quite clear is that it was incredibly negative and painful for the 37,000 men and women of the FBI and their families. But I will also say that I could not be more proud of their professionalism.

and their dedication to not let balls drop but to keep charging ahead across all of our various program areas during that time

Certainly, when you talk about contractors, we are very dependent, just like every government agency, on contractors for a whole range of services and you know we would want to make sure that that aspect of our operations doesn't get disrupted

Vice Chairman WARNER And my hope would be that folks from both sides of the aisle will look at how we might make sure—particularly some of those low-priced contractors often times the folks who clean the bathrooms or serve the food—don't have to come out of this 35-day shutdown with absolutely no compensation at all

Let me start my first question Director Wray and Director Coats. The Chairman has alluded to it, we've all talked about it this emerging challenge around social media, particularly the fact—whether it's Russians or other foreign entities—that try to masquerade as Americans. They build large followings, they create fake accounts I think this problem is going to get exponentially harder as we move into deepfake technology. A lot of policy implications

How do we sort through that? How do we, going forward, work with our social media company partners to put Americans on alert about the volume of foreign-based activity, bots, and others who are masquerading as Americans so they are not able to further manipulate not just our election process but actually to build social divisions?

Director WRAY Well Mr Vice Chairman, this is a particularly vexing and challenging problem I think it's going to require a holistic response, certainly at the FBI through the Foreign Influence Task Force and all of our field offices We are trying to work much more closely not just with our Intelligence Community partners, especially General Nakasone and the NSA, but also as you say with the private sector.

And I will say that one of the bright spots between 2016 and 2018 is how much more cooperatively we are working with the social media companies, because there's an awful lot that really has to be done by them in this space. And there were a number of success stories only some of which we could really ever share where the social media companies, based on tips that we provided, were able to take action much more effectively, much more quickly to block and prevent some of the information warfare that the Russians were engaged in And I think we are going to need to see more and more of that But now that we've got some momentum, we are looking forward to growing that partnership

Vice Chairman WARNER. And I think you would agree some companies have done well, some have not done as well I think we are going to need to continue to explore this and just basic notional ideas of—where I think we don't get into First Amendment challenges—where Americans ought to have the right to know whether they are being communicated with by a machine or a bot versus an actual human being And some of the research done by some of the folks we looked at, in a way, it may be a little more positive, it says that the vast volume of traffic on the far left and the far right in terms of political discourse in social media is actually not Americans but foreign-based bots There may not be as many

crazies out there as it seems Editorial comment. But I do think we've still got a long way to go Thank you, Mr Chairman

Director COATS Mr Chairman, if I could just add one thing to support Director Wray's remarks Having served on the Committee and gone through the frustrations of the interaction and information-sharing with private social media companies, we've seen significant progress with that Many of us have sat down eyeball to eyeball with its leaders Our tech teams are working with their tech teams I can't say that's worked with every social media company, but it's significantly better because there is information we can provide them that's in their benefit, and of course we always stress the fact that we need to work together to protect our people from the influence activities from abroad and threats to the American people So, I'm encouraged having made some trips to several of these companies, encouraged with the openness and willingness to see what we can do while protecting privacy rights, but also ensuring security

Chairman BURR Senator Risch

Senator RISCH Thank you very much

First of all, let me say that I'm always astounded in this Committee and in the Foreign Relations Committee with the volume of issues that we have to deal with. I think your opening statement, Director Coats, indicated how difficult this is to process and deal with all of this. In your statement for the record, that all of you joined in, again lays this out for us and tells us the kind of volume that we have to deal with

And we're certainly only going to scratch the surface here today, but I want to—I want to focus on something that doesn't get as much focus as I think it should We see these days, every time we pick up media or turn on TV they're talking about Russia and Russia's ham-handed efforts to affect things in the world. And certainly, it's a concern But in my judgment, and I think for many others, the real concern is China

We're approaching the end of the first fifth of the 21st century and, if we've learned anything, it's that the last few decades have convinced us that China, in the 21st century, as we proceed through it, is going to be a major competitor of ours in every way that there is Obviously, economically, militarily, culturally, and in every other way And look, this is going to happen We are living in the 21st century. Communications and transportation are so different from what they were, and we, as the United States, are going to wind up having to compete like we never have before with a gorilla that's starting to get to be about the same size we are and, as a result of that, we're going to have to learn to deal with that

The thing I really want to focus on is how we're going to do with that We are Americans We've always competed We can compete, we innovate, we create, we manufacture, we do the great things that we do that have really led the world But we can only do it if we are operating under a rule of law and that is something that is greatly missing at the present time as China tries to compete with us

The poster child for me is a local company we have an Idaho, Micron Technology Most of you have heard of them They're the sec-

ond largest manufacturer of memory in the world And they have had a recent case where Chinese nationals stole intellectual property and then took it back to China and are now suing Micron in China through a state-owned entity and a state-owned court in front of a state-owned judge And this is the kind of thing that we just can't have

I had a spirited discussion with the Chinese Ambassador about this as he attempted to defend the undefendable His suggestion was that things aren't as advanced in China as they are here Well, I get that They've come a long, long, long way in a few decades, but if we're going to do this and keep the world order right side up, China is going to have to develop their rule of law and live by it much better than what they have recently. We just saw again, the indictments against the Huawei official In defense of the Department of Justice, Department of Treasury, and others, they've indicted these Chinese people that have affected Micron

And the question I have for you is, after listening to the Chinese Ambassador, I'm not wholly convinced that their efforts are going to be as robust as they need to be to get China right-side-up when it comes to the rule of law And when I'm talking about the rule of law, I don't mean just covert theft, but I mean what I call overt theft And that is where they require businesses, as we all know, to divulge their information before they can do business in China and then having the kind of restrictions they have on them in China And all of this causes us real difficulties as we attempt to compete

Director Coats, I wonder if you could address that, or assign it to somebody there at your panel. I'm looking for what do we see in the future, number one, and number two, how can we try to get our arms around this to do something about it?

Director COATS. Well, I'll start it, but I'd like to turn it to Director Wray, relative to what was just released yesterday, which pointed, I think, in the direction of what you were talking about. But frankly, while we were sleeping in the last decade and a half, China had remarkable rise in capabilities that are stunning. A lot of that was achieved, a significant amount of that was achieved by stealing information from our companies, by inserting Chinese in certain of our labs, or bringing back technological stolen properties, which China engaged. You can talk to any number of everything from automobile manufacturers to sophisticated software as well as R&D for military, and I think General Ashley can speak to that on the military side.

I think we could go down the panel here and discuss for a significant amount of time the kind of actions China has taken to become a competitor, but also to gain superiority and what they're doing and how they're spreading around the world through their Belt and Road Initiative and a number of other initiatives. It is a serious issue that has to be dealt with. You are right on target in terms of saying that rule of law and international norms and fairness in trade and engagements is not the Chinese model.

And to counter it, we have to expose it. It was exposed yesterday and a significant way relative to telecommunications and Director Wray can talk about that. We have alerted our allies. They are now second-guessing and questioning their initial responses to China.

Oh, it's a great market, we need to get over there. Don't worry about anything else except selling a product. They're now finding that their product has been duplicated by the Chinese and sold for half the price because they didn't have to spend as much money on research and development.

So, we are working with the Chairman, Vice Chairman, and with the Committee, actually, to try to be as transparent as possible with our company heads. We have been traveling around the United States meeting with CEOs and others. I think I ought to stop right there and—and the rest of this ought to go into a secure setting in terms of how we are dealing with this. But I'd love to turn to Director Wray relative to what they are doing.

Director WRAY. Senator, I completely share your observations and I would just say that one of the things that the American people I think are now sort of waking up to understand is that the lines between the Chinese government and the Chinese Communist Party are blurred, if not totally erased. The lines between the Chinese government and Chinese state-owned enterprises, the same. The line between the Chinese government and ostensibly private companies, for all the reasons you described, and especially the line between lawful behavior and fair competition and lying and hacking and cheating and stealing.

And one of the things that I've been most encouraged about in an otherwise bleak landscape is the degree to which, as Director Coats was alluding to, American companies are waking up. American universities are waking up. Our foreign partners are waking up. And it's one of the few issues that I find when I engage in the interagency and up on the Hill, covering from one of the spectrum to the other, there seems to be actually more consensus than I've ever seen before in my career. And I think that's a positive and we need to build on that.

Chairman BURR. Do either of the generals have—General Ashley?

General ASHLEY. Yes, sir. Sir, you laid out the problem set very well and what's been highlighted, this isn't just a US issue, this is a global issue. When you think about the Internet of Things, when you think about the nature of global business and how corporations are integrated. And if it touches a company in Australia who may have a relationship with a company in the US, then we become connected. From a military standpoint, when you look at major acquisition from a Defense Intelligence Agency, one of the things we put against this is the Supply Chain Risk Management Threat Analysis Center.

So when DoD looks for major acquisition, we do the due diligence and research against those companies, but that challenge is getting more and more complicated, because you think they either buy it, they steal it, or they can build it. But the nature of that business, you have things like white labeling where you don't necessarily have to disclose the relationship, where you could sell a semiconductor, chip, piece of software that ostensibly it is from your company, when in fact it may have been manufactured by a Chinese company. So that's the due diligence that we have to apply to look at the supply chain across all acquisition. And we've got to bring all our partners in and illuminate the challenge and make sure

they're doing the same due diligence, whether it's through CFIUS or other protocols

Chairman BURR Senator Heinrich

Senator HEINRICH Thank you, Chairman

Director Coats, in this hearing last year, you testified that you would recommend minimal access to classified documents to anyone without a permanent security clearance. You made that statement with regard to reports of multiple holders of interim security clearances in the White House. And now we are seeing published reports that dozens of times the White House has overruled the career FBI experts responsible for adjudicating security clearances, granting top-secret clearances to White House officials. Would you still recommend minimal access to classified documents to those White House officials, since FBI experts recommended that they not be given those top-secret clearances?

Director COATS I do support providing all the information necessary for not only the White House, but for all of our branches relative to providing security clearance. They have the authority to do that. We issue guidelines in terms of what——

Senator HEINRICH I understand they have the authority

Director COATS [continuing] Ought to be adhered to

Senator HEINRICH I want to know, do you think that the White House should take seriously the recommendations of those FBI experts?

Director COATS To my knowledge they do take seriously. It is their decision based on a whole number of factors. We've seen every Administration issue clearances based on how they assess what is provided. Our job is to provide them the best information we have relative to security clearance processes so that they have the full picture in front of them when they make that decision.

Senator HEINRICH Speaking of the full picture, last year we passed the SECRET Act. As the Director of National Intelligence, do you think it's problematic that the Administration has not complied with the portion of that law requiring the White House to report on its process for conducting security clearance investigations?

Director COATS I'm not aware that that has happened. I'd be happy to look into that.

Senator HEINRICH I would appreciate that.

Director WRAY, as I mentioned, we're seeing public published reports that numerous times the White House has simply overruled career FBI experts responsible for adjudicating those clearances. In your view, were there valid reasons given for why the FBI's expert advice was overruled so many times?

Director WRAY Senator, I think there may be some confusion about the way the process actually works. The FBI is, in the context of providing background investigations for people other than its own employees, is what's called an ISP, or the investigative service provider. So, we essentially do it at the request of whoever the requesting entity is. In this instance it would be the White House. And I think where the confusion is, is what we do is we assemble the information, we provide the factual information. We do not actually make recommendations one way or the other about the clearances. The decision about what to do based on those facts is

entrusted by a long-standing process to the requesting entity. So, we provide the information, but then they make the call

Senator HEINRICH Thank you, Director

Director Coats, I want to come back to you for a moment. Your office issued a statement recently announcing that you had submitted the Intelligence Community's report assessing threats to the 2018 midterm elections to the president and to appropriate executive agencies. Our Committee has not seen this report. And despite Committee requests following the election that the ODNI brief the Committee on any identified threats, it took ODNI two months for us to get a simple oral briefing, and no written assessment has yet to be provided.

Can you explain to me why we haven't been kept more fully and currently informed about those Russian activities in the 2018 election?

Chairman BURR Director Coats, before you respond, let me just acknowledge to the members that the Vice Chairman and I have both been briefed on the report, and it's my understanding that the report at some point will be available.

Director COATS Yeah, the process that we're going through were two 45-day periods, one for the IC to assess whether there was anything that resulted in a change of the vote or tampering with machines, what the influence efforts were, and so forth. So, we collected all of that, and then the second 45 days, which we then provided to the Chairman and Vice Chairman, and the second 45 days now is with DHS and DOJ—looking at whether there is information enough there to determine what kind of response that they might take. We're waiting for that final information to come in.

Senator HEINRICH So the rest of us can look forward to—

Director COATS So that will be coming, coming shortly.

Senator HEINRICH [continuing]. The rest of us can look forward to reading that report?

Director COATS I think we will be informing the Chairman and the Vice Chairman of that, yes, of their decisions.

Senator HEINRICH That's not what I asked. Will the rest of the Committee have access to that report, Mr. Chairman? Chairman Burr.

Chairman BURR Well, let me say to members we're sort of in uncharted ground, but I'd make the same commitment I always do, that anything that the Vice Chairman and I were exposed to, we'll make every request to open the aperture so that all members can see it. I think it's vitally important, especially on this one. We're not to a point where we've been denied, or we're not to a point that negotiations need to start. So, it's my hope that once the final 45-day window is up, that is a report that will be made available probably to members only.

Senator HEINRICH That would be my hope as well.

Chairman BURR Senator Rubio.

Senator RUBIO. Thank you.

Director Wray, as we keep talking about China—and this takes off on what Senator Risch has already asked—using the academic community and the universities, commercial espionage, the forced transfer intellectual property, embedding themselves in the potential end of the supply chain, obviously the traditional counterintel-

ligence work that they do and the like, is it not fair to say that China today poses—just looking at the scale and scope of the threat—that China today poses the most significant counterintelligence threat this Nation has faced, perhaps in its history, but certainly in the last quarter century?

Director WRAY Well, I'd hesitate to speak, you know, categorically about the entire course of history, but I certainly would—

Senator RUBIO Well, let's limit it to 25 years. How's that?

Director WRAY But I would certainly agree with you, Senator, that as I look at the landscape today and over the course of my career—I still think of myself as a little bit young—that the Chinese counterintelligence threat is more deep, more diverse, more vexing, more challenging, more comprehensive, and more concerning than any counterintelligence threat I can think of.

Senator RUBIO And in that realm, would it not make sense—and perhaps this is for you, Director Coats—that we would have a more coordinated approach to educate and prepare all the departments and agencies of government, as well as businesses, universities—I mean just the scale and comprehensive nature of the threat—would it not make sense to have some high-level coordination or coordinated approach to be able to prepare all these different entities in our economy and society to deal with this threat?

Director COATS We are working carefully with the Committee. Particularly Senator Warner and Senator Burr both have engaged with us in terms of putting a program together to do just that. I'd turn to General Ashley for his comments on it also.

General ASHLEY So, the fact that we're having this discussion and that you've highlighted that, even last year we talked about the Confucius Institutes. You know, that word gets out. Since 2014, 13 universities have closed down the Confucius Institutes. U.S.-wide, I think the number is about 100. But again, my previous comment in terms of this is a global issue, while we've closed down about 13 in the U.S., there's been about a 23 percent increase globally in Asia, Europe, and other places, and there's probably about 320-plus Institutes that exist globally. So, the education is getting out from a U.S. standpoint, and it's trending the right way slowly. But again, it is a global problem, and we're as weak as the relationships with some of those partners subject to influence.

Senator RUBIO This is now where I make the obligatory pitch. Senator Warner and I have filed a bill that creates an office of critical technologies to help coordinate the response to this threat across the board, and I know everybody on this Committee is interested in this topic.

I want to switch gears for a moment and maybe ask you this, Director Coats, as well, if we look at the situation in Venezuela, which usually I raise in this Committee, and people know it's important, but now it's really topical. So we've had 3 million migrants flow primarily into Colombia, Peru, and Ecuador. It's projected to be five million, if current trends continue by the end of this year. That would be a rival number to what we've seen in the Syria situation, and it most certainly has had a destabilizing effect on Colombia and other neighboring countries to the point where very few nations could take in one million migrants in one shot, not to mention that quickly. Imagine two million and the impact it's having on

their government budgets, their healthcare systems, and the like. We know from Department of Justice filings and sanctions from Treasury that their government doesn't just tolerate drug trafficking, they give it the protection of government, and many high-level officials are active participants in narco-trafficking. We know that they have a relationship, long-standing relationship, with Iran and with Hezbollah. We know they have openly and repeatedly—at least Maduro has—invited the Russians and Putin to establish either a rotational or permanent presence somewhere in Venezuela, thereby creating a Russian military presence in the Western Hemisphere. In fact, they flew, about three weeks ago or a month ago, two Russian nuclear capable bombers into the Caribbean Sea.

Seeing all these factors, what's happening in Venezuela—we care a lot about democracy, we care a lot about freedom, we care a lot about human rights—but when you add all these things together, the migratory impact on regional partners and how that spills over into the United States, their relationship with Iran and Hezbollah, the drug trafficking—because all that cocaine is destined to come into our streets—the invitation to the Russians to potentially have a military base, whether it's rotational or permanent, in our hemisphere—is it not in the national interest of the United States of America that the Maduro regime fall and be replaced by a democratic and more responsible government?

Director COATS. Well, I think everything you said has been very open to the American public relative to the situation that exists in Venezuela. Our job as an Intelligence Community is to provide all of the relevant information that you just talked about in terms of what the impact of what's happening in Venezuela and then throughout the region, and the threat that evolves from that.

The decision as to how to address that obviously is a decision by the Executive Branch and by the President ultimately with the support of the National Security Council. So, we do obviously face a dire situation that has enormous consequences. I think nobody's more aware of that than you. You've been the person we turn to for—almost ready to invite you into the Intelligence Community given the information that you can provide for us given your interests.

I was remiss in not naming you as someone relative to China who's taken a forward effort on the part of the Committee and joining us in a number of ways to talk to CEOs and others around the country relative to the Chinese threat.

With Venezuela, it's a very tenuous situation right now as you know. We have taken steps in terms of recognition of the opposition as the legitimate president of Venezuela. Yesterday, the Treasury Department announced oil sanctions against a Venezuelan oil company. They are a major company that we do business with here also. So, steps are being taken and we have a lot of support from a lot of our allies. So as I said, it's a very fluid situation that I think hopefully will be successfully resolved with the support of Venezuelan people. But we do assess—and I'll turn to General Ashley here—the influence of the military on that decision, I think—Venezuelan military on that decision probably is key to what direction we might go in.

General ASHLEY So, I would say that everything you laid out is correct. We expect to see another two million refugees leave, to add to the three million that will go into the region. The relationship that they have with Russia, China, Iran is a long-standing one, pre-existing.

The reference you made to the TU-160 Blackjacks that flew those strategic bombers—third iteration of that—first time was in 2008 and then 2014, and we've seen it again. As far as presence on the ground, we can talk a little bit more detail in a closed session about where we see Russia and China going with that greater instability. But in the open press, what you've seen thus far really is nothing more than just vocal support that's coming out of Moscow and that's coming out of China as well. But there is a relationship there from a military standpoint in the way of training. Lots of Venezuelan officers go to Russia for training and there is a reciprocal relationship for equipping them as well.

Senator BARR. Senator King.

Senator KING Thank you, Mr. Chair. In light of Senator Rubio's comments, I'd just like a note of caution. He listed refugee flows, human rights abuses, and corruption. There are lots of countries in the world that meet that description and our right or responsibility to generate regime change in a situation like that I think is a slippery slope. I have some real caution about what our vital interests are and whether it's our right or responsibility to take action to try to change the government of another sovereign country. That same description would have led us into a much more active involvement in Syria, for example, five or six years ago, other parts of the country. I just wanted to note that.

Senator Burr, I loved your opening statement. It was very thoughtful and you came up with a wonderful formulation for, I think, a mission of this Committee and also the Intelligence Community of "creative, adaptive, and resolute" and I must say it reminded me immediately of my old high school football coach who put it somewhat less elegantly. He said he wanted us to be agile, mobile, and hostile. I think that may be a less elegant way to put it, but the same principle.

On Huawei, it seems to me they have to decide they are either going to be a worldwide telecommunications company or an agent of the Chinese government. They can't be both, and right now they are trying to be both. And I think the world's customers which the Chinese are certainly sensitive to are the best enforcers of that principle.

Director Haspel, one quick, I think a yes or no question, and I think Sen—I almost said Senator Coats—Director Coats referred to this in his opening testimony. Is Iran currently abiding by the terms of the JCPOA in terms of their nuclear activities?

Director HASPEL Senator King, I think the most recent information is the Iranians are considering taking steps that would lessen their adherence to JCPOA as they seek to pressure the Europeans to come through with the investment and trade benefits that Iran hoped to gain from the deal.

Senator KING But since our departure from the deal, they have abided by the terms. You're saying they are considering but at the current moment they're in compliance?

Director HASPEL Yes, they are making some preparations that would increase their ability to take a step back if they make that decision So, at the moment, technically they are in compliance, but we do see them debating amongst themselves as they've failed to realize the economic benefits they hoped for from the deal

Senator KING Thank you

Director Haspel and General Ashley, Mr. Khalilzad, our envoy to Afghanistan, has said that part of the basis of the current talks with the Taliban is that they would prevent Afghanistan from ever becoming a platform for international terrorist groups. And of course, that was the basis of our original intervention

Do we believe them? Are they capable of that? Did they learn something from having given safe haven to Osama bin Laden? Do we believe that there is a mindset change that that could be an enforceable or at least a reasonable expectation?

Director Haspel

Director HASPEL Yes, Senator, and you are referring to very recent and fresh news that has come out of Ambassador Khalilzad's very intensive efforts over many months now but particularly over the last eight days in Doha where he has been engaged in talks with the Taliban to seek to achieve a framework under which we can conduct—

Senator KING Can we believe that the Taliban will do that?

Director HASPEL Well, because we have inflicted severe damage on al-Qaeda in the AfPak theater, I think that all of us at this table would agree that it's very important that we maintain pressure on the terrorist groups that are there And so if there were an eventual peace agreement, a very robust monitoring regime would be critical and we would still need to retain the capability to act in our national interests if we needed to

Senator KING Thank you

Another note Director Coats you mentioned—I wouldn't say almost in passing but it was just a sentence of your introduction which I think is a very important point and maybe the big news of right now what's going on—increased cooperation between Russia and China For a generation that hasn't been the case That could turn out to be a very big deal on the horizon in terms of the United States If those two countries begin to work together systematically, that could be a big problem for us

One more quick question Director Wray, you are doing a lot of monitoring and working on the intervention in our election process One thing we are worried about is deepfake which we've used but not—not defined. That's when they use technology to create essentially a false reality—an apparent speech by a candidate where different words are coming out of their mouth than what they actually said. Here's my question

If in the next two years and particularly in the year preceding the next election, your agency determines that this is happening and that it's sponsored by a foreign entity, will you inform the candidates that are the victims of this, the committees? My concern is it's one thing for the Intelligence Committee to know that this is happening, but if they don't inform the people who are being victimized, who are being attacked in this way, I think that really blunts the effectiveness of the availability of the intelligence

Director WRAY Senator, we have a fairly established protocol that we work through to try to determine whether or not we have information that is reliable enough and immediate enough and actionable enough to be able to notify a victim. The Department of Justice has a set of guidelines that goes through that. They've recently been expanded to provide us more flexibility in the foreign influence or maligned influence arena, which this would be a permutation of and we would expect to follow that process.

Senator KING I hope you'll review that process, because telling the world of a maligned influence a month after the election doesn't do anybody any good. So, I hope that could be reviewed and thought about in terms of letting people know as soon as possible when there's credible evidence of a foreign deepfake or other kind of cyberattack on a campaign.

Director WRAY Just to be clear, I wasn't referring to the sort of post-election process.

Senator KING No, I understand.

Director WRAY Yeah, the protocol that I'm talking about is that's where the actionable piece of it comes into play, right? Obviously, the ability to be able to contact, just like we do in the cyber arena.

Senator KING I just want to be sure our policies keep pace with the magnitude and accelerated nature of the threat.

Director WRAY Well, we clearly need to be, to your point about agility, we clearly need to be able to adapt as the technology adapts and as Director Coats said in his opening, we would expect our foreign adversaries in the maligned influence space to keep adapting as well, which is a source of concern.

Senator KING. We want you to be agile and mobile, maybe not hostile. Thank you.

Director COATS Mr. Chair, General Ashley has a comment he would like to make.

General ASHLEY Thank you. If I go back to your comment on Huawei, you know, Huawei needing to make a decision about the direction that they want to take with regards to how do they support the Chinese government, or as an independent business. The challenge in which we've laid out in part of the dialogue is that decision does not lie with Huawei. It lies with the CCP. It lies with Xi Jinping in the way that they are starting to centralize greater the management of those businesses. So therein lies the challenge, where you see a decentralization and execution of capitalism. But really you have this kind of authoritarian capitalism in the way that the government provides oversight and puts very strict rules in place. It makes it very problematic for all of those businessmen to operate without providing that information back to Beijing.

Senator KING And I think the market has to tell them that's not acceptable. Thank you.

General ASHLEY Agree.

Chairman BARR Senator Collins.

Senator COLLINS Director Haspel, Director Coats described this morning a Russia that is aggressive across all fronts. Did the CIA have any concerns about the Treasury's actions to ease sanctions on companies associated with the close Putin ally, Oleg Deripaska, in terms of his ability to retain some informal control? This isn't a typical American company that we're dealing with.

Director HASPEL Senator Collins, I don't think I'm expert enough to comment on Treasury's decision, but what I will say is that we work very hard to make sure that every agency, and all of our senior agency leaders, understand Putin's methodologies and what he will do to try and achieve what he perceives as Russia's place in the world and as a great power status. Moscow continues to grapple with the effect of western sanctions. There have been very severe sanctions placed on them. I'm also, I think, as an Intelligence Community, both Director Wray and I were very pleased with the decision to expel 61 Russian intelligence officers. That has a tremendous impact on their ability to hurt us in our own homeland. So, our job is to make sure that everybody understands Putin's efforts to influence globally and to enhance Russia's power status in the world, and we will continue to support Treasury as they look to impose sanctions. I think Treasury has been very, very aggressive on the sanctions.

Senator COLLINS But did the CIA raise any concerns about the Treasury plan?

Director HASPEL No, I don't believe we raised any concerns, but we provided all the supporting intelligence about the oligarch in question versus the aluminum company that you're referring to.

Senator COLLINS Let me switch to a different issue, and that is Syria. Let's assume that after we depart from Syria, the Assad regime takes control of northwest Syria and eastern Syria, which I think is a reasonable scenario. Should this happen, what kind of threat would the United States and its allies expect from the thousands of extremists who are still currently fighting in those areas of Syria, such as ISIS?

Director HASPEL Senator Collins, to start with the last part of your question, everyone at this table is working very hard to make sure that we can finish the Defeat ISIS Campaign, and also that we understand the foreign fighter picture in eastern Syria and that we don't allow the foreign fighters that have been captured to return to the battlefield. It is, of course, accurate that ISIS has suffered significant leadership losses and near total loss of territorial control. But of course, they're still dangerous, which is your point, and they're the largest Sunni terrorist group, and they still command thousands of fighters in Iraq and Syria. So I think the stance in the Administration and supported by the IC is that we're going to work very hard to finish that mission and that we—that's another example of where we must maintain a very robust monitoring regime and retain the ability to project into Syria should we need to.

Senator COLLINS Director Coats, you looked like you wanted to add to that.

Director COATS Well, just to make the point that while we have defeated the Caliphate with a couple of little villages left, we should not underestimate the ability of terrorist groups, particularly ISIS and affiliated groups with al-Qaeda and other terrorist groups, that they are operating not simply on what takes place on the battlefield that gives them strength or weakness, but they are operating on the basis of a theocracy, a theology, an ideology that we will continue to see for perhaps years ahead in various places of the world. So, we see those that were engaged in Syria moving

to other ungoverned spaces. We see the tentacles of ISIS and al-Qaeda tactics in different places in the world, such as North Africa and the Philippines. We've just seen that take place, ISIS claiming credit for that. So, ISIS will continue to be a threat to the United States, and we're going to have to continue, as Director Haspel said, to keep our eyes on that and our interest in the realization that this terrorism threat is going to continue for some time.

Senator COLLINS: Thank you.

Chairman BURR: Senator Bennet.

Senator BENNET: Thank you, Mr. Chairman. Thank you for your welcoming me to the Committee. I apologize for being late, but I also want to say what a privilege it is to hear your testimony this morning and to know that you and agents and officers who work with you are at their posts keeping this democracy safe, and it is a reminder to me what's at stake when our partisan politics can't even keep our Government open. And you guys are still doing your work, and it's an inspiration to me, and I hope to the people that— whoever is watching this at home.

And in that spirit actually, Director Coats, I wanted to start with something that you ended with, which was an observation about concerns that the IC has about political uncertainty in Europe and the ability of European democracies to push back on what you described as autocratic tendencies. Could you say a little bit more about that?

Director COATS: Clearly Europe has seen Russian aggression in hybrid ways. Significant cyber incidents, trying to influence not only their view of our alliance, but their own view of their own alliance within Europe, seeking to sew divisions between countries and between Europe and the United States. It's interesting that some time ago at a meeting with NATO intelligence officials, the question was raised by the Director, did any of the 29 countries of Europe not see Russian influence in their countries and particularly in the political processes of those countries? Not one person raised their hand and said I have not seen that. All 29 have seen some type of influence from the Russians.

So, it's a persistent threat and a pervasive threat that the EU needs to address, and we address with them through our NATO coordination. But I think the warning is there. I think the nations are aware of the threat. We see some issues that threaten some of the alliance coalition. Turkey is a member of NATO, and yet we're having some issues with Turkey. They're at a very geostrategic point in the world, and we've been happy to have them with NATO, so we'd like to keep them there. I don't know if I'm directly answering your question.

Senator BENNET: You are. What about within the domestic politics of those countries? The autocratic impulses, whether aligned with Russia or not aligned with Russia?

Director COATS: Well, I think there's a lot of wariness about aligning with Russia whether you're authoritarian leadership or not. We have seen some countries leaning in that direction, raising issues as to the strength of the alliance. A lot of that is related to the economy, to trade matters, to a number of issues beyond just the military.

Senator BENNET In the minute I have left, Director, if it's okay I wanted to switch to potential dual-use capabilities that China may attain through its One Belt and One Road Initiative. Recently there were reports that China may press Pakistan for military access.

As Pakistan falls more and more into China's debt, I'm concerned about data access China may control through digital infrastructure projects in countries around the world. What is the IC's assessment of potential dual-use aspects of China's Belt and Road Initiative and what threats do they pose to U.S. interests?

Director COATS Well, I'd like to also—

Senator BENNET And where I would say?

Director COATS Well, you can look at the globe. It's called One Belt/One Road and its global. You can look at the map and see a lot of strategic places where China has real interest in perhaps a dual effort to not only provide infrastructure support, loan support for ports, airports, roads, a lot of infrastructure loans to help with their economy, but also interest in placing strategic military positions.

We've seen that take place off the Horn of Africa. We've seen China looking at different—and if you look at the spots where they're—they are engaging and you see some geopolitical and military aspects. So it is dual and I'd like to turn to General Ashley to give you better detail of what that looks like.

General ASHLEY So, we can talk in a classified session about the nature of the relationship with Pakistan and I think that we can eliminate what you are seeking there.

In terms of dual-use technologies there is a multitude of things out there and it's not necessarily germane to the Belt and Road Initiative. It's where they are investing and part of that investment is how they are garnering intellectual capital globally, but think about quantum from a communication standpoint, from a computing standpoint, from a sensing standpoint, what those advanced sensors could do, if you look at genetics, bioengineering.

So, there is a multitude of things whether it gets into human engineering, it gets into how do you cure diseases but at the same time there's kind of the flipside nefarious aspect of that and so there is a plus and a negative side to the risk in the middle. There are agricultural aspects of that which are very positive but could have a negative impact as well.

So, there's a number of things—in terms of advanced technologies where they are there investing—that have dual-use capabilities that will really mature over the course of the next decade.

Chairman BURR Senator Blunt

Senator BLUNT Thank you, Chairman

Thanks to all of you. I want to join everybody in thanking you for what you do and the important service that you provide in securing our freedom and the freedom of lots of other people.

General Ashley, I know we lost a St. Louisan in Syria as part of your defense intelligence operation and certainly reach out to their family and to the families of all who serve who put themselves at that level of risk.

Director Cardillo, I saw "60 Minutes" over the weekend—talked about small satellite data, about all of the commercial imagery

available. If, as you come for what is your last likely appearance in this job before this Committee, there's a legacy that you're leaving it's bringing the commercial data community in, in a way that we are taking advantage of what's out there that we don't have to produce ourselves.

But as we do that, what concerns do you have about cyber activity that might in some way impact that data or the data that we get in other places? How would you describe your concerns about cyber as it relates to commercial data that you've made great steps in using and the other geospatial that we produce ourselves that may be disrupted before it gets analyzed with information that's not really there?

Director CARDILLO. Thanks, Senator, for the question. I don't think there's a more important issue on my desk or I would offer the desk of my colleagues here and that is at the heart of our profession is integrity and credibility, reliability. That's how we get invited to meetings. That's how we get invited back to meetings to provide a sense of confidence to those that we serve to help them make decisions.

What you just described as both an opportunity, that's the connection with new partners, nontraditional sources, small and large companies and universities, etc. Every one of those connections is also a threat or a risk, because if I'm now plugged into this new source, to gain benefit and understanding coherence, I'm also plugging into every aspect of vulnerability that they have. So we work on this very, very hard.

I obviously count on the experts at NSA and FBI on the digital domain and the hygiene that's necessary. I will also say because it was brought up before, this issue of deepfake. As that technology advances, and it will, I do worry about as a community that needs to seek the truth and then speak the truth—in a world in which we can't agree on what's true, our job becomes much more difficult and so go back to your question.

We have to do a better job at protecting what we do so that when we do show up you have the confidence, you know where it came from, you know how we handled it, you know who did or didn't affect or manipulate it. And so again, it's an issue that's in the center of my desk and all of our concerns.

Senator BLUNT. One more question for you, Director. In your plans for geospatial western, the development of that new facility replacing a 75-year-old facility in St. Louis which is fully redundant with what happens in Springfield, Virginia. The difference you're looking at is that 40 percent of the space in that plan is unclassified.

How does IC work in an unclassified environment? How would you calculate success in your future view of how that works and why would it work that way in plowing some new ground in unclassified space in a classified facility?

Director CARDILLO. The short answer is very carefully. I will expand. So, some four years ago when I stepped into this privileged position, I challenged our team to think differently about our value proposition in a world that is much more open now in which there's many more sources of information, some good and some not so good.

And so I coined a phrase that we need to succeed in the open I modified that a few months later with some help from my teammates I said what we really need to do is succeed with the open And to your point about our new campus in St Louis, which we couldn't be more excited about by the way the infrastructure is closer to 100 years old But this is much more than an infrastructure project I think of this as a new canvas. It's almost 100 acres We can reimagine our profession on that campus, part of that re-imagination needs to be engagement with that open community in a way that's protected and that's knowing about who and what we are plugging into

So, we couldn't be more excited about the ability to take the opportunity that we have in St Louis now, to redefine that value proposition in a more open world, in a more connected world, in a world in which we are taking on sources that we know and sources that we need to double and triple check And so, the 40 percent that you referenced is just an estimate that we have now but we just want to build into that infrastructure knowing that we're going to have to work not just in but with the open and so that's why we've laid out that marker at the beginning

Senator BLUNT. And General Nakasone, how does this fit into what you do, the whole idea of GEOINT, of individual personal geography, all of the things that we didn't used to have access to that we have access to—now not only using it but using it with confidence?

General NAKASONE. Senator, I think your initial question with regards to the data security is a very important one in the terms of how do we ensure the integrity and assurance of the data that Director Cardillo and the men and women of the NGA have to be able to leverage every single day in support of a number of different requirements whether or not it's policy makers, it's forward forces deployed Our job is to assist in that and to make sure that that data is well-protected and we can rest assured that when we leverage it, it's the right time at the right place and at the right data that we need to be able to utilize it.

Senator BLUNT. Thank you Thank you, Chairman

Director COATS Mr. Chairman, if I could just add something here Robert Cardillo is finishing up a 30+ year career of working with the Intelligence Community He's just one of our crown jewels and we hate to see him moving on to maybe greener pastures and easier times. But he's just been a terrific partner with this team and I just wanted to recognize his contributions have just been exceptional And he won the best dressed of any of us on the panel award this morning

Chairman BURR. He does that every time I just want you to know that, Dan

Senator Harris

Senator HARRIS Thank you, Mr Chairman, and I join with my colleagues in thanking each of you and the men and women of your agencies for honoring the oath that they have taken and often with great sacrifice So, thank them, please, from all of us

This question is for Directors Haspel, Coats, and General Ashley, and it's about North Korea What would you say is the current

state of the threat from North Korea? And perhaps we can start with Director Haspel

Director HASPEL Well briefly, of course the regime is committed to developing a long-range nuclear armed missile that would pose a direct threat to the United States It is positive that we have managed to engage them in a dialogue They have taken some voluntary measures to close a site, dismantle a site, but ultimately the objective is to lessen that threat by getting them to declare their program and then ultimately dismantle the program I think others can probably add to that.

Senator HARRIS Director Coats

Director COATS Well, I affirm what Director Haspel has just said I think we continue to go into this situation eyes wide open. We want to employ the best of assets we can to understand what the Koreans are thinking—North Koreans are thinking—and what they're doing. We have capabilities which we can talk about in a secure session in terms of how we gather that information and how we assess that to give to our policymakers and to give to the negotiating partners relative to where we're going with North Korea

We hold to the stated premise that denuclearization is the goal which has to be achieved, but I will at that point just say I want to ensure the American people and ensure everybody listening here that we are fully engaged in providing the essential intelligence needed relative to the negotiations that are going on

Senator HARRIS And in this setting can you say, at least since you've been in the position you've been in, that their threat, in terms of their ability to strike the United States, is diminished in any way?

Director COATS I think the assessments we've made up to this particular point hold Obviously, as I mentioned in my opening statement, that over this past year we have not seen any evidence They have not done missile—seen a nuclear missile testing or launching So that's the position we're in right now But again, we keep open eyes and open ears to exactly what's going on

Senator HARRIS General

General ASHLEY So, the technologies that they demonstrated—from a technical standpoint, they showed a capability to have an ICBM function still exists There still is a substantial military capacity that Kim Jong-un wields Seventy percent of his forces are along the DMZ So, the capabilities and threat that existed a year ago are still there

Senator HARRIS Thank you, General

Director Haspel, North Korea has obviously a terrible record of human rights, and they're deeply isolated, obviously, from the international community, and this is the result of many policies, intentional probably mostly. Do you believe that North Korea values the legitimacy that comes with direct diplomatic engagement with the United States?

Director HASPEL Yes, I think our analysts would assess that they value the dialogue with the United States, and we do see indications that Kim Jong-un is trying to navigate a path toward some kind of better future for the North Korean people

Senator HARRIS. Are you aware of any intelligence suggesting that his behaviors and their human rights record has improved in any substantial way over the last couple of years?

Director HASPEL. It's obviously something we monitor to the degree possible. I do think that a vision for North Korea that further brings them into the community of nations would have a positive effect on our ability to influence them on important things like human rights.

Senator HARRIS. But over the last couple of years have you seen any change in their behaviors?

Director HASPEL. I don't think I can point to any specific changes over the last couple years.

Senator HARRIS. Thank you. And then Director Coats, changing the subject, I'd like to talk with you a bit about social media. And can you tell us, do we have a written strategy for how we're going to counter the influence operations that target social media in the United States?

Director COATS. We are fully engaged in that issue. We have regular communication among the various sectors of the Intelligence Community. Much of that is shared, both verbally and in written form.

Senator HARRIS. So there is a written strategy?

Director COATS. Not a written single strategy, but we're always looking at how we can best address this. It's a fluid situation. We had an earlier discussion relative to our engagement with private-sector social media companies.

Senator HARRIS. Thank you. My time is running out.

Can you tell us, do you have any intention of having a written strategy that will be agreed to and understood by all members of the IC as it relates to the collective responsibility and individual responsibilities for addressing foreign influence on social media in the United States?

Director COATS. As I said, it's a fluid situation. We are making significant progress on that. In terms of one specific written strategy, something that has to—will have to be looked at in a continuum of change. So, I'm not exactly sure why a written strategy would give us anything more—single strategy—that would complete—have to be modified daily, but you can be assured that it is a top priority, as we have talked about before. It is something that we are working on, and we've seen very significant progress.

Senator HARRIS. Mr. Chairman—

Director COATS. And when you go back and read the transcript of what we talked about before, you'll understand that.

Senator HARRIS. I actually have the transcript from February 13 of 2018 when you and I had this discussion at our last worldwide threats hearing, or at least a previous one, when I asked you then, would you provide us and would there be a written strategy for how the IC is dealing with these threats?

So, can you tell us has there been any advancement on that point since February of 2018?

Director COATS. I'll be happy to get back to you with that.

Senator HARRIS. Thank you.

Director COATS. You were referring to 2017? Is that my understanding?

Senator HARRIS No, 2018 We're in 2019 now

Director COATS 2018 Okay, thank you

Chairman BARR Senator Cotton

Senator COTTON Thank you all very much for your appearance and your continued service to our Nation, and for all the men and women who work in your organizations serving our country We've talked a lot about Huawei and ZTE today and the potential threats they pose Let's just make this concrete for Americans watching at home You can raise your hand if you respond yes to my questions How many of you would use a telecom product made by Huawei and ZTE?

Director COATS Senator, I would person—I would think we ought to talk about these kinds of things in a separate, closed session These are not all yes and no answers, and I think there is information here that could be better described in a closed session than an open session.

Senator COTTON Like a professional who has once been on the debate stage and not liked raise-your-hand questions, I'll simply say for the written record, though, that I saw no hands go up, and while I'll defer to the closed session, I suspect if I asked a fairer question, which is how many of you would recommend that people who are not heads of intelligence agencies, like your neighbors, or church members, or high school friends use Huawei and ZTE there would also be six no votes of confidence

Director Coats, in September the House Intelligence Committee voted by voice vote, which I presume means it was bipartisan—not controversial—to send to you several dozen of their transcripts in their investigation into Russia's interference in our 2016 election so they could release those, pending your classification review

Where does that review stand?

Director COATS That's another issue which I would like to discuss in a closed session

Senator COTTON Thank you

Director Haspel, we've spoken some about ISIS today and the threat of ISIS if they were to reform One ongoing threat from ISIS is that the Syrian Democratic Forces have a number of detainees from ISIS. Do you know how many detainees the SDF currently hold?

Director HASPEL Senator, we do know the number In this forum I'll say that they have hundreds of foreign fighters. The IC as a whole is working very, very hard to make sure we know who those are, return people to their country of origin, and to make sure that even as ISIS, as we continue to make gains against them on the battlefield, that these foreign fighters do not—are not able to return to the fight

And I can be more specific this afternoon in terms of the exact numbers

Senator COTTON And could you speak broadly about the types of detainees? Are we talking about foot soldiers? Are we talking about major external operations planners, bomb makers, that sort of thing?

Director HASPEL All of the above, Senator

Senator COTTON So, it would be very bad for our Nation if those detainees were released?

Director HASPEL I think it would be very bad, and the IC has taken great pains to categorize and make sure we know who these individuals are, and we, of course, are working very closely with our foreign allies to do just that

Senator COTTON Thank you

Director Haspel, I'd like to stay with you and turn our attention to Russia since I know you have a lot of experience with that nation

Senator COTTON President Putin has publicly stated that they are working on novel nuclear weapon systems like a nuclear-powered cruise missile, hypersonic glide vehicles, and underwater nuclear-powered torpedo And just last month, he announced Russia's successful test of a hypersonic glide vehicle which he called a new intercontinental strategic system Is it the case that some of these systems are being designed to explicitly evade the constraints of the New START Treaty?

Director HASPEL Senator, I believe—and I can go into more detail this afternoon and I'm sure General Ashley would like to add but—I believe some of these systems have in fact been in development long before New START Treaty

Senator COTTON General Ashley, do you have anything to add?

General ASHLEY Actually, if I could go back real quick to your Huawei question and then I'll come back to that one

When you look at the technology stuff and I think Huawei and ZTE are great examples, but I think the other complexity is the question really is do you know what's in your phone, not just is it a Huawei or a ZTE phone? Do you know who provided the chips, the software and everything that goes into your phone?

We are tracking everything that you just addressed in terms of Putin I'm not sure if any of that violates the New START Treaty, because right now, I know that the Russians are in compliance and what as you know New START lays out for the systems it can deliver, it's about 700, they can have 1,550 in the number of warheads and they can have 800 in the latter category in terms of other systems I'm not aware that this violates and I'll take that one for a little bit of research as well, and we may be able to get that to you in the closed session this afternoon

Senator COTTON Thank you

Director Haspel, one final follow-up question So even if these systems don't violate the New START Treaty, I believe that both this and the past Administration has said that Russia is violating the Intermediate-Range Nuclear Forces Treaty, the Open Skies Treaty, the Chemical Weapons Convention, the Biological Weapon Convention, the Vienna Document, and is no longer adhering to the Presidential Nuclear Initiatives Is there any treaty that Russia has with the United States to which they are currently adhering?

Director HASPEL Well, the Russians obviously would have a different interpretation, but I do believe that you are correct in terms of State Department's assessment of Russian compliance with those treaties

Senator COTTON Thank you

Chairman BARR Senator Wyden

Senator WYDEN Thank you very much and I want to apologize to all our distinguished panel We had a major hearing in the Finance Committee

I'm going to start with the matter of Saudi Arabia and the late Mr. Khashoggi I'm very concerned that the DNI statement for the record barely mentions the threat posed by Saudi Arabia to the rule of law around the world

Director Haspel, the Senate unanimously passed a resolution stating its belief that the Crown Prince was responsible for the murder of US resident and journalist Jamal Khashoggi Is that correct?

Director HASPEL Senator, we can go into a little bit more detail this afternoon, but as you know during the fall months, we spent a significant amount of time briefing and providing written products on our assessment of what happened to Mr Jamal Khashoggi

As you know, and as the Saudi regime itself has acknowledged, 15 individuals traveled to Istanbul and he was murdered at their consulate and it was a premeditated murder on 2 October. The trial in Saudi Arabia, I believe, has begun but in terms of further detail on our assessment of involvement, I'll hold it until the afternoon session

Senator WYDEN Respectfully, Madam Director, the Senate unanimously passed a resolution that the Crown Prince was responsible Was the Senate wrong?

Director HASPEL Senator, it's my job to provide the intelligence to support the Senate's deliberations, and I think we've done that very adequately in this case and we'll continue to do that And we continue, by the way, to track this issue and to follow it very closely

Senator WYDEN A question for you Director Wray and maybe other panel members

In my home State there are alarming indications that the Saudi government has helped Saudi nationals accused of serious crimes flee the country and thus strikes us as an assault on the rule of law right here in the United States.

My question for the Director, Director Wray, will you look at this and come back with any suggestions about what the FBI can do?

And just so you know what has troubled me so much is what looks like evidence that the Saudi government helped these individuals who have been charged with really serious crimes in my home State rape and manslaughter, helped them with illicit passports, possibly the prospect of private planes to get out of the country

Will you look at this and come back with any suggestions about what the Bureau can do here?

Director WRAY. Senator, I appreciate the question I will say I've actually had occasion to visit the Portland field office not only to meet with all of our employees there but all of our State and local partners across your State and I'd be happy to take a close look at anything you want to send our way on this subject.

Senator WYDEN. Could you get back to me within 10 days? You know we are trying to up the ante here to really get these people back You know, my sense is like a lot of other things people have a full plate I've requested travel records We will be in touch with

your office, but I would like a response within 10 days to show that this is the priority that is warranted

Director WRAY Senator, of course we have a lot of priorities as I'm acutely aware of, but I'd be happy to take a look at the information that you have and work with your office

Senator WYDEN We have a lot of priorities, but the notion that Saudi Arabia can basically say it is above the law, and that's what it looks like to the people of my home State, is just unacceptable. So, I will be back at this and you and I have talked about matters before and both of us have strong views and that will certainly be the case here

Let me ask one other question for you, Director Haspel and Director Coats, to change the subject to Russia and particularly these Trump-Putin meetings. According to press reports, Donald Trump met privately with Vladimir Putin and no one in the US Government has the full story about what was discussed

Director Haspel and Director Coats, would this put you in a disadvantaged position in terms of understanding Russia's efforts to advance its agenda against the United States? A question for you two and then I'm out of time. Thank you for letting me have them respond, Mr. Chairman

Director COATS Well, Senator, clearly this is a sensitive issue and it's an issue that we ought to talk about this afternoon. I look forward to discussing that in a closed session

Senator WYDEN Mr. Chairman, my time is up. To me from an intelligence perspective, it's just Intel 101 that it would help our country to know what Vladimir Putin discussed with Donald Trump and I will respect the rules. Thank you, Mr. Chairman

Chairman BARR Senator Cornyn

Senator CORNYN When I reflect on the number of people who lost their lives as a result of man-made causes in World War II, by some estimates as many as 39 million people, when we introduced the atomic bomb and Nagasaki and Hiroshima and think about how much more efficient we've gotten when it comes to killing one another potentially, I wanted to ask you about weapons of mass destruction and counterproliferation

If the theory behind mutually assured destruction and deterrence is that none of the so-called rational actors, let's say Russia, China, for example, would use nuclear weapons because they realize what the consequences of that would be, we know we have less than rational actors that either have acquired nuclear weapons, thinking about North Korea—certainly Pakistan and India are staring at each other, both of whom have nuclear weapons. I worry that we are not spending as much time as we need to be focusing on what is the most lethal threat to our Nation and also to the world

Let me ask you specifically about Russia. We know Russia continues to be in material breach of the terms of the Intermediate-Range Nuclear Forces Treaty. Most recently our NATO allies have concluded that Russia is in the process of developing a ground-launched cruise missile that's a direct threat to Euro-Atlantic security

I personally think it's important for us to adequately fund nuclear modernization programs, including the development of a low-yield warhead and enhance the capabilities of critical missile de-

fense systems I would also point out that China is not bound by the standards imposed by the INF treaty, further putting the U S in a compromising position

Director Coats, does the Intelligence Community assess that a complete withdrawal of the U S from the INF Treaty would pose a significant national security risk to the United States?

Director COATS Well, that risk is there whether we see Russia within the bounds of the restraints on that or whether we don't, because we know Russia has violated the terms of that treaty and has that capability

Senator CORNYN And China's not now—

Director COATS So, whether we withdraw or not—

Senator CORNYN [continuing] China's not now at all—

Director COATS You're—they're still going to have that capability That's correct

Senator CORNYN. And Director Haspel, perhaps this would be a question for you

If the U S withdraws from the INF Treaty—and I'd welcome anybody's comment on the panel. If the U S. withdraws from the INF Treaty, does the IC assess that Russia will place INF range missiles in Cuba, or will they attempt to exert pressure in some other way?

Director HASPEL Senator, what I can say, and perhaps we can go into more detail this afternoon, is we do see that Russia is very concerned about our decision to withdraw We do see also consideration of ways they can push back due to their own concerns about our forward posture in Eastern Europe

I think I'll leave it there for now, and we can elaborate this afternoon I'll ask if General Ashley would like to add something

Senator CORNYN Please

General ASHLEY Yeah, I would say that—and we can get into some more detail this afternoon—that their actions are not consistent with the ground-launched cruise missile that you already spoke about It has already been fielded operationally, so it is in utilization and available

Their actions and what they would do I think would be symmetric to anything we did to move additional capabilities forward. And then those particular symmetric actions we can talk about in a closed session

Senator CORNYN Would anybody on the panel care to talk about my statement with regard to production of a low-yield warhead? Maybe General Ashley? I don't know who would be the appropriate person

General ASHLEY So, the comment of whether we should be developing—

Senator CORNYN. Correct

General ASHLEY Yeah I'll have to leave that to the policy-makers What you alluded to is our ability to kill and some of the weapons we've developed, and then the utilization and a strategy that we've heard in the past from the Russians of non-strategic nuclear weapons and whether or not a rational actor would use those kinds of weapons in the field

We know that the Russians have a first-use policy The threshold where they think that the Kremlin would be at risk is probably

what would drive that first use, whether that—see that as an escalatory control measure that they would put into place I'll leave it to the policies—policy folks to determine the utilization of one of those weapons.

When we talk about the use of nuclear weapons specifically, one of the things that—you know, the thresholds are pretty high on their use, which is why we see the manifestations of things like hybrid war. And if you look at great power conflict, it kind of flat-lined after World War II and things that have taken place in the world order that has been kind of the outgrowth of Bretton Woods. That—the other thing that has come to bear on keeping great power conflict at bay has been the development of nuclear weapons.

Senator CORNYN Thank you.

Chairman BURR Last but not least, Senator Sasse

Senator SASSE Thank you, Mr. Chairman. Thank you to all six of you for being here. Thanks for your officers and to their families. You lead and represent a community of folks who often have family disruptions, and there aren't folks who know to thank them. So, on behalf of this Committee and the American people, thank you.

General Nakasone, when you were confirmed before the Armed Services Committee, I asked you a question about whether or not Russia or China had ever suffered a sufficient response to their cyber aggressions to warrant behavior change on their behalf, and you said no, they had not. At this point, in a non-classified setting, how would you answer that question today?

General NAKASONE So, Senator, I think the—the way that I would answer the question is, first of all, what has changed since you and I talked last year is the fact that I think that, from our work collectively across the interagency and the Government, we have been able to show effectiveness against, primarily in this case, the Russians as we take a look at our midterm elections.

Whether or not that spawns long-term behavior change, I think that's still to be determined. But certainly, this afternoon we can talk a little bit more about some of the things we have seen.

Senator SASSE Thank you for your work on that and your success. And I know, Director Coats, you're going to give us some briefing on that this afternoon as well. I know that a number of people on the Committee have been anxious to get a more fulsome report of some of the successes of the IC from early November. And I would just like to publicly say, whatever portion of that that we can declassify for the American people to know the successes of the U.S. Government and of your community, I would urge that kind of declassification where possible.

Director Wray, you have many priorities at the Bureau, but can you talk about threats we face with the long-term tech war—tech race, maybe—against China? And domestically when you think about Bureau priorities looking at different Chinese actions inside the United States, how do you rank those priorities?

Director WRAY Well, first, I would say that the—as I said earlier—that I think China writ large is the most significant counterintelligence threat we face. We have economic espionage investigations, for example—that's just one piece of it—in virtually every one of our 56 field offices. And the number of those has probably doubled over the last three or four years. And almost all of them,

not all of them but most of them, lead back to China. In addition to the—

Senator SASSE Do you have anywhere near sufficient resources for all those investigations? Many of us used to ask Director Comey about Jihadī threats against the United States We would regularly ask is the Bureau sufficiently resourced? And we were told that as long as the U S was active killing Jihadīs or partnering with allies in Syria to kill a lot of Jihadīs who were there, he thought there were sufficient domestic resources in the Bureau

For counterintelligence and for corporate espionage purposes, are you sufficiently resourced?

Director WRAY Well, I would say this If the Congress were to entrust us with more resources, I can assure you we would put them to very good use

Senator SASSE We've talked about deepfakes a couple of different times today. Our Intelligence Community is a product of history Seventeen agencies is not the way anybody would design it from scratch, but that doesn't necessarily mean a reorganization is always simplifying Oftentimes you create more complexity when you're trying to get rid of some of the duplicative functions that we have across different agencies

But when you think about the catastrophic potential to public trust and to markets that could come from deep fake attacks, are we—Director Coats and Director Haspel in particular, are we organized in a way that we could possibly respond fast enough to a catastrophic deepfakes attack?

Director COATS We certainly recognize the threat of emerging technologies and the speed at which that threat increases We clearly need to be more agile We need to partner with our private sector

We need to resource our activities relative to dealing with these known technologies and unknown technologies, which we know are going to appear anytime soon because it's just a very quickly evolving flood of technological change that poses a major threat to the United States and something that the Intelligence Community needs to be restructured to address

We are in a process of transformation right now which incorporates six major pillars that we have to put resources and activity against, and fast Cyber, trusted agile workforce, artificial intelligence, private sector partnerships, data management, acquisition agility All six of these are major issues which we have to transform We cannot rely on status quo, where we are now We're the best in the world We have to stay the best in the world But we've got real competitors, and technology is giving them the opportunity to shorten that gap very, very significantly

And so, we have a dedicated commitment to this transformation It's called IC 2025 What do we have to be in 2025, but let alone 2019 and 2020? And we are using that throughout all 17 agencies in terms of how we have to adapt to that And that's a major change that this IC has to go through But we're fully intent on making it happen

Senator SASSE Thanks, Director Before the Chairman gavels out a rookie, Director Haspel, are you confident that we could respond fast enough?

Director HASPEL I think Director Coats captured it very well I would say that, while the IC is large and unwieldy in some respects, I don't think in my 34-year career I've seen better coordination or synchronization or collaboration among the agencies to try and stay abreast of the technological challenges

Senator SASSE I hear that and I've been reading "Intel Daily" now for 18 months And the pace of upgraded game on the part of the community is a real testament for all of your leadership, but I still think the asymmetric exposure we have or the barrier to entry for deepfake technology is so low now, lots of entities, short of nation state actors, are going to be able to produce this material and again destabilize not just American public trust, but markets very rapidly. And I think we need to be thinking about not just IC 2025 but IC 2021, 2020, 2019

General ASHLEY If I could just real quick just go back to our opening question from the Chairman, when he said are you concerned about our protection of data So how do you get deepfakes that are really, really good, lots of data? That's how you train your algorithms So, it goes back to kind of where we started and the ability to protect that information, to preclude the training of those algorithms to a degree where you cannot tell the difference And again, our challenge is how do you build the algorithm to identify the anomaly because every deep fake as a flaw, at least now they do

Senator SASSE Thanks, General

Vice Chairman WARNER Thank you, Mr Chairman I would just want to make one final brief remark and commend Director Coats on the ongoing efforts to make sure that we get through the backlog on the security clearance reform The Chairman and I have worked on this very hard We appreciate the progress that has been made I hope we can I think we're down to about 500,000 I think we can do much, much better And my hope would be that particularly any Federal employee that might have had some level of a credit ding due to the shutdown would not be penalized through that security clearance process for, again, actions, quite frankly, that they had no ability to remediate It was our responsibility

Director COATS We will continue to operate carefully with you, also You played a major role in all of this We have made some progress It's not enough, it's not fast enough The shutdown deferred some tasks that we could have accomplished if the process was opened and hopefully we won't have to go through that again

Chairman BURR I thank the Vice Chairman for his comments I promised all of you ample time for nutrition in between sessions and I think we have accomplished that

I want to thank you for your testimony today in open session The Intelligence Community has always prided itself on making the impossible happen You go where others cannot You find what cannot be found You discover and uncover and create

This Committee has been privileged to see behind closed doors some of the truly fantastic innovations that are the products of your drive to accomplish impossible missions Sometimes these come from the minds of in-house geniuses Sometimes they are the fruits of successful collaboration with contractors These public-pri-

vate partnerships have always been at the core of American success stories

However, as with any good competition, our adversaries have watched carefully, and they seem to be catching up Director Coats, you note in your statement for the record that for 2019 and beyond, the innovations that drive military and economic competitiveness will increasingly originate outside the United States As the overall U S lead in science and technology shrinks, the capability gap between commercial and military technologies evaporates and foreign actors increase their efforts to acquire top talent companies, data, and intellectual property via licit or illicit means

Innovation is a global race and we must think about how to foster greater innovation at home, mitigate potential risks, and maintain our competitive edge There is no easy path, but if we concede the innovation race, not only our global competitiveness, but our national security will in fact be at risk We need to make sure we are monitoring and acting on threat information as quickly as possible and getting the information to the people who need it the most

The Federal Government should educate the private sector on threats, which we are, and enable a regulatory and financial environment that enables innovation In turn the private sector needs to listen better and be constructive and thoughtful partners The simple truth is that we need each other and only through collaboration can we regain in our lead The architecture of government must change, and our partnerships must grow

In closing, please convey this Committee's gratitude to the men and women of the Intelligence Community for the work that they do on a daily basis The American people should know that their hard work, dedication, and innovation are crucial to protecting this country and the democratic principles on which we stand. Although the threats we now face are dynamic, varied, and numerous, I'm confident the Intelligence Community will continue delivering on their mandate to reduce uncertainty in an increasingly uncertain world With that, this portion of the hearing is adjourned, and we'll gather again at 1 00 p m

[Whereupon the hearing was adjourned at 11 52 a m]

20162

963

Supplemental Material

20163

964

86

**UNCLASSIFIED RESPONSES TO QUESTIONS FOR THE RECORD
SENATE SELECT COMMITTEE ON INTELLIGENCE
HEARING JANUARY 29, 2019
DIRECTOR OF NATIONAL INTELLIGENCE DANIEL COATS**

Hearing Date: January 29, 2019
Committee: SSCI
Member: Sen. Wyden
Witnesses: DNI Coats
Info Current as of: March 21, 2019

Question: In its decision in *Carpenter v United States*, the U S Supreme Court found that the collection of cell-site location information (CSLI) from wireless providers constituted a search under the Fourth Amendment

- Have the ODNI or any elements of the Intelligence Community issued any guidance regarding how the *Carpenter* decision should be interpreted and/or applied to intelligence programs and operations?
- If so, please provide any relevant memoranda or guidance.

Answer:

Although the *Carpenter* opinion “does not consider other collection techniques involving foreign affairs or national security”¹ the Intelligence Community, as always, carefully considers all Supreme Court precedent, including *Carpenter*, when evaluating how and whether the Fourth Amendment applies to a proposed intelligence activity. The Intelligence Community will continue to assess the potential implications of the *Carpenter* decision and will, in the event a circumstance arises that might implicate the holding of the decision, provide appropriate guidance to the Intelligence Community agencies at that time. That said, the ODNI has not issued any controlling written Intelligence Community-wide guidance regarding how the *Carpenter* decision should be interpreted or applied.

¹ *Carpenter v United States*, 585 U S , at ____, 134 S Ct. 2206, at 2220 (June 22, 2018)

Hearing Date: January 29, 2019
Committee: SSCI
Member: Sen. Wyden
Witnesses: DNI Coats
Info Current as of: March 21, 2019

Question: Does the Intelligence Community agree with Mr. Evanina's recommendation that encryption be used to protect U.S. government officials' work and personal unclassified telephone communications?

- If yes, what steps, if any, has the Intelligence Community taken to communicate this recommendation to agencies and to government officials?

Answer:

The National Cyber Strategy, signed by the President on September 17, 2018, states that responsibility to secure federal networks, including federal information systems and national security systems, falls squarely on the Federal Government. National Security Directive 42 expands the responsibilities for protecting national security information systems to also include national security telecommunications systems. The Intelligence Community has distributed these documents to all federal agencies and has made continued access available through appropriate websites. Thus, encryption should be used to protect U.S. Government officials' work and associated federal information. Although personal unclassified telephone communications do not fall under the category of official government work and are not required to be afforded such protection, Director Evanina has consistently advocated for strong cyber hygiene practices through the Know the Risk – Raise Your Shield campaign. Through this campaign, Director Evanina has issued tips and guidance to the public on how to protect personal information from being exploited by cyber criminals and foreign intelligence services.

20166

967

89

Hearing Date: January 29, 2019
Committee: SSCI
Member: Sen. Heinrich
Witnesses: DNI Coats
Info Current as of: March 21, 2019

Question: As the government's Security Executive Agent, have you reviewed the Executive Office of the President's process for granting access to classified information for compliance with Executive Order 12968?

- If so, is the Executive Office of the President compliant?

Answer:

Congress has sent several letters seeking information on the security clearance process. To ensure a complete response to all of these questions, responses to this question will be included under separate cover.

20167

968

90

Hearing Date: January 29, 2019
Committee SSCI
Member: Sen. Heinrich
Witnesses: DNI Coats
Info Current as of March 21, 2019

Question: How often do you conduct such compliance reviews, and when was the last review?

Answer*

Congress has sent several letters seeking information on the security clearance process. To ensure a complete response to all of these questions, responses to this question will be included under separate cover.

20168

969

1

RPTR FORADORI

EDTR SECKMAN

FORMER SPECIAL COUNSEL ROBERT S. MUELLER III ON THE INVESTIGATION INTO
RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION

Wednesday, July 24, 2019

U.S. House of Representatives,
Permanent Select Committee on Intelligence,
Washington, D.C.

The committee met, pursuant to call, at 12:50 p.m., in Room HVC-304, Capitol
Visitor Center, the Honorable Adam Schiff (chairman of the committee) presiding

Present: Representatives Schiff, Himes, Sewell, Carson, Speier, Quigley,
Swalwell, Castro, Heck, Welch, Maloney, Demings, Krishnamoorthi, Nunes, Conaway,
Turner, Wenstrup, Stewart, Crawford, Stefanik, Hurd, and Ratcliffe

The Chairman The committee will come to order. At the outset and on behalf of my colleagues, I want to thank you, Special Counsel Mueller, for a lifetime of service to the country. Your report, for those who have taken the time to study it, is methodical, and it is devastating, for it tells the story of a foreign adversary's sweeping and systematic intervention in a close U S Presidential election. That should be enough to deserve the attention of every American, as you well point out. But your report tells another story as well.

For the story of the 2016 election is also a story about disloyalty to country, about greed, and about lies. Your investigation determined that the Trump campaign, including Donald Trump himself, knew that a foreign power was intervening in our election and welcomed it, built Russian meddling into their strategy and used it.

Disloyalty to country. Those are strong words, but how else are we to describe a Presidential campaign which did not inform the authorities of an foreign offer of dirt on their opponent, which did not publicly shun it or turn it away, but which instead invited it, encouraged it, and made full use of it. That disloyalty may not have been criminal. Constrained by uncooperative witnesses, the destruction of documents and the use of encrypted communications, your team was not able to establish each of the elements of the crime of conspiracy beyond a reasonable doubt, so not provable crime in any event. But I think maybe something worse.

A crime is the violation of law written by Congress, but disloyalty to country violates the very oath of citizenship, our devotion to a core principle on which our Nation was founded, that we, the people, and not some foreign power that wishes us ill, we decide who governs us.

This is also a story about money, about greed and corruption, about the

leadership of a campaign willing to compromise the Nation's interest, not only to win but to make money at the same time. About a campaign chairman indebted to pro-Russian interests who tried to use his position to clear his debts and make millions. About a national security advisory using his position to make money from still other foreign interests. And about a candidate trying to make more money than all of them put together through a real estate project that to him was worth a fortune, hundreds of millions of dollars and the realization of a life-long ambition, a Trump Tower in the heart of Moscow. A candidate who in fact viewed his whole campaign as the greatest infomercial in history.

Donald Trump and his senior staff were not alone in their desire to use the election to make money. For Russia, too, there was a powerful financial motive. Putin wanted relief from economic sanctions imposed in the wake of Russia's invasion of Ukraine and over human rights violations.

The secret Trump Tower meeting between the Russians and senior campaign officials was about sanctions. The secret conversations between Flynn and the Russian Ambassador were about sanctions. Trump and his team wanted more money for themselves, and the Russians wanted more money for themselves and for their oligarchs.

The story doesn't end here either, for your report also tells a story about lies, lots of lies. Lies about a gleaming tower in Moscow and lies about talks with the Kremlin. Lies about the firing of FBI Director James Comey and lies about efforts to fire you, Director Mueller, and lies to cover it up. Lies about secret negotiations with the Russians over sanctions and lies about WikiLeaks. Lies about polling data and lies about hush money payments. Lies about meetings in the Seychelles to set up secret back channels and lies about a secret meeting in New York Trump Tower. Lies to the FBI. Lies to your staff. And lies to this committee. Lies to obstruct an investigation into the

most serious attack on our democracy by a foreign power in our history.

That is where your report ends, Director Mueller, with a scheme to cover up, obstruct, and deceive every bit as systematic and pervasive as the Russian disinformation campaign itself, but far more pernicious since this rot came from within. Even now, after 448 pages and 2 volumes, the deception continues. The President and his acolytes say your report found no collusion, though your report explicitly declined to address that question, since collusion can involve both criminal and noncriminal conduct.

Your report laid out multiple offers of Russian help to the Trump campaign, the campaign's acceptance of that help, and overt acts in furtherance of Russian help. To most Americans, that is the very definition of collusion, whether it is a crime or not. They say your report found no evidence of obstruction, though you outline numerous actions by the President intended to obstruct the investigation.

They say the President has been fully exonerated, though you specifically declare you could not exonerate him. In fact, they say your whole investigation was nothing more than a witch hunt, that the Russians didn't interfere in our election, that it is all a terrible hoax. The real crime, they say, is not that the Russians intervened to help Donald Trump but that the FBI had the temerity to investigate it when they did.

But, worst of all, worse than all the lies and the greed is the disloyalty to country. For that, too, continues. When asked if the Russians intervene again, will you take their help, Mr. President? Why not, was the essence of his answer, everyone does it.

No, Mr. President, they don't. Not in the America envisioned by Jefferson, Madison, and Hamilton. Not for those who believe in the idea that Lincoln labored until his dying day to preserve the idea animating our great national experiments so unique then, so precious still, that our government is chosen by our people through our franchise, and not by some hostile foreign power.

20172

973

5

This is what is at stake, our next election and the one after that for generations to come Our democracy. This is why your work matters, Director Mueller, this is why our investigation matters, to bring these dangers to light

Ranking Member Nunes

[The statement of The Chairman follows]

***** COMMITTEE INSERT *****

Mr. Nunes Thank you, Mr Chairman.

Welcome, everyone, to the last gasp of the Russia collusion conspiracy theory. As Democrats continue to foist this spectacle on the American people, as well as you, Mr. Mueller, the American people may recall the media first began spreading this conspiracy theory in the spring of 2016 when Fusion GPS, funded by the DNC and the Hillary Clinton campaign, started developing the Steele dossier, an collection outlandish accusations that Trump and his associates were Russian agents.

Fusion GPS, Steele, and other confederates fed these absurdities to naive or partisan reporters, and to top officials in numerous agencies, including the FBI, the Department of Justice, and the State Department. Among other things, the FBI used dossier allegations to obtain a warrant to spy on the Trump campaign, despite acknowledging dossier allegations as being salacious and unverified. Former FBI Director James Comey briefed those allegations to President Obama and President-elect Trump, those briefings conveniently leaked to the press, resulting in the publication of the dossier and launching thousands of false press stories based on the word of a foreign ex-spy. One who admitted he was desperate that Trump lose the election, and who was eventually fired as an FBI source for leaking to the press.

After Comey himself was fired, by his own admission, he leaked derogatory information on President Trump to the press for the specific purpose, and successfully so, of engineering the appointment of a special counsel who sits here before us today.

The FBI investigation was marred by further corruption and bizarre abuses. Top DOJ official Bruce Ohr, whose own wife worked on Fusion GPS' anti-Trump operation, fed Steele's information to the FBI, even after the FBI fired Steele.

The top FBI investigator and his lover, another top FBI official, constantly texted

about how much they hated Trump and wanted to stop him from being elected. And the entire investigation was opened based not on Five Eyes intelligence but on a tip from a foreign politician about a conversation involving Joseph Mifsud. He is a Maltese diplomat who's widely portrayed as a Russian agent but seems to have far more connections with Western governments, including our own FBI and our own State Department, than with Russia.

Brazenly ignoring all these red flags as well as the transparent absurdity of the claims they are making, the Democrats have argued for nearly 3 years that evidence of collusion is hidden just around the corner. Like the Loch Ness monster, they insist it's there, even if no one can find it.

Consider this, in March 2017, Democrats on this committee said they had more than circumstantial evidence of collusion, but they couldn't reveal it yet. Mr. Mueller was soon appointed, and they said he would find the collusion. Then when no collusion was found in Mr. Mueller's indictments, the Democrats said we'd find it in his final report. Then when there was no collusion in the report, we were told Attorney General Barr was hiding it. Then when it was clear Barr wasn't hiding anything, we were told it will be revealed through a hearing with Mr. Mueller himself.

And now that Mr. Mueller is here, they're claiming that the collusion has actually been in his report all along, hidden in plain sight. And they're right. There is collusion in plain sight: collusion between Russia and the Democratic Party. The Democrats colluded with Russian sources to develop the Steele dossier. And Russian lawyer Natalia Veselnitskaya colluded with the dossier's key architect, Fusion GPS head Glenn Simpson.

The Democrats have already admitted, both in interviews and through their usual anonymous statements to reporters, that today's hearing is not about getting information at all. They said they want to, quote, bring the Mueller report to life and create a

television moment through ploys like having Mr Mueller recite passages from his own report

In other words, this hearing is political theater. It's a Hail Mary attempt to convince the American people that collusion is real and that it's concealed in the report. Granted, that's a strange argument to make about a report that is public. It's almost like the Democrats prepared arguments accusing Mr Barr of hiding the report and didn't bother to update their claims once he published the entire thing.

Among congressional Democrats, the Russia investigation was never about finding the truth. It's always been a simple media operation. By their own accounts, this operation continues in this room today. Once again, numerous pressing issues this committee needs to address are put on hold to indulge the political fantasies of people who believed it was their destiny to serve Hillary Clinton's administration.

It's time for the curtain to close on the Russia hoax. The conspiracy theory is dead. At some point, I would argue, we're going to have to get back to work. Until then, I yield back the balance of my time.

[The statement of Mr. Nunes follows.]

***** COMMITTEE INSERT *****

The Chairman. To ensure fairness and make sure that our hearing is prompt -- I know we got a late start, Director Mueller -- the hearing will be structured as follows. Each member of the committee will be afforded 5 minutes to ask questions, beginning with the chair and ranking member. As chair, I will recognize thereafter, in an alternating fashion and descending order of seniority, members of the majority and minority.

After each member has asked his or her questions, the ranking member will be afforded an additional 5 minutes to ask questions, followed by the chair, who will have additional 5 minutes for questions. The ranking member and the chair will not be permitted to delegate or yield our final round of questions to any other member.

After six members of the majority and six members of the minority have concluded their 5-minute rounds of questions, we'll take a 5- or 10-minute break, that we understand you've requested, before resuming the hearing with Congressman Swalwell starting his round of questions.

Special Counsel Mueller is accompanied today by Aaron Zebley, who served as deputy special counsel from May 2017 until May 2019 and had day-to-day oversight of the special counsel's investigation. Mr. Mueller and Mr. Zebley resigned from the Department of Justice at the end of May 2019 when the Special Counsel's Office was closed.

Both Mr. Mueller and Mr. Zebley will be available to answer questions today and will be sworn in consistent with the rules of the House and the committee. Mr. Mueller and Mr. Zebley's appearance today before the committee is in keeping with the committee's long-standing practice of receiving testimony from current or former Department of Justice and FBI personnel regarding open and closed investigative matters.

As this hearing is under oath and before we begin your testimony, Mr Mueller and Zebley, would you please rise and raise your right hands to be sworn.

Do you swear or affirm that the testimony you're about to give at this hearing is the whole truth and nothing but the truth?

Mr Mueller. I do

Mr. Zebley. I do

The Chairman. The record will reflect that the witnesses have been duly sworn Ranking member?

Mr Nunes. Thank you, Mr. Chair I just want to clarify that this is highly unusual for Mr Zebley to be sworn in. We're here to ask Director Mueller questions He's here as counsel Our side is not going to be directing any questions to Mr Zebley, and we have concerns about his prior representation of the Hillary Clinton campaign aide So I just want to voice that concern that we do have, and we will not be addressing any questions to Mr Zebley today

The Chairman. I thank the ranking member. I realize, as you probably do, Mr. Zebley, that there is an angry man down the street who's not happy about you being here today, but it is up to this committee and not anyone else who will be allowed to be sworn in and testify, and you are welcome, as a private citizen, to testify, and members may direct their questions to whoever they choose

With that, Director Mueller, you are recognized for any opening remarks you would like to make.

TESTIMONY OF ROBERT S. MUELLER III, FORMER SPECIAL COUNSEL

Mr Mueller Thank you Good afternoon, Chairman Schiff, Ranking Member Nunes, and members of the committee I testified this morning before the House Judiciary Committee I ask that the opening statement I made before that committee be incorporated into the record here

The Chairman Without objection, Director

[The information follows.]

***** COMMITTEE INSERT *****

Mr. Mueller. I understand that this committee has a unique jurisdiction and that you are interested in further understanding the counterintelligence implications of our investigation. So let me say a word about how we handled the potential impact of our investigation on counterintelligence matters.

As we explained in our report, the special counsel regulations effectively gave me the role of United States Attorney. As a result, we structured our investigation around evidence for possible use in prosecution of Federal crimes. We did not reach what you would call counterintelligence conclusions. We did, however, set up processes in the office to identify and pass counterintelligence information on to the FBI.

Members of our office periodically briefed the FBI about counterintelligence information. In addition, there were agents and analysts from the FBI who were not on our team but whose job it was to identify counterintelligence information in our files and to disseminate that information to the FBI. For these reasons, questions about what the FBI has done with the counterintelligence information obtained from our investigation should be directed to the FBI.

I also want to reiterate a few points that I made this morning. I am not making any judgments or offering opinions about the guilt or innocence in any pending case. It is unusual for a prosecutor to testify about a criminal investigation, and given my role as a prosecutor, there are reasons why my testimony will necessarily be limited.

First, public testimony could affect several ongoing matters. In some of these matters, court rules or judicial orders limit the disclosure of information to protect the fairness of the proceedings. And consistent with longstanding Justice Department policy, it would be inappropriate for me to comment in any way that could affect an ongoing matter.

Second, the Justice Department has asserted privileges concerning investigative information and decisions, ongoing matters within the Justice Department, and deliberations within our office. These are Justice Department privileges that I will respect. The Department has released a letter discussing the restrictions on my testimony. I, therefore, will not be able to answer questions about certain areas that I know are of public interest.

For example, I am unable to address questions about the opening of the FBI's Russia investigation, which occurred months before my appointment, or matters related to the so-called Steele dossier. These matters are the subject of ongoing review by the Department. Any questions on these topics should, therefore, be directed to the FBI or the Justice Department.

Third, as I explained this morning, it is important for me to adhere to what we wrote in our report. The report contains our findings and analysis and the reasons for the decisions we made. We stated the results of our investigation with precision. I do not intend to summarize or describe the results of our work in a different way in the course of my testimony today.

As I stated in May, I also will not comment on the actions of the Attorney General or of Congress. I was appointed as a prosecutor, and I intend to adhere to that role and to the Department's standards that govern.

Finally, as I said this morning, over the course of my career, I have seen a number of challenges to our democracy. The Russian Government's efforts to interfere in our election is among the most serious, and I am sure the committee agrees.

Now, before we go to questions, I want to add one correction to my testimony this morning. I want to go back to one thing that was said this morning by Mr. Lieu, who said, and I quote: "You didn't charge the President because of the OLC opinion

20181

982

14

That is not the correct way to say it. As we say in the report, and as I said at the opening, we did not reach a determination as to whether the President committed a crime

And, with that, Mr Chairman, I'm ready to answer questions

[The statement of Mr Mueller follows]

***** COMMITTEE INSERT *****

The Chairman. Thank you, Director Mueller

I recognize myself for 5 minutes

Director Mueller, your report describes a sweeping and systemic effort by Russia to influence our Presidential election. Is that correct?

Mr. Mueller. That is correct

The Chairman. And during the course of this Russian interference in the election, the Russians made outreach to the Trump campaign, did they not?

Mr. Mueller. That occurred over the course of -- yeah, that occurred

The Chairman. It's also clear from your report that, during that Russian outreach to the Trump campaign, no one associated with the Trump campaign ever called the FBI to report it. Am I right?

Mr. Mueller. I don't know that for sure.

The Chairman. In fact, the campaign welcomed the Russian help, did they not?

Mr. Mueller. I think we reported in our -- in the report indications that that occurred. Yes.

The Chairman. The President's son said when he was approached about dirt on Hillary Clinton that the Trump campaign would love it?

Mr. Mueller. That is generally what was said. Yes.

The Chairman. The President himself called on the Russians to hack Hillary's emails?

Mr. Mueller. There was a statement by the President in those general lines

The Chairman. And numerous times during the campaign, the President praised the releases of the Russian-hacked emails through WikiLeaks

Mr. Mueller. That did occur

The Chairman. Your report found that the Trump campaign planned, quote, a press strategy, communications campaign, and messaging, unquote, based on that Russian assistance?

Mr. Mueller. I am not familiar with that.

The Chairman. That language comes from Volume I, page 54.

Apart from the Russians wanting to help Trump win, several individuals associated with the Trump campaign were also trying to make money during the campaign and transition. Is that correct?

Mr. Mueller. That is true.

The Chairman. Paul Manafort was trying to make money or achieve debt forgiveness from a Russian oligarch?

Mr. Mueller. Generally, that is accurate.

The Chairman. Michael Flynn was trying to make money from Turkey?

Mr. Mueller. True.

The Chairman. Donald Trump was trying to make millions from a real estate deal in Moscow?

Mr. Mueller. To the extent you're talking about the hotel in Moscow?

The Chairman. Yes.

Mr. Mueller. Yes.

The Chairman. When your investigation looked into these matters, numerous Trump associates lied to your team, the grand jury, and Congress?

Mr. Mueller. A number of persons that we interviewed in our investigation it turns out did lie.

The Chairman. Mike Flynn lied?

Mr. Mueller. He was convicted of lying, yes.

The Chairman George Papadopoulos was convicted of lying?

Mr. Mueller True.

The Chairman Paul Manafort was convicted of lying?

Mr. Mueller True.

The Chairman Paul Manafort, in fact, went so far as to encourage other people to lie?

Mr. Mueller That is accurate

The Chairman Manafort's deputy, Rick Gates, lied?

Mr. Mueller That is accurate.

The Chairman Michael Cohen, the President's lawyer, was indicted for lying?

Mr. Mueller True

The Chairman He lied to stay on message with the President?

Mr. Mueller Allegedly by him

The Chairman And when Donald Trump called your investigation a witch hunt, that was also false, was it not?

Mr. Mueller I like to think so, yes.

The Chairman Well, your investigation is not a witch hunt, is it?

Mr. Mueller It is not a witch hunt

The Chairman When the President said the Russian interference was a hoax, that was false, wasn't it?

Mr. Mueller True

The Chairman When he said it publicly, it was false?

Mr. Mueller He did say publicly that it was false Yes

The Chairman And when he told it to Putin, that was false, too, wasn't it?

Mr. Mueller That I'm not familiar with

The Chairman. When the President said he had no business dealings with Russia That was false, wasn't it?

Mr Mueller I'm not going to go into the details of the report along those lines.

The Chairman When the President said he had no business dealings with Russia, in fact, he was seeking to build a Trump Tower in Moscow, was he not?

Mr. Mueller I think there's some question about when this was accomplished

The Chairman Well, you would consider a billion dollar deal to build a tower in Moscow to be business dealings, wouldn't you, Director Mueller?

Mr Mueller. Absolutely

The Chairman. In short, your investigation found evidence that Russia wanted to help Trump win the election, right?

Mr Mueller I think, generally, that would be accurate

The Chairman Russia informed campaign officials of that?

Mr. Mueller. I'm not certain to what conversation you're referring to

The Chairman Well, through an intermediary, they informed Papadopoulos that they could help with the anonymous release of stolen emails.

Mr Mueller. Accurate.

The Chairman Russia committed Federal crimes in order to help Donald Trump?

Mr Mueller When you're talking about the computer crimes charged in our case, absolutely

The Chairman The Trump campaign officials built their strategy, their messaging strategy, around those stolen documents?

Mr Mueller. Generally, that's true.

The Chairman And then they lied to cover it up?

Mr Mueller. Generally, that's true

The Chairman. Thank you.

Mr Nunes.

Mr Nunes. Thank you.

Welcome, Director. As a former FBI Director, you'd agree that the FBI is the world's most capable law enforcement agency?

Mr Mueller. I would say we're -- yes.

Mr Nunes. The FBI claims the counterintelligence investigation of the Trump campaign began on July 31, 2016, but in fact, it began before that. In June 2016, before the investigation officially opened, Trump campaign associates Carter Page and Stephen Miller, a current Trump advisor, were invited to attend a symposium at Cambridge University in July of 2016. Your office, however, did not investigate who was responsible for inviting these Trump Associates to this symposium.

Your investigators also failed to interview Steven Schrage, an American citizen who helped organize the event and invited Carter Page to it. Is that correct?

Mr Mueller. Can you repeat the question?

Mr Nunes. Whether or not you interviewed Steven Schrage, who organized --

Mr Mueller. Those areas I'm going to stay away from.

Mr Nunes. The first Trump associate to be investigated was General Flynn. Many of the allegations against him stem from false media reports that he had an affair with a Cambridge academic, Svetlana Likhova, and that Likhova was a Russian spy. Some of these allegations were made public in a 2017 article written by British intelligence historian Christopher Andrew. Your report fails to reveal how or why Andrew and his collaborator, Richard Dearlove, former head of Britain's MI6, spread these allegations. And you failed to interview Svetlana Likhova about these matters. Is that correct?

Mr Mueller. I'm not going to get into those matters to which you refer

Mr. Nunes You had a team of 19 lawyers, 40 agents, and an unlimited budget, correct, Mr. Mueller?

Mr Mueller I would not say we had an unlimited budget

Mr. Nunes. Let's continue with the ongoing or the opening of the investigation supposedly on July 31, 2016. The investigation was not open based on an official product from Five Eyes intelligence, but based on a rumor conveyed by Alexander Downer. On Volume I, page 89, your report describes him blandly as a representative of a foreign government, but he was actually a long-time Australia politician, not a military or intelligence official, who had previously arranged a \$25 million donation to the Clinton Foundation and has previous ties to Dearlove.

So Downer conveys a rumor he supposedly heard about a conversation between Papadopoulos and Joseph Mifsud. James Comey has publicly called Mifsud a Russian agent, yet your report does not refer to Mifsud as a Russian agent. Mifsud has extensive contacts with Western governments and the FBI

For example, there is a recent photo of him standing next to Boris Johnson, the new Prime Minister of Great Britain. What we're trying to figure out here, Mr Mueller, is if our NATO allies or Boris Johnson have been compromised. So we're trying to figure out, Comey says Mifsud is a Russian agent, you do not. So do you stand by what's in the report?

Mr Mueller. I stand by that which is in the report, and not so necessarily with that which is not in the report.

Mr Nunes I want to return to Mr Downer, he denies that Papadopoulos mentioned anything to him about Hillary Clinton's emails. And, in fact, Mifsud denies mentioning that to Papadopoulos. He denies that Papadopoulos mentioned anything to

him about Hillary Clinton's emails, and in fact, Mifsud denies mentioning them to Papadopoulos in the first place

So how does the FBI know to continually ask Papadopoulos about Clinton's emails for the rest of 2016? Even more strangely, your sentencing memo on Papadopoulos blames him for hindering the FBI's ability to potentially detain or arrest Mifsud. But the truth is Mifsud waltzed in and out of the United States in December 2016

The U S media could find him. The Italian press found him. And he's a supposed Russian agent at the epicenter of the purported collusion conspiracy. He's the guy who knows about Hillary Clinton's emails and that the Russians have them. But the FBI failed to question him for a half a year after officially opening the investigation.

And then, according to Volume I, page 193 of your report, once Mifsud finally was questioned, he made false statements to the FBI. But you declined to charge him. Is that correct? You did not indict Mr. Mifsud?

Mr. Mueller. Well, I'm not going to speak to the series of happenings as you articulated them.

Mr. Nunes. But you did not indict Mr. Mifsud?

The Chairman. The time of the gentleman has expired.

Mr. Mueller. Pardon?

Mr. Nunes. You did not indict Mr. Mifsud?

Mr. Mueller. True.

The Chairman. Mr. Himes.

Mr. Himes. Director Mueller, thank you for your lifetime of service to this country, and thank you for your perseverance and patience today. Director, your report opens with two statements of remarkable clarity and power.

The first statement is one that is, as of today, not acknowledged by the President.

of the United States, and that is, quote. The Russian Government interfered in the 2016 Presidential election in sweeping and systematic fashion

The second statement remains controversial amongst Members of this body, same page on your report, and I quote. The Russian Government perceived it would benefit from a Trump Presidency and worked to secure that outcome. Do I have that statement right?

Mr. Mueller I believe so

Mr. Himes Director Mueller, this attack on our democracy involved, as you said, two operations. First, a social media disinformation campaign, this was a targeted campaign to spread false information on places like Twitter and Facebook. Is that correct?

Mr. Mueller That's correct

Mr. Himes Facebook estimated, as per your report, that the Russian fake images reached 126 million people. Is that correct?

Mr. Mueller I believe that's the sum that we record

Mr. Himes Director, who did the Russian social media campaign ultimately intend benefit, Hillary Clinton or Donald Trump?

Mr. Mueller Donald Trump

Mr. Himes The second operation, Director --

Mr. Mueller Let me just say Donald Trump, but there were instances where Hillary Clinton was subject to much the same behavior.

Mr. Himes The second operation in the Russian attack was a scheme, what we call the hack and dump, to steal and release hundreds of thousands of emails from the Democratic Party and the Clinton campaign. Is that a fair summary?

Mr. Mueller That is

Mr Himes Did your investigation find that the releases of the hacked emails were strategically timed to maximize impact on the election?

Mr Mueller I'd have to refer you to our report on that question.

Mr. Himes. Page 36, I quote: The release of the documents were designed and timed to interfere with the 2016 U S Presidential election Mr. Mueller, which Presidential candidate was Russia's hacking and dumping operation designed to benefit, Hillary Clinton or Donald Trump?

Mr Mueller Mr. Trump.

Mr Himes Mr Mueller, is it possible that this sweeping and systematic effort by Russia actually had an effect on the outcome of the Presidential election?

Mr Mueller Those issues are being or have been investigated by other entities.

Mr Himes 126 million Facebook impressions, fake rallies, attacks on Hillary Clinton's health, would you rule out that it might have had some effect on the election?

Mr. Mueller. I'm not going to speculate

Mr Himes Mr. Mueller, your report describes a third avenue of attempted Russian interference That is the numerous links and contacts between the Trump campaign and individuals tied to the Russian Government Is that correct?

Mr Mueller Could you repeat that question?

Mr Himes Your report describes what is called a third avenue of Russian interference, and that's the links and contacts between the Trump campaign and individuals tied to the Russian Government?

Mr Mueller. Yes.

Mr Himes Let's bring up slide one, which is about George Papadopoulos, and it reads: On May 6, 2016, 10 days after that meeting with Mifsud, much discussed today, Papadopoulos suggested to a representative of a foreign government that the Trump

campaign had received indications from the Russian Government that it could assist the campaign through the anonymous release of information that would be damaging to Hillary Clinton

And, Director, that's exactly what happened 2 months later, is it not?

Mr. Mueller. Well, I can speak to the excerpt that you have on the screen as being accurate from the report, but not the second half of your question

Mr. Himes. Well, the second half, just to refer to Page 6 of the report, is that, on July 22, through WikiLeaks, thousands of these emails that were stolen by the Russian Government appeared, correct? That is on page 6 of the report. This is the WikiLeaks posting of those emails

Mr. Mueller. I can't find it quickly, but I'm -- please continue

Mr. Himes. Okay. So, just to be clear, before the public or the FBI ever knew, the Russians previewed for a Trump campaign official, George Papadopoulos, that they had stolen emails that they could release anonymously to help Donald Trump and hurt Hillary Clinton. Is that correct?

Mr. Mueller. I'm not going to speak to that

Mr. Himes. Director, rather than report this contact with Joseph Mifsud and the notion that there was dirt that the campaign could use, rather than report that to the FBI, that I think most of my constituents would expect an individual to do, Papadopoulos in fact lied about his Russian contact to you. Is that not correct?

Mr. Mueller. That's true

Mr. Himes. We have an election coming up in 2020, Director, if a campaign receives an offer of dirt from a foreign individual or a government, generally speaking, should that campaign report those contacts?

Mr. Mueller. Should be -- can be, depending on the circumstances, a crime

Mr Himes I will yield back the balance of my time.

The Chairman. Mr. Conaway

Mr Conaway Thank you

Mr Mueller, did anyone ask you to exclude anything from your report that you felt should have been in the report?

Mr Mueller I don't think so, but it's not a small report.

Mr Conaway. But no one asked you specifically to exclude something that you believe should have been in there?

Mr Mueller Not that I can recall No

Mr. Conaway I yield the balance of my time to Mr Ratcliffe Thank you

Mr. Ratcliffe I thank the gentleman for yielding

Good afternoon, Director Mueller In your May 29 press conference, and again in your opening remarks this morning, you made it pretty clear you wanted the special counsel report to speak for itself You said at your press conference that that was the office's final position, and we will not comment on any other conclusions or hypotheticals about the President.

Now, you spent the last few hours of your life from Democrats trying to get you to answer all kinds of hypotehticals about the President, and I expect that it may continue for the next few hours of your life I think you've stayed pretty much true to what your intent and desire was, but I guess, regardless of that, the Special Counsel's Office is closed, and it has no continuing jurisdiction or authority So what would be your authority or jurisdiction for adding new conclusions or determinations to the special counsel's written report?

Mr Mueller. As to the latter, I don't know or expect a change in the conclusions that we included in our report

Mr Ratcliffe So, to that point, you addressed one of the issues that I needed to, which was from your testimony this morning, which some construed as a change to the written report You talked about the exchange that you had with Congressman Lieu. I wrote it down a little bit different I want to ask you about it so that the record is perfectly clear.

I recorded that he asked you, quote, "The reason you did not indict Donald Trump is because of the OLC opinion stating you cannot indict a sitting President," to which you responded, "That is correct " That response is inconsistent, I think you'll agree, with your written report. I want to be clear that it is not your intent to change your written report. It is your intent to clarify the record today.

Mr Mueller As I started today, this afternoon, and added either a footnote or an end note, what I wanted to clarify is the fact that we did not make any determination with regard to culpability, in any way We did not start that process down the road

Mr Ratcliffe Terrific. Thank you for clarifying the record

A stated purpose of your appointment as special counsel was to ensure a full and thorough investigation of the Russian Government efforts to interfere in the 2016 Presidential election. As part of that full and thorough investigation, what determination did the Special Counsel Office make about whether the Steele dossier was part of the Russian Government efforts to interfere in the 2016 Presidential election?

Mr. Mueller. Again, when it comes to Mr. Steele, I defer to the Department of Justice.

Mr Ratcliffe. Well, first of all, Director, I very much agree with your determination that Russia's efforts were sweeping and systematic. I think it should concern every American That's why I want to know just how sweeping and systematic those efforts were I want to find out if Russia interfered with our election by providing

false information through sources to Christopher Steele about a Trump conspiracy that you determined didn't exist.

Mr. Mueller Well, again, I'm not going to discuss the issues with regard to Mr Steele In terms of a portrayal of the conspiracies, we returned two indictments in the computer crimes arena, one GRU, and another, active measures, in which we lay out in excruciating detail what occurred in those two --

Mr Ratcliffe. And I --

Mr. Mueller -- large conspiracies

Mr Ratcliffe. I agree with respect to that, but why this is important is an application and three renewal applications were submitted by the United States Government to spy or surveil on Trump campaign Carter Page, and on all four occasions, the United States Government submitted the Steele dossier as a central piece of evidence with expect to that

Now, the basic premise of the dossier, as you know, was that there was a well-developed conspiracy of cooperation between the Trump campaign and the Russian Government But the special counsel investigation didn't establish any conspiracy, correct?

Mr Mueller Well, what I can tell you is that the events that you are characterizing here now is part of another matter that is being handled by the Department of Justice

Mr Ratcliffe But you did not establish any conspiracy, much less a well-developed one?

Mr Mueller Again, I pass on answering that.

Mr Ratcliffe The special counsel did not charge Carter Page with anything?

Mr Mueller Special counsel did not

Mr Ratcliffe. All right. My time is expired. I yield back.

The Chairman. Ms Sewell.

Ms Sewell. Director Mueller, I'd like to turn your attention to the June 9, 2016, Trump Tower meeting. Slide two, which should be on the screen now, is part of an email campaign between Don Jr -- Donald Trump, Jr., and a publicist representing the son of a Russian oligarch. The email exchange ultimately led to the now infamous June 9, 2016, meeting. The email from the publicist to Donald Trump, Jr., reads in part: The crown prosecutor of Russia offered to provide the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia, and is a part of Russia and its government's support of Mr. Trump.

In this email Donald Trump, Jr., is being told that the Russian Government wants to pass along information which would hurt Hillary Clinton and help Donald Trump. Is that correct?

Mr Mueller. That's correct.

Ms Sewell. Now, Trump, Jr.'s, response to that is slide three. He said, and I quote. If it is what you say, I love it, especially later in the summer.

Then Donald Jr. invited senior campaign officials Paul Manafort and Jared Kushner to the meeting, did he not?

Mr Mueller. He did.

Ms Sewell. This email exchange is evidence of an offer of illegal assistance, is it not?

Mr Mueller. I cannot adopt that characterization.

Ms Sewell. But isn't it against the law for a Presidential campaign to accept anything of value from a foreign government?

Mr Mueller. Generally speaking, yes, but -- generally the cases are unique.

Ms Sewell You say, on page 184 in Volume II, that the Federal campaign-finance law broadly prohibits foreign nationals from making contributions, et cetera, and then you say that foreign nationals may not make a contribution or donation of money or anything of value, it said clearly in the report itself

Mr Mueller Yeah. Thank you

Ms Sewell Now, let's turn to what actually happened at the meeting When Donald Trump, Jr , and other got to the June 9th meeting, they realized that the Russian delegation didn't have the promised, quote/unquote, dirt In fact, they got upset about that, did they not?

Mr Mueller Generally, yes

Ms Sewell You say in Volume II, page 118, that Trump, Jr , asked What are we doing here? What do they have on Clinton? And during the meeting, Kushner actually texted Manafort saying it was, quote, a waste of time, end quote Is that correct?

Mr Mueller I believe it's in the report along the lines you specify

Ms Sewell So, to be clear, top Trump campaign officials learned that Russia wanted to help Donald Trump's campaign by giving him dirt on his opponent Trump, Jr , said Loved it And then he and senior officials held a meeting with the Russians to try to get that Russian help, but they were disappointed because the dirt wasn't as good as they had hoped

So, to the next step, did anyone to your knowledge in the Trump campaign ever tell the FBI of this offer?

Mr Mueller I don't believe so

Ms Sewell Did Donald Trump, Jr., tell the FBI that they received an offer of help from the Russians?

Mr. Mueller. I'm going to -- that's about all I'll say on this aspect of it.

Ms Sewell. Wouldn't it be true, sir, that if they had reported it to the FBI or anyone in that campaign during the course of your 2-year investigation, you would have uncovered such a --

Mr Mueller. I would hope, yes

Ms Sewell. Yes. Sir, is it not the responsibility of political campaigns to inform the FBI if they receive information from a foreign government?

Mr. Mueller. I would think that that's something they would and should do

Ms. Sewell. Well, not only did the campaign not tell the FBI, they sought to hide the existence of the June 9th meeting for over a year. Is that not correct?

Mr Mueller. On the general characterization, I would question it. If you're referring to a later initiative that flowed from the media then --

Ms Sewell. No, what I'm suggesting is that you've said in Volume 2, page 5. On several occasions, the President directed aides not to publicly disclose the email setting up the June 9th meeting.

Mr. Mueller. Yes. That is accurate.

Ms Sewell. Thanks. Sir, given this illegal assistance by Russians, you chose, even given that, you did not charge Donald Trump, Jr., or any of the other senior officials with conspiracy. Is that right?

Mr Mueller. Correct.

Ms Sewell. And while --

Mr Mueller. If you're talking about other individuals, you're talking about the attendees of June 9, that's accurate.

Ms Sewell. Yes, that's right. So, Mr. Mueller, even though you didn't charge them with conspiracy, don't you think that the American people would be concerned that

these three senior campaign officials eagerly sought a foreign adversary's help to win elections, and don't you think reporting that is important that we don't set a precedent for future elections?

Mr. Mueller. I can't accept that characterization

Ms. Sewell. Well, listen, I think that it seems like a betrayal of the American values to me, sir, that someone with -- if not being criminal, it is definitely unethical and wrong, and I would think that we would not want to set a precedent that political campaigns should not divulge of information of its foreign government assistance
Thank you, sir

The Chairman. Mr. Turner

Mr. Turner. Mr. Mueller, I have your opening statement, and in the beginning of your opening statement, you indicate that, pursuant to Justice Department regulations, that you submitted a confidential report to the Attorney General at the conclusion of the investigation. What I'd like you to confirm is the report that you did that is the subject matter of this hearing was to the Attorney General?

Mr. Mueller. Yes.

Mr. Turner. You also state in this opening statement that you threw overboard the word "collusion" because it's not a legal term. You would not conclude because collusion was not a legal term?

Mr. Mueller. Well, it depends on how you want to use the word. In the general parlance, people can think of it that way, but if you're talking about in a criminal statute arena, you can't because it's much more accurately described as conspiracy.

Mr. Turner. In your words, it's not a legal term so you didn't put it in your conclusion, correct? That's what your opening statement --

Mr. Mueller. That's correct.

Mr. Turner Mr Mueller, I want to talk about your powers and authorities. Now, the Attorney General in the appointment order gave you powers and authorities that reside in the Attorney General Now, the Attorney General has no ability to give you powers and authority greater than the powers and authority of the Attorney General, correct?

Mr. Mueller Yeah, I think that is correct

Mr. Turner Mr Mueller, I want to focus on one word in your report. It's the second to the last word in the report; it's "exonerate " The report states Accordingly, while this report does not conclude that the President committed a crime, it does not exonerate him

Now, in the Judiciary Hearing, in your prior testimony, you have already agreed with Mr Ratcliffe that "exonerate" is not a legal term, that there is not a legal test for this So I have a question for you, Mr Mueller

Mr Mueller, does the Attorney General have the power or authority to exonerate? Now, what I'm putting up here is the United States Code This is where the Attorney General gets his power and the Constitution and the annotated cases of these, which we've searched We even went to your law school because I went to Case Western, but I thought maybe your law school teaches it differently, and we got the criminal law textbook from your law school

Mr. Mueller, nowhere in these, because we had them scanned, is there a process or description on exonerate. There's no Office of Exoneration at the Attorney General's office There's no certificate at the bottom of his desk Mr Mueller, would you agree with me that the Attorney General does not have the power to exonerate?

Mr. Mueller I'm going to pass on that.

Mr. Turner Why?

Mr. Mueller Because it embroils us in a legal discussion, and I'm not prepared to do a legal discussion in that arena.

Mr. Turner Well, Mr. Mueller, you would not disagree with me when I say that there is no place that the Attorney General has the power to exonerate and he's not been given that authority?

Mr. Mueller Again, I'm not going to -- I take your question

Mr. Turner Well, the one thing that I guess is that the Attorney General probably knows that he can't exonerate either, and that's the part that kind of confuses me. Because if the Attorney General doesn't have the power to exonerate, then you don't have to power to exonerate, and I believe he knows he doesn't the have power to exonerate.

So this is the part I don't understand. If your report is to the Attorney General, and the Attorney General doesn't have the power to exonerate, and he does not -- and he knows that you do not have that power, you don't have to tell him that you're not exonerating the President, he knows this already. So then that kind of changed the context of the report.

Mr. Mueller No, we include it in the report for exactly that reason. He may not know it, and he should know it.

Mr. Turner So you believe that Attorney Bill Barr believes that somewhere in the hallways of the Department of Justice, there's an Office of Exoneration?

Mr. Mueller No, that's not what I said

Mr. Turner Well, I believe he knows, and I don't believe you put that in there for Mr. Barr. I think you put that in there for exactly what I'm going to discuss next. And that is, in The Washington Post yesterday, when speaking of your report, the article said 'Trump could not be exonerated of trying to obstruct the investigation itself. Trump

could not be exonerated.

Now, that statement is correct, Mr. Mueller, in that no one can be exonerated. The reporter wrote this -- this reporter can't be exonerated. Mr. Mueller, you can't be exonerated. In fact, in our criminal justice system, there is no power or authority to exonerate. Now, this is my concern, Mr. Mueller. This is the headline on all of the news channels while you were testifying today. "Mueller: Trump was not exonerated."

Now, Mr. Mueller, what you know is that this can't say, "Mueller exonerated Trump," because you don't have the power or authority to exonerate Trump. You have no power to declare him exonerated than you have the power to declare him Anderson Cooper. So the problem that I have here is that since there's no one in the criminal justice system that has that power -- the President pardons, he doesn't exonerate. Courts and juries don't declare innocent; they declare not guilty. They don't even declare exoneration. The statement about exoneration is misleading, and it's meaningless, and it colors this investigation. One word out of the entire portion of your report, and it's a meaningless word that has no legal meaning, and it has colored your entire report.

I yield back.

The Chairman. The time of the gentleman has expired. Mr. Carson

Mr. Carson. Thank you, Chairman.

Thank you, Director Mueller, for your years of service to our country. I want to look more closely, sir, at the Trump campaign chairman, Paul Manafort, an individual who I believe betrayed our country, who lied to a grand jury, who tampered with witnesses, and who repeatedly tried to use his position with the Trump campaign to make more money. Let's focus on the betrayal and greed.

Your investigation, sir, found a number of troubling contacts between Mr. Manafort and Russian individuals during and after the campaign. Is that right, sir?

Mr. Mueller. Correct.

Mr. Carson. In addition to the June 9th meeting just discussed, Manafort often met several times with a man named Konstantin Kilimnik, who the FBI assessed to have ties with Russian intel agencies. Is that right, sir?

Mr. Mueller. Correct.

Mr. Carson. In fact, Mr. Manafort didn't just meet with him, he shared private Trump campaign polling information with this man linked to Russian intelligence. Is that right, sir?

Mr. Mueller. That is correct.

Mr. Carson. And in turn, the information was shared with a Russian oligarch tied to Vladimir Putin. Is that right, sir?

Mr. Mueller. Allegedly.

Mr. Carson. Director Mueller, meeting with him wasn't enough. Sharing internal polling information wasn't enough. Mr. Manafort went so far as to offer this Russian oligarch tied to Putin a private briefing on the campaign. Is that right, sir?

Mr. Mueller. Yes, sir.

Mr. Carson. And, finally, Mr. Manafort also discussed internal campaign strategy on four battleground States -- Michigan, Wisconsin, Pennsylvania, and Minnesota -- with the Russian-intelligence-linked individual. Did he not, sir?

Mr. Mueller. That's reflected in the report, as were the items you listed previously.

Mr. Carson. Director Mueller, based on your decades of years of experience at the FBI, would you agree, sir, that it creates a national security risk when a Presidential

campaign chairman shares private polling information on the American people, private political strategy related to winning the votes of the American people, and private information about American battleground States with a foreign adversary?

Mr. Mueller. Is that the question, sir?

Mr. Carson. Yes, sir.

Mr. Mueller. I'm not going to speculate along those lines. To the extent that it's within the lines of the report, then I'd support it. Anything beyond that is not part of that which I would support.

Mr. Carson. Well, I think it does, sir. I think it shows an infuriating lack of patriotism from the very people seeking the highest office in the land. Director Mueller, Manafort didn't share this information exchange for nothing, did he, sir?

Mr. Mueller. I can't answer that question without knowing more about the question.

Mr. Carson. Well, it's clear that he hoped to be paid back money he was owed by Russian or Ukrainian oligarchs in return for the passage of private campaign information, correct?

Mr. Mueller. That is true.

Mr. Carson. Director Mueller, as my colleague, Mr. Heck, will discuss later, greed corrupts. Would you agree, sir, that the sharing of private campaign information in exchange for money represents a particular kind of corruption, one that presents a national security risk to our country, sir?

Mr. Mueller. I'm not going to opine on that. I don't have the expertise in that arena to really opine?

Mr. Carson. Would you agree, sir, that Manafort's contacts with Russians close to Vladimir Putin and his efforts to exchange private information on Americans for money

left him vulnerable to blackmail by the Russians?

Mr Mueller I think generally so that would be the case

Mr Carson Would you agree, sir, that these acts demonstrated a betrayal of the democratic values our country rests on?

Mr Mueller I can't agree with that

Mr Carson Director Mueller --

Mr. Mueller Not that it's not true, but I cannot agree with it

Mr Carson Yes, sir. Director Mueller, well, I can tell you that, in my years as a law enforcement officer and as a Member of Congress, fortunate to serve on the Intel Committee, I know enough to say, yes, trading political secrets for money with a foreign adversary can corrupt, and it can leave you open to blackmail. And it certainly represents a betrayal of the values underpinning our democracy

I want to thank you for your service again, Director Mueller, we appreciate you for coming today I yield back, chairman.

The Chairman Dr. Wenstrup

Dr Wenstrup Thank you, Mr Chairman

Thank you, Mr Mueller, for being here today Mr Mueller, is it accurate to say your investigation found no evidence of members of the Trump campaign were involved in the theft or publication of Clinton campaign-related emails?

Mr. Mueller Can you repeat the question?

Dr. Wenstrup It is accurate to say your investigation found no evidence that members of the Trump campaign were involved in the theft or publication of the Clinton campaign-related emails?

Mr. Mueller I don't know the -- I don't know. I -- well --

Dr. Wenstrup Well, Volume II, page 5, the investigation did not establish that

members of the Trump campaign conspired or coordinated with the Russian Government in its election interference activities. So it would, therefore, be inaccurate, based on this, to describe that finding as open to doubt, and that finding being that the Trump campaign was involved with theft or publication of the Clinton campaign emails. Are you following that, sir?

Mr. Mueller. I do believe I'm following it, but it is -- that portion or that matter does not fall within our jurisdiction or fall within our investigation.

Dr. Wenstrup. Well, basically, what your report says, Volume II, page 5, I just want to be clear that open to doubt is how the committee Democrats describe this finding in their minority views of our 2018 report, and it kind of flies in the face of what you have in your report. So is it accurate also to say the investigation found no documentary evidence that George Papadopoulos told anyone affiliated with the Trump campaign about Joseph Mifsud's claims that the Russians had dirt on candidate Clinton?

Mr. Mueller. Let me turn that over to Mr. Zebley.

Dr. Wenstrup. I'd like to ask you, sir. This is your report, and that's what I'm basing this on.

Mr. Mueller. Then could you repeat the question for me again?

Dr. Wenstrup. Yeah, is it accurate to say that the investigation found no documentary evidence that George Papadopoulos told anyone affiliated with the Trump campaign about Joseph Mifsud's claims that the Russians had dirt on candidate Clinton?

Mr. Mueller. I believe it appearing in the report, that it is accurate.

Dr. Wenstrup. So, in the report, it says, no documentary evidence that Papadopoulos shared this information with the campaign. It's, therefore, inaccurate to conclude that by the time of the June 9, 2016, Trump Tower meeting, quote. The campaign was likely already on notice via George Papadopoulos' contact with Russian

agents that Russia in fact had damaging information on Trump's opponent

Would you say that that is inaccurate to say that it's likely already --

Mr Mueller I direct you to the report.

Dr. Wenstrup Well, I appreciate that because the Democrats jumped to this incorrect conclusion in their minority views, again, which contradicts what you have in your report.

I'm concerned about a number of statements I'd like you to clarify because a number of Democrats have made some statements that I have concerns with and maybe you can clear them up So a member of this committee said President Trump was a Russian agent after your report was publicly released. That statement is not supported by your report, correct?

Mr Mueller That is accurate It's not supported

Dr. Wenstrup Multiple Democrat Members have asserted that Paul Manafort met with Julian Assange in 2016 before WikiLeaks released DNC emails, implying Manafort colluded with Assange Because your report does not mention finding evidence that Manafort met with Assange, I would assume that means you found no evidence of this meeting Is that assumption correct?

RPTR ZAMORA

EDTR HOFSTAD

[1 52 p m.]

Mr Mueller. I'm not certain I agree with that assumption

Dr Wenstrup. But you make no mention of it in your report. Would you agree with that?

Mr Mueller. Yes, I would agree with that

Dr. Wenstrup. Okay

Mr Mueller, does your report contain any evidence that President Trump was enrolled in the Russian system of komprodat, as a member of this committee once claimed?

Mr. Mueller. Well, to -- what I can speak to is information -- evidence that we picked up as the special counsel. And I think that's accurate, as far as it goes

Dr Wenstrup. Thank you. I appreciate that

So let's go for a second to scope. Did you ask the Department of Justice to expand the scope of the special counsel's mandate related to August 2, 2017, or August 20, 2017, scoping memoranda?

Mr Mueller. Well, there -- without looking at the memoranda, I could not answer that question.

Dr Wenstrup. Well, let me ask you, did you ever make a request to expand your office's mandate at all?

Mr Mueller. Generally, yes.

Dr Wenstrup. And was that ever denied?

Mr. Mueller. I'm not going to speak to that. It goes to --

Dr Wenstrup You're not going to speak to that?

Mr Mueller -- the internal deliberations

Dr Wenstrup Well, I'm just trying to understand process Does expanding the scope come from the Acting Attorney General or --

Mr. Mueller I'm not --

Dr Wenstrup -- Rod Rosenstein? Or does it come from you? Or can it come from either?

Mr Mueller Yeah, I'm not going to discuss any other alternatives

Dr Wenstrup Thank you, Mr Mueller

The Chairman Ms Speier

Ms. Speier Thank you, Mr. Chairman

Mr. Mueller, I think I can say without fear of contradiction that you are the greatest patriot in this room today, and I want to thank you for being here

Mr Mueller Thank you.

Ms. Speier You said in your report -- and I'm going to quibble with your words -- that the Russian intervention was sweeping and systematic I would quibble with that because I don't think it was just an intervention, I think it was an invasion. And I don't think it was just sweeping and systematic; I think it was sinister and scheming.

But having said that, one of my colleagues earlier here referred to this Russian intervention as a hoax And I'd like to get your comment on that.

On page 26 of your report, you talk about the Internet Research Agency and how tens of millions of U.S. persons became engaged with the posts that they made, that there were some 80,000 posts on Facebook, that Facebook itself admitted that 126 million people had probably seen the posts that were put up by the Internet Research Agency, that they had 3,800 Twitter accounts and had designed more than 175,000

tweets that probably reached 1.4 million people

The Internet Research Agency was spending about \$1.25 million a month on all of this social media in the United States in what I would call an invasion in our country

Would you agree that it was not a hoax that the Russians were engaged in trying to impact our election?

Mr. Mueller. Absolutely. That was not a hoax. The indictments we returned against the Russians, two different ones, were substantial in their scope, using the "scope" word again.

And I think one of the -- we have underplayed, to a certain extent, that aspect of our investigation that has and would have long-term damage to the United States that we need to move quickly to address.

Ms. Speier. Thank you for that. I'd like to drill down on that a little bit more.

The Internet Research Agency actually started in 2014 by sending over staff as tourists, I guess, to start looking at where they wanted to engage. And there are many that suggest, and I'm interested in your opinion, as to whether or not Russia is presently in the United States looking for ways to impact the 2020 election.

Mr. Mueller. I can't speak to that. That would be in levels of classification.

Ms. Speier. All right.

Let me ask you this. Oftentimes when we engage in these hearings, we forget the forest for the trees. You have a very large report here of over 400 pages. Most Americans have not read it. We have read it. Actually, the FBI Director yesterday said he hadn't read it, which was a little discouraging.

But, on behalf of the American people, I want to give you a minute and 39 seconds to tell the American people what you would like them to glean from this report.

Mr. Mueller. Well, we spent substantial time ensuring the integrity of the

report, understanding that it would be our living message to those who come after us
But it also is a signal, a flag to those of us who have some responsibility in this area to
exercise those responsibilities swiftly and don't let this problem continue to linger as it
has over so many years

Ms. Speier. All right. You didn't take the total amount of time, so I'm going to
yield the rest of my time to the chairman

The Chairman. I thank the gentlewoman for yielding

Director Mueller, I wanted to ask you about conspiracy. Generally, a conspiracy
requires an offer of something illegal, the acceptance of that offer, and an overt act in
furtherance of it. Is that correct?

Mr. Mueller. Correct

The Chairman. And Don Jr. was made aware that the Russians were offering dirt
on his opponent, correct?

Mr. Mueller. I don't know that for sure, but one would assume, given his
presence at the meeting.

The Chairman. And when you say that you would love to get that help, that
would constitute an acceptance of the offer?

Mr. Mueller. It's a wide-open request

The Chairman. And it would certainly be evidence of an acceptance if you
say -- when somebody offers you something illegal and you say, "I would love it," that
would be considered evidence of an acceptance.

Mr. Mueller. I'm going to stay away from any -- addressing one particular or two
particular situations

The Chairman. Well, this particular situation -- well, I'll have to continue in a bit
I now yield to Mr. Stewart

Mr. Stewart Mr. Mueller, it's been a long day. Thank you for being here.

I do have a series of important questions for you, but before I do that, I want to take a moment to reemphasize something that my friend Mr. Turner has said. I've heard many people state, "No person is above the law." And many times recently, they add "not even the President," which I think is blazingly obvious to most of us.

Mr. Mueller I'm having a little problem hearing you, sir.

Mr. Stewart Is this better?

Mr. Mueller That is better. Thank you.

Mr. Stewart I want you to know I agree with the statement that no person is above the law. But there's another principle that we also have to defend, and that is the presumption of innocence. And I'm sure you agree with this principle, though I think the way that your office phrased some parts of your report, it does make me wonder, I have to be honest with you.

For going on 3 years, innocent people have been accused of very serious crimes, including treason -- accusations made even here today. They have had their lives disrupted and in some cases destroyed by false accusations for which there is absolutely no basis other than some people desperately wish that it was so.

But your report is very clear: no evidence of conspiracy, no evidence of coordination. And I believe we owe it to these people who have been falsely accused, including the President and his family, to make that very clear.

Mr. Mueller, the credibility of your report is based on the integrity of how it is handled. And there's something that I think bothers me and other Americans. I'm holding here in my hand a binder of 25 examples of leaks that occurred from the Special Counsel's Office from those who associated with your work dating back to as early as a few weeks after your inception and the beginning of your work and continuing up to just

a few months ago

All of these -- all of them have one thing in common: They were designed to weaken or to embarrass the President. Every single one. Never was it leaked that you'd found no evidence of collusion. Never was it leaked that the Steele dossier was a complete fantasy, nor that it was funded by the Hillary Clinton. I could go on and on.

Mr. Mueller, are you aware of anyone from your team having given advance knowledge of the raid on Roger Stone's home to any person or the press, including CNN?

Mr. Mueller. Well, I'm not going to talk about specifics. I will mention -- but talk for a moment about persons who become involved in an investigation and the understanding that, in a lengthy, thorough investigation, some persons will be under a cloud that should not be under a cloud.

And one of the reasons for emphasizing, as I have, the speed of an election -- or, not election -- the speed of an investigation is that so those persons who are disrupted as a result of their --

Mr. Stewart. I appreciate that, but I do have a series of questions.

Mr. Mueller. May -- with the result of that investigation.

Mr. Stewart. Thank you. And you're right, it is a cloud, and it's an unfair cloud for dozens of people.

But, to my point, are you aware of anyone providing information to the media regarding the raid on Roger Stone's home, including CNN?

Mr. Mueller. I'm not going to speak to that.

Mr. Stewart. Okay.

Mr. Mueller, you sent a letter dated March 27 to Attorney General Barr in which you claimed the Attorney General's memo to Congress did not fully capture the context of your report. You stated earlier today that response was not authorized.

Did you make any effort to determine who leaked this confidential letter?

Mr. Mueller. No, and I'm not certain -- this is the letter of March 27?

Mr. Stewart. Yes, sir.

Mr. Mueller. Okay. I'm not certain when it was publicized. I did know it was publicized, but I do not believe we would be responsible for the leak.

Mr. Stewart. Well --

Mr. Mueller. I do believe that we have done a good job in assuring that no leaks occur --

Mr. Stewart. We have 25 examples here of where you did not do a good job -- not you, sir, I'm not accusing you at all -- but where your office did not do a good job in protecting this information.

One more example. Do you know anyone who anonymously made claims to the press that Attorney General Barr's March 24 letter to Congress had been misrepresented or misrepresented the basis of your report?

Mr. Mueller. What was the question?

Mr. Stewart. Do you know who anonymously made claims to the press that Attorney General Barr's March 24 letter to Congress had misrepresented the findings of your report?

Mr. Mueller. No.

Mr. Stewart. Sir, given these examples as well as others, you must have realized that leaks were coming from someone associated with the Special Counsel's Office. What I'd like to ask is, did you --

Mr. Mueller. I do not believe that.

Mr. Stewart. Well, sir, this was your work. You're the only one -- your office is the only one who had information regarding this. It had to come from your office.

Putting that aside -- which leads me to my final question: Did you do anything about it?

Mr. Mueller. From the outset, we've undertaken to make certain that we minimize the possibility of leaks. And I think we were successful over the 2 years that we were in operation.

Mr. Stewart. Well, I wish you'd been more successful, sir. I think it was disruptive to the American people.

My time has expired. I yield back.

The Chairman. Mr. Qigley.

Mr. Qigley. Thank you, Mr. Chairman.

Director, thank you for being here. This, too, shall pass.

Earlier today and throughout the day, you have stated the policy that a seated President cannot be indicted, correct?

Mr. Mueller. Correct.

Mr. Qigley. And upon questioning this morning, you were asked, could a President be indicted after their service, correct?

Mr. Mueller. Yes.

Mr. Qigley. And your answer was that they could.

Mr. Mueller. They could.

The Chairman. Director, please speak into the microphone.

Mr. Mueller. I'm sorry. Thank you. They could.

Mr. Qigley. So the followup question that should be concerning is: What if a President serves beyond the statute of limitations?

Mr. Mueller. I don't know the answer to that one.

Mr. Qigley. Would it not indicate that if the statute of limitations on Federal

crimes such as this are 5 years that a President who serves a second term is therefore, under the policy, above the law?

Mr. Mueller I'm not certain I would agree with the conclusion I'm not certain that I can see the possibility that you suggest

Mr. Quigley But the statute doesn't toll. Is that correct?

Mr. Mueller I don't know specifically

Mr. Quigley It clearly doesn't

And I just want -- as the American public is watching this and perhaps learning about many of these for the first time, we need to consider that and that the other alternatives are perhaps all that we have

But I appreciate your response

Earlier in questioning, someone mentioned that -- it was a question involving whether anyone in the Trump political world publicized the emails, whether or not that was the case.

I just want to refer to Volume I, page 60, where we learn that Trump Jr publicly tweeted a link to the leak of stolen Podesta emails in October of 2016 You're familiar with that?

Mr. Mueller I am

Mr. Quigley So that would at least be a republishing of this information, would it not?

Mr. Mueller I'm not certain I would agree with that.

Mr. Quigley Director Pompeo assessed WikiLeaks, at one point, as a hostile intelligence service

Given your law enforcement experience and your knowledge of what WikiLeaks did here and what they do generally, would you assess that to be accurate or something

similar? How would you assess what WikiLeaks does?

Mr. Mueller. Absolutely. And they are currently under indictment, Julian Assange is.

Mr. Qugley. But would it be fair to describe them as -- you would agree with Director Pompeo -- that's what he was when he made that remark -- that it's a hostile intelligence service, correct?

Mr. Mueller. Yes.

Mr. Qugley. If we could put up slide 6.

"This just came out. WikiLeaks! I love WikiLeaks!" Donald Trump, October 10, 2016.

"This WikiLeaks stuff is unbelievable. It tells you the inner heart, you gotta read it." Donald Trump, October 12, 2016.

"This WikiLeaks is like a treasure trove." Donald Trump, October 31, 2016.

"Boy, I love reading those WikiLeaks." Donald Trump, November 4, 2016.

Would any of those quotes disturb you, Mr. Director?

Mr. Mueller. I'm not certain I would say --

Mr. Qugley. How do you react to them?

Mr. Mueller. Well, it's -- "problematic" is an understatement in terms of what it displays in terms of giving some -- I don't know -- hope or some boost to what is and should be illegal activity.

Mr. Qugley. Volume I, page 59. "Donald Trump, Jr., had direct electronic communications with WikiLeaks during the campaign period."

"On October 3, 2016, WikiLeaks sent another direct message to Trump Jr., asking 'you guys' to help disseminate a link alleging candidate Clinton had advocated a drone to target Julian Assange. Trump Jr. responded that, quote, he already 'had done so'."

Same question This behavior, at the very least, disturbing?

Mr. Mueller. Disturbing and also subject to investigation

Mr. Quigley. Could it be described as aid and comfort to a hostile intelligence service, sir?

Mr. Mueller. I wouldn't categorize it with any specificity

Mr. Quigley. I yield the balance to the chairman, please

The Chairman. I'm not sure I can make good use of 27 seconds, but, Director, I think you made it clear that you think it unethical, to put it politely, to tout a foreign service, like WikiLeaks, publishing stolen political documents in a Presidential campaign?

Mr. Mueller. Certainly calls for investigation

The Chairman. Thank you, Director

We're going to go now to Mr. Crawford. And then after Mr. Crawford's 5 minutes, we'll take a 5- or 10-minute break.

Mr. Crawford. Thank you, Mr. Chairman.

Thank you, Mr. Mueller, for being here.

Days after your appointment, Peter Strzok texted about his concern that there's, quote, "no big there there" in the Trump campaign investigation.

Did Strzok or anyone else who worked on the FBI's investigation tell you that around 10 months into the investigation the FBI still had no case for collusion?

Mr. Mueller. Who? Can you repeat that?

Mr. Crawford. Peter Strzok.

Mr. Mueller. And could you -- I'm sorry. Can you move the microphone up a little closer?

Mr. Crawford. Sure

Mr. Mueller. Thank you.

Mr. Crawford. There's a quote attributed to Peter Strzok. He texted about his concern that there is, quote, "no big there there" in the Trump campaign investigation.

Did he or anyone else who worked on the FBI's investigation tell you that around 10 months into the investigation the FBI still had no case for collusion?

Mr. Mueller. No.

Mr. Crawford. Is the inspector general report correct that the text messages from Peter Strzok and Lisa Page's phones from your office were not retained after they left the Special Counsel's Office?

Mr. Mueller. Well, I don't -- it depends on what you're talking about. The investigation into those -- Peter Strzok went on for a period of time, and I am not certain what it encompasses. It may well have encompassed what you're adverting to.

Mr. Crawford. Okay.

Let me move on just real quickly. Did you ask the Department to authorize your office to investigate the origin of the Trump/Russia investigation?

Mr. Mueller. I'm not going to get into that. It goes to internal deliberations.

Mr. Crawford. So the circumstances surrounding the origin of the investigation have yet to be fully vetted then. I am certainly glad that Attorney General Barr and U.S. Attorney Durham are looking into this matter.

And, with that, I'd like to yield the balance of my time to Ranking Member Nunes.

Mr. Nunes. I thank the gentleman for yielding.

Mr. Mueller, I want to make sure you're aware of who Fusion GPS is. Fusion GPS is a political operations firm that was working directly for the Hillary Clinton campaign and the Democrat National Committee. They produced the dossier. So they paid Steele, who then went out and got the dossier.

And I know you don't want to answer any dossier questions, so I'm not going

there. But your report mentions Natalia Veselnitskaya 65 times. She meets in the Trump Tower -- it's this infamous Trump Tower meeting. It's in your report. You've heard many of the Democrats refer to it today.

The meeting was shorter than 20 minutes, I believe. Is that correct?

Mr. Mueller. I think what we have in our report reflects it was about that length.

Mr. Nunes. So do you know -- so Fusion GPS, the main actor at Fusion GPS, the president of the company, or the owner of the company, is a guy named Glenn Simpson, who's working for Hillary Clinton. Glenn Simpson -- do you know how many times Glenn Simpson met with Natalia Veselnitskaya?

Mr. Mueller. Myself? No.

Mr. Nunes. Would it surprise you that the Clinton campaign dirty-ops arm met with Natalia Veselnitskaya more times than the Trump campaign did?

Mr. Mueller. Well, this is an area that I'm not going to get into, as I indicated at the outset.

Mr. Nunes. Did you ever interview Glenn Simpson?

Mr. Mueller. I'm, again, going to pass on that.

Mr. Nunes. According to -- I'm going to change topics here. According to notes from the State Department official Kathleen Kavalec, Christopher Steele told her that former Russian intelligence head Trubnikov and Putin advisor Surkov were sources for the Steele dossier.

Now, knowing that these are -- not getting into whether these sources were real or not real, was there any concern that there could've been disinformation that was going from the Kremlin into the Clinton campaign and then being fed into the FBI?

Mr. Mueller. Well, as I said before, this is an area that I cannot speak to.

Mr. Nunes. Is that because you're -- it's not in the report or you're just -- or

because of an ongoing deliberations?

Mr. Mueller. Internal deliberations, other proceedings, and the like.

Mr Nunes. Okay

When Andrew Weissmann and Zainab Ahmad joined your team, were you aware that Bruce Ohr, a Department of Justice top official, directly briefed the dossier allegations to them in the summer of 2016?

Mr Mueller. Again, I'm not going to speak to that issue

Mr Nunes. Okay

Before you arrested George Papadopoulos in July of 2017, he was given \$10,000 in cash in Israel. Do you know who gave him that cash?

Mr Mueller. Again, that's outside our ambit, and questions such as that should go to the FBI or the Department.

Mr Nunes. But it involved your investigation

Mr Mueller. It involved persons involved in my investigation

Mr. Nunes. Thank you, Mr Chairman

The Chairman. The committee will stand in recess for 5 or 10 minutes. Please, folks, remain in your seats, allow the Director and Mr Zebley to exit the chamber.

[Recess]

The Chairman. The committee will come to order

Mr. Mueller. Thank you, sir

The Chairman. Thank you, Director

Mr. Swalwell, you're recognized.

Mr Swalwell. Thank you

Director Mueller, as a prosecutor, you would agree that if a witness or suspect lies or obstructs or tampers with witnesses or destroys evidence during an investigation that

generally that conduct can be used to show a consciousness of guilt. Would you agree with that?

Mr. Mueller Yes

Mr. Swalwell. Let's go through the different people associated with the Trump campaign and this investigation who lied to you and other investigators to cover up their disloyal and unpatriotic conduct.

If we could put exhibit 8 up

Director Mueller, I'm showing you campaign chairman Paul Manafort, political advisor Roger Stone; deputy campaign manager Rick Gates, National Security Advisor Michael Flynn, Donald Trump's personal attorney, Michael Cohen; and foreign policy advisor George Papadopoulos

These six individuals have each been charged, convicted, or lied to your office or other investigators Is that right?

Mr. Mueller Yes, although I look askance at Mr Stone, because he is -- he is in a different case here in D C

Mr. Swalwell. So National Security Advisor Flynn lied about discussions with the Russian Ambassador related to sanctions. Is that right?

Mr. Mueller That's correct

Mr. Swalwell. Michael Cohen lied to this committee about Trump Tower Moscow. Is that correct?

Mr. Mueller Yes

Mr. Swalwell. George Papadopoulos, the President's senior foreign policy advisor, lied to the FBI about his communications about Russia's possession of dirt on Hillary Clinton Is that right?

Mr. Mueller Yes

Mr Swalwell. The President's campaign chairman, Paul Manafort, lied about meetings that he had with someone with ties to Russian intelligence Is that correct?

Mr Mueller. That's true.

Mr. Swalwell. And your investigation was hampered by Trump campaign officials' use of encryption communications. Is that right?

Mr Mueller. We believe that to be the case

Mr Swalwell. You also believe to be the case that your investigation was hampered by the deletion of electronic messages Is that correct?

Mr Mueller. It would be, yes And, generally, any case would be if those kinds of communications are used.

Mr Swalwell. For example, you noted that deputy campaign manager Rick Gates, who shared internal campaign polling data with a person with ties to Russian intelligence at the direction of Manafort, that Mr Gates deleted those communications on a daily basis Is that right?

Mr. Mueller. I take your word -- I'd say I don't know specifically, but if it's in the report, then I support it

Mr Swalwell. That's right, Director It's Volume I, page 136.

Mr Mueller. Thank you

Mr Swalwell. In addition to that, other information was inaccessible because your office determined it was protected by attorney-client privilege Is that correct?

Mr. Mueller. That is true.

Mr. Swalwell. That would include that you do not know whether communications between Donald Trump and his personal attorneys Jay Sekulow, Rudy Giuliani, and others discouraged witnesses from cooperating with the government Is that right?

Mr. Mueller I'm not going to talk to that

Mr. Swalwell That would also mean that you can't talk to whether or not pardons were dangled through the President's attorneys because -- the shield of attorney-client privilege

Mr. Mueller I'm not going to discuss that

Mr. Swalwell Did you want to interview Donald Trump, Jr ?

Mr. Mueller I'm not going to discuss that

Mr. Swalwell Did you subpoena Donald Trump, Jr ?

Mr. Mueller And I'm not going to discuss that.

Mr. Swalwell Did you want to interview the President?

Mr. Mueller Yes

Mr. Swalwell Director Mueller, on January 1, 2017, through March 2019, Donald Trump met with Vladimir Putin in person 6 times, called him 10 times, and exchanged 4 letters with him Between that time period, how many times did you meet with Donald Trump?

Mr. Mueller I'm not going to get into that

Mr. Swalwell He did not meet with you in person Is that correct?

Mr. Mueller He did not

Mr. Swalwell As a result of lies, deletion of text messages, obstruction, and witness tampering, is it fair to say that you were unable to fully assess the scope and scale of Russia's interference in the 2016 election and Trump's role in that interference?

Mr. Mueller I'm not certain I would adopt that characterization in total. There may be pieces of it that are accurate, but not in total

Mr. Swalwell But you did state in Volume I, page 10, that "while this report embodies factual and legal determinations that the Office believes to be accurate and

complete to the greatest extent possible, given these identified gaps, the Office cannot rule out the possibility that the unavailable information would shed additional light " Is that correct?

Mr Mueller. That is correct. We don't know what we don't know.

Mr Swalwell. Why is it so important that witnesses cooperate and tell the truth in an investigation like this?

Mr Mueller. Because the testimony of the witnesses goes to the heart of just about any criminal case you have

Mr Swalwell. Thank you.

And, Mr. Chairman, I'd yield back

And thank you, Director Mueller.

The Chairman. Ms Stefanik

Ms Stefanik. Thank you, Mr Chairman

Mr Mueller, as special counsel, did you review documents related to the origin of the counterintelligence investigation into the Trump campaign?

Mr Mueller. On occasion

Ms. Stefanik. Was the Steele dossier one of those documents that was reviewed?

Mr Mueller. And I can't discuss that case

Ms. Stefanik. I'm just asking a process question. Have you read the Steele dossier?

Mr Mueller. And, again, I'm not going to respond to that

Ms. Stefanik. You were tasked, as special counsel, to investigate whether there was collusion between Russia and the Trump campaign associates to interfere with the 2016 election And the FBI, we know, has relevant documents and information related

to the opening of the CI investigation. Were you and your team permitted to access all of those documents?

Mr. Mueller. And, again, I can't get into that investigative -- what we collected and what we're doing with investigation materials

Ms Stefanik Let me ask it this way Was there any limitation in your access to documents related to the counterintelligence investigation?

Mr Mueller. That's such a broad question I have real trouble answering it

Ms Stefanik Did the Special Counsel's Office undertake any effort to investigate and verify or disprove allegations contained in the Steele dossier?

Mr Mueller Again, I can't respond.

Ms Stefanik The reason I'm asking, for the American public that is watching, it's apparent that the Steele dossier formed part of the basis to justify the FBI's counterintelligence investigation into Russian interference in the 2016 election As we know, it was used to obtain a FISA warrant on Carter Page This is why I'm asking these questions

Did your office undertake any efforts to identify Steele's sources or sub-sources?

Mr. Mueller Again, the same answer

Ms. Stefanik. Were these tasks referred to any other agencies?

[2.35 p m]

Mr Mueller. Again, I can't speak to it

Ms Stefanik. Did your office consider whether the Russian Government used Steele's sources to provide Steele with disinformation?

Mr Mueller. Again, I can't speak to that

Ms Stefanik. I understand I'm asking these questions just for the record, so thanks for your patience

Shifting gears here, did any member of the Special Counsel's Office staff travel overseas as part of the investigation?

Mr. Mueller. Yes, but I can't go further than that.

Ms Stefanik. I'm going to ask, to which countries?

Mr Mueller. And I can't answer that

Ms Stefanik. Did they meet with foreign government officials?

Mr Mueller. Again, it's out of our bailiwick.

Ms Stefanik. Did they meet with foreign private citizens?

Mr Mueller. Again, same response

Ms Stefanik. Did they seek information about a U S citizen or any U S citizens?

Mr Mueller. Again, territory that I cannot go to

Ms Stefanik. Thank you for answering on the record. These are important questions for the American public, and we're hopeful that the IG is able to answer these questions

I will yield the balance of my time to the ranking member.

Mr Nunes. I thank the gentlelady for yielding.

Mr Mueller, I want to go back to -- we started off with Joseph Mifsud, who is at

the center of this investigation. He appears in your report a dozen times or more. He really is the epicenter. He's at the origin of this. He's the man who supposedly knows about Clinton's emails.

You've seen on the screen, the Democrats have continually put up all the prosecutions that you made against Trump campaign officials and others, but I'm struggling to understand why you didn't indict Joseph Mifsud, who seems to be the man in the middle of all of this.

Mr. Mueller. Well, I think you understand that you cannot get into either classified or law enforcement information without a rationale for doing it. And I have said all I'm going to be able to say with regard to Mr. Mifsud.

Mr. Nunes. Were you aware of Kathleen Kavalec's involvement, that she had met with Mr. Steele? The State Department official.

Mr. Mueller. And, again, I can't respond to that question. It's outside my jurisdiction.

Mr. Nunes. Okay.

The Carter Page FISA warrant was re-upped three times. The last time it was re-upped was under your watch. So were you in the approval process of that last time that the Carter Page warrant was --

Mr. Mueller. Well, I can't speak specifically about that warrant, but if you ask was I in the approval chain, the answer is no.

Mr. Nunes. Okay. That's very helpful.

Thank you, Mr. Chairman. I yield back.

The Chairman. Mr. Castro.

Mr. Castro. Thank you, Chairman.

Thank you, Special Counsel Mueller, for your testimony and for your service to our

country

Donald Trump, over the years, has surrounded himself with some very shady people, people that lied for him, people that covered up for him, people that helped him enrich himself. I want to talk specifically about one of those instances that's in your report.

Specifically, let's turn to the Trump Tower Moscow project, which you described in your report as a, quote, "highly lucrative deal" for The Trump Organization. Is that right?

Mr. Mueller. I would have to look at the quote from the report, if you have it.

Mr. Castro. Sure. It's on Volume II, page 135. It's described as highly lucrative

Mr. Mueller. Okay. I have it. Thank you, sir.

Mr. Castro. Yeah. No problem.

Your office prosecuted Michael Cohen -- and Michael Cohen was Donald Trump's lawyer -- for lying to this committee about several aspects of The Trump Organization's pursuit of the Trump Tower Moscow deal. Is that right?

Mr. Mueller. That's correct.

Mr. Castro. According to your report, Cohen lied to, quote, "minimize links between the project and Trump," unquote, and to, quote, "stick to the party line," unquote, in order not to contradict Trump's public message that no connection existed between Trump and Russia. Is that right?

Mr. Mueller. That's -- yes. That's correct.

Mr. Castro. Now, when you're talking about the party line here, the party line in this case --

Mr. Mueller. If I could interject, the one thing I should've said at the outset. If

it was in the report, then, consequently, I do believe it to be true

Mr. Castro Thank you.

The party line, in this case, was that the deal ended in January 2016 In other words, they were saying that the deal ended in January 2016, before the Republican primaries In truth, though, the deal extended to June 2016, when Donald Trump was already the presumptive Republican nominee Is that correct?

Mr. Mueller That's correct

Mr Castro The party line was also that Cohen discussed the deal with Trump only three times, when, in truth, they discussed it multiple times. Is that right?

Mr Mueller Also true, and the basis for -- and part of the basis for that plea that he entered for lying to this entity.

Mr Castro Thank you. And thank you for prosecuting that

The party line was also that Cohen and Trump never discussed traveling to Russia during the campaign, when, in truth, they did discuss it. Is that right?

Mr. Mueller That's accurate

Mr. Castro And the party line was that Cohen never received a response from the Kremlin to his inquiries about the Trump Tower Moscow deal. In fact, Cohen not only received a response from the Kremlin to his email but also had a lengthy conversation with a Kremlin representative who had a detailed understanding of the project. Is that right?

Mr. Mueller If it's in the report, that is an accurate recitation of that piece of the report

Mr Castro So you have the candidate Trump at the time saying he had no business dealings with Russia, his lawyer who was lying about it, and then the Kremlin who during that time was talking to President Trump's lawyer about the deal Is that

right?

Mr. Mueller I can't adopt your characterization.

Mr. Castro Not only was Cohen lying on Trump's behalf, but so was the Kremlin. On August 30, 2017, 2 days after Cohen submitted his false statement to this committee claiming that he never received a response to his email to the Kremlin, Vladimir Putin's press secretary told reporters that the Kremlin left the email unanswered.

That statement by Putin's press secretary was false, wasn't it?

Mr. Mueller I can't speak to that.

Mr. Castro Although it was widely reported in the press

Mr. Mueller Again, I can't speak to that, particularly if it was dependent upon media sources.

Mr. Castro But it was consistent with the lie that Cohen had made to the committee. Is that right?

Mr. Mueller I'm not certain I could go that far.

Mr. Castro So Cohen, President Trump, and the Kremlin were all telling the same lie.

Mr. Mueller I defer to you on that. That's -- I can't get into the details.

Mr. Castro Special Counsel Mueller, I want to ask you something that's very important to the Nation. Did your investigation evaluate whether President Trump could be vulnerable to blackmail by the Russians because the Kremlin knew that Trump and his associates lied about connections to Russia related to the Trump Tower deal?

Mr. Mueller I can't speak to that.

Mr. Castro I yield back, Chairman.

The Chairman Mr. Hurd.

Mr. Hurd Thank you, Mr. Chairman.

Director Mueller, you've been asked many times this afternoon about collusion, obstruction of justice, and impeachment, and the Steele dossier. And I don't think your answers are going to change if I ask you about those questions

So I'm going to ask about a couple of press stories, because a lot of what the American people have received about this have been on press stories, and some of that has been wrong, and some of those press stories have been accurate.

On April 13, 2018, McClatchy reported that you had evidence Michael Cohen made a secret trip to Prague during the 2016 Presidential election. I think he told one of the committees here in Congress that that was incorrect. Is that story true?

Mr. Mueller. I can't -- well, I can't go into it

Mr. Hurd. Gotcha

On October 31, 2016, Slate published a report suggesting that a server at Trump Tower was secretly communicating with Russia's Alfa Bank, and then I quote, "akin to what criminal syndicates do."

Do you know if that story is true?

Mr. Mueller. Do not. Do not --

Mr. Hurd. You do not?

Mr. Mueller. -- know whether it's true

Mr. Hurd. So did you not investigate these allegations which are suggestive of a potential Trump-Russia --

Mr. Mueller. Because I believe it not true doesn't mean it would not be investigated. It may well have been investigated. Although my belief at this point, it's not true.

Mr. Hurd. Good copy. Thank you.

As a former CIA officer, I want to focus on something I think both sides of the

political aisle can agree on -- that is, how do we prevent Russian intelligence and other adversaries from doing this again

And after overseeing counterintelligence operations for 12 years as FBI Director and then investigating what the Russians have done in the 2016 election, you've seen tactics, techniques, and results of Russian intelligence operations

Our committee made a recommendation that the FBI should improve its victim notification process when a person, entity, or campaign has fallen victim to an active-measures attack. Would you agree with this?

Mr. Mueller. It sounds like a worthwhile endeavor. I will tell you, though, that the ability of our intelligence agencies to work together in this arena is perhaps more important than that. And adopting whatever -- and I'm not that familiar with the legislation -- but whatever legislation will encourage us working together -- by "us," I mean the FBI, CIA, NSA, and the rest -- it should be pursued aggressively, early

Mr. Hurd. Who do you think should be responsible within the Federal Government to counter disinformation?

Mr. Mueller. I'm no longer in the Federal Government, so I --

Mr. Hurd. But you've had a long, storied career, and I don't think there's anybody who better understands the threat that we are facing than you. Do you have an opinion as a former FBI officer?

Mr. Mueller. As to?

Mr. Hurd. As to who should be the coordinating point within the Federal Government on how to deal with disinformation

Mr. Mueller. I don't want to wade in those waters

Mr. Hurd. Good copy

One of the most striking things in your report is that the Internet Research Agency

not only undertook a social media campaign in the U S but they were able to organize political rallies after the election.

Our committee issued a report and insight on saying that Russian active measures are growing with frequency and intensity and including their expanded use of groups such as the IRA, and these groups pose a significant threat to the United States and our allies in upcoming elections. Would you agree with that?

Mr Mueller. Yes. In fact, one of the other areas that we have to look at are many more companies -- not companies -- many more countries are developing capability to replicate what the Russians have done.

Mr Hurd. You alluded to making sure all the elements of the Federal Government should be working together. Do you have a suggestion on a strategy to do that, to counter this disinformation?

Mr Mueller. Not overarching.

Mr Hurd. In your investigation, did you think that this was a single attempt by the Russians to get involved in our election, or did you find evidence to suggest they will try to do this again?

Mr Mueller. Oh, it wasn't a single attempt. They're doing it as we sit here. And they expect to do it during the next campaign.

Mr Hurd. Director Mueller, I appreciate your time and indulging us here in multiple committees.

And I yield back to the ranking member if he has -- I yield back to the chairman.

The Chairman. Mr. Heck.

Mr Heck. Director Mueller, I'd like to go to the motives behind the Trump campaign encouragement and acceptance of help during the election. Obviously, a clear motivation was to help them in what would turn out to be a very close election.

But there was another key motivation, and that was, frankly, the desire to make money

I always try to remember what my dad, who never had the opportunity to go beyond the 8th grade, taught me, which is that I should never, ever underestimate the capacity of some people to cut corners and even more in order to worship and chase the almighty buck

And this is important, because I think it, in fact, does go to the heart of why the Trump campaign was so unrelentingly intent on developing relationships with the Kremlin.

So let's quickly revisit one financial scheme we just discussed, which was the Trump Tower in Moscow. We indicated earlier that it was a lucrative deal Trump, in fact, stood, he and his company, to earn many millions of dollars on that deal, did they not, sir?

Mr. Mueller. True.

Mr. Heck. And Cohen, Mr. Cohen, his attorney, testified before this committee that President Trump believed the deal required Kremlin approval. Is that consistent with what he told you?

Mr. Mueller. I'm not certain whether it's Mr. Trump himself or others associated with that enterprise that had discussed the necessity of having the input from the state, meaning the Russian Government, in order for it to go forward successfully.

Mr. Heck. Isn't it also true that Donald Trump viewed his Presidential campaign, as he told top campaign aides, that the campaign was an infomercial for The Trump Organization and his properties?

Mr. Mueller. I'm not familiar with that.

Mr. Heck. Then let's turn to Trump campaign chair Paul Manafort. Did, in fact, your investigation find any evidence that Manafort intended to use his position as

Trump's campaign chair for his own personal financial benefit?

Mr. Mueller I would say there was some indication of that, but I won't go further.

Mr. Heck I think you'll find it on page 135 of Volume I

During the transition, Trump's son-in-law, Jared Kushner, met with Sergey Gorkov, the head of a Russian-owned bank that was under -- is under U S sanctions And according to the head of the bank, he met with Kushner in his capacity as CEO of Kushner Companies to discuss business opportunities.

Is that correct, sir?

Mr. Mueller I'm not certain --

Mr. Heck It was --

Mr. Mueller I'm not certain about that Let me just put it that way

Mr. Heck It was asserted thusly in your report, Volume I, on pages 161 and 162 Your report notes that, at the time, Kushner Companies were trying to renegotiate a billion-, with a "B," a billion-dollar lease of their flagship building at 666 5th Avenue, correct?

Mr. Mueller I am not familiar with those financial arrangements

Mr. Heck Also on page 162 where Kushner Companies, it was asserted, had debt obligations coming due on the company

Erik Prince, a supporter close to Trump --

Mr. Mueller A supporter -- I'm sorry

Mr. Heck -- campaign and administrative --

Mr. Mueller I just -- a supporter. I was --

Mr. Heck Yes He met in the Seychelles during the transition with Kirill Dmitriev, who was the head of a sanctioned Russian Government investment arm which

had close ties to Vladimir Putin, correct, sir?

Mr. Mueller Yes.

Mr. Heck Your investigation determined that Mr. Prince had not known nor conducted business with Dmitriev before Trump won the election, correct?

Mr. Mueller Well, I defer to the report on that.

Mr. Heck Yet -- it does And yet Prince, who had connections to top Trump administration officials, met with Dmitriev during the transition period to discuss business opportunities, among other things

But it wasn't just Trump and his associates who were trying to make money off this deal, nor hide it, nor lie about it Russia was too That was the whole point, to gain relief from sanctions which would hugely benefit their incredibly wealthy oligarchs

For example, sanctions relief was discussed at that June 9 meeting in the Trump Tower, was it not, sir?

Mr. Mueller Yes But it was not a main subject for discussion

Mr. Heck Trump administration National Security Advisor-designate Michael Flynn also discussed sanctions in a secret conversation with the Russian Ambassador, did he not?

Mr. Mueller Correct

Mr. Heck So, to summarize, Donald Trump, Michael Cohen, Paul Manafort, Jared Kushner, Erik Prince, and others in the Trump orbit all tried to use their connections with The Trump Organization to profit from Russia, which was openly seeking relief from sanctions Is that true, sir?

Mr. Mueller I'm not -- I'm not certain I can adopt what you articulate

Mr. Heck Well, I will And I'd further assert that was not only dangerous, it was un-American Greed corrupts. Greed corrupts, and it is a terrible foundation for

developing American foreign policy.

The Chairman. Mr. Ratcliffe.

Mr Ratcliffe Director Mueller, given your constraints on what you're able or allowed to answer with respect to counterintelligence matters or other matters that are currently open and under investigation, you're not going to be able to answer my remaining questions

So I thank you for your courtesies in the answers that you have given to my prior questions, and I do thank you for your extraordinary career and record of service, and yield back the balance of my time to the ranking member

Mr. Mueller. Thank you

Mr Nunes. Thank you, Mr Ratcliffe

And, Mr Mueller, let me associate my words with Mr Ratcliffe

I've got a few more questions I want to clean up a little bit about the Erik Prince Seychelles meeting

So Erik Prince testified before this committee that he was surveilled by the U.S. Government and that information from this surveillance was leaked to the press. Did you investigate whether Prince was surveilled and whether classified information on him was illegally leaked to the media?

Mr Mueller. Did you say "did you" or "will you"?

Mr. Nunes. Well, I know you can't I know you're not going to join --

Mr Mueller So I can't discuss it either way

Mr Nunes -- back up in the ranks But did you refer -- were you aware that -- you know, Prince has made these allegations that he was surveilled. He's concerned that there were leaks about the surveillance Did you make any referrals about these leaks?

Mr. Mueller. No, and I can't get into discussion on it

Mr. Nunes. Okay

I also want to -- General Flynn I know you came after the leak of his phone call with the Russian Ambassador. Your time at FBI, it would be a major scandal, wouldn't it, for the leak of the National Security Advisor and anyone in any government --

Mr. Mueller. I can't -- I can't adopt that hypothesis

Mr. Nunes. Did your report name any people who were acting as U.S. Government informants or sources without disclosing that fact?

Mr. Mueller. I can't answer that.

Mr. Nunes. Okay

On Volume I, page 133 of your report, you state that Konstantin Kilimnik has ties to Russian intelligence. His name came up quite often today. But your report omits to mention that Kilimnik has long-term relationships with U S Government officials, including our own State Department

Mr. Mueller. I can't be -- I can't get into that

Mr. Nunes. I know it's not in the report, but, you know, if Kilimnik is being used in the report to say that he was possibly some type of Russian agent, then I think it is important for this committee to know if Kilimnik has ties to our own State Department, which it appears that he does

Mr. Mueller. Again, it's the same territory that I'm loathe to get into

Mr. Nunes. Okay

You were asked this earlier about Trump attorney John Dowd, that pieces of his phone call were omitted from the report. It was what Mr Dowd calls exculpatory evidence

Are you concerned about --

Mr. Mueller. I'm not certain I would agree with that characterization

Mr. Nunes Okay

Mr. Mueller I think I said that before.

Mr. Nunes Yes

An American citizen from the Republic of Georgia, who your report misidentifies as a Russian, claims that your report omitted parts of a text message he had with Michael Cohen about stopping the flow of compromising tapes of Donald Trump In the omitted portions, he says he did not know what the tapes actually showed

Was that portion of the exchange left out of the report for a reason?

Mr. Mueller No We got an awful lot into the report, but we did not get every intersection or conversation and the like So I am not familiar with that particular episode you're talking about

Mr. Nunes. Thank you, Mr. Mueller

And thank you, Mr. Chairman

The Chairman Mr. Welch

Mr. Welch Director Mueller, did you find there was no collusion between the Trump campaign and Russia?

Mr. Mueller Well, we don't use the word "collusion" I think the word we usually use is the -- well, not "collusion" but one of the other terms that fills in when "collusion" is not used.

In any event, we decided not to use the word "collusion" inasmuch as it has no relevance to the criminal law arena

Mr. Welch The term is "conspiracy" that you prefer to use?

Mr. Mueller That's it, "conspiracy" Exactly right

Mr. Welch You help me, I'll help you

Mr Mueller. Thank you

Mr. Welch. It's an agreement Thank you.

And, in fact, you had to then make a charging decision after your investigation where, unless there was enough evidence to prove beyond a reasonable doubt, you wouldn't make a charge, correct?

Mr Mueller Generally, that's the case

Mr Welch. But making that decision does not mean your investigation failed to turn up evidence of conspiracy.

Mr Mueller. Absolutely correct

Mr Welch And, in fact, I will go through some of the significant findings that your exhaustive investigation made.

You found, as I understand it, that from May 2016 until the end of the campaign, campaign chairman Mr Manafort gave private polling information to Russian agents, correct?

Mr. Mueller Correct

The Chairman. Could you speak into the microphone?

Mr Mueller Yep, I will My apologies

Mr Welch Thank you

And your investigation found that, in June 2016, Donald Trump, Jr , made an arrangement to meet at Trump Tower, along with Jared Kushner and others, expecting to receive dirt on the Hillary Clinton campaign, correct?

Mr Mueller Correct

Mr. Welch And you found in your investigation that, on July 27, candidate Trump called on Russia to hack Hillary Clinton's emails, something that for the first time they did about 5 hours later, correct?

Mr. Mueller. That's correct

Mr. Welch And you also found that, on August 2, Mr. Manafort met with a person tied to Russian intelligence, Mr. Kılımnık, and gave him internal campaign strategy, aware that Russia was intending to do a misinformation social media campaign, correct?

Mr. Mueller. I'm not certain of the tie there.

Mr. Welch. But the fact of that meeting you agree with?

Mr. Mueller The fact that the meeting took place is accurate

Mr. Welch And your investigation, as I understand it, also found that, in late summer of 2016, the Trump campaign in fact devised its strategy and messaging around WikiLeaks releases of materials that were stolen from the Democratic National Committee, correct?

Mr. Mueller Is that from the report?

Mr. Welch Yes

Mr. Mueller Yes

Mr. Welch It's according to Mr. Gates.

Mr. Mueller Yes

Mr. Welch Yes Thank you.

And you also talked earlier about the finding in your investigation that, in September and October of 2016, Donald Trump, Jr., had email communications with WikiLeaks, now indicted, about releasing information damaging to the Clinton campaign, correct?

Mr. Mueller. True.

Mr. Welch All right

So I understand you made the decision, a prosecutorial decision, that this would not rise to proof beyond a reasonable doubt But I ask if you share my concern And

my concern is: Have we established a new normal from this past campaign that is going to apply to future campaigns so that if any one of us running for the U S House, any candidate for the U.S. Senate, any candidate for the Presidency of the United States, aware that a hostile foreign power is trying to influence an election, has no duty to report that to the FBI or other authorities --

Mr. Mueller Well, I hope --

Mr. Welch -- that -- go ahead

Mr. Mueller Well, I hope this is not the new normal, but I fear it is

Mr. Welch -- and would, in fact, have the ability without fear of legal repercussion to meet with agents of that foreign entity hostile to the American election?

Mr. Mueller I'm sorry. What is the question?

Mr. Welch Is that an apprehension that you share with me?

Mr. Mueller Yes

Mr. Welch And that there would be no repercussions whatsoever to Russia if they did this again And as you stated earlier, as we sit here, they're doing it now. Is that correct?

Mr. Mueller You're absolutely right

Mr. Welch Do you have any advice to this Congress as to, together, what we should do to protect our electoral system and accept responsibility on our part to report to you or your successor when we're aware of hostile foreign engagement in our elections?

Mr. Mueller I would say, a basis -- first line of defense, really, is the ability of the various agencies who have some piece of this to not only share information but share expertise, share targets, and use the full resources that we have to address this problem

Mr. Welch Thank you, Director Mueller.

I yield back

The Chairman. Mr. Maloney

Mr. Maloney Mr. Mueller, thank you. I know it's been a long day. And I want to make clear how much respect I have for your service and for your extraordinary career, and I want you to understand my questions in that context, sir.

I'm going to be asking you about Appendix C to your report and, in particular, the decision not to do a sworn interview with the President. It's really the only subject I want to talk to you about, sir.

Why didn't you subpoena the President?

Mr. Mueller Well, at the outset, after we took over and initiated the investigation --

Mr. Maloney If I could ask you to speak into the mike.

Mr. Mueller Yeah. Of course.

At the outset, after we took over the investigation and began it and pursued it, quite obviously, one of the things we anticipated wanting to accomplish in that is having the interview of the President. We negotiated with him for a little over a year, and I think what you adverted to in the appendix lays out our expectations as a result of those negotiations.

But, finally, when we were almost towards the end of our investigation and we'd had little success in pushing to get the interview of the President, we decided that we did not want to exercise the subpoena powers because of the necessity of expediting the end of the investigation.

Mr. Maloney Was that -- excuse me. Did you --

Mr. Mueller. I was going to say, the expectation was, if we did subpoena the President, he would fight the subpoena and we would be in the midst of the investigation.

for a substantial period of time.

Mr. Maloney. Right

But as we sit here, you've never had an opportunity to ask the President in-person questions under oath. And so, obviously, that must have been a difficult decision. And you're right, Appendix C lays that out. And, indeed, I believe you describe the in-person interview as vital. That's your word.

And, of course, you make clear you had the authority and the legal justification to do it. As you point out, you waited a year, you put up with a lot of negotiations, you made numerous accommodations, which you lay out, so that he could prepare and not be surprised. I take it you were trying to be fair to the President.

And, by the way, you were going to limit the questions, when you got to written questions, to Russia only. And, in fact, you did go with written questions after about 9 months, sir, right? And the President responded to those.

And you have some hard language for what you thought of those responses. What did you think of the President's written responses, Mr. Mueller?

RPTR FORADORI

EDTR HOFSTAD

[3 05 p.m.]

Mr. Mueller Certainly not as useful as the interview would be

Mr. Maloney In fact, you pointed out, and by my count, there were more than 30 times when the President said he didn't recall, he didn't remember, no independent recollection, no current recollection.

And I take it by your answer that it wasn't as helpful That's why you used words like "incomplete," "imprecise," "inadequate," "insufficient." Is that a fair summary of what thought of those written answers?

Mr. Mueller That is a fair summary And I presume that comes from the report

Mr. Maloney And yet, sir -- and I ask this respectfully -- by the way, the President didn't ever claim the Fifth Amendment, did he?

Mr. Mueller I'm not going to talk to that

Mr. Maloney Well, from what I can tell, sir, at one point it was vital and then at another point it wasn't vital. And my question to you is, why did it stop being vital?

And I can only think of three explanations One is that somebody told you you couldn't do it But nobody told you you couldn't subpoena the President. Is that right?

Mr. Mueller No We understood we could subpoena the President

Mr. Maloney Rosenstein didn't tell you, Whitaker didn't tell you, Barr didn't tell you you couldn't --

Mr. Mueller We could serve a subpoena.

Mr. Maloney So the only other explanation -- well, there's two others, I guess:

one, that you just flinched, that you had the opportunity to do it and you didn't do it.

But, sir, you don't strike me as the kind of guy who flinches

Mr Mueller. I'd hope not

Mr Maloney. Well, then the third explanation -- I hope not, too, sir. And the third explanation I can think of is that you didn't think you needed it

And, in fact, what caught my eye was page 13 of Volume II, where you said, in fact, you had a substantial body of evidence. And you cite a bunch of cases there, don't you, about how you often have to prove intent to obstruct justice without an in-person interview. That's the kind of nature of it. And you used terms like "a substantial body of evidence," "significant evidence" of the President's intent.

So my question, sir, is did you have sufficient evidence of the President's intent to obstruct justice, and is that why you didn't do the interview?

Mr Mueller. Well, there's a balance -- in other words, how much evidence you have that satisfy the last element against how much time are you willing to spend in the courts litigating the interview of the President

Mr Maloney. And, in this case, you felt that you had enough evidence of the President's intent

Mr Mueller. We had to make a balanced decision in terms of how much evidence we had compared to the length of time it would take to do the --

Mr Maloney. And, sir, because I have limited time, you thought that if you gave it to the Attorney General or to this Congress that there was sufficient evidence, that it was better than that delay

Mr Mueller. Can you state that again?

Mr Maloney. Well, that it was better than the delay to present the sufficient evidence -- your term -- of the President's intent to obstruct justice to the Attorney

General and to this committee Isn't that why you didn't do the interview?

Mr. Mueller No. The reason we didn't do the interview is because of the length of time that it would take to resolve the issues attendant to that

Mr. Maloney Thank you, sir

The Chairman Mrs Demings.

Mrs Demings Thank you so much, Mr Chairman

And, Director Mueller, thank you so much for being a person of honor and integrity Thank you for your service to the Nation We are certainly better for it.

Director Mueller, I, too, want to focus on the written responses that the President did provide and the continued efforts to lie and cover up what happened during the 2016 election.

Were the President's answers submitted under oath?

Mr. Mueller. Yes Yes

Mrs Demings. Thank you. They were.

Were these all the answers your office wanted to ask the President about Russian interference in the 2016 election?

Mr. Mueller No, not necessarily.

Mrs Demings So there were other --

Mr Mueller Yes

Mrs. Demings. -- questions that you wanted to answer.

Did you analyze his written answers on Russian interference to draw conclusions about the President's credibility?

Mr Mueller No It was perhaps one of the factors, but nothing more than that

Mrs Demings It was one of the factors. So what did you determine about the

President's credibility?

Mr. Mueller And that I can't get into.

Mrs. Demings Director Mueller, I know based on your decades of experience you've probably had an opportunity to analyze the credibility of countless witnesses, but you weren't able to do so with this witness?

Mr. Mueller Well, with every witness, particularly a leading witness, one assesses the credibility day by day, witness by witness, document by document And that's what happened in this case So we started with very little, and, by the end, we ended up with a fair amount My -- yeah, a fair amount.

Mrs. Demings Thank you Well, let's go through some of the answers to take a closer look at his credibility, because it seems to me, Director Mueller, that his answers were not credible at all

Did some of President Trump's incomplete answers relate to Trump Tower Moscow?

Mr. Mueller Yes

Mrs. Demings For example, did you ask the President whether he had at any time directed or suggested that discussions about Trump Moscow project should cease?

Mr. Mueller Should what?

Mrs. Demings Cease

Mr. Mueller Do you have a citation?

Mrs. Demings Yes We're still in Appendix C, section 1-7

Mr. Mueller The first page?

Mrs. Demings. Uh-huh It says. "The President 'did not answer whether he had at any time directed or suggested that discussions about the Trump Moscow project should cease but he has since made public comments about that topic "'

Mr Mueller. Okay And the question was?

Mrs Demings. Did the President -- let me go on to the next Did the President fully answer that question in his written statement to you about the Trump Moscow project ceasing? Again, in Appendix C

Mr Mueller. And can you direct me to the particular paragraph you're adverting to?

Mrs Demings. It would be Appendix C, C-1 But let me move forward Nine days after he submitted his written answers, didn't the President say publicly that he, quote, "decided not to do the project," unquote? And that is in your report

Mr Mueller. I'd ask you, if you would, to point out the particular paragraph that you're focused on.

Mrs Demings. Okay. We can move on Did the President answer your followup questions? According to the report, there were followup questions because of the President's incomplete answers about the Moscow project. Did the President answer your followup questions, either in writing or orally?

And we're now in --

Mr Mueller. No.

Mrs Demings. -- Volume II, page 150 through 151

Mr Mueller. No

Mrs. Demings. He did not

In fact, there were many questions that you asked the President that he simply didn't answer Isn't that correct?

Mr Mueller. True

Mrs Demings. And there were many answers that contradicted other evidence

you had gathered during the investigation -- Isn't that correct --

Mr. Mueller Yes.

Mrs. Demings -- Director Mueller?

Director Mueller, for example, the President, in his written answers, stated he did not recall having advance knowledge of WikiLeaks releases -- Is that correct?

Mr. Mueller I think that's what he said

Mrs. Demings But didn't your investigation uncover evidence that the President did, in fact, have advance knowledge of WikiLeaks public releases of emails damaging to his opponent?

Mr. Mueller And I can't get into that area

Mrs. Demings Did your investigation determine after very careful vetting of Rick Gates and Michael Cohen that you found them to be credible?

Mr. Mueller That we found the President to be credible?

Mrs. Demings That you found Gates and Cohen to be credible in their statements about WikiLeaks?

Mr. Mueller Those areas I'm not going to discuss

Mrs. Demings Okay

Could you say, Director Mueller, that the President was credible?

Mr. Mueller I can't answer that question

Mrs. Demings Director Mueller, isn't it fair to say that the President's written answers were not only inadequate and incomplete, because he didn't answer many of your questions, but where he did, his answers showed that he wasn't always being truthful?

Mr. Mueller There I would say generally.

Mrs. Demings Generally

Director Mueller, it's one thing for the President to lie to the American people about your investigation, falsely claiming that you found no collusion or no obstruction. But it's something else altogether for him to get away with not answering your questions and lying about them. And as a former law enforcement officer of almost 30 years, I find that a disgrace to our criminal justice system.

Thank you so --

Mr Mueller. Thank you, ma'am.

Mrs Demings. -- much.

I yield back to the chairman.

The Chairman. Mr Krishnamoorthi:

Mr Krishnamoorthi. Director Mueller, thank you for your devoted service to your country.

Earlier today, you described your report as detailing a criminal investigation, correct?

Mr Mueller. Yes.

Mr Krishnamoorthi. Director, since it was outside the purview of your investigation, your report did not reach counterintelligence conclusions regarding the subject matter of your report.

Mr Mueller. That's true.

Mr Krishnamoorthi. For instance, since it was outside your purview, your report did not reach counterintelligence conclusions regarding any Trump administration officials who might potentially be vulnerable to compromise or blackmail by Russia, correct?

Mr Mueller. Those decisions probably were made in a counter -- in the FBI.

Mr Krishnamoorthi. But not in your report, correct?

Mr. Mueller. Not in our report. We advert to the counterintelligence goals of our investigation, which were secondary to any criminal wrongdoing that we could find.

Mr. Krishnamoorthi. Let's talk about one administration official in particular -- namely, President Donald Trump. Other than Trump Tower Moscow, your report does not address or detail the President's financial ties or dealings with Russia, correct?

Mr. Mueller. Correct.

Mr. Krishnamoorthi. Similarly, since it was outside your purview, your report does not address the question of whether Russian oligarchs engaged in money laundering through any of the President's businesses, correct?

Mr. Mueller. Correct.

Mr. Krishnamoorthi. And, of course, your office did not obtain the President's tax returns, which could otherwise show foreign financial sources, correct?

Mr. Mueller. I'm not going to speak to that. I'm not going to speak to that.

Mr. Krishnamoorthi. In July 2017, the President said his personal finances were off limits or outside the purview of your investigation, and he drew a, quote/unquote, "red line" around his personal finances.

Were the President's personal finances outside the purview of your investigation?

Mr. Mueller. I'm not going to get into that.

Mr. Krishnamoorthi. Were you instructed by anyone not to investigate the President's personal finances?

Mr. Mueller. No.

Mr. Krishnamoorthi. Mr. Mueller, I'd like to turn your attention to counterintelligence risks associated with lying.

Individuals can be subject to blackmail if they lie about their interactions with

foreign countries, correct?

Mr Mueller. True.

Mr Krishnamoorthi. For example, you successfully charged former National Security Advisor Michael Flynn of lying to Federal agents about his conversations with Russian officials, correct?

Mr Mueller. Correct.

Mr Krishnamoorthi. Since it was outside the purview of your investigation, your report did not address how Flynn's false statements could pose a national security risk because the Russians knew the falsity of those statements, right?

Mr Mueller. I cannot get into that mainly because there are many elements of the FBI that are looking at different aspects of that issue.

Mr Krishnamoorthi. Currently?

Mr. Mueller. Currently

Mr Krishnamoorthi. Thank you

As you noted in Volume II of your report, Donald Trump repeated five times in one press conference, Mr. Mueller, in 2016, quote, "I have nothing to do with Russia."

Of course, Michael Cohen said Donald Trump was not being truthful because, at this time, Trump was attempting to build Trump Tower Moscow

Your report does not address whether Donald Trump was compromised in any way because of any potential false statements that he made about Trump Tower Moscow, correct?

Mr Mueller. I think that's right I think that's right

Mr Krishnamoorthi. Director Mueller, I want to turn your attention to a couple other issues

You've served as FBI Director during three Presidential elections, correct?

Mr. Mueller Yes.

Mr. Krishnamoorthi And during those three Presidential elections, you have never initiated an investigation at the FBI looking into whether a foreign government interfered in our elections the same way you did in this particular instance, correct?

Mr. Mueller I would say I, personally, no But the FBI, quite obviously, has the -- how you defense an attack such as the Russians undertook in 2016

Mr. Krishnamoorthi Now, Director Mueller, is there any information you'd like to share with this committee that you have not so far today?

Mr. Mueller Boy, that's a broad question And it'd take me a while to get an answer to it, but I'll say. No.

Mr. Krishnamoorthi Mr Mueller, you said that every American should pay very close attention to the systematic and sweeping fashion in which the Russians interfered in our democracy.

Are you concerned that we are not doing enough currently to prevent this from happening again?

Mr. Mueller Well, I'll speak generally and what I said in my opening statement this morning and here, that, no, much more needs to be done in order to protect against this intrusion, not just by the Russians but others as well

Mr. Krishnamoorthi Thank you, Director

The Chairman We have two 5-minute periods remaining, Mr Nunes and myself
Mr Nunes, you are recognized.

Mr. Nunes Mr. Mueller, it's been a long day for you. And you've had a long, great career I want to thank you for your longtime service, starting in Vietnam, obviously in the U S Attorney's Office, Department of Justice, and the FBI And I want to thank you for doing something you didn't have to do, you came here upon your own

free will And we appreciate your time today

With that, I yield back.

Mr Mueller Thank you, sir.

The Chairman. Director Mueller, I want to, to close out my questions, turn to some of the exchange you had with Mr. Welch a bit earlier I'd like to see if we can broaden the aperture at the end of the hearing

From your testimony today, I gather that you believe that knowingly accepting foreign assistance during a Presidential campaign is an unethical thing to do

Mr. Mueller And a crime --

The Chairman And a crime.

Mr. Mueller -- in certain circumstances Yes

The Chairman And to the degree it undermines our democracy and our institutions, we can agree that it's also unpatriotic

Mr Mueller. True

The Chairman And wrong

Mr Mueller. True

The Chairman The standard of behavior for a Presidential candidate or any candidate, for that matter, shouldn't be merely whether something is criminal, they should be held to a higher standard You would agree?

Mr Mueller I will not get into that because it goes to the standards to be applied by other institutions besides ours

The Chairman Well, I'm just referring to ethical standards We should hold our elected officials to a standard higher than mere avoidance of criminality, shouldn't we?

Mr Mueller Absolutely

The Chairman You have served this country for decades You've taken an oath to defend the Constitution. You hold yourself to a standard of doing what's right.

Mr. Mueller I would hope

The Chairman You have I think we can all see that And befitting the times, I'm sure your reward will be unending criticism But we are grateful.

The need to act in an ethical manner is not just a moral one but, when people act unethically, it also exposes them to compromise, particularly in dealing with foreign powers Is that true?

Mr. Mueller True.

The Chairman Because when someone acts unethically in connection with a foreign partner, that foreign partner can later expose their wrongdoing and extort them?

Mr. Mueller True.

The Chairman And that conduct, that unethical conduct, could be of a financial nature if you have a financial motive or an illicit business dealing Am I right?

Mr. Mueller Yes.

The Chairman But it can also just involve deception If you're lying about something that can be exposed, then you can be blackmailed

Mr. Mueller Also true.

The Chairman In the case of Michael Flynn, he was secretly doing business with Turkey, correct?

Mr. Mueller Yes

The Chairman And that could open him up to compromise, that financial relationship?

Mr. Mueller I presume.

The Chairman He also lied about his discussions with the Russian Ambassador

And since the Russians were on the other side of that conversation, they could've exposed that, could they not?

Mr. Mueller Yes.

The Chairman. If a Presidential candidate was doing business in Russia and saying he wasn't, Russians could expose that too, could they not?

Mr. Mueller I leave that to you

The Chairman Well, let's look at Dmitry Peskov, the spokesperson for the Kremlin, someone that the The Trump Organization was in contact with to make that deal happen.

Your report indicates that Michael Cohen had a long conversation on the phone with someone from Dmitry Peskov's office Presumably the Russians could record that conversation, could they not?

Mr Mueller Yes

The Chairman And so, if Candidate Trump was saying "I have no dealings with the Russians" but the Russians had a tape recording, they could expose that, could they not?

Mr. Mueller Yes

The Chairman. That's the stuff of counterintelligence nightmares, is it not?

Mr Mueller Well, it has to do with counterintelligence and the need for a strong counterintelligence entity

The Chairman It does indeed.

And when this was revealed, that there were these communications notwithstanding the President's denials, the President was confronted about this, and he said two things first of all, "That's not a crime " But I think you and I have already agreed that that shouldn't be the standard, right, Mr Mueller?

Mr Mueller True

The Chairman And the second thing he said was, "Why should I miss out on all those opportunities?" I mean, why indeed, merely running a Presidential campaign, why should you miss out on making all that money, was the import of his statement.

Were you ever able to ascertain whether Donald Trump still intends to build that tower when he leaves office?

Mr Mueller Was that a question, sir?

The Chairman Yes Were you able to ascertain -- because he wouldn't answer your questions completely -- whether or if he ever ended that desire to build that tower?

Mr Mueller I'm not going to speculate on that

The Chairman If the President was concerned that if he lost his election, he didn't want to miss out on that money, might he have the same concern about losing his reelection and --

Mr. Mueller. Again --

The Chairman. -- missing out on that money?

Mr Mueller -- speculation

The Chairman The difficulty with this, of course, is we are all left to wonder whether the President is representing us or his financial interests.

That concludes my questions.

Mr. Nunes, do you have any concluding remarks?

Mr Nunes I don't

The Chairman Director Mueller, let me close by returning to where I began Thank you for your service, and thank you for leading this investigation

The facts you set out in your report and have elucidated here today tell a disturbing tale of a massive Russian intervention in our election, of a campaign so eager

to win, so driven by greed that it was willing to accept the help of a hostile foreign power in a Presidential election decided by a handful of votes in a few key States.

Your work tells of a campaign so determined to conceal their corrupt use of foreign help that they risked going to jail by lying to you, to the FBI, and to Congress about it. And, indeed, some have gone to jail over such lies

And your works speaks of a President who committed countless acts of obstruction of justice that, in my opinion and that of many other prosecutors, had it been anyone else in the country, they would've been indicted

Notwithstanding the many things you have addressed today and in your report, there were questions you could not answer given the constraints you're operating under

You would not tell us whether you would've indicted the President but for the OLC opinion that you could not. And so the Justice Department will have to make that decision when the President leaves office, both as to the crime of obstruction of justice and as to the campaign finance fraud scheme that Individual 1 directed and coordinated and for which Michael Cohen went to jail

You would not tell us whether the President should be impeached, nor did we ask you, since it is our responsibility to determine the proper remedy for the conduct outlined in your report. Whether we decide to impeach the President in the House or we do not, we must take any action necessary to protect the country while he is in office

You would not tell us the results or whether other bodies looked into Russian compromise in the form of money laundering, so we must do so.

You would not tell us whether the counterintelligence investigation revealed whether people still serving within the administration pose a risk of compromise and should never have been given a security clearance, so we must find out.

We did not bother to ask whether financial inducements from any Gulf nations

were influencing U S policy since it is outside the four corners of your report, and so we must find out.

But one thing is clear from your report, your testimony, from Director Wray's statements yesterday. The Russians massively intervened in 2016, and they are prepared to do so again in voting that is set to begin a mere 8 months from now. The President seems to welcome the help again, and so we must make all efforts to harden our elections infrastructure, to ensure there is a paper trail for all voting, to deter the Russians from meddling, to discover it when they do, to disrupt it, and to make them pay

Protecting the sanctity of our elections begins, however, with the recognition that accepting foreign help is disloyal to our country, unethical, and wrong. We cannot control what the Russians do, not completely, but we can decide what we do and that this centuries-old experiment we call American democracy is worth cherishing

Director Mueller, thank you again for being here today. And before I adjourn, I would like to excuse you and Mr. Zebley.

Everyone else, please remain seated.

This hearing is adjourned.

[Whereupon, at 3 30 p m., the committee was adjourned]