

IMPEACHMENT OF PRESIDENT
DONALD JOHN TRUMP

THE EVIDENTIARY RECORD
PURSUANT TO S. RES. 483

VOLUME X, PART 11



Printed at the direction of Julie E. Adams, Secretary of the Senate,
pursuant to S. Res. 483, 116th Congress, 2nd Sess. (2020)

JANUARY 22, 2020.—Ordered to be printed

IMPEACHMENT OF PRESIDENT DONALD JOHN TRUMP
THE EVIDENTIARY RECORD PURSUANT TO S. RES. 483
VOLUME X, PART 11

IMPEACHMENT OF PRESIDENT
DONALD JOHN TRUMP

THE EVIDENTIARY RECORD
PURSUANT TO S. RES. 483

VOLUME X, PART 11



Printed at the direction of Julie E. Adams, Secretary of the Senate,
pursuant to S. Res. 483, 116th Congress, 2nd Sess. (2020)

JANUARY 22, 2020.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2020

IMPEACHMENT OF PRESIDENT DONALD JOHN TRUMP

THE EVIDENTIARY RECORD PURSUANT TO H. RES. 798

VOLUME X, PART 11

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

WASHINGTON : 2020

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 RESCHENTHALER, Pennsylvania

BEN CLINE, Virginia

KELLY ARMSTRONG, North Dakota

W. GREGORY STEUBE, Florida

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 XI

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

DECEMBER 11–13, 2019

Serial No. 116–69

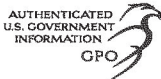
Printed for the use of the Committee on the Judiciary



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

U.S. GOVERNMENT PUBLISHING OFFICE
WASHINGTON : 2020

39–411



(21665)

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 XI

DECEMBER 11–13, 2019

A. SUPPLEMENTAL

	Page
Article, Wall Street Journal, Rick Perry Called Rudy Giuliani at Trump's Direction on Ukraine Concerns, October 16, 2019	1
Article, BBC, Ukraine's Deadliest Day: The Battle of Ilovaisk, August 2014, August 29, 2019	8
Report, CRS, Ukraine: Background, Conflict with Russia, and U.S. Policy, September 19, 2019	17
Article, Defense News, US State Department Clears Ukraine Security Assistance Funding. Is the Pentagon Next?, September 12, 2019	60
Factsheet, U.S. Foreign Aid by Country, USAID, September 23, 2019	62
Article, Washington Post, Trump Defends Call With Ukrainian President, Calling it "Perfectly Fine and Routine," September 21, 2019	63
Article, Washington Post, Trump Promised Zelensky a White House Meeting. More Than a Dozen Other Leaders Got One Instead, December 13, 2019	67
Article, CBS News, Trump Quotes Sondland Quoting Him: "I Want Nothing. I want No Quid Pro Quo, November 20, 2019	76
Article, New York Times, Giuliani, Facing Scrutiny, Travels to Europe to Interview Ukrainians, December 4, 2019	80
Article, Washington Post, Ukraine Lawmaker Seeking Biden Probe Meets with Giuliani in Kyiv, December 5, 2019	83
Article, Washington Post, Giuliani May be Making a Stronger Case Against Trump Than Biden, December 16, 2019	91
Tweet by Rudy Giuliani on the Impeachment Inquiry, December 5, 2019	100
Tweet by Donald Trump, December 4, 2019	101
Article, NBC News, Trump Tweeted as Maria Yovanovitch Testified: Was it Witness Tampering?, November 16, 2019	102
Tweet by Trump War Room, December 26, 2019	106
Report, GAO, Decision in the Matter of: Office of Management and Budget—Withholding of Ukraine Security Assistance, January 16, 2020	107
Report, US House of Representatives, H. Rept. 105–795 Investigatory Powers of the Committee on the Judiciary with Respect to its Impeachment Inquiry, October 7, 1998	116
Fact Sheet, European Commission, EU Aid Explorer: Donors, Updated January 16, 2020	164
Article, National Law Journal, DOJ Tells "Unelected and Unaccountable" Judges to Stay Out of Fight for McGahn Testimony, January 3, 2020	165
Article, USA Today, "Food fight" or congressional oversight? Appeals court weighs whether to enforce subpoenas issued in impeachment inquiry, January 3, 2020	170
Letter, Rudy Guiliana to Volodymyr Zelensky, May 10, 2019	174
Letter, Letter from Senators to President Poroshenko, February 12, 2019	175
Letter from Chairman Eliot L. Engel (HFAC), Chairman Adam Schiff (HPSCI), and Chairman Elijah Cummings (HCOR), to Pat Cipollone (White House), September 9, 2019	177

1/16/2020

Rick Perry Called Rudy Giuliani at Trump's Direction on Ukraine Concerns - WSJ

THE WALL STREET JOURNAL.

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <https://www.djreprints.com>.

<https://www.wsj.com/articles/rick-perry-called-rudy-giuliani-at-trumps-direction-on-ukraine-concerns-11571273635>

◆ WSJ NEWS EXCLUSIVE | POLITICS

Rick Perry Called Rudy Giuliani at Trump's Direction on Ukraine Concerns

President's lawyer said Ukraine had worked to hurt Trump in 2016 election, energy secretary says in interview



Secretary of Energy Rick Perry at the Energy Department's offices in Washington, D.C., on Wednesday. PHOTO: STEPHEN VOSS FOR THE WALL STREET JOURNAL

By Timothy Puko and Rebecca Ballhaus

Updated Oct. 16, 2019 9:33 pm ET

WASHINGTON—Energy Secretary Rick Perry said he sought out Rudy Giuliani this spring at President Trump's direction to address Mr. Trump's concerns about alleged Ukrainian corruption, a sign of how closely the president's personal lawyer worked with the administration on Ukraine policy.

Mr. Perry, in an exclusive interview with The Wall Street Journal, said he contacted Mr. Giuliani in an effort to ease a path to a meeting between Mr. Trump and his new Ukrainian counterpart. He said Mr. Giuliani described to him during their phone call several concerns about Ukraine's alleged interference in the 2016 U.S. election, concerns that haven't been substantiated.

1/16/2020

Rick Perry Called Rudy Giuliani at Trump's Direction on Ukraine Concerns - WSJ

Mr. Perry also said he never heard the president, any of his appointees, Mr. Giuliani or the Ukrainian regime discuss the possibility of specifically investigating former Vice President Joe Biden, a Democratic presidential contender, and his son Hunter Biden. Mr. Trump's request for a probe of the Bidens in a July 25 call with Ukraine's president has sparked the impeachment inquiry in the House.

Mr. Giuliani, in an interview, confirmed the spring phone call and said he was telling Mr. Perry to be careful with regards to the new Ukrainian president, Volodymyr Zelensky. "Everything I said there I probably said on television 50 times," he said.

Mr. Giuliani has repeatedly accused Ukraine of interfering in the election on Democrat Hillary Clinton's behalf, allegations that Democratic lawmakers and others say are a way to undermine U.S. intelligence agencies' conclusion that Russia interfered in the 2016 election on Mr. Trump's behalf—a finding about which the president has repeatedly expressed skepticism.

Trump and Ukraine: A Guide to the Key Players



VALENTYN OGIRENKO/REUTERS

Mr. Perry's phone call to Mr. Giuliani came after a May meeting at the White House following the inauguration of the Ukrainian president. U.S. officials at that meeting, including Mr. Perry and Kurt Volker, the U.S. envoy for Ukraine negotiations, urged Mr. Trump to meet his new counterpart. Mr. Trump told officials there that they needed to work with Mr. Giuliani to resolve his concerns before he would agree to such a meeting, according to people familiar with

the matter.

Mr. Trump said he wasn't comfortable that the Ukrainians had "straightened up their act," a concern that Mr. Perry later understood to be related to Mr. Trump's 2016 campaign, Mr. Perry said, quoting Mr. Trump. "Visit with Rudy," Mr. Perry said the president told him.

Mr. Perry has served as one of the Trump administration's top liaisons with the new Ukrainian administration, a role that has made him a significant player in the course of events now under scrutiny in the impeachment probe into whether Mr. Trump abused his power to seek help from Ukraine digging up political dirt on rivals.

1/16/2020

Rick Perry Called Rudy Giuliani at Trump's Direction on Ukraine Concerns - WSJ

Mr. Giuliani's contact with the energy secretary adds another cabinet secretary to the list of officials he dealt with in his efforts to push for investigations in Ukraine, which he has said he did at the president's behest. Mr. Giuliani was also in contact with Secretary of State Mike Pompeo, U.S. ambassador to the European Union Gordon Sondland and Mr. Volker, he has said.

In his most detailed account to date of the Ukraine events, Mr. Perry said Mr. Trump had dismissed his requests to meet with Mr. Zelensky to show U.S. support for the new administration.

At Mr. Trump's direction, the energy secretary said, he called Mr. Giuliani looking for a better understanding of Mr. Trump's concerns.

"And as I recall the conversation, he said, 'Look, the president is really concerned that there are people in Ukraine that tried to beat him during this presidential election,' " Mr. Perry said. " 'He thinks they're corrupt and...that there are still people over there engaged that are absolutely corrupt.' "

Mr. Perry said the president's lawyer didn't make any explicit demands on the call. "Rudy didn't say they gotta do X, Y and Z," Mr. Perry said. "He just said, 'You want to know why he ain't comfortable about letting this guy come in? Here's the reason.' "

In the phone call, Mr. Giuliani blamed Ukraine for the dossier about Mr. Trump's alleged ties to Russia that was created by a former British intelligence officer, Mr. Perry said, and asserted that Ukraine had Mrs. Clinton's email server and "dreamed up" evidence that helped send former Trump campaign chairman Paul Manafort to jail.

"I don't know whether that was crap or what," Mr. Perry added, "but I'm just saying there were three things that he said. That's the reason the president doesn't trust these guys."

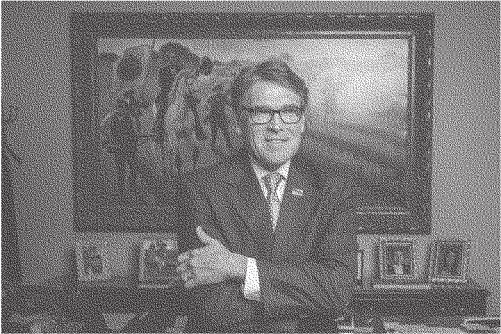
Mr. Trump, in the July 25 call with Mr. Zelensky, raised some of the issues Mr. Giuliani described. He asked Mr. Zelensky to do a "favor" for the U.S. related to an unproven conspiracy theory about a cybersecurity firm that conducted forensic analysis of the hack of the Democratic National Committee's computer network in 2016. The firm concluded the hack was carried out by Russian intelligence officers, a finding U.S. agencies corroborated, but one about which the president has repeatedly expressed skepticism.

A rough transcript that the White House released of the president's call with Mr. Zelensky also showed that he pressed for the investigation of the Bidens. Mr. Trump has defended his call with Mr. Zelensky as "perfect" and has said the impeachment inquiry is a hoax.

Hunter Biden sat on the board of a Ukrainian gas company at the same time as his father, then President Obama's vice president, was leading an international anticorruption effort in

1/16/2020

Rick Perry Called Rudy Giuliani at Trump's Direction on Ukraine Concerns - WSJ



Mr. Perry said he has no current plans to leave the Trump administration. PHOTO: STEPHEN VOSS FOR THE WALL STREET JOURNAL

Ukraine, an arrangement Mr. Giuliani and the president have described as corrupt. There is no evidence of wrongdoing by either Biden.

Mr. Giuliani's business and political dealings in Ukraine have become a focus of investigations into the Trump administration's interactions with Ukraine. Two of his associates working in the country, Lev Parnas and Igor Fruman, were arrested last week on campaign-finance and conspiracy counts. The two haven't entered a plea. Federal prosecutors are examining Mr. Giuliani's dealings and finances, meetings and work for a city mayor there, The Wall Street Journal previously reported.

Several diplomats have testified in the probe about their concerns regarding Mr. Giuliani, who was working often directly on behalf of the president but outside official diplomatic channels. For months he pushed the administration to remove the ambassador, Marie Yovanovitch. She was ultimately recalled on Mr. Trump's orders in May—at the same time the White House gave more power to Mr. Perry and other political appointees to lead diplomatic efforts in the country, people familiar with the matter said.

PREVIOUS COVERAGE

- Former Russia Adviser Says She Was Alarmed About Ukraine Pressure (Oct. 14, 2019)
- Hunter Biden Resigns From Chinese Board (Oct. 13, 2019)
- Trump Pressed for Ukraine Envoy's Removal, She Says (Oct. 11, 2019)
- Giuliani Associates Who Helped on Ukraine Charged With Campaign-Finance Violations (Oct. 10, 2019)

Mr. Perry's involvement with the new Ukrainian administration began in May,

1/16/2020

Rick Perry Called Rudy Giuliani at Trump's Direction on Ukraine Concerns - WSJ

when he led a U.S. delegation that included Mr. Sondland, Mr. Volker and Sen. Ron Johnson (R., Wis.) to Ukraine for Mr. Zelensky's inauguration.

According to the whistleblower complaint filed in August that set off the impeachment probe last month, U.S. officials said Vice President Mike Pence had been set to lead the delegation, but that around May 14, Mr. Trump instructed Mr. Pence to cancel his planned trip and tapped Mr. Perry, who had traveled to Kyiv in November, to go in his place.

Mr. Perry was already well known in Ukraine, having twice met the previous president and other leaders of the country before Mr. Zelensky was elected. Mr. Perry saw Ukraine as essential to the administration's strategy in Europe to make the region less reliant on energy from Russia, and ideally more frequent customers of U.S. energy companies.

Mr. Perry had helped forge a deal to increase U.S. coal exports to the Eastern European country, and a gas deal with Poland that would help send the fuel into neighboring Ukraine, too. Energy Department officials worked every year to prepare the country if Russia were to shut off energy supplies in the winter. And Mr. Perry helped advise Ukrainian leadership on how to start reforms in its energy sector, including at the state gas company Naftogaz.

During the May trip, Mr. Volker informed the other members of the delegation of press reports detailing Mr. Giuliani's efforts to call for investigations in Ukraine, including into Mr. Biden and possible election interference, according to a person familiar with the matter. The group was surprised to learn what Mr. Giuliani had been doing, the person said.

On May 23, back in Washington, the delegation met with Mr. Trump at the White House, where the president directed the group to work with Mr. Giuliani before he would agree to meet with Mr. Zelensky.

After that meeting, the delegation that had traveled together to Kyiv continued to stay in touch on efforts to strengthen the relationship between Mr. Trump and Mr. Zelensky, including on energy issues that had come up in their meeting with the Ukrainian president, according to people familiar with the matter. In June, Mr. Perry met Mr. Zelensky again at a dinner in Brussels.

On July 10, some members of the delegation—including Mr. Perry, Mr. Sondland and Mr. Volker—convened again at the White House for a meeting with Oleksandr Danylyuk, the secretary of

1/16/2020

Rick Perry Called Rudy Giuliani at Trump's Direction on Ukraine Concerns - WSJ

Ukraine's national security and defense council, and John Bolton, then the U.S. national security adviser.

During that meeting, U.S. officials including Mr. Volker and Mr. Perry pushed for a call to be scheduled between Mr. Trump and Mr. Zelensky as a U.S. show of support for the new administration, according to people familiar with the conversation. Also during the meeting, Mr. Sondland brought up investigations the president was interested in Ukraine pursuing, a move that so alarmed Mr. Bolton and Fiona Hill, the top Russia adviser at the time, that Ms. Hill subsequently relayed her concerns to a National Security Council lawyer, Ms. Hill told House committees earlier this week.

After that meeting, Mr. Perry learned that administration aides had been told a call between Messrs. Trump and Zelensky didn't need to be scheduled until they had something substantive to discuss, according to a person familiar with the matter. Mr. Perry called Mr. Bolton on July 11 and again pressed for the two leaders to speak ahead of parliamentary elections on July 21, stressing that a call was needed to build the relationship and help counter Russian influence in Ukraine. Mr. Perry at that point also brought up investigations, reiterating that Mr. Zelensky was committed to rooting out corruption and wouldn't prove an obstacle to any probes, the person said.

After several more days of back-and-forth on the timing of the call, the two leaders spoke on July 25, four days after Ukraine's parliamentary elections.

The next day, Mr. Sondland gave an interview to a Ukrainian broadcaster in which he described himself, Mr. Volker and Mr. Perry as the "three amigos." He said the president had tasked the three of them with overseeing the U.S.-Ukraine relationship. "We can make sure all of the reforms and all of the initiatives that we are undertaking with Ukraine stay on track and happen quickly," he said.

Mr. Perry again disputed recent reports that have claimed he was planning to leave the administration, but he did leave the door open to his departure. He said he expects to be at the Energy Department at Thanksgiving, but gave a less definitive answer when asked about staying beyond that, through year's end.

"I don't know," he said. "I'm working at the will of the president, just like I always have."

Write to Timothy Puko at tim.puko@wsj.com and Rebecca Ballhaus at Rebecca.Ballhaus@wsj.com

1/16/2020

Rick Perry Called Rudy Giuliani at Trump's Direction on Ukraine Concerns - WSJ

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <https://www.djreprints.com>.

1/16/2020

Ukraine's deadliest day: The battle of Ilovaisk, August 2014 - BBC News

Home	News	Sport	Reel	Worklife	Travel	Future	M
------	------	-------	------	----------	--------	--------	---

Ukraine's deadliest day: The battle of Ilovaisk, August 2014

By Viacheslav Shramovych
BBC Ukrainian

29 August 2019



Ukraine conflict



1/16/2020

Ukraine's deadliest day: The battle of Ilovaik, August 2014 - BBC News

Russia's biggest loss of life in Ukraine's war against Russian-backed separatists.

Hundreds of soldiers died as the Ukrainian army and volunteers retreated in a column from the eastern town of Ilovaik on 29 August 2014.

Ukrainian veterans are adamant the Russian army was there, even though Moscow has always denied claims that regular Russian forces took part in the battle.

President Vladimir Putin has said merely that any Russians involved were volunteers following "a call of the heart".

How the battle was lost

At first it seemed like any other operation against Russian-backed separatists, says Roman Zinenko, 45, a former soldier who served in the Dnipro-1 volunteer police battalion that fought in the battle of Ilovaik.



The Ukrainian army had surrounded the town and their battalion had been ordered to "wipe out" the Russian-backed force.

But on 24 August, Ukraine's independence day, they began receiving calls from relatives.

Ilovaik was surrounded, Ukrainian media were reporting.

"We did not feel that, because the [Ukrainian] army held positions around the city," he told the BBC. "On August 24, we even captured the enemy's fortified area."

But the next day, heavy mortar shelling began and the school they were using as a base was raided.

1/16/2020

Ukraine's deadliest day: The battle of Ilovaisk, August 2014 - BBC News

ROMAN ZINENKO

"We realised the enemy had reinforcements," he says.

"At the time we could not imagine the scale of this entrapment. Our troops had surrounded Ilovaisk but all our troops were surrounded by the enemy".

Negotiations were going on and a humanitarian corridor was being prepared for them to leave, they were told, and yet their withdrawal was repeatedly postponed.

How soldiers became trapped in 'bloody corridor'

Then, on the morning of 29 August 2014, came the command to gather and leave Ilovaisk in two columns.

"Nobody knew the routes," said Roman Zinenko.

They began to move, they passed the first ring of encirclement smoothly but within a few kilometres their column came under fire.

"It was just a shooting range and we were the targets," he said.

Roman and his fellow soldiers had set out in a security van because of a lack of equipment. But its wheels and motor were shot up so they switched to a light-armoured vehicle and kept going under constant fire.

Behind them, an infantry fighting vehicle carrying more than 10 soldiers was hit by a shell.

Bodies were thrown everywhere by the force of the blast.

"I can still see it. This body flying high, turning in the air and ending up hanging from a power line."

ROMAN ZINENKO/OLEXIY RUBETS

They drove on a few more kilometres until their vehicle was disabled.

He escaped unharmed but his commander, Denys Tomilovych, was hit in the head by a 30mm automatic cannon shell.

"Another fighter sat next to him, he was injured too," said Roman Zinenko. "When Den was hit in the head, fragments of his helmet and skull just cut his forearm."

Roman and his comrades managed to survive and escaped the encirclement two days later.

According to official Ukrainian data, 366 Ukrainian soldiers were killed in the Ilovaisk battle.

1/16/2020

Ukraine's deadliest day: The battle of Ilovaisk, August 2014 - BBC News

The true figure may be at least 400, when you include soldiers registered missing or unidentified by their relatives.

How the conflict began

February 2014: Ukraine's pro-Russian President Viktor Yanukovych flees after months of protests in Kiev

March 2014: Russia seizes then annexes Crimea from Ukraine

April 2014: Russian-backed armed groups seize parts of the eastern Ukrainian regions of Donetsk and Luhansk; government launches military operation to retake them

August 2014: Battle of Ilovaisk

Total casualties of conflict 2014-19: Some 13,000 dead, including 3,331 civilians, and 30,000 wounded (OHCR 2019)

- Four charged with murder for downing flight MH17
- Russia may ease passport rules for whole of Ukraine
- Russia completes Crimea security fence
- The sea port where few ships can go

Did the Russian army get involved?

The Ukrainian general staff blames the heavy loss of life on an "invasion" by the Russian army. A government report also cited poor military preparedness and mistakes by senior commanders.

While many also died on the pro-Russian side, Kiev insists the separatists simply did not have the capability to win the battle.

Ukraine says nine battalion tactical groups of the Russian regular army crossed into eastern Ukraine and surrounded Ukrainian forces near Ilovaisk.

Russia puts it down to a "counterattack" by rebel forces of the self-proclaimed "Donetsk People's Republic".

It denies direct armed support of the separatists and says only Russian "volunteers" who were not associated with the regular army fought in Ukraine's Donbas region.

The separatists were using Soviet-era arms and military equipment captured from Ukrainian soldiers, and not modern Russian weaponry, Moscow insists.

It has made these arguments ever since the conflict began.

Was a Russian tank in the battle?

"We did not encounter Russian soldiers in Ilovaisk itself," Roman Zinenko accepts.

"But the (Ukrainian) fighters who held positions around Ilovaisk and held back tank attacks seized a Russian T-72B3 tank that could only belong to the Russian army."

1/16/2020

Ukraine's deadliest day: The battle of Ilovaisk, August 2014 - BBC News

This is the same tank the research group Forensic Architecture has investigated as part of a case being taken by Ukrainian volunteers against Russia to the European Court of Human Rights.

In August 2014, **the tank was filmed by Ukraine's Espresso TV channel**, but it was later recaptured by pro-Russian forces.

ANDRIY TETERUK

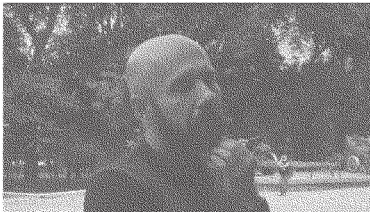
Roman Zinenko says he also saw Russian military equipment in the first line of the encirclement.

"There were modifications of multi-purpose armoured light vehicles which the Ukrainian army doesn't have. We use Soviet-era machines and these [Russian ones] are more modern. They look different."

Who were the Russians near Ilovaisk?

The BBC also spoke to another Ukrainian military veteran, Vadym Yakushenko, 40, who was at one of the checkpoints near Ilovaisk and captured by what he insists was the "regular Russian army".

He says he also saw new Russian military equipment with markers in the form of white circles and erased numbers.



“

"The Russians were given away by their accents, ammunition and Russian uniforms, even though they were without chevrons, as well as by

1/16/2020

Ukraine's deadliest day: The battle of Ilovaisk, August 2014 - BBC News



their nicknames like Ryazan, Tula and Moscow.

Vadym Yakushenko

Ukrainian soldier captured at Ilovaisk

"There was a guy named Vanya from Kostroma who openly said he was from the 76th Pskov Airborne Division of the Russian Army," Mr Yakushenko insists.

"He complained that we had spoiled his vacation. He had recently got married and was planning a honeymoon but was summoned from his division and sent by train to [the Russian border town] Rostov and then ended up in Ukraine."

Five years on, the battle of Ilovaisk continues to overshadow the lives of the two veterans.

Vadym Yakushenko is head of a museum dedicated to the conflict, while Roman Zinenko has written two books on the battle.

"Part of my soul is still there," says Roman.

Related Topics

[Russia](#)
[Vladimir Putin](#)
[Ukraine conflict](#)
[Ukraine](#)

Share this story About sharing

<https://www.bbc.com/news/world-europe-49426724>

9/19



**Congressional
Research Service**

Informing the legislative debate since 1914

Ukraine: Background, Conflict with Russia, and U.S. Policy

Updated September 19, 2019

Congressional Research Service

<https://crsreports.congress.gov>

R45008

CRS REPORT

Prepared for Members and
Committees of Congress



Congressional Research Service
Informing the legislative debate since 1914

SUMMARY

R45008

September 19, 2019

Cory Welt
Specialist in European
Affairs

Ukraine: Background, Conflict with Russia, and U.S. Policy

After Ukraine's transition to a new government under President Volodymyr Zelensky and his Servant of the People party, the country continues to grapple with serious challenges. President Zelensky has expressed a commitment to implementing difficult economic and governance reforms, promoting Ukraine's Western integration, rebuilding ties with residents of Russian-controlled areas of eastern Ukraine, and revitalizing talks with Russia on conflict resolution. The U.S. government has congratulated President Zelensky and all Ukrainians on their "vibrant democracy" and expressed "steadfast support" to Ukraine "as it undertakes essential reforms."

The United States supports Ukraine's sovereignty and territorial integrity within its internationally recognized borders, while actively promoting the continuation and consolidation of domestic reforms. Since Ukraine's independence, and especially after Russia's 2014 invasion, Ukraine has been a leading recipient of U.S. foreign, humanitarian, and military aid in Europe and Eurasia. Nonmilitary, non-humanitarian assistance totaled an average of \$320 million a year from FY2015 to FY2018. The United States provides substantial military assistance to Ukraine, including via the Ukraine Security Assistance Initiative, which provides "appropriate security assistance and intelligence support" to help Ukraine defend its sovereignty and territorial integrity.

Since 2014, many Members of Congress have condemned Russia's invasion of Ukraine, promoted sanctions against Russia for its actions, and supported increased economic and security aid to Ukraine. Key legislation includes the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (SSIDES; P.L. 113-95; 22 U.S.C. 8901 et seq.), the Ukraine Freedom Support Act of 2014 (UFSA; P.L. 113-272; 22 U.S.C. 8921 et seq.), and the Countering Russian Influence in Europe and Eurasia Act of 2017 (CRIEEA; Title II of P.L. 115-44, Countering America's Adversaries Through Sanctions Act [CAATSA]; 22 U.S.C. 9501 et seq.).

In November-December 2018, Members of the 115th Congress passed resolutions condemning a Russian attack on Ukrainian naval vessels (S.Res. 709, H.Res. 1162). The 115th Congress also passed a resolution calling for the cancellation of Nord Stream 2, a new Baltic Sea pipeline Russia is constructing, and the imposition of sanctions with respect to the project (H.Res. 1035). In July 2019, during the 116th Congress, the Senate passed S.Res. 74 to mark the fifth anniversary of Ukraine's Revolution of Dignity.

Several pieces of Ukraine-related legislation are under consideration in the 116th Congress. In March 2019, the House of Representatives voted 427-1 to pass H.R. 596, the Crimea Annexation Non-recognition Act, which asserts that it is the policy of the United States not to recognize Russia's claim of sovereignty over Crimea, its airspace, or its territorial waters. Several Members of Congress have sought to further respond to Russia's November 2018 attack on Ukrainian naval vessels (S.Res. 27, H.Res. 116, S. 482), express continuing opposition to Nord Stream 2 (S.Res. 27, H.R. 2023, H.R. 3206, S. 1441, H.Res. 116, S. 1830), and enhance U.S.-Ukraine security cooperation (H.R. 3047).

For related information, see CRS Report R45415, *U.S. Sanctions on Russia*, and CRS In Focus IF11138, *Nord Stream 2: A Fait Accompli?*

Contents

Introduction	1
Politics and Governance	1
Ukraine's New Government	3
Reform Challenges	5
Conflict with Russia	8
Crimea	9
Eastern Ukraine	10
Internally Displaced Persons and Transit Across the Contact Line	12
Minsk Agreements	13
Sea of Azov and Kerch Strait	19
Ukraine's Church Becomes Independent of Moscow	21
Economy	21
Trade	22
Energy	23
U.S.-Ukraine Relations	25
Sovereignty and Territorial Integrity	25
Maritime and Energy Security	27
Domestic Reforms	28
Foreign Aid	29
Military Aid	30
Trade	33
Role of Congress	33
Congressional Response to Russia's Invasion	34
Ukraine-Related Sanctions	36
Relations with the EU and NATO	37
Outlook	39

Figures

Figure 1. Ukraine	9
Figure 2. Southern Ukraine and the Sea of Azov	20

Tables

Table 1. July 2019 Parliamentary Elections	4
--	---

Contacts

Author Information	39
--------------------------	----

Introduction

Ukraine has accomplished much in the five years since the country's Revolution of Dignity (also known as the Euromaidan). Forced to confront a Russian invasion and occupation of the Crimea region, a Russian-instigated conflict in eastern Ukraine, and a tightening of Russian control in the nearby Sea of Azov and Black Sea, Ukraine has developed a military capable of territorial defense, halted a decline in economic growth, implemented reforms, maintained a democratic path, and gained formal independence for the Orthodox Church of Ukraine.

Ukraine continues to grapple with serious challenges. Earlier this year, the country transitioned to a new government. President Volodymyr Zelensky and his Cabinet have pledged to implement difficult economic and governance reforms, promote Ukraine's Western integration, rebuild ties with residents of Russian-controlled areas of eastern Ukraine, and revitalize talks with Russia on conflict resolution.

The United States has long supported Ukraine's independence, sovereignty, and democratic trajectory. Since 2014, many Members of Congress have condemned Russia's invasion of Ukraine, promoted sanctions against Russia for its actions, and supported increased economic and security aid to Ukraine (see "Role of Congress," below).

This report provides an overview of Ukraine's domestic politics and reform efforts; conflict with Russia and the conflict settlement process; and relations with the United States, the European Union (EU), and NATO.

Ukraine at a Glance

Population: 42.2 million (January 2019 est., excluding about 2.2 million in Crimea)

Size: Slightly smaller than Texas

Capital: Kyiv

Ethnicity: 78% Ukrainian, 17% Russian, 0.5% Crimean Tatar (2001 census)

Languages: Ukrainian (official), 68%; Russian (regional status), 30% (2001 census)

Religion: About 75% Orthodox Christian (mostly Ukrainian Orthodox), 8%-10% Greek Catholic

GDP/GDP per capita: \$125 billion/\$2,963 (2018 est.)

Top Exports: iron and steel, cereals, fats and oils, ores, electrical machinery, oil seeds, industrial machinery

Leadership: President Volodymyr Zelensky, Prime Minister Oleksiy Honcharuk, Foreign Minister Vadym Prystaiko, Defense Minister Andriy Zahorodniuk, Parliamentary Chairperson Dmytro Razumkov

Sources: State Statistics Service of Ukraine, International Monetary Fund, Pew Research Center.

Politics and Governance

Ukraine is one of the largest successors, by territory, population, and economy, to the Union of Soviet Socialist Republics (USSR, or Soviet Union) (for map, see **Figure 1**). Historically, Ukrainians trace their lineage to medieval Kievan Rus, an early Orthodox Christian state that Russians also consider a core part of their heritage. Most of Ukraine's territory was incorporated over time into the USSR's predecessor, the Russian Empire, although several western regions of Ukraine were first annexed by the Soviet Union during World War II. In December 1991, Ukraine's leaders joined those of neighboring Russia and Belarus to dissolve the USSR.

In over a quarter century of independence, many observers have considered Ukraine to have a "hybrid" political regime, containing both democratic and nondemocratic elements. Since 2011,

the U.S.-based nongovernmental organization (NGO) Freedom House has given Ukraine an annual “freedom rating” of “partly free.”¹

According to Freedom House, Ukraine’s democratic credentials improved after the ouster of former President Viktor Yanukovych in 2014, in Ukraine’s Revolution of Dignity (for details, see “From Orange Revolution to Revolution of Dignity” text box, below). The interim government that followed pledged to embrace reforms that would facilitate Ukraine’s Euro-Atlantic integration, and an energized civil society supported its efforts. Within weeks, however, the new government had to confront Russian armed interventions in southern and eastern Ukraine. Russia occupied and annexed Ukraine’s Crimea region in March 2014 and instigated a separatist conflict in eastern Ukraine that continues to this day.

From Orange Revolution to Revolution of Dignity

Ukraine’s first two presidents, Leonid Kravchuk (1991-1994) and Leonid Kuchma (1994-2005), were former Communists who claimed to promote Ukraine’s national interests but also presided over economic mismanagement, corruption, and other abuses of power. Most prominently, Kuchma came to be suspected of involvement in the 2000 murder of journalist Georgiy Gongadze.

In 2004, a popular movement known as the Orange Revolution thwarted the efforts of Kuchma’s team—with Russian support—to fraudulently elect a handpicked successor, then-Prime Minister Viktor Yanukovych, as president. Yanukovych’s reformist opponent, Viktor Yushchenko, was allegedly poisoned during the election campaign, won the first round, and was elected in a rerun of the fraudulent second round. However, infighting and poor governance led to popular disillusionment with the “Orange government” and eventually to Yanukovych’s return to power, first as prime minister (2006-2007) and then as president (2010-2014).

Many observers considered Yanukovych to be a corrupt and authoritarian president who preferred to preserve power with Russia’s economic and political assistance rather than to pursue Western-oriented reforms. Yanukovych also appeared reluctant to fulfill a key demand of Western partners, the release from prison of Yulia Tymoshenko, a former prime minister whom he defeated in the 2010 presidential election. In 2011, Tymoshenko was sentenced to seven years in prison for abuse of power and other charges that many observers considered to be politically motivated.

In November 2013, protests erupted over the Yanukovych government’s decision to postpone a move toward closer relations with the European Union. The government suppressed the protests, leading to larger protests and violent clashes with police that eventually killed over 100 protestors (many Ukrainians refer to these victims as the *Heavenly Hundred*) and almost 20 police officers. In February 2014, Yanukovych’s government collapsed. Yanukovych had agreed to a deal with the opposition that was to lead to an early presidential election, but instead he departed for eastern Ukraine amid government defections. Subsequently, Tymoshenko was freed from prison, Ukraine’s legislature voted to remove Yanukovych from office, and Yanukovych left Ukraine for Russia. In January 2019, Yanukovych was found guilty of treason and sentenced in absentia to 13 years in prison.

Sources: Adrian Karatnycky, “Ukraine at the Crossroads,” *Journal of Democracy* 6, no. 1 (January 1995), pp. 117-130; Dominique Arel, “Kuchmagate and the Demise of Ukraine’s Geopolitical Bluff,” and Keith A. Darden, “Blackmail as a Tool of State Domination: Ukraine Under Kuchma,” *East European Constitutional Review* 10, no. 2/3 (Spring/Summer 2001), pp. 54-59, 67-71; Andrew Wilson, *Ukraine’s Orange Revolution* (Yale University Press, 2005); Anders Aslund and Michael McFaul, *Revolution in Orange: The Origins of Ukraine’s Democratic Breakthrough* (Carnegie Endowment, 2006); Andrew Wilson, *Ukraine Crisis: What It Means for the West* (Yale University Press, 2014); RFE/RL, “Ukraine Sentences Ex-President Yanukovych in Absentia to 13 Years in Prison,” January 24, 2019.

¹ Freedom House ranks all countries in the world on a “freedom” scale, which includes measures of political rights and civil liberties. Freedom House also scores post-Communist states on an index of “democratic progress” ranging between 1 (most democratic) and 7 (least democratic). States that receive a “democracy score” between 4 and 5 are considered “transitional governments or hybrid regimes.” Ukraine has received a democracy score between 4 and 5 since at least 1999. See annual reports in Freedom House, *Freedom in the World 2019*, at <https://freedomhouse.org/report/freedom-world/2019/ukraine>, and *Nations in Transit 2018*, at <https://freedomhouse.org/report/nations-transit/2018/ukraine>.

Ukraine's New Government

Ukraine has a mixed presidential-parliamentary system, in which the president shares power with a prime minister chosen by Ukraine's legislature, the *Verkhovna Rada*. Presidential election rounds were held in March and April 2019, and snap parliamentary elections were held in July 2019. The victories of political novice Volodymyr Zelensky and his Servant of the People party appeared to reflect widespread disillusionment with Ukraine's political establishment.

2019 Presidential Election. On April 21, 2019, popular actor-comedian, television producer, and political novice Volodymyr Zelensky (aged 41) overwhelmingly won the second round of Ukraine's presidential election, defeating incumbent Petro Poroshenko 73% to 24%.² International and domestic observers considered the election to be generally free and fair. The U.S. Department of State said the elections were "peaceful, competitive, and the outcome represented the will of the people."³

Before the election, opinion polls indicated relatively low levels of support for Ukraine's political leaders. In a September-October 2018 poll, 16%-18% of respondents expressed approval of the government.⁴ For months before the election, then-President Poroshenko was in third place in most opinion polls. In the last two months of the campaign, he managed to reach second place, which is where he placed in the election's March 2019 first round, with 16% of the vote.⁵

A strong supporter of Ukraine's integration with the EU and NATO, Poroshenko had unofficially campaigned under the slogan of "Army! Language! Faith!" that appeared on billboards early in the campaign.⁶ The slogan reflected Poroshenko's efforts to gain popular support as a defender of Ukraine's sovereignty and national identity. Poroshenko portrayed himself as Ukraine's wartime commander in chief, who had built up Ukraine's military forces and was standing firm against Russian aggression. He also backed legislation that prioritized use of the Ukrainian language in education, media, and government.⁷ Finally, he sought credit for the January 2019 recognition by the Ecumenical Patriarchate of Constantinople of an independent (autocephalous) Ukrainian Orthodox Church, officially separate from the Russian Orthodox Church (see "Ukraine's Church Becomes Independent of Moscow," below).

At the same time, many Ukrainians believed Poroshenko did not do enough to restore the country's economic health after almost five years of conflict and generally did not live up to the high expectations for reform that arose from the 2013-2014 Revolution of Dignity, which set the

² Poroshenko, a wealthy businessman, then-member of parliament, ex-government official, and supporter of the Euromaidan protests, won 55% of the popular vote in a May 2014 election to succeed Viktor Yanukovich. His closest competitor, former Prime Minister Yulia Tymoshenko, won 13%. Poroshenko held political office under Ukraine's two previous presidents, including as foreign minister (2009-2010) under Viktor Yushchenko and minister of trade and economic development (2011-2012) under Yanukovich.

³ U.S. Department of State, "Ukrainian Presidential Elections," April 22, 2019.

⁴ See the U.S.-based International Republican Institute's Center for Insights in Survey Research, "Public Opinion Survey of Residents of Ukraine, September 29-October 14, 2018."

⁵ Former Prime Minister Tymoshenko came in third place in the first round, with 13% of the vote. She ran on a populist platform that was critical of government-led economic reforms, including pension reform, increased gas prices, and land sales. Ian Bateson, "The Fall and Troubled Rise of a Ukrainian Populist," *Atlantic*, March 28, 2019.

⁶ Leonid Bershidsky, "Religion Will Be on Ukraine's Ballot," *Bloomberg*, December 18, 2018.

⁷ Ukraine's language laws have been the subject of considerable debate. See, for example, Gwendolyn Sasse, "Ukraine's Poorly Timed Education Law," *Carnegie Europe*, October 2, 2017; Alessandra Prentice, "Criticism of Ukraine's Language Law Justified: Rights Body," *Reuters*, December 8, 2017; Tetiana Ogarkova, "The Truth Behind Ukraine's Language Policy," *Atlantic Council*, March 12, 2018; and Natalia Kudratiutseva, "Ukraine's Language Agenda: When Aspiration Meets Practice," *Wilson Center*, April 23, 2018.

stage for his election as president in May 2014.⁸ A widespread perception that Poroshenko failed to adequately combat corruption also appears to have been a factor in his defeat.⁹

Observers note, however, that the public did not express much confidence in the opposition to Poroshenko. This began to change after the popular Zelensky announced his candidacy on New Year's Eve in 2018. Zelensky quickly took the lead in opinion polls and won the first round of the election with 30% of the vote.

2019 Parliamentary Elections. Zelensky consolidated his political victory with snap parliamentary elections held on July 21, 2019 (see **Table 1**). Zelensky's victory boosted the fortunes of his nascent and politically untested party, Servant of the People (named after one of his popular television shows). The party won 60% of seats, including 43% of the party-list vote and almost two-thirds of majoritarian seats, making it the first party in independent Ukraine to win an outright majority of seats. The party's leading members are mostly under the age of 40 and include, among others, Zelensky associates, anti-corruption activists, and former members of other political parties.¹⁰

Ukraine's new legislature held its first plenary session on August 29, 2019. Parliamentarians selected as prime minister Oleksiy Honcharuk (aged 35), an economic adviser to President Zelensky and former head of an EU-funded business policy institute. The new parliamentary chairperson is Dmytro Razumkov (aged 35), a political consultant who was the head of Zelensky's election campaign. The Cabinet is relatively young; almost all ministers are under the age of 50.¹¹

Table 1. July 2019 Parliamentary Elections

Party	Party List Seats (%)	Majoritarian Seats	Total Seats
Servant of the People	124 (43%)	130	254
Opposition Platform – For Life	37 (13%)	6	43
Fatherland	24 (8%)	2	26
European Solidarity	23 (8%)	2	25
Voice	17 (6%)	3	20
Opposition Bloc	—(3%)	6	6
Freedom	—(2%)	1	1
Self Reliance	—(<1%)	1	1
Other/Independents	—	48	48
Total	225	199	424

Sources: Central Election Commission of Ukraine; *Ukrainska Pravda*.

Notes: Only parties that won seats are listed. Five other parties received between 1%-5% of the party-list vote (and another nine received less than 1% of the vote). Single-mandate seats from 26 districts in occupied Crimea and the nongovernment-controlled areas of eastern Ukraine are unfilled.

Another four parties received enough votes to enter the legislature on party lists. These are the eastern Ukrainian-based (and Russian-leaning) Opposition Platform–For Life (13%); former

⁸ Volodymyr Yermolenko, "Does Poroshenko Have a Chance at a Second Term?" *UkraineAlert*, Atlantic Council, October 1, 2018.

⁹ Ilko Kucheriv Democratic Initiatives Foundation, "The Fight Against Corruption in Ukraine: Public Opinion," June 1, 2018.

¹⁰ Oksana Grytsenko and Vyacheslav Hnatyuk, "What We Know About People Zelensky Will Take to Next Parliament," *Kyiv Post*, July 8, 2019.

¹¹ Two ministers are holdovers from the previous government: Minister of Internal Affairs Arsen Avakov and Minister of Finance Oksana Markarova. "Here's Every Member of Ukraine's New Cabinet of Ministers," *Kyiv Post*, August 29, 2019.

Prime Minister Yulia Tymoshenko's Fatherland (8%); ex-President Poroshenko's European Solidarity (8%); and Voice (6%), a new party of reformists and professionals led by rock musician Svyatoslav Vakarchuk. Fatherland, European Solidarity, and Voice are all considered to be pro-Western parties. A few other parties won some seats in the majoritarian races, but independent candidates received most of the seats that were not won by Servant of the People candidates.

The presidential and parliamentary election outcomes suggested that Ukraine's population was highly dissatisfied with Ukraine's political establishment. Zelensky ran as an outsider ostensibly untainted by politics or corruption. His appeal stemmed in part from his starring role in a popular television show, *Servant of the People*, as a beloved schoolteacher who is unexpectedly elected president of Ukraine after a video of him delivering an anti-corruption rant goes viral. Zelensky is from the city of Kryvii Rih (Kryvoi Rog) in Ukraine's Dnipropetrovsk region, north of Crimea, which observers feared might become another flashpoint of conflict in 2014.

The election outcomes also suggested that issues of ethnic and linguistic identity mattered less to voters than expected. Zelensky demonstrated broad appeal across the country, coming in first in all but one of Ukraine's regions (he lost to Poroshenko in the western region of Lviv). Despite his outsider status, Zelensky did not campaign as a nationalist or a populist. On the contrary, Zelensky is a native Russian speaker who also speaks Ukrainian, is of Jewish descent, and supports closer relations with the West. Earlier in the campaign, observers anticipated that he would attract votes mainly from southern and eastern Ukrainians who reject the alleged corruption and pro-Russian sentiments of traditional regional elites but have felt marginalized in Ukrainian politics since 2014.

Reform Challenges

Under ex-President Poroshenko, the Ukrainian government pursued an ambitious reform agenda. In 2017, the International Monetary Fund (IMF) praised Ukraine's implementation of key reforms, including a reduction of the fiscal deficit, increase in gas prices (while retaining subsidies for lower-income households), reform of the banking system, and reduction in inflation.¹² Observers also noted progress in decentralization, health care reform, and judicial reform.¹³

At the same time, domestic and international stakeholders criticized the Poroshenko government for slowly implementing, failing to complete, or backsliding on key reforms, particularly with regard to anti-corruption efforts (see discussion below). International partners and donors also have underlined the importance of further reforms in the energy sector, sustainable pension reform, the privatization of state-owned enterprises, and land sales (a moratorium has existed on land sales since 2001).¹⁴

¹² International Monitoring Fund (IMF), "Ukraine Receives IMF Support but Must Accelerate Reforms," IMF Country Focus, April 4, 2017.

¹³ Organization for Economic Cooperation and Development (OECD), *Maintaining the Momentum of Decentralization in Ukraine* (Paris: OECD Publishing, 2018); Maryna Rabinovych, Anthony Levitas, and Andreas Umland, *Revisiting Decentralization After Maidan: Achievements and Challenges of Ukraine's Local Governance Reform*, Kennan Institute, July 16, 2018; UNIAN Information Agency, "Council of Europe Praises Judicial Reform in Ukraine," June 13, 2019; Iryna Budz, "What Prevents Ukrainian Judiciary From Becoming Truly Effective And Independent?" Vox Ukraine, July 24, 2019; Government of Ukraine, "Health Care System Reform," at <https://www.kmu.gov.ua/en/reformi/rozvitok-lyudskogo-kapitalu/reforma-sistemi-ohoroni-zdorovya>.

¹⁴ See, for example, Sagatom Saha and Ilya Zaslavskiy, *Advancing Natural Gas Reform in Ukraine*, Council on Foreign Relations, December 2018; IMF, "Reforming Ukraine's Pension System," in *Ukraine: Selected Issues*, March 7, 2017,

In May 2019, President Zelensky was inaugurated amid some uncertainty about his administration's future course. Zelensky's electoral platform lacked a detailed policy agenda, although he attracted some reform-oriented economists to his campaign team.¹⁵ Many observers have expressed concern about Zelensky's lack of foreign policy and leadership experience at a time of ongoing conflict with Russia.¹⁶ Some also have questioned his relationship with wealthy businessperson (or "oligarch") Ihor Kolomoysky, who reportedly controls Ukraine's most popular television station (which airs Zelensky's shows); a former lawyer of Kolomoysky was appointed the president's chief of staff.¹⁷

Since taking power, Ukraine's new president and government have unveiled an ambitious reform program. They have proposed to implement rapidly a series of measures to tighten anti-corruption legislation; promote long-awaited judicial, security, land, and privatization reforms; and invest in infrastructure and defense.¹⁸ Some of the first votes of Ukraine's newly elected legislature were to reduce the size of parliament, enact a fully proportional electoral system, and lift parliamentary deputies' impunity from prosecution.¹⁹

Anti-corruption Efforts Under the Poroshenko Government. Under ex-President Poroshenko, the implementation of anti-corruption reforms was a major concern of domestic and international stakeholders. Combating corruption was to be a central focus of the Ukrainian government after the 2014 Revolution of Dignity. Observers considered that high levels of corruption persisted, however, and that many officials resisted anti-corruption measures. In public opinion polls, respondents ranked corruption as one of the country's most important issues. The NGO Transparency International ranked Ukraine 120 out of 180 countries in its 2018 Corruption Perception Index.²⁰

The Poroshenko government's initial reforms included the establishment of three related institutions: the National Anti-Corruption Bureau of Ukraine (NABU), the Special Anti-Corruption Prosecutor's Office (SAP), and the National Agency for the Prevention of Corruption (NAPC).²¹

pp. 19-37; World Bank, *Ukraine Special Focus Note: Reforming Land Markets for Agricultural Growth*, October 3, 2017; World Bank Group, *Reducing Market Distortions for a More Prosperous Ukraine: Proposals for Market Regulation, Competition Policy, and Institutional Reform*, March 2019.

¹⁵ Christopher Miller, "So Far, Zelenskiy Is High on Charisma and Light on Policy. Do Ukrainians Care?" RFE/RL, April 8, 2019.

¹⁶ Others suggest, however, that Moscow may be less enthusiastic about Zelensky's victory if he brings new energy to Ukraine's anti-corruption and democracy reforms. Alexander Baumov, "Putin Should Fear Ukraine's Russia-Friendly Front-Runner," *Foreign Policy*, April 18, 2019.

¹⁷ Kolomoysky served as Dnipropetrovsk's governor for one year until falling out with Poroshenko in 2015. Before the second-round presidential election, Kolomoysky won some preliminary court cases regarding the 2016 nationalization of Ukraine's largest commercial bank, PrivatBank, which he previously controlled. Matthias Williams and Natalia Zinets, "Comedian Faces Scrutiny over Oligarch Ties in Ukraine Presidential Race," Reuters, April 1, 2019; Natalia Zinets, "Ukraine Could Nationalize PrivatBank Again if Needed: Central Bank," Reuters, May 15, 2019; Roman Olearchyk, "Volodymyr Zelensky Hires Oligarch's Lawyer as Chief of Staff," *Financial Times*, May 22, 2019.

¹⁸ Oleksiy Sorokin and Anna Myroniuk, "Zelensky to Cabinet: Adopt Budget, Lift Land Moratorium, Legalize Casinos—Fast!" *Kyiv Post*, September 2, 2019; "Quick Wins, Big Promises: Zelensky's Agenda for Parliament, Government," *Kyiv Post*, September 6, 2019.

¹⁹ Oleksiy Sorokin, "Zelensky's Changes to Ukrainian Constitution, Explained," *Kyiv Post*, September 6, 2019.

²⁰ Transparency International, "Ukraine," Corruption Perceptions Index 2018, at <https://www.transparency.org/country/UKR>.

²¹ For details, see John Lough and Vladimir Dubrovskiy, *Are Ukraine's Anti-Corruption Reforms Working?*, Chatham House, November 2018.

NABU and the SAP were to constitute the investigative and prosecutorial arms of Ukraine's anti-corruption efforts. Many observers believed, however, that these institutions did not have the government's full support. After repeatedly encountering resistance from within the government, NABU came under legal pressure in February 2019 to close dozens of investigations into alleged corruption, after Ukraine's Constitutional Court ruled that the underlying basis for these investigations, related to the crime of "illicit enrichment," did not have a constitutional foundation.²² In addition, many observers believed the SAP did not exhibit the independence necessary to fulfill its functions.

NAPC, a third institution, was supposed to develop and implement Ukraine's anti-corruption strategy, with a focus on prevention, as well as establish a public electronic system for the mandatory disclosure and verification of government officials' assets and incomes. Over 100,000 officials submitted the first required declarations in 2016, with members of parliament (many of whom come from the business world) appearing to openly report their assets.²³ However, NAPC's work moved forward slowly, and the verification process stalled.

The Poroshenko government repeatedly postponed the establishment of a fourth anti-corruption institution, the High Anti-Corruption Court (HACC). In summer 2018, the government finally established the HACC, after the United States, the EU, the IMF, and the World Bank called on the government to move forward with the court's establishment in line with international recommendations.²⁴ Observers note that the HACC, which officially began to function in 2019, requires the full empowerment and independence of NABU and the SAP, as well as legislative changes that will allow for the prosecution of illicit enrichment.

Far Right and Attacks on Civil Society and Minorities. Some observers have expressed concern about the rise of far-right Ukrainian nationalist groups in Ukraine. Such groups gained attention during the 2013-2014 Euromaidan protests, when activists from groups like the Freedom (*Svoboda*) political party and the Right Sector (*Praviy Sektor*) movement participated in a violent wing of the resistance against the Yanukovich government.²⁵ Some of these groups transformed into wartime volunteer battalions, like the Azov Battalion, fought against Russian-controlled forces in eastern Ukraine, and eventually were incorporated into Ukraine's National Guard. Some groups also established political parties.²⁶

Although some far-right organizations have gained a certain legitimacy in Ukrainian society, they have not been successful politically. In the 2019 parliamentary elections, the most prominent far-right political parties and movements competed as a single bloc and won 2% of the vote (not enough to receive party list seats) and one majoritarian seat. In comparison, the Freedom party won less than 5% of the vote and received six majoritarian seats in the 2014 parliamentary elections. In the 2014 presidential election, the Freedom party's leader won 1% of the vote and the Right Sector's former leader won less than 1% of the vote.

²² Transparency International, "Constitutional Court Ruling Undermines Anti-corruption Achievements in Ukraine," March 1, 2019; Oleksandra Drik, "Why the West Should Be Worried About Ukraine's Flagging Fight Against Graft," Atlantic Council, March 12, 2019.

²³ Kateryna Boguslavska, "Full Disclosure: Tackling Public Corruption in Ukraine," Chatham House, November 30, 2016.

²⁴ Marc Jones, "IMF Backs Ukraine Anti-corruption Court Plan," Reuters, July 25, 2018.

²⁵ See, for example, Andrew Higgins and Andrew E. Kramer, "Converts Join with Militants in Kiev Clash," *New York Times*, February 21, 2014.

²⁶ Christopher Miller, "Azov, Ukraine's Most Prominent Ultranationalist Group, Sets Its Sights on U.S., Europe," RFE/RL, November 14, 2018.

Far-right groups and others have been implicated in violent attacks against civil society activists, journalists, and minorities, including members of the Roma and LGBT communities.²⁷ Human rights NGOs reported more than 50 attacks on activists and human rights defenders in 2018 and a few dozen more in the first half of 2019. Many of the attacks appeared to be at the local level, allegedly as reprisals for investigations of corruption and other illegal activities. One prominent case was that of Kateryna Handzyuk, an activist and city council employee who was the victim of a severe acid attack in July 2018; she died of her wounds in November 2018. Another case is that of local investigative journalist Vadym Komarov, who was attacked in May 2019 and died of his wounds in June 2019.²⁸

During the previous government, observers expressed concern that authorities did not thoroughly investigate such cases and that, when prosecutions did occur, perpetrators may have been punished but not always those who ordered the attacks.²⁹ In some cases, observers believe that local government officials, rather than far-right groups, instigated attacks (although far-right members also reportedly have been hired to carry out attacks).

Conflict with Russia

Many observers consider that of all the post-Soviet states, Ukraine's independence has been the most difficult for Russians to accept. Many Russians traditionally have considered much of Ukraine to be a historical province of Russia and Ukrainians to be close ethnic brethren. In June 2019, Russian President Vladimir Putin said that "Russians and Ukrainians are one people ... one nation."³⁰ Most Ukrainians can speak Russian, whether as a primary or secondary language. An estimated 15%-20% of the population identifies as ethnic Russian, mostly concentrated in the south (Crimea) and east, where ties to Russia are stronger than in the rest of the country. In Soviet times, eastern Ukraine became home to a heavy industrial sector (including defense-related manufacturing) that retained close economic ties to Russia after independence.

Even before 2014, however, the Russia-Ukraine relationship occasionally suffered turbulence, with disputes over Ukraine's ties to NATO and the EU, the status of Russia's Crimea-based Black Sea Fleet, and the transit of Russian natural gas via Ukraine to Europe. Under ex-President Yanukovich, such disputes largely were resolved. By the end of 2013, Yanukovich appeared to make a decisive move toward Russia, postponing the conclusion of an Association Agreement to establish closer political and economic ties with the EU and agreeing instead to substantial financial assistance from Moscow. This decision provoked the Euromaidan protests and, ultimately, led to Yanukovich's removal from power.

²⁷ Amnesty International, *Ukraine: Human Rights Under Pressure, Their Advocates Under Attack*, February 8, 2019; Office of the United Nations High Commissioner for Human Rights (OHCHR), *Civic Space and Fundamental Freedoms Ahead of the Presidential, Parliamentary and Local Elections in Ukraine in 2019-2020*, March 12, 2019.

²⁸ Human Rights Watch, "Ukraine: Address Attacks Against Activists and Human Rights Defenders," October 3, 2018; Ukrinform, "39 Attacks on Journalists and Activists Recorded in Ukraine This Year," June 21, 2019; Human Rights Watch, "Ukraine: Investigate Journalist's Killing," June 25, 2019.

²⁹ Tetiana Kozak, "Who Is Ordering Attacks on Activists in Ukraine," Open Democracy, August 23, 2018; RFE/RL, "Ukrainian Court Sentences Five Men in Activist's Death Following Acid Attack," June 6, 2019.

³⁰ Associated Press, "Putin: Russians, Ukrainians Are 'One People,'" July 20, 2019.

Figure 1. Ukraine



Sources: Graphic produced by CRS. Map information generated using data from the Department of State, Esri, and DeLorme.

Crimea

The Russia-Ukraine conflict arose soon after Yanukovich fled to Russia in February 2014.³¹ Moscow covertly deployed forces to Ukraine's Crimea region and, after holding what most observers consider to have been an illegal referendum on secession in March 2014, declared it was incorporating Crimea directly into the Russian Federation. In explaining these actions, Russian government officials characterized the change in power in Kyiv as a Western-backed "coup" that, among other things, could threaten the security of the ethnic Russian population in Crimea, eject Russia's Black Sea Fleet from the region, and potentially even bring Ukraine into NATO, something Moscow firmly opposed.

Since 2014, Russia has significantly increased its military presence in Crimea and suppressed local dissent. Ukrainian officials say Russia has deployed more than 30,000 troops to the region, as well as S-400 surface-to-air missile systems and other advanced weaponry.³² The Office of the

³¹ Studies of the conflict include Richard Sakwa, *Frontline Ukraine: Crisis in the Borderlands* (I.B. Tauris, 2016); Michael Kofman et al., *Lessons from Russia's Operations in Crimea and Eastern Ukraine* (RAND Corporation, 2017); Samuel Charap and Timothy J. Colton, *Everyone Loses: The Ukraine Crisis and the Ruinous Contest for Post-Soviet Eurasia* (Routledge/IJSS, 2017); Lawrence Freedman, *Ukraine and the Art of Strategy* (Oxford University Press, 2019); and Sabine Fischer, *The Donbas Conflict: Opposing Interests and Narratives, Difficult Peace Process*, German Institute for International and Security Affairs (SWP), 2019.

³² Patrick Tucker, "U.S. Intelligence Officials and Satellite Photos Detail Russian Military Buildup on Crimea," *Defense One*, June 12, 2019; UNIAN Information Agency, "Ukraine Intel Assesses Size of Russia's Military Force Amassed in Occupied Crimea," June 21, 2019.

United Nations High Commissioner for Human Rights (OHCHR) has documented “multiple and grave” human rights violations in Crimea and said that minority Crimean Tatars, who are generally opposed to Russia’s occupation, have been “particularly targeted.”³³

Much of the international community does not recognize Russia’s purported annexation of Crimea. Many states and international organizations have condemned Russia’s occupation of Ukraine as a violation of international law and Russia’s own commitments under the 1975 Final Act of the Conference on Security and Cooperation in Europe. More specifically, they also consider it to be a violation of the 1994 Budapest Memorandum, in which Russia, together with the United States and the United Kingdom (UK), reaffirmed its commitment “to respect the independence and sovereignty and the existing borders of Ukraine,” as well as the “obligation to refrain from the threat or use of force” against Ukraine.³⁴ In March 2014, the United Nations General Assembly (UNGA) voted 100 to 11, with 58 countries abstaining, to affirm Ukraine’s territorial integrity. The UNGA has passed further resolutions, most recently in December 2018, that condemn the “temporary occupation” of Crimea and reaffirm nonrecognition of its annexation.³⁵

The Ukrainian government and state-owned companies seek to uphold their rights in and around Crimea through international arbitration. In August 2019, the Paris-based International Court of Arbitration awarded state-owned Oschadbank \$1.3 billion in damages from Russia.³⁶ Ukrainian state-owned energy company Naftogaz seeks \$5.2 billion in compensation for its seized assets in the Hague-based Permanent Court of Arbitration; the court ruled in March 2019 that Russia had violated its bilateral investment treaty with Ukraine.³⁷ In a separate case before the Permanent Court of Arbitration, the Ukrainian government seeks to broadly uphold its maritime rights around Crimea under the United Nations Convention on the Law of the Sea (for more on Russia’s maritime aggression, see “Sea of Azov and Kerch Strait,” below).³⁸ The Russian government refuses to recognize the international rulings against it.

Eastern Ukraine

After occupying Crimea, Moscow engineered the rise of new separatist movements in eastern Ukraine (the Donetsk and Luhansk regions, collectively known as the Donbas; see **Figure 1**). Beginning in April 2014, militants forcibly took power in several cities and towns, announced the establishment of two separatist entities (the so-called Donetsk People’s Republic, or DPR, and the

³³ OHCHR, “Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine),” September 25, 2017.

³⁴ These assurances were provided in connection with Ukraine’s assent to the removal of nuclear weapons from its territory. The official title of the Budapest Memorandum is the Memorandum on Security Assurances in Connection with Ukraine’s Accession to the Treaty on the Non-Proliferation of Nuclear Weapons. United Nations General Assembly/Security Council (A/49/765, S/1994/1399), December 19, 1994, at <https://digitallibrary.un.org/record/169471?ln=en>. For details, see Steven Pifer, *The Trilateral Process: The United States, Ukraine, Russia and Nuclear Weapons*, Brookings, May 2011.

³⁵ U.N. General Assembly Resolutions A/RES/68/262, March 27, 2014; A/RES/71/205, December 19, 2016; A/RES/72/190, December 19, 2017; and A/73/L.47, December 5, 2018.

³⁶ Reuters, “Ukraine’s Oschadbank Awarded \$1.3 Bln from Russia over Crimea Loss,” November 27, 2018;

³⁷ Ukrinform, “Permanent Court of Arbitration: Russia Illegally Seizes Assets of Naftogaz in Crimea,” March 1, 2019; RFE/RL, “Ukraine’s Naftogaz Seeks \$5.2 Billion in Damages from Russia over Seized Crimea Assets,” August 1, 2019.

³⁸ Roman Olearchyk, “Ukraine Hits Russia with Another Legal Claim,” *Financial Times*, September 14, 2016; Ukrinform, “Ukraine v. Russia: Permanent Court of Arbitration Publishes Positions of Parties,” June 11, 2019.

so-called Luhansk People's Republic, or LPR), and gradually expanded their control over Ukrainian territory. Ukrainian government and volunteer forces restored state control over some areas, but they also suffered some major defeats. These defeats included battles in which regular Russian forces reportedly participated, near Ilovaisk (August-September 2014), the Donetsk Airport (September 2014-January 2015), and Debaltseve (January-February 2015).³⁹

For Russia, the establishment of separatist entities in eastern Ukraine may have served multiple purposes. The Russian government claimed it was seeking to "protect" relatively pro-Russian populations in these regions. Many observers believe, however, that Moscow sought to complicate Ukraine's domestic development and foreign policy and increase Russian leverage in potential negotiations over Ukraine's future trajectory.

Moscow continues to officially deny Russia's involvement in the conflict in eastern Ukraine. Many observers agree, however, that the Russian government has deployed troops to fight unofficially, encouraged other Russian "volunteers" to join these troops, and supplied weapons and equipment to local fighters. U.S. Special Representative for Ukraine Negotiations Kurt Volker has stated that "Russia has 100 percent command and control of what is happening in the occupied areas there—military forces, political entities, and direct economic activity."⁴⁰ In May 2018, then-U.S. Ambassador to the United Nations Nikki Haley said "militants in eastern Ukraine report directly to the Russian military, which arms them, trains them, leads them and fights alongside them."⁴¹

The estimated number of Russian troops in eastern Ukraine has declined since peaking in 2015 at about 12,000.⁴² In February 2019, Ukraine's ambassador to the United Nations said that "over 2,100 Russian regular military, mostly in key command and control positions," were fighting in eastern Ukraine, with the total number of Russian-backed fighters about 35,000.⁴³

The conflict's intensity has declined since 2015, but fighting continues. In 2018, Special Representative Volker characterized the conflict as a "hot war."⁴⁴ U.S. officials and others regularly call attention to the "humanitarian catastrophe" in eastern Ukraine.⁴⁵ According to OHCHR, the conflict has led to around 10,000 combat deaths and more than 3,000 civilian fatalities.⁴⁶

This count includes the 298 foreign nationals killed in the July 17, 2014, downing of Malaysian Airlines Flight 17, or MH17, a commercial aircraft en route from Amsterdam to Kuala Lumpur that was shot down in Ukrainian airspace. Intelligence sources indicate that separatist forces brought down the plane using a missile supplied by the Russian military. The MH17 tragedy helped galvanize EU support for more substantial sanctions on Russia in response to its invasion of Ukraine (see "Ukraine-Related Sanctions," below). In June 2019, the Dutch government

³⁹ See, for example, Maj. Michael Cohen, "Ukraine's Battle at Ilovaisk, August 2014: The Tyranny of Means," *Military Review*, June 10, 2016; Maj. Amos C. Fox, "Cyborgs at Little Stalingrad": *A Brief History of the Battles of the Donetsk Airport*, Institute of Land Warfare, May 2019; and Maj. Amos C. Fox, "Battle of Debaltseve: The Conventional Line of Effort in Russia's Hybrid War in Ukraine," *Armor* (Winter 2017), pp. 45-52.

⁴⁰ U.S. Department of State, "Press Briefing with Kurt Volker, Special Representative for Ukraine Negotiations," November 8, 2018.

⁴¹ Remarks at the U.N. Security Council (S/PV.8270, 16), May 29, 2018, at <https://undocs.org/en/S/PV.8270>.

⁴² Reuters, "Some 12,000 Russian Soldiers in Ukraine Supporting Rebels: U.S. Commander," March 3, 2015.

⁴³ Remarks at the U.N. Security Council (S/PV.8461, 23), February 12, 2019, at <https://undocs.org/en/S/PV.8461>.

⁴⁴ U.S. Department of State, "Latest Developments on Ukraine Negotiations," April 13, 2018.

⁴⁵ U.S. Department of State, "Press Briefing on Ukraine Negotiations," January 29, 2018.

⁴⁶ OHCHR, *Report on the Human Rights Situation in Ukraine: 16 November 2018 to 15 February 2019*, p. 6.

announced a decision to prosecute three Russian citizens and a Ukrainian citizen for the downing of MH17.⁴⁷

In April 2019, days after Zelensky was elected president, the Russian government introduced new procedures to expedite the process of acquiring Russian citizenship for residents of “certain areas” of Donetsk and Luhansk (a diplomatic euphemism for the nongovernment-controlled areas). In July 2019, these procedures were expanded to apply to all residents of Donetsk and Luhansk.⁴⁸ Russia has provided citizenship to residents in regions of other countries it has militarily occupied (including Georgia’s Abkhazia and South Ossetia regions and Moldova’s Transnistria region). Although the Russian government claims the policy has a humanitarian justification, many observers contend it is intended to entrench Russia’s position in these regions and could provide a potential pretext for future military action.⁴⁹

Internally Displaced Persons and Transit Across the Contact Line

The conflict has led to a large number of internally displaced persons (IDPs). As of July 2019, the Ukrainian government officially counted almost 1.4 million IDPs.⁵⁰ International organizations estimate the number of actually displaced persons to be closer to 800,000, as many IDPs still live in or have returned to their homes but remain registered as IDPs to receive pensions (a requirement established by the Ukrainian government).⁵¹ International organizations and NGOs have called on Ukraine to allow residents of the “nongovernment-controlled areas” of eastern Ukraine (the official term for the Russian-controlled areas) to receive their pensions without having to register as IDPs.⁵²

Ukrainians are permitted to cross the approximately 300-mile long “contact line” that divides the government- and nongovernment-controlled areas of Donetsk and Luhansk. In the first half of 2019, an average of about 1.1 million total crossings occurred per month via five official crossing points.⁵³ According to the U.N. High Commissioner for Refugees (UNHCR), most crossings are by female and elderly residents of nongovernment-controlled areas, mainly to collect pensions.⁵⁴

⁴⁷ Among MH17’s passengers were 193 Dutch citizens and 18 citizens of other EU countries. Government of the Netherlands, “Suspects To Be Prosecuted for the Downing of Flight MH17,” press release, June 19, 2019; Claire Parker, “Here’s What We Know About the Four Suspects Charged with Downing Flight MH17,” *Washington Post*, June 19, 2019.

⁴⁸ The measures also apply to, among others, former residents of Ukraine’s Crimea region who left the region before Russia’s occupation. Nataliya Vasilyeva, “Russia Offers Ukrainians in Conflict Zones Quick Citizenship,” AP, April 24, 2019; RFE/RL, “Putin Widens Citizenship Offer to All Residents of Ukraine’s Donetsk, Luhansk Regions,” July 18, 2019.

⁴⁹ Observers note that Russia justified its invasion of Georgia in 2008 in part by asserting the need to defend Russian citizens in Georgia’s South Ossetia region. See, for example, Yuri Zoria, “Is Russia’s Passport Scheme in Donbas a Harbinger of Full-Scale Invasion Like in 2008 Georgia?” Euromaidan Press, May 14, 2019.

⁵⁰ Ukrainian Ministry of Social Policy, July 15, 2019, at <https://www.msp.gov.ua/news/17351.html>.

⁵¹ Internal Displacement Monitoring Centre, at <http://www.internal-displacement.org/countries/ukraine>; Krzysztof Nieczypor, “In the Shadow of War: Ukraine’s Policy Towards Internally Displaced Persons,” OSW Centre for Eastern Studies (Warsaw), January 16, 2019.

⁵² Previously, the government could deny internally displaced persons (IDPs) pensions if they failed to be present at their place of registration during spot checks (i.e., because they had returned to their homes in the nongovernment-controlled areas). In September 2018, Ukraine’s Supreme Court upheld an earlier ruling that the government could not deny pensions based on residency verification mechanisms. U.N. High Commissioner for Refugees (UNHCR), “Supreme Court of Ukraine Takes Landmark Decision to Protect Pension Rights of IDPs,” September 7, 2018; Human Rights Watch, “Ukraine: Pension Issues, Crossing Conditions,” July 10, 2019.

⁵³ UNHCR, “Checkpoints Monthly Crossings – Online Dashboard,” at <https://www.unhcr.org/ua/en/resources>.

⁵⁴ UNHCR/Right to Protection, “Eastern Ukraine Checkpoint Monitoring – Online Dashboard – 2019,” at

Vehicular traffic is permitted, although the bridge that serves as the sole crossing point in Luhansk (near the town of Stanytsia Luhanska) is too damaged for vehicles to cross and is generally unsafe for pedestrian traffic.⁵⁵

The Ukrainian government is taking measures to facilitate transit to and from the nongovernment-controlled areas. In July 2019, the government issued an order to liberalize the crossing regime by allowing individuals to carry all goods through crossing points except those specifically prohibited (the crossing regime currently prohibits all goods except those specifically permitted).⁵⁶ That month, the government also announced its intent to repair the Stanytsia Luhanska bridge, the sole crossing point in the Luhansk region.⁵⁷

The Ukrainian government currently prohibits cargo traffic to and from the nongovernment-controlled areas. Until 2017, the Ukrainian government permitted some trade with the separatist regions of eastern Ukraine, especially in coal used in domestic power plants and sold abroad. In particular, energy companies in the separatist regions owned by prominent Ukrainian businessman Rinat Akhmetov recognized Ukrainian authority and paid taxes.⁵⁸ After some Ukrainians launched an unofficial blockade against this trade in early 2017, the separatist entities reportedly took control of companies including those owned by Akhmetov. In response, the Ukrainian government officially suspended all cargo traffic, until the proper owners of the companies regain control.⁵⁹

Minsk Agreements

Efforts at conflict resolution are structured around a set of measures known as the Minsk agreements. The Minsk agreements were signed in 2014 and 2015 by representatives of Russia, Ukraine, and the Organization for Security and Cooperation in Europe (OSCE)—members of what is known as the Trilateral Contact Group—together with de facto representatives of the nongovernment-controlled areas of eastern Ukraine. The agreements are supported by a broader international grouping known as the Normandy Four (or Normandy Format): France, Germany, Russia, and Ukraine.

The first Minsk agreements were signed in September 2014. They included a 12-point agreement known as the Minsk Protocol, signed just days after the defeat of Ukrainian government and volunteer forces at Ilovaik, and a follow-up memorandum outlining measures for a cease-fire

<https://www.unhcr.org/ua/en/resources>.

⁵⁵ Human Rights Watch, “Ukraine: Barriers to Free Movement for Older People,” November 29, 2018.

⁵⁶ This change in policy was initially proposed by the previous government in June 2018 but was not implemented prior to the change in government. UNHCR, *Freedom of Movement Across the Line of Contact in Eastern Ukraine*, July 2018, pp. 1, 4; Ukrainian Ministry of Temporarily Occupied Territories and Internally Displaced Persons, “A New Order for Crossing the Contact Line in the East Approved,” July 18, 2019.

⁵⁷ Organization for Security and Cooperation in Europe (OSCE), “OSCE Chair Lajčák Welcomes New Recommitment to Ceasefire in Eastern Ukraine and Plans for Urgently Needed Repairs to Stanytsia Luhanska Bridge; Urges Sides to Honour and Implement Them,” press release, July 18, 2019; UNIAN Information Agency, “Russia Occupation Troops Impede Experts’ Access to Damaged Bridge in Donbas Disengagement Area,” July 24, 2019.

⁵⁸ Nataliya Vasilyeva, “Ukraine’s Richest Man Plays Both Sides of War’s Frontline,” Associated Press, September 22, 2015.

⁵⁹ Fred Weir, “In Ukraine, Blockade Threatens to Force Issue at Heart of Civil War,” *Christian Science Monitor*, February 28, 2017; RFE/RL, “Ukraine Announces Suspension of Cargo Traffic with Separatist-Held Areas,” March 15, 2017.

and international monitoring mission.⁶⁰ The Minsk Protocol failed to end fighting or prompt a political resolution to the conflict.

The Normandy Four met again in February 2015, amid the battle at Debaltseve, to develop a more detailed “package of measures” known as Minsk-2.⁶¹ This package included, among other provisions, a cease-fire, the withdrawal of heavy weapons and foreign troops and fighters, full Ukrainian control over its border with Russia, local elections, and a “special status” for certain districts in eastern Ukraine (see “Summary of Minsk-2 Measures” text box).

The signing of Minsk-2, on February 12, 2015, was intended to trigger an expedited timeframe for a “comprehensive political settlement” to the conflict. This timeframe included a cease-fire from February 15, 2015; full withdrawal of heavy weapons after 15 days of a cease-fire; full exchange of prisoners within the subsequent 5 days; and the introduction of special status for nongovernment-controlled areas, corresponding constitutional reforms, local elections, and Ukraine’s full control of its border by the end of 2015. Although Minsk-2 established a specific timeline and/or sequencing for several of its measures, the sequencing of some key measures is ambiguous.⁶²

Summary of Minsk-2 Measures

1. Immediate and comprehensive cease-fire.
2. Withdrawal of heavy weapons from defined security zones.
3. OSCE monitoring and verification of the cease-fire regime and withdrawal of heavy weapons.
4. Dialogue on (1) modalities of local elections in accordance with Ukrainian legislation and (2) the future status of “certain areas” in Donetsk and Luhansk and specification of the areas in eastern Ukraine to which this status applies.
5. Amnesty via a law forbidding persecution and punishment of persons “in connection with the events” that took place in certain areas in Donetsk and Luhansk.
6. Release and exchange of all hostages and other illegally detained people based on a principle of “all for all.”
7. Safe access and delivery of humanitarian aid to those in need, on the basis of an international mechanism.
8. Determining modalities for fully restoring social and economic links with nongovernment-controlled areas of eastern Ukraine, including pensions and taxes (and, consequently, functioning of the Ukrainian banking system in those areas).
9. Restoration of full Ukrainian control over its border with Russia, beginning from the first day after local elections and ending after a comprehensive political settlement, following the introduction of a new constitution and permanent legislation on the special status of certain areas in Donetsk and Luhansk.
10. Withdrawal of all foreign armed groups, weapons, and mercenaries from Ukrainian territory and disarmament of all illegal groups.
11. Constitutional reform, including on decentralization, and permanent legislation on the special status of certain areas in Donetsk and Luhansk, in agreement with representatives of nongovernment-controlled areas.
12. Local elections to be held in certain areas in Donetsk and Luhansk, in agreement with representatives of those districts and in accordance with OSCE standards.
13. Intensification of the work of the Trilateral Contact Group, including through working groups on implementation of the Minsk agreements.

⁶⁰ “Protocol on the Outcome of Consultations of the Trilateral Contact Group on Joint Steps Aimed at the Implementation of the Peace Plan of the President of Ukraine, P. Poroshenko, and the Initiatives of the President of the Russian Federation, V. Putin,” September 5, 2014, at https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_140905_MinskCeasfire_en.pdf; and “Memorandum on the Implementation of the Provisions of the Protocol [...],” September 19, 2014, at https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_140919_MemolImplementationPeacePlan_en.pdf.

⁶¹ “Package of Measures for the Implementation of the Minsk Agreements,” February 12, 2015, at https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_150212_MinskAgreement_en.pdf.

⁶² See, for example, “What Are the Minsk Agreements?” *Economist*, September 14, 2016; U.S. Department of State, “U.S. Special Representative for Ukraine Negotiations Kurt Volker,” November 3, 2017; Tim B. Peters and Anastasia Shapkina, *The Grand Stalemate of the Minsk Agreements*, Konrad Adenauer Stiftung, February 2019; and Anna Hess

The Minsk agreements have been endorsed by the U.N. Security Council, which includes Russia as a permanent member; U.N. Security Council Resolution 2202 (2015) endorses and calls on all parties to fully implement the package of measures.⁶³ In June 2018, a Security Council “presidential statement” condemned ongoing cease-fire violations and called for the implementation of disengagement commitments and withdrawal of heavy weapons. It also urged “[the] parties to recommit to the peace process [and] achieve immediate progress in the implementation of the Minsk agreements.”⁶⁴ The statement underlined the Security Council’s “full support for the sovereignty, independence, and territorial integrity of Ukraine.”

The United States supports the efforts of the Trilateral Contact Group and the Normandy Four. In the last two years, U.S. policy toward the Ukraine conflict has been directed mainly through the office of the U.S. Special Representative for Ukraine Negotiations. In July 2017, the U.S. Department of State established this position to advance “U.S. efforts to achieve the objectives set out in the Minsk agreements” and “to hold regular meetings with Ukraine and the other members of the Normandy Format.”⁶⁵

Implementation Status of the Minsk-2 Agreement

Of Minsk-2’s 13 measures, only one (measure 13) arguably has been fully implemented: the establishment of working groups within the Trilateral Contact Group to address the implementation of various aspects of the Minsk agreements.

Many of Minsk-2’s most significant measures largely remain unfulfilled to date:

- No lasting cease-fire exists, and heavy weapons have not been fully withdrawn from the defined security zones (measures 1 and 2).⁶⁶ Although cease-fires are declared periodically (including, most recently, a “harvest cease-fire” from July 21, 2019), such cease-fires are temporary, often violated, and eventually break down.⁶⁷ At the end of June 2019, the parties implemented a related step: the withdrawal of armed forces and hardware within a small “disengagement area” near the town of Stanytsia Luhanska.⁶⁸ If this withdrawal holds, observers believe it will improve security for civilian transit in the Luhansk region, including by allowing for repairs to the Stanytsia Luhanska bridge.⁶⁹

Sargsyan, *Unpacking Complexity in the Ukraine Peace Process*, Center for Security Studies (ETH Zurich), April 2019.

⁶³ U.N. Security Council Resolution 2202 (2015), at [https://undocs.org/S/RES/2202\(2015\)](https://undocs.org/S/RES/2202(2015)).

⁶⁴ U.N. Security Council, “Condemning Continuous Ceasefire Violations in Eastern Ukraine, Security Council Presidential Statement Expresses Grave Concern About Severe Impact on Civilians,” SC/13367, June 6, 2018.

⁶⁵ U.S. Department of State, “Secretary Tillerson Appoints Ambassador Kurt Volker Special Representative for Ukraine Negotiations,” July 7, 2017.

⁶⁶ See, for example, remarks by Ertuğrul Apakan, Chief Monitor, OSCE Special Monitoring Mission to Ukraine, in the U.N. Security Council, February 12, 2019 (S/PV.8461, 4-5/28), at <https://undocs.org/en/S/PV.8461>.

⁶⁷ On August 7, 2019, Ukrainian Armed Forces Commander and Chief of Staff Ruslan Khomchak said that six Ukrainian servicemen had been killed since the start of the cease-fire less than three weeks before. Ukrinform, “Six Ukrainian Soldiers Killed, Nine Wounded During ‘Harvest Ceasefire,’” August 7, 2019.

⁶⁸ Disengagement areas are provided for not in the Minsk-2 measures but in a September 2016 Framework Decision on Disengagement of Forces and Hardware. See OSCE, “Special Representative of the OSCE Chairperson-in-Office in Ukraine Sajdik Welcomes Framework Decision on Disengagement of Forces and Hardware,” September 21, 2016.

⁶⁹ Hromadske International, “Ukraine’s War-Torn Stanytsia Luhanska Sees Historic Separation of Forces,” June 27, 2019; UNIAN Information Agency, “OSCE Officially Confirms Disengagement Near Stanytsia Luhanska in Donbas,” June 30, 2019.

- Foreign (namely Russian) armed formations, weapons, and mercenaries reportedly still are present in the region (measure 10).
- Although Ukraine has adopted and twice extended a law providing for a special form of local government in certain areas of Donetsk and Luhansk and amnesty for participants in the conflict, these provisions are to enter into force only after local elections are held and illegal armed formations withdraw from the country. The law is neither permanent nor accompanied by constitutional amendments on decentralization (that are to reference “specificities” of certain areas of Donetsk and Lugansk). The law is scheduled to expire on December 31, 2019 (measures 5, 11).⁷⁰
- Although local authorities in the nongovernment-controlled areas claim to have held elections in November 2018, neither Ukraine nor international stakeholders recognize these elections as in accordance with Ukrainian law, international standards, or the Minsk agreements (measure 12).
- In the absence of permanent legislation on the special status of the nongovernment-controlled areas, constitutional reform, and legitimate local elections, Russia has not returned full control of Ukraine’s state border to the government of Ukraine (measure 9).
- Although donors and nongovernmental organizations direct some humanitarian assistance to nongovernment-controlled areas, aid organizations’ access to these areas is not ensured and aid delivery and distribution does not operate on the basis of an agreed-upon international mechanism.⁷¹ According to the International Crisis Group, “the overwhelming bulk of aid to rebel-held areas comes from the Russian government ... but independent aid workers say it’s unclear how many of those goods actually reach the people in need” (measure 7).⁷²

Some of Minsk-2’s other measures have been at least partially fulfilled:

- An international monitoring mission in the nongovernment-controlled areas monitors cease-fire violations and the presence of heavy weaponry within defined security zones (measure 3) (see “OSCE Special Monitoring Mission for Ukraine” text box, below).
- Ukraine’s law on interim local self-government appears to address what Minsk-2 refers to as the “modalities” of local elections and the future “special regime” that is to govern certain areas of Donetsk and Luhansk. In addition, Ukraine’s legislature passed a resolution on March 17, 2015, listing the cities, towns, and other settlements to which the law on local self-government applies.⁷³ The extent to which these issues have been the subject of a “dialogue” with representatives of the nongovernment-controlled areas might be open to interpretation (measure 4).
- Prisoner exchanges occasionally have occurred, although as of September 2019 Ukrainian officials state that more than 110 Ukrainians remain illegally detained

⁷⁰ Law of Ukraine No. 1680-VII, as amended, at <https://zakon.rada.gov.ua/laws/show/en/1680-18>.

⁷¹ See, for example, Ukrinform, “U.N. Sends over 180 Tonnes of Humanitarian Aid to ORDLO,” July 26, 2019.

⁷² Anna Arutunyan, “Getting Aid to Separatist-Held Ukraine,” International Crisis Group, May 13, 2019.

⁷³ Resolution of the Verkhovna Rada of Ukraine No. 252-VIII, at <https://zakon.rada.gov.ua/laws/show/252-viii>.

in Russia and occupied Crimea and more than 225 remain illegally detained in nongovernment-controlled regions in eastern Ukraine (measure 6).⁷⁴

A major prisoner exchange took place in December 2017, when the Ukrainian government and de facto authorities in the nongovernment-controlled areas arranged a prisoner swap in which over 230 prisoners held by the government were exchanged for over 70 prisoners in the nongovernment-controlled areas.⁷⁵

Another major prisoner exchange took place in September 2019, when Russia and Ukraine each freed 35 individuals. Among those Russia freed were some of Moscow's most prominent Ukrainian political prisoners and prisoners of war, including 24 sailors Russia illegally detained in November 2018; Crimea-based filmmaker Oleh Sentsov; and 21-year-old Pavlo Hryb, who was forcibly removed from Belarus in 2017. Prisoners Ukraine freed included Kirill Vyshinsky, a Ukrainian-Russian journalist charged with treason; Volodymyr Tsemakh, a person of interest in the downing of MH17 whom Dutch prosecutors interviewed before his release; separatist and volunteer fighters; and suspected spies.⁷⁶

- Although some "modalities" for resuming socioeconomic ties with the nongovernment-controlled areas appear to have been defined, "full" social and economic linkages with nongovernment-controlled areas have not been restored (measure 8). Residents may receive pensions and other social benefits, and they may conduct individual trade and transit across the contact line. As of August 2019, however, transit remains restricted to official crossing points that continue to be in need of improvements, cargo traffic remains prohibited, and Ukraine's banking system does not operate in the nongovernment-controlled areas.⁷⁷

OSCE Special Monitoring Mission for Ukraine

The OSCE's Special Monitoring Mission (SMM) for Ukraine is an unarmed civilian monitoring mission that was established in 2014 after Russia's occupation of Crimea but prior to the outbreak of hostilities in eastern Ukraine (and, hence, prior to the September 2014 signing of the Minsk Protocol). The SMM is deployed throughout Ukraine but focuses especially on the nongovernment-controlled areas in Donetsk and Luhansk. As of July 2019, the SMM includes 760 international monitors, including 57 from the United States, the SMM's largest contributor. The SMM issues daily and spot monitoring reports on the security situation and facilitates the delivery of humanitarian aid. In addition to the SMM, the OSCE operates an Observer Mission at the Russian Checkpoints Gukovo and Donetsk (both within Russia) to monitor border crossings to and from eastern Ukraine.

Sources: OSCE Special Monitoring Mission to Ukraine, "Status Report as of July 15, 2019," July 19, 2019, at <https://www.osce.org/special-monitoring-mission-to-ukraine/426140>; OSCE Observer Mission webpage at <https://www.osce.org/observer-mission-at-russian-checkpoints-gukovo-and-donetsk>.

⁷⁴ Iryna Matviyishyn, "What Price Did Ukraine Pay for Prisoner Exchange?" *UkraineAlert*, Atlantic Council, September 8, 2019.

⁷⁵ Other prisoners also were released in December 2017 but reportedly chose not to be transferred across the conflict lines. Inna Varenysia, "Ukrainian Authorities and Separatist Rebels Swap Prisoners," Associated Press, December 27, 2017.

⁷⁶ Oksana Grytsenko, "What We Know About 35 Ukrainian Political Prisoners Released from Russia," *Kyiv Post*, September 7, 2019; Hromadske International, "The Great Exchange: Whom Did Ukraine Send to Russia?" September 7, 2019.

⁷⁷ See, for example, Olga Malchevska, "The Killer Queues of Ukraine," BBC World Service, May 28, 2019; UNHCR, "UNHCR Voices Needs for Improvements at Stanytsia Luhanska Entry-Exit Crossing Point to the President of Ukraine and the President of the EU Council," press release, July 8, 2019.

With regard to the Minsk agreements' implementation, the Ukrainian and Russian governments emphasize what they consider to be the other party's failures in fulfilling key responsibilities. Ukrainian officials prioritize an end to the armed conflict and Russian occupation, both on principle and as a necessary condition for establishing a secure environment to hold democratic local elections. They call on Russia to enforce a cease-fire among Russian-controlled forces, withdraw heavy weapons, withdraw its official and unofficial military forces, and create an environment that allows local elections to be held in accordance with Ukrainian law and international standards, leading to restoration of Ukraine's control over its state border.⁷⁸ Under ex-President Poroshenko, the Ukrainian government also called for the establishment of an international peacekeeping mission throughout the nongovernment-controlled areas that would help enforce a cease-fire.

The Russian government, for its part, claims the Ukrainian government is as responsible as the de facto authorities in the nongovernment-controlled areas for cease-fire violations and the failure to withdraw heavy weapons (for which Moscow disavows responsibility). Russia also calls on Ukraine, irrespective of the security environment, to fulfill its political and economic obligations, including the enactment of a permanent and immediate grant of special status to the nongovernment-controlled areas and related constitutional reforms, restoration of economic links, and an amnesty for all conflict participants.⁷⁹

Russian officials also have criticized the Ukrainian government's earlier call to establish an international peacekeeping mission throughout the nongovernment-controlled areas as something not envisioned by the Minsk agreements. However, Russian President Putin also has proposed the establishment of an international peacekeeping force in the region, albeit only along the line of contact to protect OSCE monitors and help separate the conflicting sides.⁸⁰

Many observers have questioned Russia's commitment to implementing the Minsk agreements, despite the U.N. Security Council's endorsement and Russia's official expressions of support. Unlike Russia's policy toward Crimea, Moscow formally recognizes the nongovernment-controlled areas in eastern Ukraine as Ukrainian territory. Moscow denies its own leading political and military role in the conflict, however, and disavows responsibility for implementing the Minsk agreements or for the actions of local authorities and armed forces. Ukraine, the EU, and the United States consider the holding of so-called DPR and LPR elections in November 2018 to be in violation of the Minsk agreements (Russia says these elections fall outside the agreements' scope).⁸¹ Ukraine, the EU, and the United States also consider Russia's new policy

⁷⁸ See, for example, United Nations, "Statement of the Ministry of Foreign Affairs of Ukraine on the Fifth Anniversary of the Beginning of Russian Armed Aggression Against Ukraine," February 20, 2019, at <https://undocs.org/pdf?symbol=en/S/2019/180>.

⁷⁹ Moscow claims that Ukraine's law on interim self-government postpones the grant of special status in a way that is contrary to Minsk-2, as the law first requires the withdrawal of illegal armed formations and the holding of local elections. Minsk-2 appears to call for Ukraine to implement constitutional decentralization reforms before local elections are to be held (it makes no reference to the timing of the withdrawal of illegal armed formations). See, for example, United Nations, "Brief Overview of Actions by the Kiev Authorities That Undermine the Prospects of a Peaceful Settlement in Ukraine," February 19, 2019, at <https://undocs.org/pdf?symbol=en/S/2019/163>.

⁸⁰ Tony Wesolowsky, "Explainer: Does Putin's Peacekeeper Proposal for Ukraine Have Any Merit?" RFE/RL, September 6, 2017.

⁸¹ See, for example, European Council, "Declaration by the High Representative on Behalf of the EU on the 'Elections' Planned in the So-Called 'Luhansk People's Republic' and 'Donetsk People's Republic' for 11 November 2018," November 10, 2018; and U.S. Department of State, "Condemning Sham 'Elections' in Russia-Controlled Eastern Ukraine," November 12, 2018.

of facilitating citizenship for residents of Donetsk and Luhansk to be contrary to “the spirit and the objectives” of the Minsk agreements.⁸²

Some observers have questioned whether Ukraine is committed to the Minsk agreements. In general, Ukrainian officials view the agreements through a wide lens: the need to roll back Russian aggression throughout Ukraine, including Crimea, and avoid any legitimization of its effects. In February 2018, then-President Poroshenko signed a law on “ensuring state sovereignty” in “temporarily occupied territories” that designates Russia as an aggressor state and does not refer to the Minsk agreements.⁸³ For his part, President Zelensky has said that Ukraine is “prepared to do everything required by the Minsk agreements [and] to follow all the steps needed to implement the agreements in order to finally achieve peace.”⁸⁴ In July 2019, Zelensky appeared to propose a new format for peace talks that would expand the Normandy Format to include the United States and the UK, both signatories (together with Russia and Ukraine) of the 1994 Budapest Memorandum that offered security assurances to Ukraine.⁸⁵

Sea of Azov and Kerch Strait

On November 25, 2018, Russian coast guard vessels in the Black Sea forcibly prevented two small Ukrainian artillery boats and a tugboat from passing through the Kerch Strait, the waterway connecting the Black Sea to the Sea of Azov (see **Figure 2**).⁸⁶ Russian authorities detained the boats and their crew and took them to the town of Kerch, in Crimea. The sailors were arrested and placed in pretrial detention on charges of illegally crossing what Russia refers to as its state border (i.e., territorial waters around occupied Crimea). Previously, in September 2018, a Ukrainian command ship and tugboat transited the Kerch Strait without incident, escorted by Russian coast guard vessels (other ships have arrived over land).⁸⁷

Ukraine and its international partners (including the EU and the United States) considered the November 2018 incident to be a major violation of international law and an escalation in Russia’s

⁸² European Council, “European Council Conclusions on the MFF, Climate Change, Disinformation and Hybrid Threats, External Relations, Enlargement and the European Semester, 20 June 2019,” June 20, 2019. Also see U.S. Department of State, “Russia’s Decision to Grant Expedited Citizenship to Residents of Russia-Controlled Eastern Ukraine,” April 24, 2019; U.N. News, “Security Council: U.N. Calls for ‘Spirit and Letter’ of Ukraine Agreements to Be Upheld, as Russia Issues Simplified Citizenship Decree,” April 25, 2019, and RFE/RL, “Volker: Moscow’s Passport Move For Donbas Residents Diverges from Peace Plan,” July 19, 2019.

⁸³ Law of Ukraine No. 2268-VIII, at <https://zakon.rada.gov.ua/laws/show/2268-19>.

⁸⁴ Nicholas Connolly, “Ukraine Ready for Peace, President Volodymyr Zelenskyy Tells DW,” DW (Germany), July 5, 2019.

⁸⁵ Zelensky did not state that his proposal was linked to the status of the United States and the United Kingdom (UK) as signatories of the Budapest Memorandum. Former Prime Minister and presidential candidate Yulia Tymoshenko has called for international discussions to be held within the framework of the Budapest Memorandum, which provides for consultations among signatories “in the event a situation arises that raises a question concerning these commitments.” RFE/RL, “Exclusive: Tymoshenko Defends Decision Not to Fight over Crimea, Attacks Minsk Process,” March 18, 2019; UNIAN Information Agency, “Zelensky Offers Putin Talks Involving Trump,” July 8, 2019.

⁸⁶ After ramming the tugboat and blockading all three boats for hours, the Russian vessels reportedly fired on them as they sought to leave the area, injuring six sailors. Dmitry Gorenburg and Michael Kofman, “Russia and Ukraine Had a Short Naval Battle. Here’s What You Need to Know,” *Washington Post*, November 28, 2018; and Andrzej Wilk, “The Russian Attack on Ukrainian Ships in the Black Sea: The Military Aspects,” Centre for Eastern Studies (Warsaw), November 28, 2018.

⁸⁷ Ridvan Bari Urcosta, “Ukraine’s Strategic Aims in the Sea of Azov,” *Eurasia Daily Monitor*, Jamestown Foundation, October 17, 2018; Yuri Zoria, “Ukrainian Warships Break Russian De-Facto Blockade in Azov Sea to Create Naval Base,” Euromaidan Press, September 25, 2018.

efforts to control maritime access to eastern Ukraine.⁸⁸ In May 2018, President Putin opened a new 12-mile-long bridge over the Kerch Strait linking Russia to occupied Crimea. The bridge was designed to accommodate an existing shipping lane, but it imposed new limits on the size of ships that transit the strait. Observers note that since the bridge's opening, Russia has stepped up its interference with commercial traffic traveling to and from Ukrainian ports in Mariupol and Berdyansk, which export steel, grain, and coal.⁸⁹ Russia also has bolstered its maritime forces in the Sea of Azov.⁹⁰

The U.N. High Commissioner for Human Rights considered the 24 Ukrainian sailors to be prisoners of war.⁹¹ On May 25, 2019, the U.N.-established International Tribunal for the Law of the Sea issued an order requiring Russia to release the sailors and ships.⁹² Although the Russian government said it did not recognize the tribunal's authority in this matter, it released the sailors as part of a prisoner exchange in September 2019.

Figure 2. Southern Ukraine and the Sea of Azov



Sources: Graphic produced by CRS. Map information generated using data from the Department of State, Esri, and DeLorme.

⁸⁸ A 2003 bilateral agreement between Ukraine and Russia affirms freedom of navigation through the strait for both countries. Some argue that customary international law as reflected in the United Nations Charter on the Law of the Sea, or UNCLOS, also does that. See http://www.fao.org/fishery/shared/faolextrns.jsp?xp_FAOLEX=LEX-FAOC045795, and <https://www.iucn.org/theme/marine-and-polar/our-work/international-ocean-governance/unclos>.

⁸⁹ Russian authorities reportedly have imposed delays at the bridge and conducted inspections of vessels. They also have established notification and transit procedures for ships seeking to pass through the strait; during the November 25, 2018, incident, Russian authorities invoked what they considered noncompliance with these procedures as partial justification for denying passage to the Ukrainian vessels. Oksana Grytsenko and Kostyantyn Chernichkin, "Dangerous Waters: As Russia Monopolizes Azov Sea, Mariupol Feels Heightened Danger," *Kyiv Post*, August 3, 2018.

⁹⁰ Joshua Kucera, "Russia Transfers Five Warships Out of Caspian Sea," *Eurasianet*, June 25, 2018.

⁹¹ OHCHR, *Report on the Human Rights Situation in Ukraine: 16 November 2018 to 15 February 2019*, p. 3.

⁹² International Tribunal for the Law of the Sea, "Tribunal Prescribes Provisional Measures Ordering the Russian Federation to Release Three Ukrainian Naval Vessels and Their 24 Servicemen," press release, May 25, 2019.

Ukraine's Church Becomes Independent of Moscow

The Kerch Strait incident emerged against the backdrop of an increase in tensions between Russia and Ukraine over the issue of the Ukrainian Orthodox Church's formal independence (i.e., autocephaly) from the Russian Orthodox Church (ROC). In Ukraine, Orthodox churchgoers traditionally have been divided mainly between parishes belonging to a self-declared Ukrainian Orthodox Church-Kyiv Patriarchate (UOC-KP) and those belonging to the ROC-subordinated Ukrainian Orthodox Church-Moscow Patriarchate (UOC-MP). In January 2019, the Ecumenical Patriarch recognized an autocephalous Orthodox Church of Ukraine (OCU), which incorporated both the Kyiv Patriarchate and a smaller self-declared Ukrainian Autocephalous Orthodox Church.⁹³

Observers consider the OCU's development to be a long-term process. As of July 2019, less than 5% of the Moscow-subordinated parishes in Ukraine had formally transferred their allegiance to the OCU.⁹⁴ In recent months, the pace of transferring parishes has slowed. Observers attribute this shift to a combination of ROC opposition and parish reluctance, as well as the OCU's internal strife: three months after the establishment of the OCU, the UOC-KP's former spiritual leader, Patriarch Emeritus Filaret, attempted to reestablish the UOC-KP under his authority (Filaret had agreed not to serve as the OCU's Metropolitan).⁹⁵ Other Orthodox Churches have yet to recognize the OCU.

Russia strongly opposes Ukrainian autocephaly and claims that it threatens the religious freedom and safety of ROC parishioners.⁹⁶ Ukrainian officials and some observers have cautioned that Russia could use such allegations to justify new interventions.⁹⁷ U.S. Secretary of State Michael Pompeo has called the granting of autocephaly "a historic achievement" and encouraged "government and Church officials to promote tolerance and respect for the freedom of members of all religious affiliations to worship as they choose."⁹⁸

Economy

As part of the Soviet Union, Ukraine was responsible for a large share of the country's agricultural and industrial production. The Soviet Union's collapse led to a severe economic contraction: Ukraine's gross domestic product (GDP) reportedly dropped by over 60% from 1989

⁹³ Ecumenical Patriarchate, "Patriarchal and Synodal Tomos for the Bestowal of the Ecclesiastical Status of Autocephaly to the Orthodox Church in Ukraine," January 14, 2019, at <https://www.patriarchate.org/-/patriarchikos-kai-synodikos-tomos-choregeseos-autokephalou-ekklesiastikou-kathestotos-eis-ten-en-oukraniai-orthodoxon-ekklesian>.

⁹⁴ Bohdan Ben, "New Independent Church and Moscow Patriarchate Vie for Parishes in Ukraine," Euromaidan Press, January 30, 2019; UNIAN Information Agency, "Over 500 Moscow Patriarchate Parishes in Ukraine Join New Orthodox Church – Leader," July 28, 2019.

⁹⁵ Oksana Grytsenko, "Power Struggle Shakes New Ukraine's Orthodox Church," *Kyiv Post*, June 26, 2019; Alya Shandra, "Honeymoon Over for Orthodox Church of Ukraine as Its 'Creator' Goes into Schism," Euromaidan Press, July 6, 2019.

⁹⁶ Gabby Deutch, "Ukraine's Spiritual Split from Russia Could Trigger a Global Schism," *Atlantic*, October 11, 2018; Robert Person and Aaron Brantly, "The Ukrainian Orthodox Church Is Trying to Withdraw from Moscow's Control. The Kremlin Is Not Happy," *Washington Post*, October 31, 2018; Christine Borovkova and Andreas Umland, "How Russia's Orthodox Church Rejects Ukrainian Autocephaly," *Vox Ukraine*, August 6, 2019.

⁹⁷ Mykola Vorobiov, "Kremlin's Destabilization Strategy Ahead of Ukrainian Presidential Elections," *Eurasia Daily Monitor*, Jamestown Foundation, March 11, 2019.

⁹⁸ U.S. Department of State, "Declaration of Ukrainian Autocephaly," January 10, 2019.

to 1999.⁹⁹ Ukraine's economy recovered for much of the 2000s but was hit hard by the 2008-2009 global recession, with GDP declining by almost 15% in 2009. After returning to growth in 2010-2011, the economy stagnated in 2012-2013 and then again declined after Russia's 2014 invasion, with GDP falling by 7% in 2014 and 10% in 2015.¹⁰⁰

In recent years, Ukraine's economy has shown signs of stabilization, due in part to international assistance, including about \$10 billion in loans from the IMF.¹⁰¹ GDP growth was about 2.4% a year in 2016-2017 and 3.3% in 2018. The IMF forecasts annual growth of about 2.7%-3.1% from 2019 to 2021.

Poverty has declined in recent years, although it remains higher than before Russia's 2014 invasion. The World Bank estimates that the percentage of Ukrainians living in moderate poverty was 16% in 2018, down from a height of 27% in 2016 (but up from 14% in 2013).¹⁰² The official unemployment rate for 2018 was about 9%. About 20% of Ukrainian laborers work in agriculture, a sector of the economy that accounts for about 10% of GDP.¹⁰³

Ukraine's economy depends in part on remittances from labor migration. From 2015 to 2018, remittances made up about 10% of Ukraine's GDP. In 2017, Russia was estimated to be the source of more than 50% of Ukrainian remittances, followed by the United States (8%) and Germany (5%).¹⁰⁴

Trade

In 2013, Russia, Ukraine's largest trading partner, began to impose restrictions on trade in response to Ukraine's plans to conclude a free trade agreement with the EU. Further restrictions followed in 2014-2015, and Russia suspended its own free trade agreement with Ukraine in 2016. Ukraine also introduced trade restrictions against Russia. Excluding exports from occupied Crimea and nongovernment-controlled areas in eastern Ukraine, the total value of Ukraine's merchandise exports declined by 43% from 2013 to 2016, with the value of merchandise exports to Russia declining by 76%.¹⁰⁵

⁹⁹ Anders Aslund, *Ukraine: What Went Wrong and How to Fix It* (Washington, DC: PIIE Press, 2015), p. 5.

¹⁰⁰ IMF World Economic Outlook Database, April 2019, at <https://www.imf.org/external/pubs/ft/weo/2019/01/weodata/index.aspx>.

¹⁰¹ In March 2015, the IMF approved a four-year, \$17.5 billion loan package to Ukraine under its Extended Fund Facility (EFF). The IMF tied disbursement of funds to implementation of specific reforms and disbursed around half of the funds in the loan package. In December 2018, the IMF replaced the expiring EFF program with a 14-month Stand-By Arrangement, worth around \$3.9 billion, and initially disbursed around \$1.4 billion. Natalia Zinets, "Ukraine Goes Back to the Future as IMF Programme Stutters," Reuters, August 1, 2018; IMF, "IMF Executive Board Approves 14-month US\$3.9 Billion Stand-By Arrangement for Ukraine, US\$1.4 Billion for Immediate Disbursement," press release, December 18, 2018.

¹⁰² World Bank, *Ukraine Economic Update*, April 10, 2018, at <https://www.worldbank.org/en/news/press-release/2019/05/23/ukraine-economic-update-spring-2019>; World Bank, *Ukraine Economic Update*, May 23, 2019, at <https://www.worldbank.org/en/news/press-release/2019/05/23/ukraine-economic-update-spring-2019>.

¹⁰³ State Statistics Service of Ukraine, at <http://ukrstat.gov.ua/>.

¹⁰⁴ World Bank, *Migration and Remittances Data*, at <http://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>.

¹⁰⁵ The total value of Ukraine's merchandise imports declined by 51% from 2013 to 2015, with the value of merchandise imports from Russia declining by 78% from 2013 to 2016. Trade data are from the State Customs Committee of Ukraine, as presented by Global Trade Atlas.

In 2017, Ukraine's overall merchandise trade started to recover. Trade with the EU, as a whole Ukraine's largest trading partner, made up about 42% of total trade in 2018.¹⁰⁶ Individually, Ukraine's four largest merchandise trading partners were Russia (\$11.8 billion, or 11% of Ukraine's trade), China (\$9.8 billion, 9%), Germany (\$8.2 billion, 8%), and Poland (\$6.8 billion, 7%). The top three destinations for Ukraine's merchandise exports in 2018 were Russia (8%), Poland (7%), and Italy (6%), and its top three sources of imports were Russia (14%), China (13%), and Germany (10%). Ukraine's main exports were iron and steel, cereals, fats and oils, ores, and electrical machinery.

After severe declines in foreign direct investment (FDI) in 2013-2014, FDI inflows have partially recovered since 2015. According to official statistics, total FDI declined from \$53.7 billion at the start of 2014 to \$31.2 billion at the start of 2017 (and was \$32.3 billion at the start of 2019). FDI inflows during 2018 amounted to \$2.9 billion, mainly in finance (42%), wholesale and retail trade (21%), real estate (14%), and industry (11%). About two-thirds of FDI in 2018 came from the Netherlands (33%), Russia (17%), and Cyprus (17%).¹⁰⁷

Energy

Ukraine has significant energy resources, but the sector traditionally has performed below its potential in an environment of low domestic energy prices, subsidies, and high consumption.¹⁰⁸ After Russia's invasion, Ukraine's government began to reform the energy sector, including raising tariffs for households (while retaining subsidies for lower-income households). Observers commended Ukraine for initial energy reforms, although concerns arose among stakeholders that energy reforms slowed down in 2017.¹⁰⁹ In 2018, observers noted some renewed progress, including another rise in gas prices and a commitment to the unbundling of Ukraine's state-owned energy company, Naftogaz, into separate production and transmission companies by the end of 2019. Preparations for the unbundling of Naftogaz continued through 2019, and Ukraine's new government has confirmed that the process will proceed.¹¹⁰

Ukraine has traditionally depended on Russia for its natural gas supplies. Many observers argue that Russia has used price hikes, debt repayments, and energy cutoffs as leverage in various disputes with Ukrainian governments.¹¹¹ Since 2015, however, Ukraine has reduced its dependence on Russian gas imports. In 2013, 92% of Ukraine's natural gas imports came directly from Russia (51% of Ukraine's total gas consumption). By 2015, 37% of Ukraine's natural gas imports came from Russia (18% of consumption), and in 2016, Ukraine halted Russian gas

¹⁰⁶ European Commission, "European Union, Trade in Goods with Ukraine," June 3, 2019, at https://webgate.ec.europa.eu/isdb_results/factsheets/country/details_ukraine_en.pdf.

¹⁰⁷ State Statistics Service of Ukraine.

¹⁰⁸ See, for example, Anders Aslund, *Securing Ukraine's Energy Sector*, Atlantic Council, April 2016.

¹⁰⁹ Four of five members of the supervisory board of Ukraine's state-owned energy company, Naftogaz, resigned in 2017, citing delays in further reform and government interference in Naftogaz operations. Reuters, "Board of Ukraine's Naftogaz Resigns, Cites Reform Blockage by Govt," September 19, 2017.

¹¹⁰ Naftogaz, "Naftogaz Reports on Progress of Unbundling," July 4, 2019; Interfax-Ukraine, "Honcharuk – Issue of Naftogaz's Unbundling to Be Settled in Coming Weeks," August 30, 2019.

¹¹¹ In particular, after Ukraine's 2004-2005 Orange Revolution, Russia clashed with Ukraine on several issues, including natural gas supply volumes, prices, and debt repayment. After gas contract negotiations failed, Russia twice briefly reduced and, in 2009, cut gas exports to Ukraine, leading to temporary dips in supplies to some EU countries. For more, see Jonathan Stern, *The Russian-Ukrainian Gas Crisis of January 2006*, Oxford Institute for Energy Studies, January 16, 2006, and Simon Pirani, Jonathan Stern, and Katja Yafimava, *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment*, Oxford Institute for Energy Studies, February 2009.

imports entirely.¹¹² In addition to reducing its gas consumption, Ukraine managed this reduction in Russian imports by importing gas from Slovakia, as well as from Poland and Hungary (all of which import gas from Russia).¹¹³

In recent years, Russia has sought to reduce the amount of its gas that flows through Ukraine to Europe by working with various countries to build pipelines that bypass Ukraine. Before the 2011 opening of the first Nord Stream gas pipeline connecting Russia directly to Germany via the Baltic Sea, most of Russia's natural gas exports to Europe transited Ukraine. Currently, about 40%-50% of these exports transit Ukraine.¹¹⁴ According to Naftogaz, the company's operating profit for gas transit was over \$900 million in 2016 and \$535 million in 2017.¹¹⁵ The current gas transit contract between Ukraine and Russia expires at the end of 2019.

In February 2018, a Swedish arbitration court issued a final ruling on several disputes between Naftogaz and Russia's state-owned gas company Gazprom about their earlier gas trade. Combined, the court's rulings required Gazprom to pay Naftogaz over \$2.5 billion and required Naftogaz to buy 5 billion cubic meters (bcm) per year of Russian gas in 2018-2019 (about 10% of its previous contractual commitment). Gazprom said it would not supply gas to Ukraine and appealed the rulings.¹¹⁶

Russia is constructing a new Baltic pipeline, Nord Stream 2, with the financial support of several European energy companies.¹¹⁷ If the pipeline enters into operation, it is expected to further reduce Russian gas transit through Ukraine. This development would not necessarily increase Ukraine's vulnerability to energy supply cutoffs since, as noted above, Ukraine stopped importing natural gas directly from Russia in 2016; it could, however, increase Ukraine's strategic vulnerability, as Russia's dependence on Ukraine for gas transit would no longer be a potential constraining factor in its policies toward Ukraine.

In an April 2018 meeting with Russian President Putin, German Chancellor Angela Merkel addressed a chief concern of some critics by stating that Nord Stream 2 could not proceed without guarantees that Gazprom will continue to export gas through Ukraine. Merkel did not specify in what form such guarantees could be made. A 2019 modification to EU gas regulations, extending key principles such as third-party access and ownership unbundling to pipelines located in the offshore territorial waters of EU members, is likely to affect the ownership structure of Nord

¹¹² Data come from Naftogaz annual reports for 2014-2016.

¹¹³ Natural gas consumption in Ukraine was already in decline since 2012-2013 (by around 8% a year), and it declined even more markedly in 2014 and 2015 (by 16% and 20%, respectively) due to a decline in industrial production, the halting of gas supplies to the nongovernment-controlled areas of eastern Ukraine, and higher tariffs. In 2016, the annual decline in consumption slowed to 2%. Naftogaz of Ukraine, *Annual Report 2016*, p. 75, at http://www.naftogaz.com/files/Zvity/Annual_report_eng_170608.pdf.

¹¹⁴ Calculated on the basis of International Energy Agency, "Facts in Brief: Ukraine, Europe, Oil & Gas," March 4, 2014; Naftogaz of Ukraine, *Annual Report 2016*, p. 71; and Gazpromexport, "Gas Supplies to Europe."

¹¹⁵ In October 2017, then-U.S. Ambassador to Ukraine Marie Yovanovitch said that Nord Stream 2 would "cost Ukraine up to \$2.7 billion in lost revenues, or almost 3% of GDP every year." According to the Nord Stream 2 project website, these revenues include operating costs. Naftogaz, *2017 Annual Report*, p. 101; U.S. Embassy in Ukraine, "Remarks by Ambassador Yovanovitch at Opening of Naftogaz Oil and Gas Forum," October 24, 2017; Nord Stream 2 website, at www.nord-stream2.com.

¹¹⁶ Reuters, "Ukraine's Naftogaz Claims \$2.56 Billion Victory in Gazprom Legal Battle," February 28, 2018; TASS Russian News Agency, "Gazprom Appeals Against Court Decision on Gas Transit Contract with Ukraine's Naftogaz," March 30, 2018; Reuters, "Swedish Appeals Court Suspends Gazprom Vs Naftogaz Arbitration Ruling," June 14, 2018.

¹¹⁷ For more, see CRS In Focus IF11138, *Nord Stream 2: A Fait Accompli?*, by Paul Belkin et al.

Stream 2 but might not prevent its completion. Germany and France stated that the change was to be “indispensable for a fruitful discussion on the future gas transit through Ukraine.”¹¹⁸

U.S.-Ukraine Relations

U.S. relations with Ukraine are deep and multifaceted. In 1994, former National Security Adviser Zbigniew Brzezinski justified U.S. engagement with the newly independent Ukraine by arguing that a strong Ukraine not only would benefit Ukrainians but also would help prevent the rise of a new Russian empire, bolstering regional and global security. “It cannot be stressed strongly enough that without Ukraine,” Brzezinski said, “Russia ceases to be an empire, but with Ukraine suborned and then subordinated, Russia automatically becomes an empire.”¹¹⁹

Less frequently cited are Brzezinski’s 1994 assessment of Ukraine’s fragility and the ensuing policy prescriptions, which successive U.S. administrations appear to have followed:

American policymakers must face the fact that Ukraine is on the brink of disaster: the economy is in a free-fall, while Crimea is on the verge of a Russia-abetted ethnic explosion. Either crisis might be exploited to promote the breakup or the reintegration of Ukraine in a larger Moscow-dominated framework. It is urgent and essential that the United States convince the Ukrainian government—through the promise of substantial economic assistance—to adopt long-delayed and badly needed economic reforms. At the same time, American political assurances for Ukraine’s independence and territorial integrity should be forthcoming.¹²⁰

Sovereignty and Territorial Integrity

Soon after Brzezinski’s article was published, the United States provided “political assurances” to Ukraine with the signing of the 1994 Budapest Memorandum. Twenty years later, after Russia’s 2014 invasion of Ukraine, U.S. officials came to express more emphatically and frequently U.S. support for Ukraine’s sovereignty and territorial integrity within its internationally recognized borders. In recent years, Trump Administration officials have called this policy “unbending,” “unwavering,” and “ironclad.”¹²¹

U.S. support for Ukraine’s sovereignty and territorial integrity applies as much to Crimea as it does to the nongovernment-controlled areas in eastern Ukraine. In February 2018, Deputy Secretary of State John J. Sullivan said in Kyiv that “Crimea is Ukraine.... We will never accept trading one region of Ukraine for another. We will never make a deal *about* Ukraine *without* Ukraine.”¹²² In July 2018, Secretary Pompeo issued the “Crimea Declaration,” which

reaffirms as policy [the United States’] refusal to recognize the Kremlin’s claims of sovereignty over territory seized by force in contravention of international law. In concert with allies, partners, and the international community, the United States rejects Russia’s

¹¹⁸ DW, “EU Adopts French, German Compromise on Nord Stream 2 Pipeline to Russia,” February 8, 2019.

¹¹⁹ Zbigniew Brzezinski, “The Premature Partnership,” *Foreign Affairs* 73, no. 2 (March/April 1994), p. 80.

¹²⁰ See footnote 119.

¹²¹ U.S. Department of State, “Acting Secretary Sullivan’s Meeting with Ukrainian Foreign Minister Klimkin,” April 21, 2018; U.S. Department of State, “Crimea Is Ukraine,” February 27, 2019.

¹²² U.S. Department of State, “Remarks at the Ministry of Foreign Affairs’ Diplomatic Academy,” February 21, 2018.

attempted annexation of Crimea and pledges to maintain this policy until Ukraine's territorial integrity is restored.¹²³

The Crimea Declaration explicitly links U.S. policy toward Crimea to the Welles Declaration of 1940, which marked the start of a U.S. policy not to recognize the Soviet Union's annexation of the Baltic states (Estonia, Latvia, and Lithuania).¹²⁴

U.S. officials frequently call attention to Russia's human rights violations in occupied Crimea. In March 2018, the State Department stated that in Crimea "Russia has engaged in a campaign of coercion and violence, targeting anyone opposed to its attempted annexation [including] Crimean Tatars, ethnic Ukrainians, pro-Ukrainian activists, civil society members, and independent journalists."¹²⁵ In February 2019, Secretary Pompeo said "the United States remains gravely concerned by the worsening repression by Russia's occupation regime in Crimea" and "calls on Russia to release all of the Ukrainians, including members of the Crimean Tatar community, it has imprisoned in retaliation for their peaceful dissent."¹²⁶

The United States is equally supportive of Ukraine's sovereignty and territorial integrity with respect to the nongovernment-controlled areas in eastern Ukraine. The United States supports the efforts of the Normandy Four and the Trilateral Contact Group to implement the Minsk agreements, particularly through the office of the U.S. Special Representative for Ukraine Negotiations. Appointed in July 2017, Special Representative Kurt Volker holds discussions with Ukrainian and other government officials; promotes implementation of the Minsk agreements; and regularly publicizes the status of the conflict, settlement efforts, and humanitarian consequences.¹²⁷

For a time, the U.S. Special Representative established a bilateral channel with a Russian counterpart. From August 2017 to January 2018, Special Representative Volker and Russian Presidential Aide Vladislav Surkov held four meetings, at which they discussed, among other issues, the possible deployment of international peacekeepers to the nongovernment-controlled areas of eastern Ukraine.¹²⁸ Russia proposed the deployment of peacekeepers along the line of contact, while the U.S. government supported Ukraine's call for a peacekeeping mission throughout the areas as a means to establish the security conditions necessary to implement Minsk-2's package of measures.¹²⁹ After these discussions, Russia declined to hold a follow-on meeting for much of 2018. Plans for a new meeting were postponed (on the U.S. side) after Russia's use of force against Ukrainian naval vessels in November 2018 and (on the Russian side) during Ukraine's 2019 election campaign season.¹³⁰

¹²³ U.S. Department of State, "Crimea Declaration," July 25, 2018.

¹²⁴ U.S. Department of State, Office of the Historian, "Press Release Issued by the Department of State on July 23, 1940," at <https://history.state.gov/historicaldocuments/frus1940v01/d412>. Also see U.S. Department of State, "Seventy-Fifth Anniversary of the Welles Declaration," July 22, 2015, at <https://2009-2017.state.gov/secretary/remarks/2015/07/245160.htm>.

¹²⁵ U.S. Department of State, "Crimea Is Ukraine," March 14, 2018.

¹²⁶ U.S. Department of State, "Crimea Is Ukraine," February 27, 2019.

¹²⁷ Since November 2017, Special Representative Volker has conducted at least nine on-the-record press briefings, available at <https://www.state.gov/countries-areas-archive/ukraine/>.

¹²⁸ U.S. Department of State, "Latest Developments on Ukraine Negotiations," April 13, 2018.

¹²⁹ U.S. Department of State, "Detainee Exchange Between Ukraine and Russia-Led Forces," December 28, 2017; U.S. Department of State, "Latest Developments on Ukraine Negotiations," April 13, 2018.

¹³⁰ U.S. Department of State, "Press Briefing with Kurt Volker, Special Representative for Ukraine Negotiations," January 31, 2019; U.S. Department of State, "LiveAtState With Special Representative for Ukraine Negotiations Kurt

The United States has criticized Russia repeatedly for failing to fulfill its commitments under the Minsk agreements. In October 2018, the State Department stated that Ukraine's law on special status for the nongovernment-controlled areas of eastern Ukraine "demonstrates Ukraine's continued commitment to a peaceful resolution of the conflict" and "stands in sharp comparison to Russia's continued failure to fulfill its Minsk commitments."¹³¹ The State Department condemned the November 2018 "sham elections" in the nongovernment-controlled areas and called for the dismantling of the so-called DPR and LPR as "having no place within the Minsk agreements or within Ukraine's constitutional government."¹³² The State Department similarly condemned the Russian government's April 2019 decision to facilitate the granting of Russian citizenship to residents of Donetsk and Luhansk.¹³³

Maritime and Energy Security

The United States supports Ukraine against Russian efforts to tighten control over the Kerch Strait and Sea of Azov. In May 2018, several months before Russia's attack on the Ukrainian vessels, the State Department condemned Russia's construction of a bridge to Crimea, which, it said, "represents not only an attempt by Russia to solidify its unlawful seizure and its occupation of Crimea, but also impedes navigation" and "serves as a reminder of Russia's ongoing willingness to flout international law."¹³⁴ Since November 2018, Secretary Pompeo and other U.S. officials have responded to Russia's use of force by calling on Russia to free Ukraine's sailors, return the vessels, and restore freedom of passage through the Kerch Strait.¹³⁵

The United States supports Ukraine's energy security. The Countering Russian Influence in Europe and Eurasia Act of 2017 (CRIEEA; Title II of P.L. 115-44, Countering America's Adversaries Through Sanctions Act [CAATSA]; 22 U.S.C. 9501 et seq.) states that it is U.S. policy to "continue to oppose the Nord Stream 2 pipeline given its detrimental impacts on the EU's energy security, gas market development in Central and Eastern Europe, and energy reforms in Ukraine." In November 2018, Secretary Pompeo said that Nord Stream 2 "undermines Ukraine's economic and strategic security and risks further compromising the sovereignty of European nations that depend on Russian gas."¹³⁶

Volker," May 28, 2019.

¹³¹ U.S. Department of State, "Ukraine Passes Key Hurdle in Implementation of Minsk Peace Agreements," October 11, 2018.

¹³² U.S. Department of State, "Condemning Sham 'Elections' in Russia-Controlled Eastern Ukraine," November 12, 2018.

¹³³ U.S. Department of State, "Russia's Decision to Grant Expedited Citizenship to Residents of Russia-Controlled Eastern Ukraine," April 24, 2019.

¹³⁴ Subsequently, in August 2018, the State Department called on Russia "to cease its harassment of international shipping in the Sea of Azov and the Kerch Strait." U.S. Department of State, "The Opening of the Kerch Bridge in Crimea," May 15, 2018; U.S. Department of State, "Russia's Harassment of International Shipping Transiting the Kerch Strait and Sea of Azov," August 30, 2018.

¹³⁵ See, for example, U.S. Department of State, "Russia's Dangerous Escalation in the Kerch Strait," November 26, 2018. In response to Russia's actions, according to the White House, President Trump canceled a scheduled meeting with President Putin at a G-20 summit in Buenos Aires.

¹³⁶ U.S. Department of State, "Secretary of State Michael R. Pompeo and Ukrainian Foreign Minister Pavlo Klimkin Statements to the Press," November 16, 2018.

Domestic Reforms

The United States also actively promotes the continuation and consolidation of domestic reforms in Ukraine. In February 2018, Deputy Secretary Sullivan said that “Ukraine has great, untapped potential” and that the U.S. interest is served by “a stable democratic, prosperous and free Ukraine [that] will be less vulnerable to external threats and serve as a beacon to other nations facing Russian aggression.”¹³⁷ Since 2018, expressions of U.S. support for Ukrainian reforms include the following:

- In March 2017, then-Secretary of State Rex Tillerson called on the Ukrainian government “to redouble its efforts to implement challenging reforms, including uprooting corruption, increasing transparency in the judicial system, strengthening the banking sector, and pursuing corporate governance reform and the privatization of state-owned enterprises.” He said that “[i]t serves no purpose for Ukraine to fight for its body in Donbas if it loses its soul to corruption.”¹³⁸
- In February 2018, the State Department stated that “there is still more work needed to fulfill the promise of the [Maidan] and unlock Ukraine’s potential.” The statement called on “Ukraine’s leaders to redouble their efforts to implement the deep, comprehensive and timely reforms that are necessary to build the stable, democratic, prosperous, and free country Ukrainians deserve.”¹³⁹
- In March 2019, then-U.S. Ambassador to Ukraine Marie Yovanovitch stated that “Ukraine’s once-in-a-generation opportunity for change ... has not yet resulted in the anti-corruption or rule of law reforms that Ukrainians expect or deserve.”¹⁴⁰

In supporting Ukraine’s reform efforts, the U.S. government has urged the implementation of specific measures and criticized perceived backsliding. Since 2018, examples include the following:

- In February 2018, Deputy Secretary Sullivan delivered a speech in Kyiv focused, in part, on Ukraine’s anti-corruption reforms. He emphasized the importance of strengthening Ukraine’s National Anti-Corruption Bureau and the Specialized Anti-Corruption Prosecutor’s Office, as well as the need to stand up an “independent and successful” Anti-Corruption Court. He also commended Ukraine for “bold education, healthcare, and pension reforms” and “deregulating certain business sectors and increasing tax transparency.”¹⁴¹
- In June 2018, the State Department commended Ukraine for establishing an independent Anti-Corruption Court and expressed support for the IMF’s recommendation to “quickly amend the law so the proposed court will be able to hear all cases under its jurisdiction, including existing corruption cases.”¹⁴²

¹³⁷ U.S. Department of State, “Remarks at the Ministry of Foreign Affairs’ Diplomatic Academy,” February 21, 2018.

¹³⁸ U.S. Department of State, “Remarks to NATO-Ukraine Commission,” U.S. Department of State, March 31, 2017.

¹³⁹ U.S. Department of State, “Fourth Anniversary of Ukraine’s Revolution of Dignity,” February 19, 2018.

¹⁴⁰ U.S. Embassy in Ukraine, “Remarks by Ambassador Yovanovitch on the Occasion of the 5th Anniversary of the Ukraine Crisis Media Center’s Founding,” March 5, 2019.

¹⁴¹ U.S. Department of State, “Remarks at the Ministry of Foreign Affairs’ Diplomatic Academy,” February 21, 2018.

¹⁴² U.S. Department of State, “Ukraine’s Anti-Corruption Court Legislation,” June 20, 2018. Also see U.S. Department of State, “The Importance of an Independent Anti-Corruption Court for Ukraine,” June 5, 2018.

- In July 2018, the State Department “welcome[d]” Ukraine’s Law on National Security as “consistent with Western principles” and noted that it provided “a framework for increasing the Ukrainian Armed Forces’ NATO interoperability” and would “further deepen Ukraine’s Western integration.”¹⁴³
- In July 2018, the State Department was “pleased to note” the Ukrainian government’s commitment to unbundle Naftogaz and create a gas transmission system operator that would “function under anti-corruption and corporate governance standards.” The State Department stated that the unbundling of Naftogaz would represent “a positive step for Ukraine as an important transit country for gas delivered to Europe, and also for European energy security more broadly.”¹⁴⁴
- In March 2019, then-U.S. Ambassador to Ukraine Yovanovitch criticized the Constitutional Court decision removing the criminal status of “illicit enrichment,” calling it “a serious setback in the fight against corruption.” She called for a “new and better” amendment to the criminal code and the replacement of the Special Anti-Corruption Prosecutor “to ensure the integrity of anticorruption institutions.”¹⁴⁵

Foreign Aid

Since independence, Ukraine has been a leading recipient of U.S. foreign and military aid in Europe and Eurasia. In the 1990s (FY1992-FY2000), the U.S. government provided almost \$2.6 billion in total aid to Ukraine (\$287 million a year, on average).¹⁴⁶ In the 2000s (FY2001 to FY2009), total aid to Ukraine amounted to almost \$1.8 billion (\$199 million a year, on average).¹⁴⁷ In the five years before Russia’s 2014 invasion of Ukraine (FY2010 to FY2014), State Department and U.S. Agency for International Development (USAID) assistance (including foreign military financing) totaled about \$105 million a year, on average. Separate nonproliferation and threat reduction assistance administered by the Departments of Energy and Defense amounted to an average of over \$130 million a year in obligated funds.¹⁴⁸

¹⁴³ U.S. Department of State, “Ukraine’s New Law on National Security,” July 6, 2018.

¹⁴⁴ U.S. Department of State, “Progress on Ukraine Energy Reforms,” July 24, 2018.

¹⁴⁵ U.S. Embassy in Ukraine, “Remarks by Ambassador Yovanovitch on the Occasion of the 5th Anniversary of the Ukraine Crisis Media Center’s Founding,” March 5, 2019.

¹⁴⁶ Foreign aid totals from FY1992 to FY2000 include all agencies and accounts. See U.S. Department of State, *U.S. Government Assistance to and Cooperative Activities With the New Independent States of the Former Soviet Union* (submitted pursuant to Section 104 of the FREEDOM Support Act, P.L. 102-511), FY2000 Annual Report (Appendix), January 2001, at <https://2009-2017.state.gov/p/eur/rls/rpt/nisasst/index.htm>.

¹⁴⁷ CRS calculations, based on data available in the U.S. Department of State’s annual *U.S. Government Assistance to and Cooperative Activities with Eurasia* reports for FY2001 to FY2009, at <https://2009-2017.state.gov/p/eur/rls/rpt/c10250.htm>.

¹⁴⁸ Since FY2010, the U.S. government has not provided a comprehensive accounting of foreign aid to post-Soviet states similar to that included in the annual Section 104 reports issued through FY2009. From FY2010, State Department and U.S. Agency for International Development (USAID) assistance cited in the text refer to actual funds, as reported in the State Department’s annual Congressional Budget Justifications. Nonproliferation and threat reduction assistance refers to obligated funds from the Department of Energy Defense Nuclear Nonproliferation and Department of Defense Cooperative Threat Reduction (CTR) accounts, as reported by USAID. FY2014 CTR funds include some assistance provided in response to Russia’s invasion of Ukraine. USAID Foreign Aid Explorer, at <https://explorer.usaid.gov/>.

Since Russia's invasion of Ukraine, the United States has provided higher levels of annual assistance to Ukraine. Nonmilitary, non-humanitarian development aid totaled an average of \$320 million a year from FY2015 to FY2018.¹⁴⁹ In addition, the United States provided three \$1 billion loan guarantees to Ukraine from 2014 to 2016.¹⁵⁰ For FY2019, Congress appropriated \$327.8 million in nonmilitary aid. The President's FY2020 nonmilitary aid request for Ukraine was \$198.6 million, and the House Appropriations Committee recommended \$327.8 million.¹⁵¹

The United States provides separate humanitarian assistance to Ukraine in cooperation with UNHCR and other countries to assist internally displaced persons (IDPs) and other victims of conflict. As of June 2019, USAID reported a total of more than \$200 million in humanitarian assistance provided to Ukraine since 2014.¹⁵²

Military Aid

The United States provides substantial military assistance to Ukraine. In June 2019, the Department of Defense stated that the United States had provided \$1.5 billion in total security (mostly military) assistance since the Ukraine conflict began in 2014 (on average, about \$300 million a year).¹⁵³ U.S. military assistance to Ukraine has included, in part, foreign military financing (which reached \$115 million in FY2019), as well as emergency and reprogrammed aid during FY2014 and FY2015.

U.S. military assistance also includes the Department of Defense-managed Ukraine Security Assistance Initiative (P.L. 114-113, §9014), which Congress established in FY2016. The Ukraine Security Assistance Initiative provides "appropriate security assistance and intelligence support" to support Ukraine's sovereignty and territorial integrity and to help it defend against further aggression. From FY2016 to FY2019, Congress appropriated \$850 million for this initiative. FY2020 appropriations, as passed by the House (H.R. 2740), would provide another \$250 million. FY2019 funds for military assistance, which had not been obligated by the start of September 2019, were released in mid-September 2019 after some Members of Congress expressed concern about authority for this funding potentially expiring at the end of the fiscal year.¹⁵⁴

In June 2019, the Department of Defense said the Ukraine Security Assistance Initiative's FY2019 allocation of \$250 million would

provide equipment to support ongoing training programs and operational needs, including capabilities to enhance: maritime situational awareness and operations as part of ongoing U.S. efforts to increase support for Ukraine's Navy and Naval Infantry; the defensive capacity and survivability of Ukraine's Land and Special Operations Forces through the provision of sniper rifles, rocket-propelled grenade launchers, and counter-artillery radars;

¹⁴⁹ This total includes all State Department and USAID bilateral assistance, except for the Foreign Military Financing and International Military Education and Training accounts.

¹⁵⁰ The subsidy cost of the third loan guarantee (\$290 million) was included in the total amount of State Department/USAID assistance for FY2016 but is not included in the calculations in the text. On loan guarantees, see CRS In Focus IF10409, *U.S. Foreign Assistance: USAID Loan Guarantees*, and USAID, "USAID Announces U.S. Issuance of \$1 Billion Loan Guarantee to the Government of Ukraine," press release, September 30, 2016.

¹⁵¹ H.Rept. 116-78 to accompany H.R. 2839.

¹⁵² CRS calculations, based on USAID's end-fiscal year (and June 24, 2019) *Ukraine - Complex Emergency Fact Sheet* for FY2015 to FY2019, at <https://www.usaid.gov/crisis/ukraine/ukraine-disaster-response-archive>.

¹⁵³ U.S. Department of Defense (DOD), "DOD Announces \$250M to Ukraine," press release, June 18, 2019.

¹⁵⁴ Rachel Oswald, "Trump Released Hold on Ukraine Aid; Democrats Unsatisfied," *CQ*, September 13, 2019.

command and control; electronic warfare detection and secure communications; military mobility; night vision; and, military medical treatment.¹⁵⁵

The Trump Administration has provided major defensive lethal weaponry to Ukraine. During the Obama Administration, arguments against the provision of lethal assistance centered on Russia's ability and willingness to steadily escalate conflict in response.¹⁵⁶ In August 2017, then-U.S. Secretary of Defense James Mattis said in Kyiv that the Trump Administration was "actively reviewing" the question of lethal assistance.¹⁵⁷ In 2018, the State Department approved a foreign military sale of 210 Javelin portable anti-tank missiles, as well as launchers, associated equipment, and training, at a total estimated cost of \$47 million. According to media reports, the missiles are stored away from the frontline.¹⁵⁸

The United States also provides military training assistance. Since 2015, U.S. forces have advised and assisted Ukrainian forces as part of the Joint Multinational Training Group-Ukraine (JMTG-U), which also has included military trainers from Canada, Denmark, Lithuania, Poland, Sweden, and the UK (see "Yavoriv Combat Training Center" text box, below). In addition to the JMTG-U, a Multinational Joint Commission on Defense Reform and Security Cooperation serves as an advisory body that "assesses Ukrainian requirements and prioritizes training, equipment, and advisory initiatives."¹⁵⁹ In September 2016, then-U.S. Secretary of Defense Ash Carter and Ukrainian Minister of Defense Stepan Poltorak signed a framework document "to enhance the defense capacity of Ukraine's forces, advance critical Ukrainian defense reforms, improve resource management processes, and boost defense technology cooperation."¹⁶⁰

The United States and Ukraine host annual joint military exercises in Ukraine with the participation of NATO allies and partners. Sea Breeze, a maritime exercise, has been held regularly since 1997; the exercise "seeks to build combined capability and capacity to ensure maritime regional security and foster stronger friendships among partnering nations."¹⁶¹ Another exercise, Rapid Trident, has been held annually since 2011. Originally a peacekeeping exercise for NATO and Partnership for Peace members, Rapid Trident has evolved to serve as the "validation" for Ukrainian armed forces undergoing training at the Yavoriv Combat Training

¹⁵⁵ See footnote 154.

¹⁵⁶ See, for example, Fiona Hill and Clifford Gaddy, "How Aiding the Ukrainian Military Could Push Putin into a Regional War," *Washington Post*, February 5, 2015.

¹⁵⁷ U.S. Department of Defense, "Secretary Mattis Joint Press Conference with Ukrainian President Poroshenko," August 24, 2017.

¹⁵⁸ Defense Security Cooperation Agency, "Ukraine – Javelin Missiles and Command Launch Units," Transmittal No. 18-02, March 1, 2018; Mike Eckel and Christopher Miller, "Next Up for U.S. Weapons Supplies to Ukraine? Possibly Surface-to-Air Missiles," RFE/RL, June 11, 2019.

¹⁵⁹ The Multinational Joint Commission on Defense Reform and Security Cooperation originated in 2014 as a bilateral U.S.-Ukraine commission and expanded to include Canada, Lithuania, and the UK and, subsequently, Poland, Denmark, and Sweden. The White House, "Fact Sheet: U.S. and NATO Efforts in Support of NATO Partners, Including Georgia, Ukraine, and Moldova," July 9, 2016; Government of Canada, "Operation UNIFIER," December 3, 2018; Interfax-Ukraine, "War Won't Prevent Ukraine from Completing Army Reform, Adopting NATO Standards – Turchynov," February 1, 2019.

¹⁶⁰ U.S. Department of Defense, "Readout of Secretary Carter's Meeting with Ukrainian Minister of Defense General Stepan Poltorak," September 8, 2016.

¹⁶¹ U.S. Naval Forces Europe-Africa, "Sixth Fleet Announces Sea Breeze 2019 Participation," press release, June 25, 2019; Ed Adamczyk, "U.S. Navy Prepares for 'Sea Breeze 2019' Naval Exercises in Ukraine," UPI, June 28, 2019.

Center “under the advisement of allied and partner nations.”¹⁶² In 2018, Ukraine hosted a new U.S.-sponsored multinational air force exercise, Clear Sky 2018.¹⁶³

Yavoriv Combat Training Center

Since 2015, U.S. and other allied forces have provided training and mentoring to members of the Ukrainian Armed Forces as part of the Joint Multinational Training Group-Ukraine (JMTG-U), based at the Yavoriv Combat Training Center in the western Ukrainian region of Lviv. The combat training center is “co-located” with Ukraine’s International Center for Peacekeeping and Security, a preexisting multinational training center.

The U.S. training mission in Ukraine is overseen by U.S. Army Europe’s 7th Army Training Command. Military trainers deployed to the JMTG-U and a predecessor mission (Fearless Guardian, which provided training to interior ministry troops) serve on rotational deployments. U.S. personnel have been drawn from the U.S. Army and National Guard, including

- U.S. Army Europe’s 173rd Airborne Brigade Combat Team (2015-2016)
- California Army National Guard’s 79th Infantry Brigade Combat Team (2016) (the California National Guard has a broad partnership with Ukraine through the National Guard’s State Partnership Program)
- U.S. Army’s 2nd Infantry (now Armored) Brigade Combat Team, 3rd Infantry Division (2016)
- Oklahoma Army National Guard’s 45th Infantry Brigade Combat Team (2017)
- New York Army National Guard’s 27th Infantry Brigade Combat Team (2017-2018)
- Tennessee Army National Guard’s 278th Armored Cavalry Regiment (2018-2019)
- U.S. Army’s 2nd Infantry Brigade Combat Team, 101st Airborne Division (Air Assault) (2019)

The Ukrainian Armed Forces are expected to assume full training responsibility at the Yavoriv Combat Training Center in 2020.

Sources: Andrew Roth, “U.S. Army Trainers Arrive in Ukraine,” *New York Times*, April 17, 2015; Capt. Russell Gordon, “Progress Made on Ukrainian Military Reform as Fearless Guardian II’s First Rotation Nears End,” U.S. Army, February 4, 2016; Oriana Pawlyk, “California Guard May Send More Troops to Ukraine in 2017,” *Military.com*, December 28, 2016; Sgt. Alexander Rector, “N.Y. Army Guard Soldiers Mentor and Learn in Ukraine,” *National Guard*, June 22, 2018; 101st Airborne Division (Air Assault), “101st Airborne Division Soldiers to Case Colors for Ukraine Deployment,” press release, April 5, 2019; additional media and U.S. military reports, available to congressional clients upon request.

The United States also provides cybersecurity assistance to Ukraine. U.S. interagency teams visited Ukraine in 2016 regarding December 2015 cyberattacks against Ukrainian power companies. The United States and Ukraine have held two annual Bilateral Cybersecurity Dialogues in Kyiv, and the United States has pledged \$10 million in cybersecurity assistance since 2017.¹⁶⁴

¹⁶² 7th Army Training Command, “Rapid Trident,” n.d.; Spc. Michael Sword, “Secretary of Army Witnesses Rapid Trident 2011 in Ukraine,” U.S. Army, August 5, 2011; John Vandiver, “Rapid Trident Exercise Takes Place in Ukraine, a Country at War,” *Stars and Stripes*, September 18, 2014; Lacey Justinger, “Exercise Rapid Trident 2018 Enables Relationships to Cross Borders,” U.S. Army, September 14, 2018.

¹⁶³ During the exercise, a Ukrainian SU-27 fighter jet crashed, killing a U.S. fighter pilot from the California Air National Guard and a Ukrainian air force officer. Oriana Pawlyk, “Air National Guard Identifies Pilots Killed in Ukraine Crash,” *Military.com*, October 17, 2018; Kyle Rempfer, “U.S. Air Force’s Huge Exercise in Ukraine Fuels Growing Partnership and That Country’s NATO Ambitions,” *Air Force Times*, November 13, 2018.

¹⁶⁴ ICS-CERT, U.S. Department of Homeland Security, “Cyber-Attack Against Ukrainian Critical Infrastructure,” February 25, 2016; Kim Zetter, “Inside the Cunning, Unprecedented Hack of Ukraine’s Power Grid,” *Wired*, March 3, 2016; U.S. Department of State, “Second U.S.-Ukraine Cybersecurity Dialogue,” November 5, 2018.

Trade

The United States granted Ukraine permanent normal trade relations status in 2006.¹⁶⁵ From 2014 to 2016, bilateral trade declined in line with an overall decline in Ukraine's trade after being invaded by Russia. U.S.-Ukraine trade began to recover in 2017. In 2018, the United States was Ukraine's 6th-largest source of merchandise imports and 13th-largest destination for exports.¹⁶⁶ The value of Ukraine's merchandise imports from the United States—mainly oil and mineral fuels, motor vehicles and parts, and industrial and electrical machinery—was \$2.96 billion in 2018. The value of merchandise exports to the United States—mainly iron and steel—was \$1.11 billion in 2018.

In July 2017, President Trump and then-President Poroshenko agreed to increase the sale of U.S. coal to Ukraine, stating that it could help replace now-halted supplies of coal from the nongovernment-controlled areas of eastern Ukraine.¹⁶⁷ In 2018, U.S. coal accounted for almost one-third of Ukraine's total coal imports.

Role of Congress

Since 1991, Congress has supported Ukraine's independence, sovereignty, and democratic trajectory. In addition to appropriating funds for foreign and security assistance, the House and Senate have passed several resolutions in support of Ukraine's independence and democratization.¹⁶⁸ Congress especially supported Ukraine's democratic transition during the 2004-2005 Orange Revolution.¹⁶⁹ Congress also has passed several resolutions to commemorate the 1986 Chernobyl nuclear disaster, which took place in Soviet Ukraine, and to support related U.S. and international assistance.¹⁷⁰ In addition, Congress has regularly commemorated the Soviet Ukraine famine of 1932-1933, most recently in 2018 (H.Res. 931/S.Res. 435).¹⁷¹

During Ukraine's 2013-2014 Revolution of Dignity, Congress supported a peaceful resolution to the conflict. Before ex-President Yanukovich fled Ukraine in February 2014, the House and Senate passed resolutions to support Ukrainians' democratic aspirations, call for a peaceful

¹⁶⁵ P.L. 109-205. Before then, Ukraine was subject to Title IV of the Trade Act of 1974 (P.L. 93-618; 19 U.S.C. 2101 et seq.), pursuant to which Russia and other post-Soviet states were denied permanent normal trade relations status. The Trade Act had originally imposed restrictions on trade with the Soviet Union, due to its nonmarket economy and prohibitive emigration policies (the latter through Section 402, popularly cited as the Jackson-Vanik amendment). After the collapse of the Soviet Union, these trade restrictions formally continued to apply to Russia and other post-Soviet states, even though they received conditional normal trade relations in 1992.

¹⁶⁶ Data in this section are from the State Customs Committee of Ukraine, as presented in Global Trade Atlas.

¹⁶⁷ Ari Natter, "Ukraine Coal Exports Part of Trump Bid to Counter Russia," Bloomberg News, July 31, 2017; Alessandra Prentice, "How a U.S. Coal Deal Warmed Ukraine's Ties with Trump," Reuters, February 19, 2018.

¹⁶⁸ See, for example, H.Con.Res. 120 (1996), S.Res. 205 (2002), and S.Res. 422 (2010).

¹⁶⁹ See, for example, S.Res. 473 (2004), S.Res. 487 (2004), and H.Con.Res. 16/S.Con.Res. 7 (2005).

¹⁷⁰ See H.Res. 440 (1986), H.Con.Res. 167/S.Con.Res. 56 (1996), H.Res. 703 (2006), and S.Res. 153 (2011).

¹⁷¹ Historians attribute the famine, which Ukrainians refer to as the Holodomor, to the coercive policies of Joseph Stalin's regime. The famine killed almost 4 million Ukrainians, according to current estimates. In 1985, Congress established a Commission on the Ukraine Famine (P.L. 99-180), which held hearings with eyewitnesses, published findings, and conducted a related oral history project. In 2006, Congress passed legislation authorizing the government of Ukraine to establish a memorial on federal land to honor the victims of the Ukraine famine (P.L. 109-340). The memorial was established in 2015. Anne Applebaum, *Red Famine: Stalin's War on Ukraine* (Doubleday, 2017); Commission on the Ukraine Famine, *Investigation of the Ukrainian Famine, 1932-1933*, Report to Congress, submitted to Congress on April 22, 1988; Roma Hadzewycz, "Over 5,000 Witness Dedication of Holodomor Memorial in Washington," *Ukrainian Weekly*, November 13, 2015.

resolution to the standoff between the government and protestors, and raise the prospect of sanctions “against individuals responsible for ordering or carrying out the violence” (S.Res. 319, H.Res. 447). Prior to the start of the Euromaidan protests, the Senate also passed a resolution calling upon the Ukrainian government to release Yulia Tymoshenko from prison and the EU to make her release a condition for signing the EU-Ukraine Association Agreement (S.Res. 165).

Congressional Response to Russia’s Invasion

Since March 2014, many Members of Congress have condemned Russia’s invasion of Ukraine, promoted sanctions against Russia for its actions, and supported increased economic and security aid to Ukraine. In 2014 and 2015, the House and Senate passed a number of resolutions condemning Russia’s aggression in Ukraine and expressing support for increased aid.¹⁷²

In April 2014, Congress passed, and President Obama signed into law, the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (SSIDES; P.L. 113-95; 22 U.S.C. 8901 et seq.). SSIDES authorized aid to help Ukraine pursue reform, provided security assistance to Ukraine and other countries in Central and Eastern Europe, required the U.S. government to assist Ukraine to recover assets linked to corruption by the former government, and established a variety of sanctions (see “Ukraine-Related Sanctions,” below). At this time, Congress also passed, and the President signed into law, a bill authorizing increased funds to boost programming in Ukraine, Moldova, “and neighboring regions” by U.S. government-funded broadcasters Radio Free Europe/Radio Liberty (RFE/RL) and Voice of America (VOA) (P.L. 113-96).

In December 2014, Congress passed, and President Obama signed into law, the Ukraine Freedom Support Act of 2014 (UFSA; P.L. 113-272; 22 U.S.C. 8921 et seq.). UFSA stated that it is the policy of the United States “to further assist the Government of Ukraine in restoring its sovereignty and territorial integrity [and] to deter the Government of the Russian Federation from further destabilizing and invading Ukraine and other independent countries in Central and Eastern Europe, the Caucasus, and Central Asia.” The act required or authorized a variety of expanded sanctions (see “Ukraine-Related Sanctions,” below); authorized increased nonmilitary and military assistance to Ukraine; and authorized an expansion of RFE/RL and VOA broadcasting throughout the post-Soviet states, giving priority to Ukraine, Georgia, and Moldova.

In July-August 2017, Congress passed, and President Trump signed into law, CAATSA (P.L. 115-44), with CRIEEA as its Title II. CRIEEA codified sanctions on Russia provided for in existing Ukraine-related (and cyber-related) executive orders, strengthened additional sanctions, and required or recommended several new sanctions (see “Ukraine-Related Sanctions,” below). In addition, the act established a congressional review of any potential presidential move to ease or lift sanctions. Among additional measures, the act authorized \$30 million in FY2018-FY2019 to promote energy security in Ukraine (\$257).

Since FY2015, foreign operations appropriations have restricted funds for implementing policies and actions that would recognize Russian sovereignty over Crimea and have imposed restrictions on foreign assistance to the governments of countries that support Russia’s annexation of Crimea (P.L. 116-6, Division F, §7047). In addition, CRIEEA states that it is the policy of the United States “to never recognize the illegal annexation of Crimea by the Government of the Russian

¹⁷² The House passed H.Res. 499, H.Res. 726, and H.Res. 758 in 2014, and H.Res. 50, H.Res. 162, and H.Res. 348 in 2015. The Senate passed S.Res. 378 and S.Res. 520 in 2014, and S.Res. 52 and S.Res. 72 in 2015.

Federation or the separation of any portion of Ukrainian territory through the use of military force" (§257).¹⁷³

Since 2014, Congress has supported the provision of defensive lethal weapons to Ukraine. UFSA authorized the President to provide to Ukraine "defense articles ... including anti-tank and anti-armor weapons [and] crew weapons and ammunition." The FY2016 to FY2019 National Defense Authorization Acts authorized "appropriate security assistance" to Ukraine, including "lethal assistance" such as "anti-armor weapon systems, mortars, crew-served weapons and ammunition, grenade launchers and ammunition, and small arms and ammunition." Since FY2016, defense appropriations have provided for military assistance to Ukraine, to include "lethal weapons of a defensive nature" and (for FY2019) "lethal assistance."¹⁷⁴ In December 2016, a bipartisan group of 27 Senators asked the incoming Trump Administration to provide defensive lethal assistance "to help Ukrainians better defend themselves" and "deter future aggression."¹⁷⁵

In February 2018, during the 115th Congress, the House passed the Ukraine Cybersecurity Cooperation Act of 2017 (H.R. 1997), which called for greater cybersecurity cooperation with and aid to Ukraine.¹⁷⁶ In November-December 2018, Members of the 115th Congress passed resolutions condemning Russia's attack on Ukrainian naval vessels (S.Res. 709, H.Res. 1162) and calling for the cancellation of Nord Stream 2 and the imposition of sanctions on entities for investing in or supporting the project (H.Res. 1035).

In July 2019, during the 116th Congress, the Senate passed S.Res. 74 to mark the fifth anniversary of Ukraine's Revolution of Dignity "by honoring the bravery, determination, and sacrifice of the people of Ukraine during and since the Revolution, and condemning continued Russian aggression against Ukraine." The resolution, among other things, applauds Ukraine's reform progress, encourages the continued implementation of reforms, affirms the Crimea Declaration, and expresses the belief that "the strengthening of Ukraine's democracy ... should serve as a positive example to other post-Soviet countries."

Several pieces of Ukraine-related legislation are under consideration in the 116th Congress. In March 2019, the House of Representatives voted 427-1 to pass H.R. 596, the Crimea Annexation Non-recognition Act, which asserts that it is the policy of the United States not to recognize Russia's claim of sovereignty over Crimea, its airspace, or its territorial waters. Several Members of Congress have sought to further respond to Russia's November 2018 attack on Ukrainian naval vessels, express continuing opposition to Nord Stream 2, and enhance U.S.-Ukraine security cooperation.¹⁷⁷

¹⁷³ The Countering Russian Influence in Europe and Eurasia Act of 2017 (Title II of P.L. 115-44, Countering America's Adversaries Through Sanctions Act; 22 U.S.C. 9501 et seq.) also states that the United States generally "does not recognize territorial changes effected by force, including the illegal invasions and occupations" of Crimea and eastern Ukraine, as well as of Abkhazia and South Ossetia (in Georgia) and Transnistria (in Moldova) (§253).

¹⁷⁴ From 2014 to 2016, the House and/or Senate expressed support for providing lethal defensive weapons to Ukraine at least five more times. See H.Res. 758 (2014), P.L. 113-291 (FY2015 National Defense Authorization Act), H.Res. 162 (2015), S.Res. 72 (2015), and H.R. 5094 (2016). Subsequently, in July 2019, S.Res. 74 affirmed the United States' "unwavering commitment to ... providing additional lethal and non-lethal security assistance to strengthen Ukraine's defense capabilities on land, sea, and in the air in order to improve deterrence against Russian aggression."

¹⁷⁵ Rebecca Kheel, "Senators to Trump: Get Tough on Russia over Ukraine," *The Hill*, December 8, 2016.

¹⁷⁶ A related bill was introduced in the Senate (S. 2455).

¹⁷⁷ Proposed legislation that responds to Russia's maritime aggression includes S.Res. 27 (reported and placed on the Senate Legislative Calendar) and its companion bill, H.Res. 116, as well as Section 602 of S. 482. Legislation that opposes Nord Stream 2 and other export pipelines includes S.Res. 27 and H.Res. 116, as well as H.R. 2023, H.R. 3206, S. 1441, and S. 1830 (the House bills are ordered to be reported; S. 1441 has been reported and placed on the Senate

Ukraine-Related Sanctions

Most U.S. designations of Russian persons subject to sanctions have been in response to Russia's invasion of Ukraine. In 2014, the Obama Administration said it would impose increasing costs on Russia, in coordination with the EU and others, until Russia "abides by its international obligations and returns its military forces to their original bases and respects Ukraine's sovereignty and territorial integrity."¹⁷⁸ To date, the United States has imposed Ukraine-related sanctions on more than 665 individuals and entities.¹⁷⁹

The basis for most Ukraine-related sanctions is a series of executive orders (EOs 13660, 13661, 13662, and 13685) issued in 2014 and codified by CRIEEA (CAATSA, Title II). The EOs provide for sanctions against those the President determines have undermined Ukraine's security and stability; misappropriated Ukrainian state assets; or conducted business, trade, or investment in occupied Crimea. They also provide for sanctions against Russian government officials and those who offer them support, those who operate in the Russian arms sector, and those who operate in key sectors of the Russian economy. Among those designated are Ukrainian individuals and entities, including former government officials and de facto authorities in Crimea and the nongovernment-controlled areas in eastern Ukraine.

In addition, *sectoral sanctions* apply to specific entities in Russia's financial, energy, and defense sectors. U.S. persons are restricted from engaging in certain transactions with these entities related to new equity investment and/or financing. Sectoral sanctions also prohibit U.S. trade related to the development of Russian deepwater, Arctic offshore, or shale projects that have the potential to produce oil and, as amended by CRIEEA, such projects worldwide in which those entities have an ownership interest of at least 33% or a majority of voting interests.

SSIDES and UFSA, signed into law in 2014, expanded upon the sanctions actions the Obama Administration took in response to Russia's invasion of Ukraine. President Obama, however, did not cite SSIDES or UFSA as an authority for designations or other sanctions actions.¹⁸⁰ In November 2018, President Trump cited SSIDES, as amended by CRIEEA (§228), to designate two individuals and one entity for serious human rights abuses in territories forcibly occupied or controlled by Russia. SSIDES and UFSA contain additional sanctions provisions that the executive branch could use, including potentially wide-reaching secondary sanctions against foreign individuals and entities that facilitate significant transactions for Russia-related designees.

Like the United States, the EU has imposed sanctions—or *restrictive measures*, in EU parlance—against Russia since 2014 for its invasion of Ukraine. The EU imposed these sanctions largely in cooperation with the United States, and EU sanctions are similar, although not identical, to U.S. sanctions. Imposing these sanctions requires the unanimous agreement of all 28 EU member

Legislative Calendar). H.R. 3047 would enhance U.S.-Ukraine security cooperation, including by authorizing the provision of more lethal defense articles, such as "anti-tank weapons systems, anti-ship weapons systems, and anti-aircraft weapons systems." The bill also would authorize the President to treat Ukraine as a major non-NATO ally. Proposals to treat Ukraine as a major non-NATO ally were previously included in legislation introduced in 2014 (H.R. 5190, S. 2828, H.R. 5782).

¹⁷⁸ The White House, "Fact Sheet: Ukraine-Related Sanctions," March 17, 2014, at <https://obamawhitehouse.archives.gov/the-press-office/2014/03/17/fact-sheet-ukraine-related-sanctions>.

¹⁷⁹ For details, see CRS Report R45415, *U.S. Sanctions on Russia*, coordinated by Cory Welt.

¹⁸⁰ In his signing statement, President Obama said the Administration did "not intend to impose sanctions under this law, but the Act gives the Administration additional authorities that could be utilized, if circumstances warranted." The White House, "Statement by the President on the Ukraine Freedom Support Act," December 18, 2014, at <https://obamawhitehouse.archives.gov/the-press-office/2014/12/18/statement-president-ukraine-freedom-support-act>.

states. Most EU sanctions are imposed for a defined period of time (usually six months or a year) to incentivize change and provide the EU with flexibility to adjust the sanctions as warranted. Unanimity among EU member states also is required to renew (i.e., extend) EU sanctions. A number of other states, including Australia, Canada, Japan, Norway, and Switzerland, also have imposed Ukraine-related sanctions on Russia.

Relations with the EU and NATO

Since 2014, the Ukrainian government has prioritized closer integration with the EU and NATO. In February 2019, Ukraine adopted a constitutional amendment declaring the government responsible for implementing Ukraine’s “strategic course” toward EU and NATO membership.¹⁸¹ Zelensky’s first foreign trip as president was to Brussels, where he met with EU and NATO leaders and reaffirmed that Ukraine’s “strategic course [was] to achieve full-fledged membership in the EU and NATO.”¹⁸²

The EU’s main framework for political and economic engagement with Ukraine is the Association Agreement, which encourages harmonization with EU laws and regulations and includes a Deep and Comprehensive Free Trade Area (DCFTA).¹⁸³ According to the EU, the DCFTA has shown “positive results.”¹⁸⁴ Since the DCFTA’s entry into force, Ukraine’s trade with the EU, its largest trading partner (42% of Ukraine’s total trade in 2018), has grown faster than Ukraine’s total trade, and Ukraine has begun to export new products to EU markets, including butter and washing machines.¹⁸⁵ The EU also is a major provider of foreign aid, totaling more than €15 billion (about \$16.4 billion) in grants and loans since 2014.¹⁸⁶ The EU granted Ukrainian citizens visa-free travel in 2017.

As mentioned, the EU has imposed wide-ranging sanctions in response to Russia’s invasion of Ukraine. The EU also has supported Ukraine against Russia’s maritime aggression near the Kerch Strait. In July 2019, the EU announced an increase in tailored assistance to Ukraine “to help mitigate the impact of Russia’s destabilizing actions in the Sea of Azov region.”¹⁸⁷

Ukraine also has close relations with NATO. In 1994, Ukraine was the first post-Soviet state (not including the Baltic states) to join NATO’s Partnership for Peace. A NATO-Ukraine Commission,

¹⁸¹ Ministry of Foreign Affairs of Ukraine, “President Signed Amendments to the Constitution on the Strategic Course of Ukraine for Membership in the EU and NATO,” February 19, 2019.

¹⁸² RFE/RL, “Ukraine’s President Promises NATO Referendum as Part of Path to West,” June 5, 2019.

¹⁸³ Parts of the agreement were applied provisionally from September 2014, and the free-trade agreement was applied provisionally in January 2016. The full agreement entered into force in September 2017. The text of the Association Agreement and the 2018 *Association Implementation Report* are available at https://eeas.europa.eu/node/10420_en. For a summary, see *Quick Guide to the Association Agreement*, at https://eeas.europa.eu/sites/eeas/files/071215_eu-ukraine_association_agreement.pdf. For more information, see European Council, “EU Relations with Ukraine,” at <http://www.consilium.europa.eu/en/policies/eastern-partnership/ukraine/>.

¹⁸⁴ European Commission and European External Action Service (EEAS), *Joint Staff Working Document: Association Implementation Report on Ukraine*, November 7, 2018, p. 12.

¹⁸⁵ EEAS, *Joint Staff Working Document* (footnote 184); Tony Barber, “Ukraine Reaps Benefits of Trade Deal with EU,” *Financial Times*, September 11, 2018.

¹⁸⁶ This assistance includes €3.3 billion (around \$3.6 billion) in macro-financial assistance loans and almost €1.2 billion (\$1.3 billion) in assistance grants. Assistance also includes €6.5 billion (\$7.1 billion) in financing from the European Investment Bank and the European Bank for Reconstruction and Development. For more details, see European Union External Action, “EU-Ukraine Relations, Factsheet,” updated July 5, 2019, at https://eeas.europa.eu/headquarters/headquarters-homepage/4081/eu-ukraine-relations-factsheet_en.

¹⁸⁷ European Commission, “EU-Ukraine Summit: EU Steps Up Its Support to the Sea of Azov Region,” July 8, 2019.

established in 1997, provides the framework for cooperation. Under ex-President Yanukovich, Ukraine adopted a “non-bloc” (i.e., nonaligned) status, rejecting aspirations of NATO membership, but invited NATO to launch a Defense Education Enhancement Programme and participated in the NATO Response Force, a rapid reaction force. After Russia’s invasion in 2014, Ukraine’s parliament rejected its non-bloc status and, in 2017, voted to make cooperation with NATO a foreign policy priority.¹⁸⁸

Ukraine has supported several NATO peacekeeping and maritime operations. Ukrainian forces have long contributed to the NATO-led Kosovo Force. Ukraine also contributes to the Resolute Support Mission in Afghanistan and participated in the previous International Security Assistance Force in Afghanistan, the counterterrorism Operation Active Endeavour maritime mission, and the antipiracy Operation Ocean Shield. In addition, Ukraine has supported NATO’s maritime Sea Guardian operation.

NATO has expressed strong support for Ukraine since Russia’s 2014 invasion. At a 2016 summit in Warsaw, NATO pledged additional training and technical support for the Ukrainian military and endorsed a Comprehensive Assistance Package (CAP). The CAP includes “tailored capability and capacity building measures ... to enhance Ukraine’s resilience against a wide array of threats, including hybrid threats.”¹⁸⁹ In addition, NATO established six trust funds “working in critical areas of reform and capability development in Ukraine’s security and defense sector.”¹⁹⁰

Many observers consider that closer integration with the EU and NATO has not enabled Ukraine to improve its near-term prospects for membership in these organizations. According to recent polls, over half of Ukrainians support membership in the EU (polls do not include the Crimea region and nongovernment-controlled areas of Ukraine).¹⁹¹ The EU is unlikely to consider Ukraine a candidate for membership soon, however, given Ukraine’s domestic challenges, the conflict with Russia, the EU’s own internal challenges, and lack of support for enlargement among many EU members.

Ukraine also faces a challenge to NATO membership. In 2008, NATO members agreed that Ukraine and Georgia would become members of NATO, but Ukraine has not been granted a NATO Membership Action Plan or other clear path to membership.¹⁹² Most observers believe NATO will not move forward with membership as long as Russia occupies Ukrainian territory and the conflict remains unresolved. Moreover, Ukrainians themselves remain divided over NATO membership. Since 2014, about 40%-50% of opinion poll respondents support membership in NATO (compared to about 25%-40% against); these polls do not include the

¹⁸⁸ Steven Pifer, “Ukraine Overturns Its Non-Bloc Status: What Next with NATO?,” *Kyiv Post*, December 26, 2014; RFE/RL, “Ukrainian Parliament Makes NATO Integration a Priority,” June 8, 2017. For more on NATO-Ukraine relations, see NATO, “Relations with Ukraine,” updated July 1, 2019, at http://www.nato.int/cps/en/natolive/topics_37750.htm.

¹⁸⁹ NATO, “Warsaw Summit Communiqué Issued by the Heads of State and Government Participating in the Meeting of the North Atlantic Council in Warsaw 8-9 July 2016,” July 9, 2016; White House, “Fact Sheet: U.S. and NATO Efforts in Support of NATO Partners, Including Georgia, Ukraine, and Moldova,” July 9, 2016.

¹⁹⁰ The trust funds address the following areas: Command, Control, Communications and Computers; Cyber Defense; Explosive Ordnance Disposal and Counter-Improvised Explosive Devices; Logistics and Standardization; Medical Rehabilitation; and Military Career Transition.

¹⁹¹ Olena Makarenko, “68% of Ukrainians Want Pro-European Reforms Even Without EU Membership Prospects,” *Euroimaidan Press*, October 22, 2018; Ukrinform, “Poll: 57% of Ukrainians Support Accession to EU,” May 16, 2019.

¹⁹² In the Bucharest Summit Declaration of April 2008, heads of state and government of NATO member countries declared that “NATO welcomes Ukraine’s and Georgia’s Euro-Atlantic aspirations for membership in NATO. We agreed today that these countries will become members of NATO.” NATO, “Bucharest Summit Declaration,” April 3, 2008, at https://www.nato.int/cps/us/natohq/official_texts_8443.htm.

Crimea region and nongovernment-controlled areas of Ukraine, where support for NATO membership likely would be low even in the absence of conflict.¹⁹³

Outlook

Five years after Ukraine's Euromaidan protests and Russia's invasion, Ukraine continues to face a number of internal and external challenges. Issues that Members of Congress may consider in seeking to influence or shape U.S. relations with Ukraine could include the following:

- How the United States can best assist Ukraine's new government to implement governance reforms that are supported by the international community and Ukrainian civil society;
- Whether Ukraine's new government will sustain a reform-minded and democratic trajectory;
- The extent to which the change of government in Ukraine provides new opportunities for implementing the Minsk agreements to resolve the conflict in eastern Ukraine and to address humanitarian needs in and around the nongovernment-controlled areas;
- The appropriate level of military assistance to Ukraine and whether the United States should provide new forms of defensive lethal weapons;
- The other kinds of U.S. assistance that may be especially important to Ukraine at this time; and
- Additional ways to increase Ukraine's benefits from its free trade agreement with the EU and its closer integration with the EU and NATO.

Author Information

Cory Welt
Specialist in European Affairs

¹⁹³ Sergey Sukhankin, "Ukraine's Thorny Path to NATO Membership: Mission (Im)possible?" International Center for Defense and Security (Estonia), April 22, 2019; Daniel Shapiro, "Ukraine and NATO: Disconnect Between State Policy and Public Opinion Is Less Dangerous Than Russia," Russia Matters, Harvard Kennedy School, May 9, 2019; Steven Pifer, "NATO's Ukraine Challenge: Ukrainians Want Membership, But Obstacles Abound," Brookings, June 6, 2019.

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

1/16/2020

US State Department clears Ukraine security assistance funding. Is the Pentagon next?

Europe ([//www.defensenews.com/global/europe/](https://www.defensenews.com/global/europe/))**US State Department clears Ukraine security assistance funding. Is the Pentagon next?**By: Aaron Mehta ([author/aaron-mehta](https://www.defensenews.com/author/aaron-mehta/)) 📅 September 12, 2019

462

38

Updated Sept. 12, 2019, at 10:35 a.m. ET with comments from the Senate.

WASHINGTON — The U.S. State Department has cleared \$141.5 million in security assistance for Ukraine, including money for sniper rifles and grenade launchers — and another \$250 million (<https://www.defensenews.com/congress/2019/09/03/us-lawmakers-press-trump-to-release-aid-for-ukraine-to-fight-russia/>) from the Defense Department, controversially delayed by the Trump administration, appears set to move as well.

Speaking at a Defense Writers Group event Thursday, R. Clarke Cooper (<https://www.defensenews.com/smr/defense-news-conference/2019/09/04/us-ratchets-up-focus-on-incentivizing-arms-exports-to-allies/>), assistant secretary of state for political-military affairs, announced that Congress was notified late Wednesday about the funding. Those dollars can be used 15 days after the notification, should there be no objection from Capitol Hill.

“The Department of State has assessed further opportunities on foreign military financing and additional opportunities on the Countering Russian Aggression accounts,” Cooper said. “We also have support to the conventional weapons destruction and abatement and weapon storage. So there is a whole host of security assistance that we have outlined and identified for Ukraine.”

“I would anticipate there would be further notifications, but we were able to get all that paperwork done and pushed to Capitol Hill yesterday,” he added.

An hour later, during a Senate Appropriations Committee hearing, Sen. Lindsay Graham, R-S.C., indicated that the Defense Department’s funding for Ukraine may also move forward, saying Ukraine is “going to get the money.”

Sen. Dick Durbin, D-Ill., later claimed that the Trump administration moved the funds in part because the White House was embarrassed Congress was poised to act on the issue.

The \$250 million became a political flashpoint at the end of August, when reports emerged that the White House requested Defense Secretary Mark Esper and then-national security adviser John Bolton to review that security assistance package. The delay resulted in bipartisan criticism from Congress, where support for Ukraine remains strong (<https://www.defensenews.com/congress/2018/11/26/us-lawmakers-urge-trump-to-arm-ukraine-break-silence-on-russian-blockade/>).

Sign up for our Early Bird Brief

Get the defense industry’s most comprehensive news and information straight to your inbox

Subscribe

The situation expanded days later, when The Washington Post’s editorial board wrote that it was “reliably told” the Trump administration suspended the aid to pressure Ukrainian President Volodymyr Zelensky to relaunch a corruption probe into former Vice President Joe Biden — the front-runner in the Democratic primary to challenge President Donald Trump — and his son. Reportedly, a prosecutor previously investigated Biden’s son, who had worked for a Ukrainian energy firm. As a result of the Post’s claim, House Democrats threatened to launch an investigation (<https://www.defensenews.com/congress/2019/09/09/house-democrats-probe-trump-slow-rolled-ukraine-military-aid-in-larger-effort-to-target-biden/>).

The latest approval for funding comes from fiscal 2018 foreign military financing and overseas contingency operations accounts (\$26.5 million) and from fiscal 2019 foreign military financing funds (\$115 million).

The projects break down like this:

<https://www.defensenews.com/global/europe/2019/09/12/trump-admin-clears-ukraine-security-assistance-funding-but-pentagon-money-still-in-limbo/>

1/5

1/16/2020

US State Department clears Ukraine security assistance funding. Is the Pentagon next?

- \$10 million to the Countering Russian Influence Fund, which helps provide “advisors, equipment, spare parts and training to build maritime domain awareness, secure communications, command and control, marksmanship, night vision disaster preparedness and special operations and territorial defense units.” Some money may also be used for cyber resiliency efforts.
- \$16.5 million in Europe and Eurasia regional funds, targeted to Black Sea maritime security efforts with a focus on “detecting, identifying and tracking Russian surface, subsurface and long-range aircraft combatants.” This may include funding for naval special warfare training.
- \$115 million in foreign military financing funding for FY19. Included in that funding are English language training, medical equipment, an improvised explosive device simulator and urban operations simulation equipment. Other areas of focus include naval and maritime capability support, refurbishment of equipment, airfield defense, night vision devices, radars, vehicles and tactical communication equipment. More specifically, funding “seeks to improve anti-armor, anti-personnel and counter-sniper capabilities against Russian-led separatists by modernizing Ukraine’s small arms weapons inventory with more precise and capable weapons, including sniper rifles and rocket-propelled grenade launchers.”

Cooper, for his part, said the number of different accounts for Ukraine, along with a recent visit from U.S. Vice President Mike Pence, is a sign of the Trump administration’s focus on the region.

“There is a whole host of security assistance that we have outlined and identified for Ukraine,” he said.

Joe Gould in Washington contributed to this report.

462

36

Recommended for you



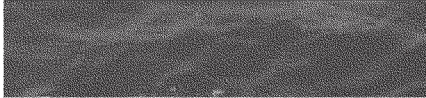
It's time to take network defense to a new level

(http://www.defensenews.com/thought-leadership/2020/01/15/its-time-to-take-network-defense-to-a-new-level/?utm_source=clavis)



Amid Iran tensions, Democratic hopefuls joust over military plans

(http://www.defensenews.com/news/pentagon-congress/2020/01/15/amid-iran-tensions-democratic-hopefuls-joust-over-military-plans/?utm_source=clavis)



L3Harris to deliver Iver4 underwater drone to Navy

(http://www.defensenews.com/unmanned/2020/01/15/l3harris-to-deliver-iver4-underwater-drone-to-us-navy/?utm_source=clavis)



Court makes ruling on \$3.6B in border wall spending

(http://www.defensenews.com/global/the-americas/2020/01/09/court-makes-ruling-on-36b-in-border-wall-spending/?utm_source=clavis)

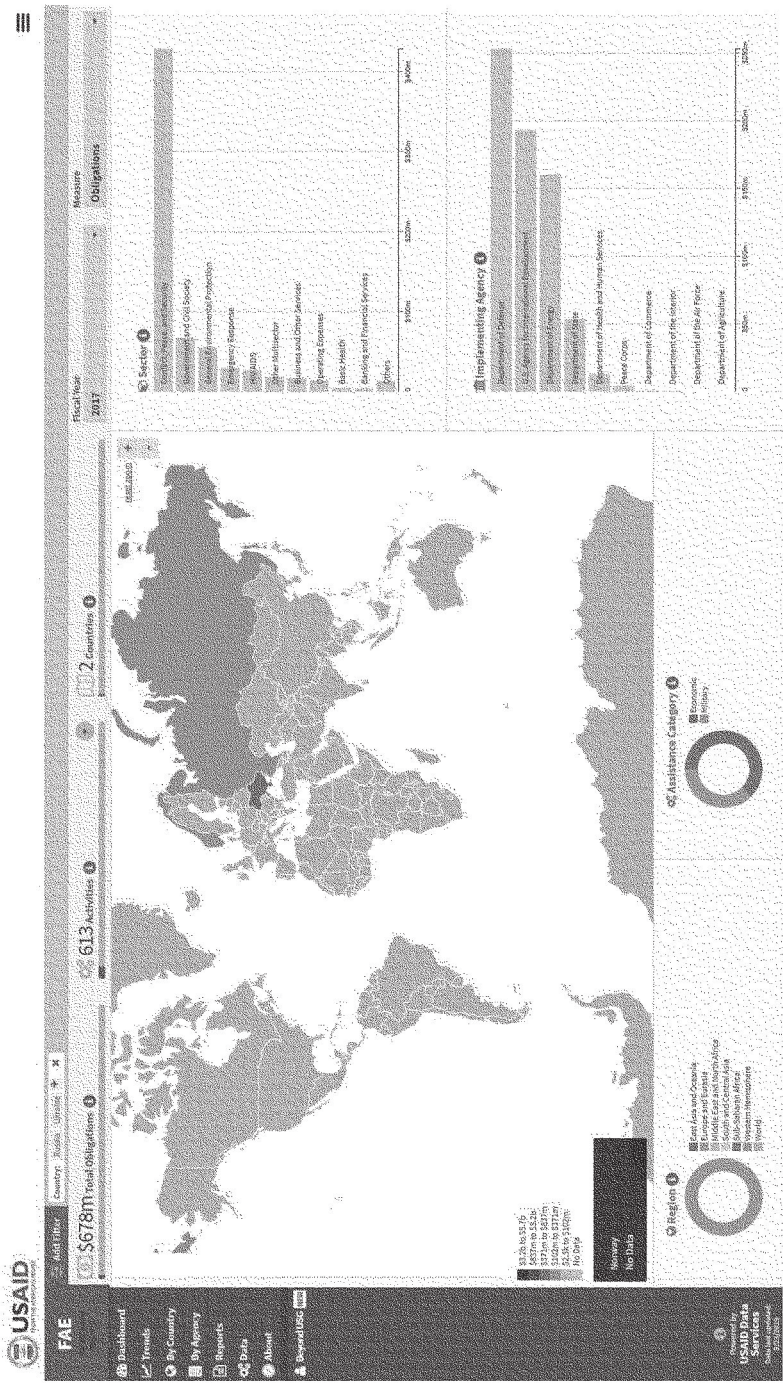
Around The Web

Recommended by

|

<https://www.defensenews.com/global/europe/2019/09/12/trump-admin-clears-ukraine-security-assistance-funding-but-pentagon-money-still-in-limbo/>

2/5



The Washington Post

Democracy Dies in Darkness

Politics

Impeachment

White House

Congress

Polling

The Trailer

Fact Checker

Trump defends call with Ukrainian president, calling it 'perfectly fine and routine'

By **Colby Itkowitz**

September 21, 2019 at 1:04 p.m. EDT

President Trump began his weekend defending his “perfectly fine and routine” conversation with the Ukrainian president in which he reportedly asked the foreign leader to investigate former vice president Joe Biden.

In his tweets, Trump references his phone call with Ukrainian President Volodymyr Zelensky, but makes no mention of whether he brought up Biden during the conversation. Instead, he blames the news media for its coverage of the story.

“The Fake News Media and their partner, the Democrat Party, want to stay as far away as possible from the Joe Biden demand that the Ukrainian Government fire a prosecutor who was investigating his son, or they won’t get a very large amount of U.S. money, so they fabricate a story about me and a perfectly fine and routine conversation I had with the new President of the Ukraine. Nothing was said that was in any way wrong, but Biden’s demand, on the other hand, was a complete and total disaster. The Fake News knows this but doesn’t want to report!” he said in a pair of tweets.

AD

Campaigning in Iowa on Saturday, Biden, the top polling 2020 Democratic presidential candidate, called on Trump to release a transcript of his call with Zelensky.

“Let everybody hear what it is. Let the House see it and see what he did,” Biden told reporters, according to video of the exchange posted by CNN.

Biden said he’d never spoken to his son about his business overseas and accused Trump of “doing this because he knows I will beat him like a drum and is using the abuse of power and every element of the presidency to try to smear.”

Biden’s efforts to get the top Ukrainian prosecutor removed was related to the United States’ belief that he wasn’t weeding out corruption in the country. No evidence has been found that Biden was trying to help his son.

AD

After Trump tweeted complaining that the media wouldn't cover the Biden story, he tweeted a video montage showing the media covering the Biden story.

An intelligence official who on a phone call with Trump and Volodymyr in July reported to the intelligence agency's inspector general that Trump had made a promise to the foreign leader that unnerved the whistleblower.

Subsequent reporting found that during the call Trump pressured Volodymyr to look into Biden's son. Then, Giuliani followed up with a more specific request that the country examine both the Ukrainian natural gas company who had Biden's son Hunter on his board as well as whether Democrats had colluded with Ukraine to get information about former Trump campaign chairman Paul Manafort.

AD

Trump later tweeted Saturday that news of his call with Zelensky was an extension of the "witch hunt" carried out by Democrats, his frequent reference to the Mueller investigation into Russian interference in the 2016 election and firing of James B. Comey as FBI director.

1/16/2020

Trump defends call with Ukrainian president, calling it 'perfectly fine and routine' - The Washington Post

“Now that the Democrats and the Fake News Media have gone “bust” on every other of their Witch Hunt schemes, they are trying to start one just as ridiculous as the others, call it the Ukraine Witch Hunt, while at the same time trying to protect Sleepy Joe Biden. Will fail again!” he tweeted.

Trump’s comments echo a defense first laid out Thursday night by his personal attorney Rudolph Giuliani, who argued that the president could ask a foreign leader anything he wanted and that the real story was related to Biden’s pressuring the Ukrainian government in 2016 to fire its top prosecutor who at the time happened to be investigating a company in which Biden’s son, Hunter, had a stake.

Trump made similar comments on Friday to reporters at the White House, saying “it doesn’t matter what I discussed” with Zelensky and that “someone ought to look into” the former vice president.

John Wagner contributed to this report.

AD

The Washington Post

Democracy Dies in Darkness

Politics

[Impeachment](#)

[White House](#)

[Congress](#)

[Polling](#)

[The Trailer](#)

[Fact Checker](#)

Trump promised Zelensky a White House meeting. More than a dozen other leaders got one instead.

Including someone from a country at war with Ukraine

By **Philip Bump**

Dec. 13, 2019 at 5:47 p.m. EST

You've seen the pictures dozens — maybe hundreds — of times. The president of the United States sitting in a big armchair in the Oval Office, shaking the hand of a foreign leader whose name is on the tip of your tongue. It's a bit of international diplomacy that's generally fairly routine: a visit to Washington and a photo opportunity for both sides, with the American public only occasionally looking up.

Over the past three months, though, we've learned a lot more about how fraught those visits can be. Ukrainian President Volodymyr Zelensky repeatedly made clear his desire for a meeting at the White House, a visit that would solidify his position as Ukraine's new leader and demonstrate the United States' ongoing support for Ukraine in its conflict with Russia. And yet it was continually out of reach, held hostage, according to witnesses who testified in the impeachment inquiry targeting President Trump, until Ukraine agreed to launch investigations that would politically benefit Trump himself.

While Zelensky and his aides wrestled with Trump's team to try to get a visit confirmed, leader after leader walked through the White House for a grip-and-grin. Strong allies of the United States, such as Canada and Australia. More dubious leaders such as Hungary's Viktor Orban and Turkish President Recep Tayyip Erdogan. And, the salt in the wound, Russia's foreign minister, even as the House finalized articles of impeachment.

AD

Here are all of the visits that occurred after Trump first extended a vague invitation to Zelensky. We've interlaced dates from the impeachment probe (highlighted in yellow) to show how the Trump team was leveraging the Zelensky meeting to get the investigations Trump wanted to see. As they did on July 10, in two meetings with the Ukrainians — the same day the White House announced a visit by the prime minister of Pakistan, a country Trump once derided as a safe harbor for terrorists.

The year in White House visits (and one that wasn't)

April 18. The White House announces an upcoming visit by Prime Minister Shinzo Abe of Japan.

April 21. Zelensky wins Ukraine's presidential election. In a call with Zelensky, Trump invites him to the White House. Zelensky asks that Trump attend his inauguration.

AD

April 26. The White House announces an upcoming visit by Prime Minister Peter Pellegrini of Slovakia.

April 26. Trump hosts Abe at the White House.

May 3. Trump hosts Pellegrini at the White House.

May 7. The White House announces an upcoming visit by Hungarian Prime Minister Viktor Orban.

May 13. Trump hosts Orban at the White House.

May 15. The White House announces an upcoming visit by Polish President Andrzej Duda.

May 20. Zelensky is inaugurated. Then-Energy Secretary Rick Perry attends in lieu of Trump or Vice President Pence.

June 7. The White House announces an upcoming visit by Sheikh Tamim bin Hamad al-Thani of Qatar.

June 12. Trump hosts Duda at the White House.

June 14. The White House announces an upcoming visit by Canadian Prime Minister Justin Trudeau.

AD

June 17. Acting U.S. ambassador to Ukraine William B. Taylor Jr. arrives in Kyiv, carrying with him a letter again extending an invitation for Zelensky to visit the White House.

June 20. Trump hosts Trudeau at the White House.

June 28. According to testimony from David Holmes, Zelensky is told in a call with several administration staffers that a White House meeting would come only if he launched investigations desired by Trump.

July 2. At an event in Toronto, then-Ukraine special envoy Kurt Volker again tells Zelensky that a meeting depends on investigations.

July 9. Trump hosts al-Thani at the White House.

July 10. In two meetings at the White House, U.S. Ambassador to the European Union Gordon Sondland tells Ukrainian officials that a meeting with Trump depends on investigations.

AD

Also July 10. The White House announces an upcoming visit by Prime Minister Imran Khan of Pakistan.

July 11. The White House announces an upcoming visit by Dutch Prime Minister Mark Rutte.

July 18. Trump hosts Rutte at the White House.

July 22. Trump hosts Khan at the White House.

July 25. Trump and Zelensky speak on the phone. Trump invites Zelensky to the White House, but only after Zelensky has agreed to launch the desired investigations. In a text message sent to Zelensky aide Andriy Yermak right before the call, that quid pro quo was made explicit by Volker.

Aug. 2. Trump's personal attorney meets with Yermak in Madrid, where the two discuss a meeting — and the need for investigations. The focus soon turns to the development of a statement announcing the probes.

AD

Aug. 6. The White House announces an upcoming visit by Romanian President Klaus Iohannis.

Aug. 10. Volker, Sondland, Yermak and Trump's personal lawyer Rudolph W. Giuliani have been in contact about the desired statement. Yermak suggests a date for the meeting be set before it's released. Both sides can't agreed on content, and the statement is tabled.

Aug. 20. Trump hosts Iohannis at the White House.

Aug. 28. The halt in aid to Ukraine becomes publicly known. Resolving this issue moves to the center of interactions with Ukraine.

Sept. 12. The White House announces an upcoming visit by Crown Prince Salman bin Hamad al-Khalifa of Bahrain.

Sept. 15. The White House announces an upcoming visit by Australian Prime Minister Scott Morrison.

Sept. 16. Trump hosts Salman at the White House.

Sept. 18. The White House announces an upcoming visit by President Sauli Niinisto of Finland.

Sept. 20. Trump hosts Morrison for a state dinner at the White House.

Sept. 24. House Democrats launch an impeachment inquiry.

AD

Sept. 25. Zelensky and Trump meet in person for the first time during a U.N. event in New York. The meeting is one of many for both leaders. In front of reporters, Zelensky pointedly asks Trump when he can come visit the White House.

“I want to thank you for invitation to Washington,” Zelensky said, half-joking. “You invited me, but I think — I’m sorry. I’m sorry. But I think you forgot to tell me the date.”

Trump demurred.

Oct. 2. Trump hosts Niinisto at the White House.

Oct. 8. The White House announces an upcoming visit by President Recep Tayyip Erdogan of Turkey.

Oct. 11. The White House announces an upcoming visit by Italian President Sergio Mattarella.

Oct. 16. Trump hosts Mattarella at the White House.

Nov. 8. The White House announces an upcoming visit by Bulgarian Prime Minister Boyko Borissov.

Nov. 13. Trump hosts Erdogan at the White House.

Nov. 25. Trump hosts Borissov at the White House.

Dec. 2. The White House announces an upcoming visit by Greek Prime Minister Kyriakos Mitsotakis in January 2020.

Dec. 5. The White House announces an upcoming visit by President Mario Abdo Benítez of Paraguay.

Dec. 8. The White House announces an upcoming visit by Russian Foreign Minister Sergei Lavrov.

Dec. 10. Trump hosts Lavrov at the White House.



Donald J. Trump
@realDonaldTrump

Just had a very good meeting with Foreign Minister Sergey Lavrov and representatives of Russia. Discussed many items including Trade, Iran, North Korea, INF Treaty, Nuclear Arms

Control, and Election Meddling. Look forward to continuing our dialogue in the near future!




44.6K 5:51 PM - Dec 10, 2019

25.5K people are talking about this

Dec. 13. Trump hosts Abdo Benítez at the White House.

No date for a visit by Zelensky has been announced.

Trump quotes Sondland quoting him: "I want nothing. I want no quid pro quo"

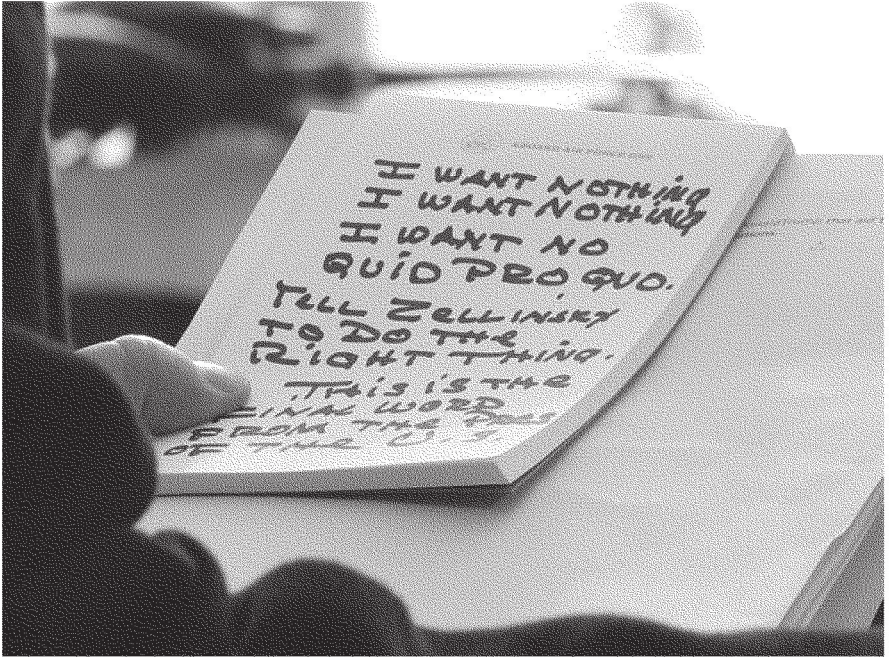
 [cbsnews.com/news/trump-quotes-sondland-quoting-him-i-want-nothing-i-want-no-quid-pro-quo/](https://www.cbsnews.com/news/trump-quotes-sondland-quoting-him-i-want-nothing-i-want-no-quid-pro-quo/)

UPDATED ON: NOVEMBER 20, 2019 / 5:13 PM / CBS NEWS

President Trump quoted a portion of the testimony of U.S. Ambassador to the EU Gordon Sondland as he departed the White House Wednesday: "I want nothing. I want nothing," Mr. Trump read to reporters outside the White House. "I want no quid pro quo. Tell Zelensky — President Zelensky to do the right thing."

The quote referred to a September 9 conversation that Sondland depicted as "very short and abrupt." Mr. Trump disputed Sondland's characterization of him as having been in a bad mood — "I'm always in a good mood. I don't know what that is." He then suggested he was quoting Sondland saying, "This is the final word from the president of the United States: 'I want nothing.'"

As the president spoke, he could be seen holding handwritten notes with his statement scrawled in bold black ink on Air Force One notepaper: "I want nothing. I want nothing. I want no quid pro quo. Tell Zellinsky (sic) to do the right thing."



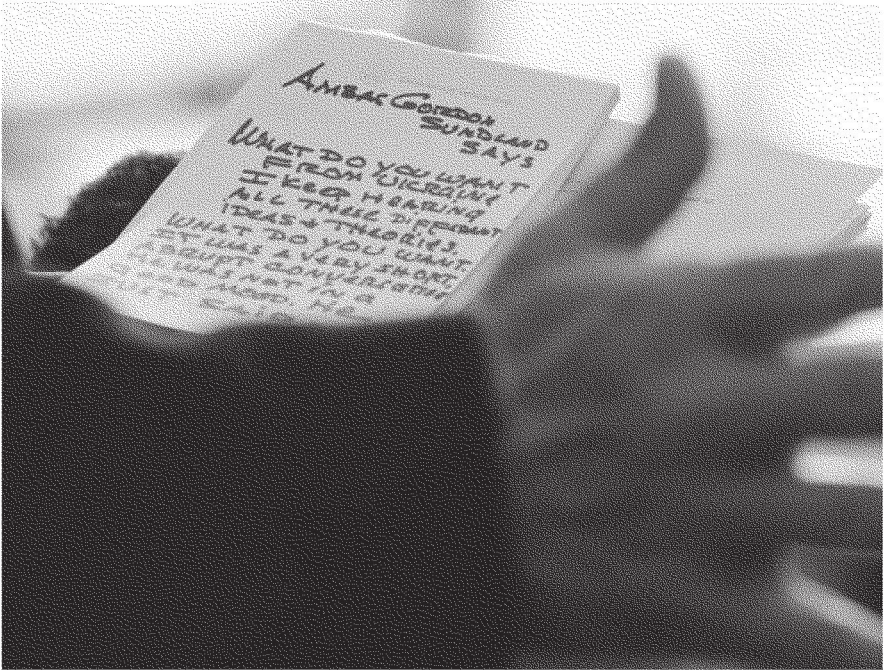
President Donald Trump holds notes saying "I want nothing. I want no quid pro quo," while speaking to the media about the testimony of Ambassador Gordon Sondland on November 20, 2019. Mark Wilson/ Getty Images

The date of that conversation between Sondland and Mr. Trump was September 9, the date that the House Intelligence Committee learned of the anonymous whistleblower's complaint at the center of the impeachment inquiry.

Later Wednesday, as Mr. Trump toured an Apple manufacturing plant in Austin with Apple CEO Tim Cook, he stopped to speak with reporters and again read the quotes from Sondland's testimony about their phone call. He called Sondland's testimony "fantastic" and declared, "Not only did we win today, it's over."

During his ongoing testimony before the House Intelligence Committee Wednesday, Sondland told the House Intelligence Committee, "It was a very short abrupt conversation. He was not in a good mood," Sondland said about his call with Mr. Trump. "He just said, 'I want nothing, I want nothing, I want no quid pro quo.'"

He went on to say that when he conveyed to Ambassador William Taylor that Mr. Trump had "no quid pro quo" demand, his intent was "not to defend what the president was saying, not to opine on whether the president was being truthful or untruthful, but simply to relay I've gone as far as I can, this is the final word that I heard."



President Donald Trump holds his notes about Ambassador Sundland's testimony while speaking to the media before departing from the White House on November 20, 2019. Mark Wilson / Getty Images

Mr. Trump said Wednesday that Sondland "seems like a nice guy" but added, "I don't know him well."

While the president is traveling, Sondland has been testifying in the impeachment hearings against Mr. Trump. Sondland, in his opening statement said that he, then-special envoy to Ukraine Kurt Volker and Energy Secretary Rick Perry worked with the president's personal lawyer, Rudy Giuliani, on Ukraine "at the express direction of the president." He also repeated his testimony on his understanding of a quid pro quo sought by the president, through Giuliani:

Mr. Giuliani's requests were a quid pro quo for arranging a White House visit for President Zelensky. Mr. Giuliani demanded that Ukraine make a public statement announcing investigations of the 2016 election/DNC server and Burisma. Mr. Giuliani was expressing the desires of the President of the United States, and we knew that these investigations were important to the President.

Sondland dismissed as "false" the idea that this was "rogue" diplomacy. He told the House Intelligence Committee that he has identified "State Department emails and messages" that show the leadership of the State Department and National Security Council was informed of these efforts from

21747

79

May 23, 2019 until the aid was released in September.

1/16/2020

Giuliani, Facing Scrutiny, Travels to Europe to Interview Ukrainians - The New York Times

The New York Times | <https://nyti.ms/2Lnvzm5>

Giuliani, Facing Scrutiny, Travels to Europe to Interview Ukrainians

President Trump's personal lawyer has been in Budapest and Kyiv this week to talk with former Ukrainian prosecutors for a documentary series intended to debunk the impeachment case.

By **Kenneth P. Vogel** and **Benjamin Novak**

Published Dec. 4, 2019 Updated Dec. 17, 2019

WASHINGTON — Even as Democrats intensified their scrutiny this week of Rudolph W. Giuliani's role in the pressure campaign against the Ukrainian government that is at the heart of the impeachment inquiry, Mr. Giuliani has been in Europe continuing his efforts to shift the focus to purported wrongdoing by President Trump's political rivals.

Mr. Giuliani, the president's personal lawyer, met in Budapest on Tuesday with a former Ukrainian prosecutor, Yuriy Lutsenko, who has become a key figure in the impeachment inquiry. He then traveled to Kyiv on Wednesday seeking to meet with other former Ukrainian prosecutors whose claims have been embraced by Republicans, including Viktor Shokin and Kostiantyn H. Kulyk, according to people familiar with the effort.

The former prosecutors, who have faced allegations of corruption, all played some role in promoting claims about former Vice President Joseph R. Biden Jr., a former United States ambassador to Ukraine and Ukrainians who disseminated damaging information about Mr. Trump's campaign chairman, Paul Manafort, in 2016.

Those claims — some baseless and others with key disputed elements — have been the foundations of the effort by Mr. Trump and Mr. Giuliani to pressure the Ukrainian government to commit itself to investigations that would benefit Mr. Trump heading into his re-election campaign. That effort in turn has led to the impeachment proceedings in the House against the president.

Mr. Giuliani is using the trip, which has not been previously reported, to help prepare more episodes of a documentary series for a conservative television outlet promoting his pro-Trump, anti-impeachment narrative. His latest moves to advance the theories propounded by the prosecutors amount to an audacious effort to give the president's supporters new material to undercut the House impeachment proceedings and an eventual Senate trial.

It was Mr. Giuliani's earlier interactions with some of the same Ukrainian characters that set the stage for the impeachment inquiry in the first place, and also led to an investigation by federal prosecutors into whether Mr. Giuliani violated federal lobbying laws.

Mr. Giuliani's trip has generated concern in some quarters of the State Department, coming amid scrutiny of his work with American diplomats earlier this year on the pressure campaign. His trip to Budapest and Kyiv suggests that he is unbowed by the intense scrutiny that has enveloped him and his associates, including revelations from the House Intelligence Committee on Tuesday of frequent calls from Mr. Giuliani to the White House and other figures in the pressure campaign at key moments this year.

The European trip was organized around the filming of a multipart television series featuring Mr. Giuliani that is being produced and aired by a conservative cable channel, One America News, or OAN.

The series, the first two installments of which have already aired, is being promoted as a Republican alternative to the impeachment hearings, including Ukrainian "witnesses" whom House Democrats running the inquiry declined to call. Some of the Ukrainians interviewed by Mr. Giuliani were sworn in on camera to "testify under oath" in a manner that the network claims "debunks the impeachment hoax."

Mr. Giuliani was joined in Budapest by an OAN crew, including the reporter hosting the series, Chanel Rion, who conducted an interview in the Hungarian capital with Mr. Lutsenko, according to someone familiar with the interview.

Earlier this year, Mr. Lutsenko played a formative role in what became Mr. Trump's pressure campaign, meeting with Mr. Giuliani in New York, where he made claims about a gas company that paid Mr. Biden's son as a board member and the dissemination of a secret ledger listing slush payments from a Russia-aligned Ukrainian political party earmarked to Mr. Manafort and others. When The New York Times revealed the payments earmarked to Mr. Manafort in August 2016, it forced him to resign under pressure from the Trump campaign.

Mr. Lutsenko, whom Mr. Giuliani considered representing as a client, is facing allegations in Ukraine of abuse of power during his years as a prosecutor and was characterized by some American officials in the impeachment inquiry as untrustworthy. But his office moved to pursue investigations sought by Mr. Trump, and he was praised by the president as a "very good prosecutor" during a July 25 phone call with President Volodymyr Zelensky of Ukraine.

1/16/2020

Giuliani, Facing Scrutiny, Travels to Europe to Interview Ukrainians - The New York Times

Mr. Lutsenko discussed some of the subjects into which Mr. Trump sought investigations during his interview on Tuesday with Ms. Rion, said the person familiar with the interview.

Also joining Mr. Giuliani and the OAN crew in Budapest were two former Ukrainian officials who have been supportive of Mr. Trump, Andrii Telizhenko and Andrii V. Artemenko.

The pair, along with a third former Ukrainian official, Mykhaylo Okhondovsky, recorded interviews at OAN's studios in Washington late last month with Ms. Rion and Mr. Giuliani for an episode of the series that aired on Tuesday night.

The three Ukrainians questioned the Democrats' case for impeachment during the episode. And they asserted that Mr. Trump had ample reason to ask Mr. Zelensky during their July 25 phone call to investigate the Bidens and whether Ukrainians acted improperly to damage Mr. Trump's 2016 campaign.

The July 25 call helped trigger a whistle-blower complaint about the pressure wielded by Mr. Trump and Mr. Giuliani against Mr. Zelensky, and the whistle-blower complaint incited the impeachment inquiry into whether Mr. Trump abused his power for political gain.

In the OAN episode broadcast on Tuesday, Mr. Telizhenko reiterated his claims that, while working in the Ukrainian Embassy in Washington in 2016, he was instructed to help a Democratic operative gather incriminating information about Mr. Manafort. The Ukrainian Embassy has denied his account.

Mr. Artemenko, a former member of Parliament, and Mr. Okhondovsky, the former chairman of Ukraine's Central Election Commission, both called into question the authenticity of the ledger listing payments to Mr. Manafort.

Ms. Rion falsely claimed on air that the Democratic operative connected to the Ukrainian Embassy, who has become a frequent target of House Republicans, provided the ledger to The Times. She declared that her interviews with Mr. Telizhenko, Mr. Artemenko and Mr. Okhondovsky "pulls the rug out from under" Democrats' "central premise that Trump was wrong to ask about Joe Biden and the Democrat party's starring role in Ukrainian corruption."

Ms. Rion, Mr. Telizhenko, Mr. Artemenko and the White House did not respond to requests for comment.

Mr. Giuliani rejected any notion that it was audacious or risky for him to continue pursuing the Ukrainian mission, given the scrutiny of him by impeachment investigators and federal prosecutors in the Southern District of New York, or S.D.N.Y.

"If S.D.N.Y. leaks and Democrats' threats stopped me, then I should find a new profession," he wrote in a text message on Wednesday.

Asked about his interview with Mr. Lutsenko and efforts to interview other Ukrainian prosecutors, he responded that "like a good lawyer, I am gathering evidence to defend my client against the false charges being leveled against him" by the news media and Democrats.

He accused Representative Adam B. Schiff, the chairman of the House Intelligence Committee, which conducted impeachment hearings last month, of preventing testimony that could help Mr. Trump. "I am hoping that the evidence concealed by Schiff will be available to the public as they evaluate his outrageous, unconstitutional behavior."

He did not respond to a question about whether he briefed Mr. Trump on his trip or his involvement in the OAN series, but he has said that he keeps Mr. Trump apprised of his efforts related to Ukraine.

In a news release Tuesday, OAN indicated that the third installment of its series with Mr. Giuliani was "currently in the works with OAN investigative staff outside the United States conducting key interviews at undisclosed safe houses." It said the network would release additional details "upon return of OAN staff to U.S. soil."

In Budapest, Mr. Giuliani had dinner on Tuesday night at the residence of the United States ambassador to Hungary, David B. Cornstein, a longtime friend and associate of both Mr. Trump and Mr. Giuliani.

A businessman who made a fortune operating jewelry counters inside department stores and worked in Mr. Giuliani's New York mayoral administration, Mr. Cornstein has courted Viktor Orban, Hungary's authoritarian prime minister, who in turn has provided fodder for Mr. Trump's critical view of Ukraine.

A spokesman for the American Embassy in Budapest issued a statement describing the Tuesday night get-together as "a private dinner" hosted by the ambassador "with his longtime friend," Mr. Giuliani, and Mr. Giuliani's assistant. "No one else was present at the dinner."

A reporter who showed up outside the ambassador's residence during the dinner was turned away by a security guard.

Some State Department officials said they were tracking Mr. Giuliani's continued efforts to engage the Ukrainians with concern. One department official, speaking on the condition of anonymity to discuss a politically sensitive topic, called it "shocking" that, in the face of scrutiny of his prior efforts related to Ukraine, Mr. Giuliani was traveling internationally in continued pursuit of information from Ukrainians.

1/16/2020

Giuliani, Facing Scrutiny, Travels to Europe to Interview Ukrainians - The New York Times

One of the former prosecutors with whom Mr. Giuliani is seeking to meet in Kyiv is Mr. Shokin, who claims his ouster was forced by Mr. Biden to prevent investigations into the gas company paying Mr. Biden's son Hunter Biden. Allies of the oligarch who owns the gas company say they welcomed Mr. Shokin's firing, but not because he was actively investigating the company or the oligarch. Rather, they say, he was using the threat of prosecution to try to solicit bribes.

Another prosecutor with whom Mr. Giuliani was seeking to meet, Mr. Kulyk, had compiled a seven-page dossier in English accusing Hunter Biden of corruption, and had taken steps to pursue an investigation into Burisma Holdings, the gas company on whose board Hunter Biden served. Mr. Kulyk was fired recently by Mr. Zelensky's new top prosecutor as part of an anti-corruption initiative.

OAN's crew hopes to interview the former prosecutors as well. Ms. Rion suggested during the first episode of the series, which aired late last month.

Kenneth P. Vogel reported from Washington, and Benjamin Novak from Budapest.

Common Questions About Impeachment

- What is impeachment?**
 Impeachment is charging a holder of public office with misconduct.
- Why is the impeachment process happening now?**
 A whistle-blower complaint filed in August [said that White House officials believed they had witnessed Mr. Trump abuse his power for political gain.](#)
- Can you explain what President Trump is accused of doing?**
 President Trump is accused of breaking the law by pressuring the president of Ukraine to [look into former Vice President Joseph R. Biden Jr., a potential Democratic opponent in the 2020 election.](#)
- What did the President say to the president of Ukraine?**
 Here is a [reconstructed transcript](#) of Mr. Trump's call to President Volodymyr Zelensky of Ukraine, released by The White House.
- What is the impeachment process like?**
 Here are answers to [seven key questions](#) about the process.

How to Keep Up

-  Get an [email](#) recapping the day's news
-  Download our mobile app on [iOS](#) and [Android](#) and turn on alerts
-  Listen to analysis on our special podcast series, [The Latest](#)

The Washington Post

Democracy Dies in Darkness

Ukraine lawmaker seeking Biden probe meets with Giuliani in Kyiv

By **David L. Stern** and **Robyn Dixon**

Dec. 5, 2019 at 5:45 p.m. EST

KYIV, Ukraine — President Trump’s personal lawyer Rudolph W. Giuliani met Thursday in Ukraine with one of the key figures working to build a corruption case against Hunter Biden, the Ukraine lawmaker said, after posting Facebook photographs of himself with the former New York mayor.

Andriy Derkach said he pressed Giuliani on the need to set up a joint U.S.-Ukraine investigation into corruption in Ukraine at the meeting in Kyiv. Derkach also vowed to set up an anti-corruption group in the Ukraine parliament.

Giuliani did not make any immediate public comments on the meetings in Ukraine.

But in tweets hours later, he drew connections between future U.S. aid and investigations by Ukraine into former vice president Joe Biden — issues that are already at the center of the impeachment inquiry.

AD

Giuliani tweeted that U.S. assistance to Ukraine on anti-corruption reforms could face a “major obstacle” until the “conversation about corruption in Ukraine” is resolved. Giuliani alleged “compelling” evidence of criminal misdeeds by Biden, but gave no specifics.

His presence in Ukraine also advances the efforts of Trump allies to create an alternative narrative in the rapidly moving impeachment investigation — tapping some of Ukraine’s most controversial figures who have spread theories of corruption and impropriety around Biden, his son Hunter Biden and Ukrainian interference in the 2016 election.

The New York Times, which first reported Giuliani’s travels, said he had meetings in Budapest and Kyiv this week to meet current and former Ukrainian officials for a documentary.

AD

1/16/2020

Ukraine lawmaker seeking Biden probe meets with Giuliani in Kyiv - The Washington Post

Derkach noted that their meeting was filmed by “some kind of American television company” but offered no further details.

“Rudolph Giuliani has arrived in Kyiv. We met up immediately to discuss the establishment of the Friends of Ukraine STOP Corruption interparliamentary group,” Derkach said in a Facebook post.

Derkach, an independent lawmaker who was formerly a member of a pro-Russian party in parliament, went to the Dzerzhinsky Higher School of the KGB in Moscow. He is the son of a KGB officer who later served as head of Ukrainian intelligence.

Derkach wrote that Giuliani could help bring experts, journalists and analysts to investigate corruption in Ukraine and “benefit strategic relations between Kyiv and the United States.”

AD

Derkach said he had sent letters Tuesday to key Republicans including Sen. Lindsey O. Graham (S.C.), Rep. Devin Nunes (Calif.) and White House acting chief of staff Mick Mulvaney, seeking their participation.

He said their involvement would help expose the ineffective use of U.S. tax dollars by Ukrainian authorities.

1/16/2020

Ukraine lawmaker seeking Biden probe meets with Giuliani in Kyiv - The Washington Post

“We sent our proposal. We’re waiting for a reaction, an answer. We’re waiting to see how much this is something that the congressmen and senators are in need of. If they want to work together, we’re ready,” Derkach said.

Derkach said he handed Giuliani documents on allegations relating to inefficient expenditure of U.S. government money on projects in Ukraine and other matters.

AD

The documents do not mention the Bidens. But Derkach makes reference to the energy company Burisma, which had Hunter Biden as a board member.

Right-wing network One America News announced Tuesday it was conducting a “special investigation” with Giuliani, flying three Ukrainian officials to the United States and “debunking Schiff’s impeachment narrative.”

Rep. Adam B. Schiff (D-Calif.) chaired the Intelligence Committee that handed down a report concluding that Trump sought to undermine U.S. democracy and endangered national security.

Derkach did not state whether the TV crew with Giuliani was from One America News.

1/16/2020

Ukraine lawmaker seeking Biden probe meets with Giuliani in Kyiv - The Washington Post

Derkach and another parliamentary deputy, Oleksandr Dubinsky, called a news conference in Kyiv last month announcing plans to launch an investigative committee of the Ukrainian parliament, claiming corruption by top Ukrainian political figures and Burisma.

AD

The company is at the heart of the impeachment investigation, with allegations Trump withheld military aid to press Ukrainian President Volodymyr Zelensky to open corruption investigations that could have damaged Joe Biden, a potential rival in next year's presidential election.

Analysts have dismissed Derkach as spreading disinformation to support the theory, being promoted by Trump allies, that Biden sought the dismissal of a former Ukraine prosecutor general, Viktor Shokin, because he wanted to protect his son.

Ukraine's prosecutor general, Ruslan Ryaboshapka, said in October that he would carry out an audit to review the handling of all previous cases involving Burisma.

1/16/2020

Ukraine lawmaker seeking Biden probe meets with Giuliani in Kyiv - The Washington Post

AD

No evidence of wrongdoing by the Bidens has emerged, and European powers were also seeking Shokin's dismissal, seeing him as corrupt and an obstacle to reform.

Derkach has previously led calls to investigate the Bidens and alleged Ukrainian interference in the 2016 U.S. elections. In 2017, he wrote a letter to the Ukrainian prosecutor general's office, demanding an investigation into alleged interference in the elections by Ukrainian officials to hamper Trump's campaign, claiming this had "seriously damaged Ukraine-American relations."

The July 24, 2017, letter came one day before Trump called on the U.S. attorney general's office in a tweet to investigate "Ukrainian efforts to sabotage the Trump campaign."

AD

1/16/2020

Ukraine lawmaker seeking Biden probe meets with Giuliani in Kyiv - The Washington Post

Derkach and Dubinsky, however, seem to be experiencing difficulty attracting the support of 150 members of parliament — the number required to form the investigative group.

Derkach and Dubinsky have “zero” chance of forming an investigative committee, said one parliamentarian Thursday, who spoke on the condition of anonymity due to the issue’s sensitivity.

Anders Aslund, a senior fellow at the Atlantic Council and analyst on corruption in Russia and Ukraine, tweeted last month that Derkach and others were spreading “lies” on behalf of Trump and Giuliani.

“Stay away from them! All lies!” he wrote.

He tweeted Wednesday that Giuliani “has chosen Ukrainian interlocutors who are criminals & NEVER say anything true.”

AD

On Tuesday, Giuliani met again with another key figure, former Ukrainian prosecutor Yuri Lutsenko, in Budapest, according to the New York Times. Giuliani had met previously with Lutsenko, who also has pushed the theory that Ukraine, not Russia, intervened in 2016 elections.

1/16/2020

Ukraine lawmaker seeking Biden probe meets with Giuliani in Kyiv - The Washington Post

The New York Times reported Giuliani was seeking other meetings with two former prosecutors, Shokin and Kostiantyn Kulyk.

Ukrainian anti-corruption campaigner Daria Kaleniuk, director of the nonprofit Anti-Corruption Action Center, described Derkach on Twitter as having associations with Ukrainian security services and an allegedly corrupt pharmaceutical firm. She noted that he opposed a system of electronic declaration of parliamentarians' assets in 2015, designed to clean up endemic Ukrainian corruption.

Dixon reported from Moscow. Colby Itkowitz in Washington contributed to this report.

The Washington Post

Democracy Dies in Darkness

Politics

Impeachment

White House

Congress

Polling

The Trailer

Fact Checker

Giuliani may be making a stronger case against Trump than Biden

Instead of validation by Ukraine, it has been validated by conservative media.

By **Philip Bump**

Dec. 16, 2019 at 5:23 p.m. EST

Let's assume for the sake of argument that President Trump's motivation in asking Ukrainian President Volodymyr Zelensky to investigate former vice president Joe Biden was not, in fact, generalized concern about corruption in that country. It's a fair assumption to make, given that he never publicly expressed concern about corruption in Ukraine before September and only rarely mentioned corruption elsewhere (save within the Democratic Party). But should you be inclined to give him the benefit of the doubt on that point, I ask that you set it aside for a moment.

Lots of things suddenly click neatly into place. That would explain, then, why Trump asked Zelensky only and specifically about Biden and his son Hunter instead of corruption more broadly. It would explain, too, why, asked several days after the rough transcript of his call was made public what he hoped Zelensky would do, he said he wanted the Ukrainian president to "start a major investigation into the Bidens" — not that he wanted Zelensky to focus broadly on potential issues of corruption. Particularly since there's no robust evidence that Biden or his son actually engaged in any corrupt activity.

By the time Trump made that request on July 25, his team within the administration had been agitating for Ukraine to launch an investigation for a month, using Zelensky's desire for a meeting at the White House as leverage. His team *outside* the administration — centralized in his personal attorney Rudolph W. Giuliani — had been on the case even longer, stretching back to late 2018. Despite sporadic efforts to distance himself from Giuliani's efforts in particular, Trump's embrace of Giuliani's singular focus on Biden has been obvious for some time and has been reinforced regularly even as the president has faced impeachment by the House.

AD

Giuliani recently returned from Ukraine, where he met with several current and former officials from that country who've contributed bits of information to Giuliani's theory of Biden malfeasance. He did so in the company of a personality from the unabashedly pro-Trump cable network One America News Network, who subsequently filed reports about the trip that would make a 2-year-old's assessment of the existence of Santa Claus seem measured and skeptical.

Most of what Giuliani alleges is centered on testimony from a handful of obviously conflicted witnesses and bolstered by other dubious characters. At the center is Viktor Shokin, Ukraine's prosecutor general until early 2016, when he was forced out under pressure from Biden and other U.S. and European leaders.

Shokin has repeatedly claimed that he was targeted by Biden solely because his office was investigating corruption at a Ukrainian company called Burisma Holdings, on the board of which Hunter Biden then served. Others, including a number of other officials, have denied that claim. No one has presented robust evidence that there was such an investigation underway while a number of individuals have flatly denied that Burisma was under investigation in the way Shokin claims. In fact, as Adam Entous reported in the New Yorker on Monday, much of the criticism Shokin engendered stemmed from his *failure* to prosecute corruption. But Shokin nonetheless has insisted to Giuliani that he was targeted solely because Biden wanted to protect his son.

AD

Shokin also told Giuliani that he'd twice been poisoned, had each time technically died and twice been brought back to life.

Giuliani reported this without amendment to his Twitter followers. There are no news articles reinforcing the claim that a former senior Ukrainian government official had narrowly cheated poisoning, despite the historical resonance of such a claim. But this, as we'll see, is how Giuliani's investigation works.

The Entous article focuses on another source of Giuliani's, Shokin's successor Yuri Lutsenko. Lutsenko was included in the OANN series, but his most dramatic mark on the Ukraine story was made in interviews with writer John Solomon for articles published at The Hill this year. In those interviews, he alleged wrongdoing by the Bidens and accused then-Ambassador to Ukraine Marie Yovanovitch of having given him a do-not-prosecute list — evidence, he suggested, of the government's willingness to steer law enforcement in Ukraine in particular directions.

AD

Neither of those claims was true. Lutsenko walked each back a few months after offering them and explained to Entous his rationale for making them in the first place. Entous's article also casts significant doubt on two stories Lutsenko is still peddling via Giuliani and OANN, involving money laundering allegations targeting an American financial company and Burisma itself. In the interview, Lutsenko also targets Yovanovitch again, this time claiming she lied under oath.

What's emerged since the beginning of the year was a willingness by Giuliani to share whatever information was presented to him, regardless of the credibility of the source or the information itself. Interviews with Shokin and Lutsenko conducted in January were documented and later passed along to the State Department without verification. While Trump presents Giuliani as "a great crime-fighter" — a function of his tenure as a U.S. attorney and as mayor of New York City — it's hard to come to the conclusion that Giuliani's current efforts are much more than partisan dirt-digging.

Entous reports on a call he had with Giuliani last month to that point.

AD

"Giuliani described some tips he was hearing from his sources in Ukraine, including allegations that a Ukrainian oligarch had made illegal campaign contributions to Hillary Clinton totaling forty million dollars, 'that Biden helped to facilitate,' " Entous writes. "In addition, he said, 'I was told Biden had participated in the hacking' — a reference to the penetration of Democratic National Committee computer servers in 2016, which U.S. intelligence agencies have attributed to Russia's military intelligence agency."

Giuliani shrugs at the fact that he's passing on dubious claims: "They may be true, they may be false." The important throughline, of course, is that they impugn Biden.

Trump has been kept apprised of Giuliani's activities. Last Friday, Giuliani spent several hours at the White House. In an interview with the Wall Street Journal published Saturday, he describes a phone conversation with Trump immediately upon landing back in the U.S. from Ukraine.

AD

According to Giuliani, Trump asked, "What did you get?"

Giuliani replied, "More than you can imagine."

On Dec. 7, Trump spoke to reporters outside the White House and discussed Giuliani's research.

"I just know he came back from someplace, and he's going to make a report, I think to the attorney general and to Congress," Trump said. "He says he has a lot of good information. I have not spoken to him about that information."

The president also retweeted part of Giuliani's thread about his "investigations" with OANN, including Lutsenko's accusation against Yovanovitch.

Yovanovitch's ouster in April—by the Trump administration's State Department—followed a public campaign by Giuliani, Fox News's Sean Hannity and Donald Trump Jr. suggesting that she had behaved inappropriately in office or was disloyal to Trump. To Entous, Giuliani expressed another rationale for getting her out of the way.

AD

"I believed that I needed Yovanovitch out of the way," Giuliani told Entous. "She was going to make the investigations difficult for everybody."

This, of course, is a central allegation from House Democrats, that the investigations sought by Trump — particularly targeting Biden — was the reason Trump's team wanted Yovanovitch gone.

Giuliani simply admitted it, just as he pushes forward on his Hooveresque (as in the vacuum, not the FBI director) investigation, sucking up any claim that includes a criminal statute, a verb and “Joe Biden.” The insistence by Trump allies that the president wanted Ukraine broadly to address corruption is flimsy at best, but Giuliani keeps kicking out pieces of the sagging scaffolding that the claim depends on. He does so while obviously still engaging with Trump — by his own admission. Trump has claimed that he didn’t direct Giuliani’s efforts in Ukraine, but Giuliani, who has said that he’s engaging in the probes on behalf of his client — Trump — also hasn’t been told to cut it out.

AD

There’s one more damning part of Entous’s article that bears mentioning. Lutsenko told the New Yorker reporter that “he suspected that an attention-grabbing announcement from Ukraine was more important to Giuliani than the proposed investigations themselves, which would drag on for years.” This, of course, was the claim made by Ambassador to the European Union Gordon Sondland, who testified during an open hearing as part of the House impeachment inquiry that Trump and Giuliani simply wanted an announcement of an investigation, getting the political benefit of the cloud that would hang over Biden, without having to worry about an eventual exoneration.

The irony is that this is where we already are. That cloud is there, thanks to the uncritical reiteration of Giuliani's claims in conservative media like OANN and thanks to Trump defenders during the impeachment process. It's a tidy little circle: Trump's request for a probe of Biden derived from concern about corruption, and that concern about corruption centered on Biden because of these unproven allegations that Trump wanted to learn more about.

Assume that perhaps this wasn't Trump's intent and things get a lot easier to explain — thanks in large part to Trump's personal attorney.

1/16/2020

Rudy Giuliani on Twitter: "Schiffs impeachment is a FARCE because 1. There was no military aid withheld. 2. The conversation about cor...



Rudy Giuliani ●
@RudyGiuliani

Follow



Schiffs impeachment is a FARCE because

1. There was no military aid withheld.

2. The conversation about corruption in Ukraine was based on compelling evidence of criminal conduct by then VP Biden, in 2016, that has not been resolved and until it is will be a major obstacle...

1:42 PM - 5 Dec 2019

10,223 Retweets 25,252 Likes



5.0K



10K

25K



Rudy Giuliani ● @RudyGiuliani · 5 Dec 2019

...to the US assisting Ukraine with its anti-corruption reforms.

The American people will learn that Biden & other Obama administration officials, contributed to the increased level of corruption in Ukraine between 2014 to 2016.

This evidence will all be released very soon.



3.1K



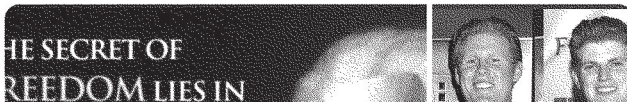
7.4K

15K



Rhonda Harbison @rhonda_harbison · 5 Dec 2019

Replying to @RudyGiuliani



<https://twitter.com/RudyGiuliani/status/1202704721548644353>

1/1

1/16/2020 Donald J. Trump on Twitter: "...I would like to have the Attorney General (of the United States) call you or your people....." This, based o...



When I said, in my phone call to the President of Ukraine, "I would like you to do US a favor though because our country has been through a lot and Ukraine knows a lot about it." With the word "us" I am referring to the United States, our Country. I then went on to say that.....



21K

21K

99K



Donald J. Trump

@realDonaldTrump

Follow



...."I would like to have the Attorney General (of the United States) call you or your people....." This, based on what I have seen, is their big point - and it is no point at a all (except for a big win for me!). The Democrats should apologize to the American people!

7:50 PM - 4 Dec 2019

16,724 Retweets 77,564 Likes



11K

17K

78K



ALX @alx · 4 Dec 2019

Replying to @realDonaldTrump

REMINDER TO THE MEDIA:

It is NOT ILLEGAL to report the name of the Whistleblower!

DO YOUR JOB



ALX 🇺🇸

1/16/2020

Trump tweeted as Marie Yovanovitch testified: Was it witness tampering?

IMPEACHMENT INQUIRY

Trump tweeted as Marie Yovanovitch testified: Was it witness tampering?

"It's very intimidating," Yovanovitch said about Trump's attacks on her. "I can't speak as to what the president is trying to do but I think the effect is to be very intimidating."



President Donald Trump attends an event on healthcare prices in the Roosevelt Room of the White House, on Nov. 15, 2019. Evan Vucci / AP

Nov. 16, 2019, 12:33 PM EST

By Danny Cevallos

Former U.S. ambassador [Marie Yovanovitch was testifying Friday](#) in the House impeachment inquiry when suddenly President Donald Trump weighed in.

<https://www.nbcnews.com/politics/trump-impeachment-inquiry/trump-tweeted-marie-yovanovitch-testified-was-it-witness-tampering-n1084176>

1/4

1/16/2020

Trump tweeted as Marie Yovanovitch testified: Was it witness tampering?

"Everywhere Marie Yovanovitch went turned bad," the president tweeted during the public, televised hearing before the House Intelligence Committee. "She started off in Somalia, how did that go?"

Trump also asserted his "absolute right" to recall ambassadors, as he had done with Yovanovitch, whose most recent post was in Ukraine, a country at the heart of the impeachment inquiry.



Donald J. Trump
@realDonaldTrump

Everywhere Marie Yovanovitch went turned bad. She started off in Somalia, how did that go? Then fast forward to Ukraine, where the new Ukrainian President spoke unfavorably about her in my second phone call with him. It is a U.S. President's absolute right to appoint ambassadors.

121K 10:01 AM - Nov 15, 2019

100K people are talking about this

Committee Chairman Adam Schiff, D-Calif., read the tweet aloud during the hearing and asked Yovanovitch how the president's repeated attacks on her might affect other witnesses in the impeachment inquiry.

"It's very intimidating," she said. "I can't speak as to what the president is trying to do but I think the effect is to be very intimidating."

Former U.S. Ambassador to Ukraine Marie Yovanovitch testifies before the House Intelligence Committee, on Nov. 15, 2019, on Capitol Hill. J. Scott Applewhite / AP

During a break, Schiff told reporters that "we saw today witness intimidation in real time by the president of the United States, once again going after this dedicated and respected career public servant in an effort to not only chill her, but to chill others who may come forward.

Trump told reporters later on Friday that he was just offering his opinion.

Download the NBC News app for breaking news and politics

"I have the right to speak. I have the freedom of speech just as other people do," the president said.

But was it witness tampering, which is a violation of the law?

1/16/2020

Trump tweeted as Marie Yovanovitch testified: Was it witness tampering?

Why it could be prosecuted as witness tampering

Federal criminal law contains a broad prohibition against illegitimately affecting the presentation of evidence in hearings. For example, it is unlawful to knowingly use intimidation or corrupt persuasion with intent to influence the testimony of any person in an official proceeding.

An "official proceeding" includes hearings before Congress. Witness harassment also includes conduct intended to "badger, disturb or pester" and attempts to intimidate, even if the witness isn't actually influenced, and even if the witness never actually received the threat.

An act "with the intent to influence the testimony" has the purpose of getting the person to "change, color, or shade his or her testimony in some way." The government doesn't have to prove that the testimony was, in fact, changed, as long as the intent was there. The government does have to prove that whatever statements were made to the person about the testimony had that improper purpose.

"Intimidation" means the use of any words designed to make someone timid or fearful. Yovanovitch all but established this prong when she testified about her reaction to the tweet: "It's intimidating." It seems to fit the elements of the witness-tampering statute.

How the tweet could be defended

There are two major themes for the defense, first, that the tweet did not have a bad purpose and, secondly, that the First Amendment allows the president to express his opinion.

The president's defense could point out that as the former ambassador was already recalled from her post in Ukraine and now has a good fellowship at Georgetown University, Trump's words can no longer affect her job.

The defense could also argue that his words were not a threat, but rather just an explanation that Yovanovitch was recalled because she was bad at her job.

Finally, the president's team might even argue that he has a First Amendment right to say whatever he wants about the former ambassador.

That last argument is the weakest.

Courts have rejected First Amendment challenges to witness-tampering laws. The law does not prohibit all persuasion but only that which is "corrupt," which means the government must prove the defendant was motivated by an improper purpose, with the purpose of obstructing justice. By narrowly targeting only persuasion that is "corrupt," federal law does not outlaw lawful or constitutionally protected speech and is not unconstitutionally overbroad.

1/16/2020

Trump tweeted as Marie Yovanovitch testified: Was it witness tampering?

Trump’s strongest argument is that his opinion about the bad job the ambassador did gives context to why she was recalled. And, since ambassadors serve at the president’s pleasure, voicing his displeasure with her service is part of his executive prerogative.

There are prosecutors who would charge this case or bring it to a grand jury on these facts. There are also prosecutors who might not bring this case.

It’s not a slam dunk, but it’s a winnable case. There are a few defenses, but the best defense is that the tweet was not motivated by any bad purpose.

Of course, a sitting president cannot be charged with a crime by the Department of Justice, but he can be impeached by Congress. That tweet could very well end up in an article of impeachment.



[ABOUT](#)

[CONTACT](#)

[CAREERS](#)

[COUPONS](#)

[PRIVACY POLICY](#) - [NEW](#)

[DO NOT SELL MY PERSONAL INFORMATION](#)

[TERMS OF SERVICE](#)

[NBCNEWS.COM SITE MAP](#)

[ADVERTISE](#)

[ADCHOICES](#)

© 2020 NBC UNIVERSAL

[5P NEWS](#)

[5P NEWS](#)

[5P NEWS](#)

1/16/2020

Trump War Room --- Text FIGHT to 88022 on Twitter: "It's pretty simple. The CIA "whistleblower" is not a real whistleblower! https://t.co/z...

whose complaint led to the impeachment inquiry against President Donald Trump called for Republican lawandcrime.com

119

200

469

**Trump War Room --- Text FIGHT t...**

@TrumpWarRoom

Follow

Replying to @MarkSZaidEsq @ODNlgov @MarshaBlackburn

It's pretty simple. The CIA "whistleblower" is not a real whistleblower!
[washingtonexaminer.com/news/schiff-hi](https://www.washingtonexaminer.com/news/schiff-hi) ...

Team Trump (Text FIRST to 88022)

**against Donald Trump.**

1:07 152K views

Threat to Democracy

1:50 PM - 26 Dec 2019

6,684 Retweets **17,315** Likes

1.5K

6.7K

17K

**Lennie Appelquist** @lenapple · 26 Dec 2019

Replying to @TrumpWarRoom @realDonaldTrump and 3 others

How effing embarrassing that the "president" of the United States actually retweets the alleged whistleblowers identity.

<https://twitter.com/TrumpWarRoom/status/1210316970090024964>

1/1



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Decision

Matter of: Office of Management and Budget—Withholding of Ukraine Security Assistance

File: B-331564

Date: January 16, 2020

DIGEST

In the summer of 2019, the Office of Management and Budget (OMB) withheld from obligation funds appropriated to the Department of Defense (DOD) for security assistance to Ukraine. In order to withhold the funds, OMB issued a series of nine apportionment schedules with footnotes that made all unobligated balances unavailable for obligation.

Faithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law. OMB withheld funds for a policy reason, which is not permitted under the Impoundment Control Act (ICA). The withholding was not a programmatic delay. Therefore, we conclude that OMB violated the ICA.

DECISION

In the summer of 2019, OMB withheld from obligation approximately \$214 million appropriated to DOD for security assistance to Ukraine. See Department of Defense Appropriations Act, 2019, Pub. L. No. 115-245, div. A, title IX, § 9013, 132 Stat. 2981, 3044–45 (Sept. 28, 2018). OMB withheld amounts by issuing a series of nine apportionment schedules with footnotes that made all unobligated balances for the Ukraine Security Assistance Initiative (USAI) unavailable for obligation. See Letter from General Counsel, OMB, to General Counsel, GAO (Dec. 11, 2019) (OMB Response), at 1–2. Pursuant to our role under the ICA, we are issuing this decision. Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, title X, § 1015, 88 Stat. 297, 336 (July 12, 1974), *codified at* 2 U.S.C. § 686. As explained below, we conclude that OMB withheld the funds from obligation for an

unauthorized reason in violation of the ICA.¹ See 2 U.S.C. § 684. We also question actions regarding funds appropriated to the Department of State (State) for security assistance to Ukraine.

OMB removed the footnote from the apportionment for the USAI funds on September 12, 2019. OMB Response, at 2. Prior to their expiration, Congress then rescinded and reappropriated the funds. Continuing Appropriations Act, 2020, Pub. L. No. 116-59, div. A, § 124(b), 133 Stat. 1093, 1098 (Sept. 27, 2019).

In accordance with our regular practice, we contacted OMB, the Executive Office of the President, and DOD to seek factual information and their legal views on this matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP; Letter from General Counsel, GAO, to Acting Director and General Counsel, OMB (Nov. 25, 2019); Letter from General Counsel, GAO, to Acting Chief of Staff and Counsel to the President, Executive Office of the President (Nov. 25, 2019); Letter from General Counsel, GAO, to Secretary of Defense and General Counsel, DOD (Nov. 25, 2019).

OMB provided a written response letter and certain apportionment schedules for security assistance funding for Ukraine. OMB Response (written letter); OMB Response, Attachment (apportionment schedule). The Executive Office of the President responded to our request by referring to the letter we had received from OMB and providing that the White House did not plan to send a separate response. Letter from Senior Associate Counsel to the President, Executive Office of the President, to General Counsel, GAO (Dec. 20, 2019). We have contacted DOD regarding its response several times. Letter from General Counsel, GAO, to Secretary of Defense and General Counsel, DOD (Dec. 10, 2019); Telephone Conversation with Deputy General Counsel for Legislation, DOD (Dec. 12, 2019); Telephone Conversation with Office of General Counsel Official, DOD (Dec. 19, 2019). Thus far, DOD officials have not provided a response or a timeline for when we will receive one.

¹ On October 30, 2019, Senator Chris Van Hollen asked the Comptroller General about this matter during a hearing before the Senate Committee on the Budget. *Chief Financial Officers Act of 1990: Achieving the Vision: Hearing Before the Senate Committee on the Budget*, 116th Cong. (2019), (statement of Sen. Van Hollen), available at <https://www.budget.senate.gov/chief-financial-officers-act-of-1990-achieving-the-vision> (last visited Jan. 13, 2020). We also received a letter from Senator Van Hollen regarding this matter. Letter from Senator Chris Van Hollen to Comptroller General (Dec. 23, 2019).

BACKGROUND

For fiscal year 2019, Congress appropriated \$250 million for the Ukraine Security Assistance Initiative (USAI). Pub. L. No. 115-245, § 9013, 132 Stat. at 3044–45. The funds were available “to provide assistance, including training; equipment; lethal assistance; logistics support, supplies and services; sustainment; and intelligence support to the military and national security forces of Ukraine.” *Id.* § 9013, 132 Stat. at 3044. The appropriation made the funds available for obligation through September 30, 2019. *Id.*

DOD was required to notify Congress 15 days in advance of any obligation of the USAI funds. *Id.* § 9013, 132 Stat. at 3045. In order to obligate more than fifty percent of the amount appropriated, DOD was also required to certify to Congress that Ukraine had taken “substantial actions” on “defense institutional reforms.” John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, div., A, title XII, § 1246, 132 Stat. 1636, 2049 (Aug. 13, 2018) (amending National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, div. A, title XII, § 1250, 129 Stat. 726, 1068 (Nov. 25, 2015)). On May 23, 2019, DOD provided this certification to Congress. Letter from Under Secretary of Defense for Policy, to Chairman, Senate Committee on Foreign Relations (May 23, 2019) (DOD Certification) (noting that similar copies had been provided to the congressional defense committees and the House Committee on Foreign Affairs). In its certification, DOD included descriptions of its planned expenditures, totaling \$125 million. *Id.*

On July 25, 2019, OMB issued the first of nine apportionment schedules with footnotes withholding USAI funds from obligation. OMB Response, 1–2. This footnote read:

“Amounts apportioned, but not yet obligated as of the date of this reapportionment, for the Ukraine Security Assistance Initiative (Initiative) are not available for obligation until August 5, 2019, to allow for an interagency process to determine the best use of such funds. Based on OMB’s communication with DOD on July 25, 2019, OMB understands from the Department that this brief pause in obligations will not preclude DOD’s timely execution of the final policy direction. DOD may continue its planning and casework for the Initiative during this period.”

Id.; see *id.*, Attachment. On both August 6 and 15, 2019, OMB approved additional apportionment actions to extend this “pause in obligations,” with footnotes that, except for the dates, were identical to the July 25, 2019 apportionment action.² *Id.*,

² The initial apportionment footnote made USAI funds unavailable for obligation until August 5, 2019. OMB Response, Attachment. OMB did not sign the next
(continued...)

at 2 n. 2. OMB approved additional apportionment actions on August 20, 27, and 31, 2019; and on September 5, 6, and 10, 2019.³ *Id.* The footnotes from these additional apportionment actions were, except for the dates, otherwise identical to one another. *Id.*, Attachment. They nevertheless differed from those of July 25 and August 6 and 15, 2019, in that they omitted the second sentence that appeared in the earlier apportionment actions regarding OMB's understanding that the pause in obligation would not preclude timely obligation. *Id.* The apportionment schedule issued on August 20 read as follows:

"Amounts apportioned, but not yet obligated as to the date of this reapportionment, for the Ukraine Security Assistance Initiative (Initiative) are not available for obligation until August 26, 2019, to allow for an interagency process to determine the best use of such funds. DOD may continue its planning and casework for the Initiative during this period."

Id., Attachment. The apportionment schedules issued on August 27 and 31, 2019; and on September 5, 6, and 10, 2019 were identical except for the dates. *Id.* On September 12, 2019, OMB issued an apportionment that removed the footnote that previously made the USAI funds unavailable for obligation. OMB Response, at 2; *id.*, Attachment. According to OMB, approximately \$214 million of the USAI appropriation was withheld as a result of these footnotes. OMB Response, at 2. OMB did not transmit a special message proposing to defer or rescind the funds.

DISCUSSION

At issue in this decision is whether OMB had authority to withhold the USAI funds from obligation.

(...continued)

apportionment until August 6, 2019. See *id.* On August 6, 2019, the amounts were made unavailable for obligation until August 12, 2019. *Id.* While the next footnote was issued on August 15, 2019 it stated that funds were unavailable for obligation "until August 12, 2019." *Id.* Despite the dates listed in each apportionment footnote, OMB provided that the "pause in obligations was *extended*" on both August 6, 2019 and August 15, 2019. See OMB Response, at 2, fn. 2 (emphasis added).

³ The apportionment footnote issued on August 20, 2019 made USAI funds unavailable for obligation until August 26, 2019. OMB Response, Attachment. OMB did not sign the next apportionment until August 27, 2019. See *id.* Despite the date listed in the apportionment footnote, OMB provided that the "pause in obligations was *extended*" on August 20, 2019. See OMB Response, at 2, fn. 2 (emphasis added).

The Constitution specifically vests Congress with the power of the purse, providing that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. art. I, § 9, cl. 7. The Constitution also vests all legislative powers in Congress and sets forth the procedures of bicameralism and presentment, through which the President may accept or veto a bill passed by both Houses of Congress, and Congress may subsequently override a presidential veto. *Id.*, art. I, § 7, cl. 2, 3. The President is not vested with the power to ignore or amend any such duly enacted law. See *Clinton v. City of New York*, 524 U.S. 417, 438 (1998) (the Constitution does not authorize the President “to enact, to amend, or to repeal statutes”). Instead, he must “faithfully execute” the law as Congress enacts it. U.S. Const., art. II, § 3.

An appropriations act is a law like any other; therefore, unless Congress has enacted a law providing otherwise, the President must take care to ensure that appropriations are prudently obligated during their period of availability. See B-329092, Dec. 12, 2017 (the ICA operates on the premise that the President is required to obligate funds appropriated by Congress, unless otherwise authorized to withhold). In fact, Congress was concerned about the failure to prudently obligate according to its Congressional prerogatives when it enacted and later amended the ICA. See generally, H.R. Rep. No. 100-313, at 66–67 (1987); see also S. Rep. No. 93-688, at 75 (1974) (explaining that the objective was to assure that “the practice of reserving funds does not become a vehicle for furthering Administration policies and priorities at the expense of those decided by Congress”).

The Constitution grants the President no unilateral authority to withhold funds from obligation. See B-135564, July 26, 1973. Instead, Congress has vested the President with strictly circumscribed authority to impound, or withhold, budget authority only in limited circumstances as expressly provided in the ICA. See 2 U.S.C. §§ 681–688. The ICA separates impoundments into two exclusive categories—deferrals and rescissions. The President may temporarily withhold funds from obligation—but not beyond the end of the fiscal year in which the President transmits the special message—by proposing a “deferral.”⁴ 2 U.S.C. § 684. The President may also seek the permanent cancellation of funds for fiscal policy or other reasons, including the termination of programs for which Congress has provided budget authority, by proposing a “rescission.”⁵ 2 U.S.C. § 683.

In either case, the ICA requires that the President transmit a special message to Congress that includes the amount of budget authority proposed for deferral or

⁴ Budget authority proposed for deferral must be prudently obligated before the end of its period of availability. 2 U.S.C. § 684; B-329092, Dec. 12, 2017.

⁵ Budget authority proposed for rescission must be made available for obligation unless, within 45 calendar days of continuous congressional session, Congress has completed action on a rescission bill rescinding all or part of the amount proposed for rescission. 2 U.S.C. § 683.

rescission and the reason for the proposal. 2 U.S.C. §§ 683–684. These special messages must provide detailed and specific reasoning to justify the withholding, as set out in the ICA. See 2 U.S.C. §§ 683–684; B-237297.4, Feb. 20, 1990 (vague or general assertions are insufficient to justify the withholding of budget authority). The burden to justify a withholding of budget authority rests with the executive branch.

There is no assertion or other indication here that OMB intended to propose a rescission. Not only did OMB not submit a special message with such a proposal, the footnotes in the apportionment schedules, by their very terms, established dates for the release of amounts withheld. The only other authority, then, for withholding amounts would have been a deferral.

The ICA authorizes the deferral of budget authority in a limited range of circumstances: to provide for contingencies; to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or as specifically provided by law. 2 U.S.C. § 684(b). No officer or employee of the United States may defer budget authority for any other purpose. *Id.*

Here, OMB did not identify—in either the apportionment schedules themselves or in its response to us—any contingencies as recognized by the ICA, savings or efficiencies that would result from a withholding, or any law specifically authorizing the withholding. Instead, the footnote in the apportionment schedules described the withholding as necessary “to determine the best use of such funds.” See OMB Response, at 2; Attachment. In its response to us, OMB described the withholding as necessary to ensure that the funds were not spent “in a manner that could conflict with the President’s foreign policy.” OMB Response, at 9.

The ICA does not permit deferrals for policy reasons. See B-237297.3, Mar. 6, 1990; B-224882, Apr. 1, 1987. OMB’s justification for the withholding falls squarely within the scope of an impermissible policy deferral. Thus, the deferral of USAI funds was improper under the ICA.

When Congress enacts appropriations, it has provided budget authority that agencies must obligate in a manner consistent with law. The Constitution vests lawmaking power with the Congress. U.S. Const., art. I, § 8, cl. 18. The President and officers in an Administration of course may consider their own policy objectives as they craft policy proposals for inclusion in the President’s budget submission. See B-319488, May 21, 2010, at 5 (“Planning activities are an essential element of the budget process.”). However, once enacted, the President must “take care that the laws be faithfully executed.” See U.S. Const., art. II, § 3. Enacted statutes, and not the President’s policy priorities, necessarily provide the animating framework for all actions agencies take to carry out government programs. *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 374 (1986) (“[A]n agency literally has no power to act . . . unless and until Congress confers power upon it.”); *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001) (a federal agency is “a creature of

statute” and “has no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress”).

Faithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law. In fact, Congress was concerned about exactly these types of withholdings when it enacted and later amended the ICA. See H.R. Rep. No. 100-313, at 66–67 (1987); see *also* S. Rep. No. 93-688, at 75 (1974) (explaining that the objective was to assure that “the practice of reserving funds does not become a vehicle for furthering Administration policies and priorities at the expense of those decided by Congress”).

OMB asserts that its actions are not subject to the ICA because they constitute a programmatic delay. OMB Response, at 7, 9. It argues that a “policy development process is a fundamental part of program implementation,” so its impoundment of funds for the sake of a policy process is programmatic. *Id.*, at 7. OMB further argues that because reviews for compliance with statutory conditions and congressional mandates are considered programmatic, so too should be reviews undertaken to ensure compliance with presidential policy prerogatives. *Id.*, at 9.

OMB’s assertions have no basis in law. We recognize that, even where the President does not transmit a special message pursuant to the procedures established by the ICA, it is possible that a delay in obligation may not constitute a reportable impoundment. See B-329092, Dec. 12, 2017; B-222215, Mar. 28, 1986. However, programmatic delays occur when an agency is taking necessary steps to implement a program, but because of factors external to the program, funds temporarily go unobligated. B-329739, Dec. 19, 2018; B-291241, Oct. 8, 2002; B-241514.5, May 7, 1991. This presumes, of course, that the agency is making reasonable efforts to obligate. B-241514.5, May 7, 1991. Here, there was no external factor causing an unavoidable delay. Rather, OMB on its own volition explicitly barred DOD from obligating amounts.

Furthermore, at the time OMB issued the first apportionment footnote withholding the USAI funds, DOD had already produced a plan for expending the funds. See DOD Certification, at 4–14. DOD had decided on the items it planned to purchase and had provided this information to Congress on May 23, 2019. *Id.* Program execution was therefore well underway when OMB issued the apportionment footnotes. As a result, we cannot accept OMB’s assertion that its actions are programmatic.

The burden to justify a withholding of budget authority rests with the executive branch. Here, OMB has failed to meet this burden. We conclude that OMB violated the ICA when it withheld USAI funds for a policy reason.

Foreign Military Financing

We also question actions regarding funds appropriated to State for security assistance to Ukraine. In a series of apportionments in August of 2019, OMB withheld from obligation some foreign military financing (FMF) funds for a period of six days. These actions may have delayed the obligation of \$26.5 million in FMF funds. See OMB Response, at 3. An additional \$141.5 million in FMF funds may have been withheld while a congressional notification was considered by OMB. See E-mail from GAO Liaison Director, State, to Staff Attorney, GAO, *Subject: Response to GAO on Timeliness of Ukraine Military Assistance* (Jan. 10, 2020) (State's Additional Response). We have asked both State and OMB about the availability of these funds during the relevant period. Letter from General Counsel, GAO, to Acting Director and General Counsel, OMB (Nov. 25, 2019); Letter from General Counsel, GAO, to Secretary of State and Acting Legal Adviser, State (Nov. 25, 2019). State provided us with limited information. E-mail from Staff Attorney, GAO, to Office of General Counsel, State, *Subject: RE: Response to GAO on Timeliness of Ukraine Military Assistance* (Dec. 18, 2019) (GAO's request for additional information); E-mail from GAO Liaison Director, State, to Assistant General Counsel for Appropriations Law, GAO, *Subject: Response to GAO on Timeliness of Ukraine Military Assistance* (Dec. 12, 2019) (State's response to GAO's November 25, 2019 letter); State's Additional Response. OMB's response to us contained very little information regarding the FMF funds. See *generally* OMB Response, at 2–3.

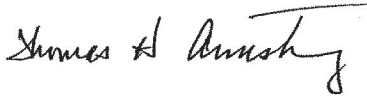
As a result, we will renew our request for specific information from State and OMB regarding the potential impoundment of FMF funds in order to determine whether the Administration's actions amount to a withholding subject to the ICA, and if so, whether that withholding was proper. We will continue to pursue this matter.

CONCLUSION

OMB violated the ICA when it withheld DOD's USAI funds from obligation for policy reasons. This impoundment of budget authority was not a programmatic delay.

OMB and State have failed, as of yet, to provide the information we need to fulfill our duties under the ICA regarding potential impoundments of FMF funds. We will continue to pursue this matter and will provide our decision to the Congress after we have received the necessary information.

We consider a reluctance to provide a fulsome response to have constitutional significance. GAO's role under the ICA—to provide information and legal analysis to Congress as it performs oversight of executive activity—is essential to ensuring respect for and allegiance to Congress' constitutional power of the purse. All federal officials and employees take an oath to uphold and protect the Constitution and its core tenets, including the congressional power of the purse. We trust that State and OMB will provide the information needed.

A handwritten signature in black ink, reading "Thomas H. Armstrong". The signature is written in a cursive style with a horizontal line above the name.

Thomas H. Armstrong
General Counsel

105TH CONGRESS } 2d Session }	HOUSE OF REPRESENTATIVES {	REPORT 105-795 }
----------------------------------	----------------------------	---------------------

INVESTIGATORY POWERS OF THE COMMITTEE ON THE JUDICIARY WITH RESPECT TO ITS IMPEACHMENT INQUIRY

OCTOBER 7, 1998.—Referred to the House calendar and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H. Res. 581]

The Committee on the Judiciary, having had under consideration H. Res. 581, authorizing and directing the Committee on the Judiciary to investigate whether sufficient grounds exist for the impeachment of William Jefferson Clinton, President of the United States, reports the same to the House with a recommendation that the resolution be adopted.

CONTENTS

	Page
The Resolution	2
Purpose and Summary	3
Referral from the Independent Counsel	4
Counsel's Review and Report on the Referral from the Independent Counsel ...	7
Introduction	7
Concepts of Constitutional Government	7
The Independent Counsel's Referral	8
Staff Review of the Referral	8
Monica Lewinsky's Credibility	10
Staff Focus	10
Potential Felonies Committed by the President	11
I	11
II	15
III	16
IV	16
V	17
VI	17
VII	18
VIII	19
IX	19

X	20
XI	20
XII	21
XIII	22
XIV	22
XV	23
Committee Consideration	24
Need for the Resolution	24
President's Procedural Rights	25
Issues Relating to Defining Standards for Impeachment	26
Issues Relating to the Scope of the Inquiry	27
Issues Relating to Time Limits/Deadlines	27
Issues Relating to the Public Printing of Certain Materials	28
Section-by-Section Analysis and Discussion	33
Resolved Clause	33
Section Two	33
Votes of the Committee	34
Committee Oversight Findings	36
Committee on Government Reform and Oversight Findings	37
New Budget Authority and Tax Expenditures	37
Committee Cost Estimate	37
Constitutional Authority Statement	37
Additional and Dissenting Views	38

THE RESOLUTION

The resolution is as follows:

Resolved, That the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in accordance with the rules of the committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

SEC. 2. (a) For the purpose of making such investigation, the committee is authorized to require—

(1) by subpoena or otherwise—

(A) the attendance and testimony of any person (including at a taking of a deposition by counsel for the committee); and

(B) the production of such things; and

(2) by interrogatory, the furnishing of such information; as it deems necessary to such investigation.

(b) Such authority of the committee may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole or by subcommittee. Subpoenas and interrogatories so authorized may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them, and may be served by any person designated by the chairman, or ranking minority member, or any member designated by either of them. The chairman, or ranking minority member, or any member designated by either of

them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness. For the purposes of this section, "things" includes, without limitation, books, records, correspondence, logs, journals, memorandums, papers, documents, writings, drawings, graphs, charts, photographs, reproductions, recordings, tapes, transcripts, printouts, data compilations from which information can be obtained (translated if necessary, through detection devices into reasonably usable form), tangible objects, and other things of any kind.

PURPOSE AND SUMMARY

The purpose of this resolution, which was adopted by the Committee on the Judiciary after thoughtful and considerable debate, is to authorize the Committee to investigate whether William Jefferson Clinton, President of the United States, has committed offenses requiring the House of Representatives to exercise its constitutional responsibility of impeachment. This resolution provides the parameters for a fair, thorough and independent review of the facts.

The scope of the inquiry authorized by this resolution will permit consideration of any matter necessary to the Committee's inquiry into the existence or nonexistence of sufficient grounds for impeachment. The authorization in this resolution is wholly consistent with historical precedent, including the Watergate impeachment investigation conducted by the Committee on the Judiciary.

This resolution empowers the Committee to require the production of documents and other records and the attendance and testimony of such witnesses as it deems necessary, by subpoena or otherwise. It authorizes the Committee to take such testimony at hearings or by deposition. Depositions may be taken by counsel to the Committee, without a member of the Committee being present, thus expediting the presentation of information to the Committee. This resolution further authorizes the Committee to require the furnishing of information in response to interrogatories propounded by the Committee. Like the deposition authority, the authority to compel answers to written interrogatories is intended to permit the Committee to conduct a thorough investigation under as expeditious a schedule as possible. Interrogatories should prove particularly useful in providing a basis for the efficient exercise of the Committee's subpoena power, by enabling it to secure inventories and lists of documents, materials, records and the names of potential witnesses.

The Committee's investigative authority is intended to be fully co-extensive with the power of the House in an impeachment investigation with respect to the persons who may be required to respond, the methods by which response may be required, and the types of information and materials required to be furnished and produced.

It is the intention of the Committee that its investigation will be conducted in all respects on a fair, impartial and bipartisan or non-partisan basis. In this spirit, the power to authorize subpoenas and other compulsory process is committed by this resolution in the first instance to the Chairman and the Ranking Minority Member

acting jointly. If either declines to act, the other may act alone, subject to the right of either to refer the question to the Committee for decision prior to issuance, and a meeting of the Committee will be convened promptly to consider the question. Thus, meetings will not be required to authorize issuance of process, so long as neither the Chairman nor the Ranking Minority Member refers the matter to the Committee. In the alternative, the Committee possesses the independent authority to authorize subpoenas and other process, should it be felt that action of the whole Committee is preferable under the circumstances. Thus, maximum flexibility and bipartisanship are reconciled in this resolution.

After careful consideration, the Committee determined not to establish a deadline for its final action. The Committee concluded that it is not now possible to predict the course and duration of its inquiry and that establishment of dates would be artificial and unrealistic and thus misleading. The Committee was anxious to avoid an arbitrary deadline that might ultimately operate as an unnecessary hindrance to an early and just conclusion to its inquiry.

REFERRAL FROM THE INDEPENDENT COUNSEL

The Constitution provides that the President “* * * shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors” (Article II, section 4), and that the “House of Representatives * * * shall have the sole Power of Impeachment” (Article I, section 2, clause 5). To that end, an independent counsel must advise the House of Representatives of any “substantial and credible information which * * * may constitute grounds for an impeachment.” 28 U.S.C. § 595(c). The Independent Counsel statute was first enacted in 1978 as Title IV of the Ethics in Government Act of 1978, and has been reauthorized three times since. Most recently it was supported by Attorney General Janet Reno¹ and signed into law by President Clinton on June 30, 1994.

¹During the reauthorization process of the Independent Counsel Act, Attorney General Reno testified as follows:

In 1975, after his firing triggered the Constitutional crisis that led to the first version of this Act, Watergate special prosecutor Archibald Cox testified that an independent counsel was needed in certain limited cases and he said, “The pressure, the divided loyalty, are too much for any man, and as honorable and conscientious as any individual might be, the public could never feel entirely easy about the vigor and thoroughness with which the investigation was pursued. Some outside person is absolutely essential.” Now, nearly two decades later, I could not state it any better.

It is neither fair nor valid to criticize the Act for what politics has wrought, nor to expect the Act to solve all our crises. The Iran-Contra investigation, far from providing support for doing away with the Act, proves its necessity. I believe that this investigation could not have been conducted under the supervision of the Attorney General and concluded with any public confidence in its thoroughness or impartiality.

The reason that I support the concept of an independent counsel with statutory independence is that there is an inherent conflict whenever senior Executive Branch officials are to be investigated by the Department and its appointed head, the Attorney General. The Attorney General serves at the pleasure of the President. Recognition of this conflict does not belittle or demean the impressive professionalism of the Department's career prosecutors, and permit me to say again, I have been so impressed with the lawyers in the Department of Justice at every level. They are non-political, they are splendid lawyers, and they have enjoyed the opportunity to work with your staff on this legislation.

* * * * *

It is absolutely essential for the public to have confidence in the system and you cannot do that when there is conflict or an appearance of conflict in the person who is,

On September 9, 1998, Independent Counsel Kenneth Starr wrote to Speaker Gingrich and Minority Leader Gephardt notifying them of his transmission to the House of a referral prepared pursuant to 28 U.S.C. §595(c). In response, the House Sergeant-at-Arms was directed to take control of the materials until the House decided how to proceed. During that time, 36 boxes of materials delivered to the House were safeguarded by the Sergeant-at-Arms and no person had access to the materials. Two days later, on September 11, 1998, the House passed H. Res. 525 by a vote of 363-63. H. Res. 525 conferred jurisdiction over the Independent Counsel's referral to the Committee on the Judiciary and directed the Committee to, among other things, "determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced."

Pursuant to 28 U.S.C. §595(c), the Office of Independent Counsel (OIC) submitted what it believed to be substantial and credible information that President Clinton obstructed justice during the *Jones v. Clinton* sexual harassment lawsuit by lying under oath and concealing evidence of his relationship with a young White House intern and federal employee, Monica Lewinsky. After a federal criminal investigation of the President's actions began in January 1998, the President allegedly lied under oath to the grand jury and obstructed justice during the grand jury investigation. The Independent Counsel also alleged substantial and credible information that the President's actions with respect to Monica Lewinsky constitute an abuse of authority inconsistent with the President's constitutional duty to faithfully execute the laws. Specifically, the Independent Counsel alleged that there is substantial and credible information supporting the following eleven possible grounds for impeachment:

1. President Clinton lied under oath in his civil case when he denied a sexual affair, a sexual relationship, or sexual relations with Monica Lewinsky.
2. President Clinton lied under oath to the grand jury about his sexual relationship with Ms. Lewinsky.

in effect, the chief prosecutor. There is an inherent conflict here, and I think that that is why this Act is so important.

It is worth noting that only a few matters that have been investigated by independent counsels over the last decade resulted in convictions. Far more covered individuals accused of wrongdoing have been cleared at the close of an independent counsel's investigation. This role of declining to prosecute a Government official is, I suggest, as important a part as any process in the prosecution. The credibility and public confidence engendered by the fact that an independent and impartial outsider has examined the evidence and concluded that prosecution is not warranted serves to clear a public official's name in a way that no Justice Department investigation ever could.

It is telling that on occasion covered individuals, including former Attorney General Edwin Meese, have called for an appointment of an independent counsel to investigate the allegations against them. I doubt the public would have accepted with confidence the decision not to prosecute had each of those individuals been cleared not by an impartial outside prosecutor but by the Attorney General and his Justice Department.

The Independent Counsel Act was designed to avoid even the appearance of impropriety in the consideration of allegations of misconduct by high-level Executive Branch officials and to prevent, as I have said, the actual or perceived conflicts of interest. The Act thus served as a vehicle to further the public's perception of fairness and thoroughness in such matters, and to avert even the most subtle influences that may appear in an investigation of highly-placed Executive officials.

The Independent Counsel Reauthorization Act of 1993: Hearings on S.24 Before the Senate Comm. on Governmental Affairs, 103rd Cong., 1st Sess. (S. Hrg. 103-437) at 11-12 (Testimony of Attorney General Reno).

3. In his civil deposition, to support his false statement about the sexual relationship, President Clinton also lied under oath about being alone with Ms. Lewinsky and about the many gifts exchanged between Ms. Lewinsky and him.

4. President Clinton lied under oath in his civil deposition about his discussions with Ms. Lewinsky concerning her involvement in the *Jones* case.

5. During the *Jones* case, the President obstructed justice and had an understanding with Ms. Lewinsky to jointly conceal the truth about their relationship by concealing gifts subpoenaed by Ms. Jones's attorneys.

6. During the *Jones* case, the President obstructed justice and had an understanding with Ms. Lewinsky to jointly conceal the truth of their relationship from the judicial process by a scheme that included the following means: (i) both the President and Ms. Lewinsky understood that they would lie under oath in the *Jones* case about their sexual relationship; (ii) the President suggested to Ms. Lewinsky that she prepare an affidavit that, for the President's purposes, would memorialize her testimony under oath and could be used to prevent questioning of both of them about their relationship; (iii) Ms. Lewinsky signed and filed the false affidavit; (iv) the President used Ms. Lewinsky's false affidavit at his deposition in an attempt to head off questions about Ms. Lewinsky; and (v) when that failed, the President lied under oath at his civil deposition about the relationship with Ms. Lewinsky.

7. President Clinton endeavored to obstruct justice by helping Ms. Lewinsky obtain a job in New York at a time when she would have been a witness harmful to him were she to tell the truth in the *Jones* case.

8. President Clinton lied under oath in his civil deposition about his discussions with Vernon Jordan concerning Ms. Lewinsky's involvement in the *Jones* case.

9. The President improperly tampered with a potential witness by attempting to corruptly influence the testimony of his personal secretary, Betty Currie, in the days after his civil deposition.

10. President Clinton endeavored to obstruct justice during the grand jury investigation by refusing to testify for seven months and lying to senior White House aides with knowledge that they would relay the President's false statements to the grand jury—and did thereby deceive, obstruct, and impede the grand jury.

11. President Clinton abused his constitutional authority by (i) lying to the public and the Congress in January 1998 about his relationship with Ms. Lewinsky; (ii) promising at that time to cooperate fully with the grand jury investigation; (iii) later refusing six invitations to testify voluntarily to the grand jury; (iv) invoking Executive Privilege; (v) lying to the grand jury in August 1998; and (vi) lying again to the public and Congress on August 17, 1998—all as part of an effort to hinder, impede, and deflect possible inquiry by the Congress of the United States.²

The Committee was in no way bound by these allegations and reviewed the material in an independent, fair, and thorough manner.

² Referral from Independent Counsel Kenneth W. Starr in Conformity with the Requirements of Title 28, United States Code, Section 595(c), H. Doc. 105-310, 2nd Sess, 105th Cong., 129-130 (1998).

COUNSEL'S REVIEW AND REPORT ON THE REFERRAL FROM THE INDEPENDENT COUNSEL

Introduction

Pursuant to H. Res. 525, the Committee was obligated to "determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced." In order to fulfill that important obligation, the Chairman and Ranking Minority Member directed the majority and minority chief investigative counsels to advise the Committee regarding the information referred by the Independent Counsel. The Committee received their orally delivered reports on October 5, 1998. The following summarizes the report delivered by the Committee's Chief Investigative Counsel, David Schippers.

Concepts of Constitutional Government

The President of the United States enjoys a singular and appropriately lofty position in our system of government. But that position by its very nature involves equally unique and onerous responsibilities, among which are included affirmative obligations that apply to no other citizen.

Specifically, the Constitution of the United States imposes upon the President the explicit and affirmative duty to "take Care that the Laws be faithfully executed . . ." U.S. Const., Article II, Section 3. Moreover, before entering upon the duties of his office, the President is constitutionally commanded to take the following oath:

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 ability, preserve, protect and defend the Constitution of the United States.

U.S. Const., Article II, Section 1.

The President is the chief law enforcement officer of the United States. Although he is neither above nor below the law, he is, by virtue of his office, held to a higher standard than any other American. Furthermore, as Chief Executive Officer and Commander in Chief, he is the repository of a special trust.

Second, many defendants who face legal action, whether it be civil or criminal, may honestly believe that the case against them is unwarranted and factually deficient. It is not, however, in the discretion of the litigant to decide that any tactics are justified to defeat the lawsuit in that situation. Rather, it is incumbent upon that individual to testify fully and truthfully during the truth seeking phase. It is then the function of the system of law to expose the frivolous cases. The litigant may not with impunity mislead, deceive or lie under oath in order to prevail in the lawsuit or for other personal gain. Any other result would be subversive of the American Rule of Law.

The principle that every witness in every case must tell the truth, the whole truth and nothing but the truth, is the foundation of the American system of justice which is the envy of every civilized nation. The sanctity of the oath taken by a witness is the most essential bulwark of the truth seeking function of a trial, the American method of ascertaining the facts. If lying under oath is

tolerated and, when exposed, is not visited with immediate and substantial adverse consequences, the integrity of this country's entire judicial process is fatally compromised and that process will inevitably collapse. The subject matter of the underlying case, whether civil or criminal, and the circumstances under which the testimony is given are of no significance whatever. It is the oath itself that is sacred and must be enforced.

The Independent Counsel's Referral

The Independent Counsel Act provides in relevant part: "An independent counsel shall advise the House of Representatives of any substantial and credible information . . . that may constitute grounds for an impeachment." 28 U.S.C. §595(c). In compliance with the statutory mandate, the Office of Independent Counsel Kenneth Starr informed the House of Representatives on September 9, 1998, that it was prepared to submit a referral under the statute. On that day, the Independent Counsel's Office delivered to the House the following material:

- a Referral consisting of an Introduction, a Narrative of Relevant Events and an Identification and Analysis of the Substantial and Credible Information that may support grounds for impeachment of William Jefferson Clinton;

- an Appendix, in six three-ring binders totaling in excess of 2500 pages, of the most relevant testimony and other material cited in the Referral; and

- seventeen transmittal boxes containing grand jury transcripts, deposition transcripts, FBI reports, reports of interviews, and thousands of pages of incidental back-up documents.

Pursuant to H. Res. 525, with the exception of the Referral which was ordered printed as a document of the House, all of this material was turned over to the Committee on the Judiciary to be held in Executive Session until September 28, 1998. The resolution provided that all materials would be released to the public at that time, except those which were withheld by prior action of the Committee.

Staff Review of the Referral

The majority and minority staffs were instructed by the Committee to review the Referral, together with all of the other evidence and testimony that was submitted, for the purpose of determining whether there actually existed "substantial and credible" evidence that President Clinton may have committed acts that may constitute grounds to justify conducting an impeachment inquiry.

Because of the narrow scope of that directive, the investigation and analysis was necessarily circumscribed by information delivered with the Referral together with some information and analysis furnished by the counsel for the President.³ For that reason, staff did not seek to procure any additional evidence or testimony from any other source. Particularly, the staff did not seek to obtain or

³ See Preliminary Memorandum of the President of the United States Concerning Referral of the Office of Independent Counsel and Initial Response of the President of the United States to Referral of the Office of Independent Counsel, 2nd Sess., 105th Cong., H. Doc. 105-317 (September 28, 1998).

review the material that remained in the possession of the OIC. In two telephone conversations with the OIC, Mr. Lowell, the Minority Chief Investigative Counsel, and Mr. Schippers were assured that the retained material was deemed unnecessary to comply with the statutory requirement under Section 595(c). Though the Office of Independent Counsel offered to make available to the Committee all of that material, the staff did not deem it necessary or even proper to go beyond the submission itself. However, at the suggestion of the Minority Chief Investigative Counsel, the material remaining in the possession of the OIC was reviewed by members of both staffs at the OIC. The material was, as anticipated, irrelevant.

To support the Referral, the House has been furnished with grand jury transcripts, FBI interview memoranda, transcripts of depositions, other interview memoranda, statements, audio recordings, and, where available, video recordings of all persons named in the Referral. In addition, the House was provided with a copy of every document cited and a mass of documentary and other evidence produced by witnesses, the White House, the President, the Secret Service and the Department of Defense.

The report delivered by the Chief Investigative Counsel was confined solely to that Referral and supporting evidence and testimony supplied to the House and then to this Committee, supplemented only by the information provided by the President's Counsel. Although the original submission contained a transcript of the President's deposition testimony, no video tape was included. Pursuant to a request by Chairman Hyde, a video tape of the entire deposition was later provided to the Committee by District Judge Susan Webber Wright.

Apart from the thorough review of President Clinton's deposition and grand jury testimony, the following functions were performed in preparation for the report delivered by Chief Investigative Counsel Schippers:

1. All grand jury transcripts and memoranda of interview of Ms. Currie, Mr. Jordan, Ms. Lewinsky, the Secret Service Agents, and Ms. Tripp were independently reviewed, compared and analyzed by at least three members of the staff; and those of Ms. Currie, Mr. Jordan, Ms. Lewinsky, Ms. Tripp and both appearances of the President by Mr. Schippers personally.

2. All of the remaining grand jury transcripts, deposition transcripts and memoranda of the others interviewed were likewise reviewed, compared and analyzed. This involved more than 250 separate documents, some consisting of hundreds of pages. In this regard, the staff was instructed to seek any information that might cast doubt upon the legal or factual conclusions of the Independent Counsel.

3. The entire Appendix, consisting of in excess of two thousand pages, was systematically reviewed and analyzed against the statements contained in the Referral.

4. Chief Investigative Counsel Schippers personally read the entire Evidence Reference and Legal Reference that accompanied the Referral. He analyzed the legal precepts and theories, and read at least the relevant portions of each case cited.

5. In addition to other members of the staff, Mr. Schippers personally read and analyzed the eleven specific allegations made by

the Independent Counsel, and reviewed the evidentiary basis for those allegations. Each footnote supporting the charges was checked to insure that it did, in fact, support the underlying evidentiary proposition. In cases where inferences were drawn in the body of the Referral, the validity of those inferences was tested under acceptable principles of federal trial practice.

6. Each of the literally thousands of back-up documents was reviewed in order to insure that no relevant evidence had been overlooked.

7. Meetings of the entire staff were conducted on virtually a daily basis for the purpose of coordinating efforts and to synthesize the divergent material into a coherent report.

Having completed all of the tasks assigned, the staff was prepared to report their findings to the Members of the Committee. The report presented to the Committee represented a distillation and consensus of the staff's efforts and conclusions for the Committee's guidance and consideration.

Monica Lewinsky's Credibility

Monica Lewinsky's credibility may be subject to some skepticism. At an appropriate stage of the proceedings, that credibility will, of necessity, be assessed together with the credibility of all witnesses in the light of all the other evidence. Ms. Lewinsky admitted to having lied on occasion to Linda Tripp and to having executed and caused to be filed a false affidavit in the Paula Jones case.

On the other hand, Ms. Lewinsky obtained a grant of immunity for her testimony before the grand jury and, therefore, had no reason to lie thereafter. Furthermore, the witness' account of the relevant events could well have been much more damaging. For the most part, though, the record reflects that she was an embarrassed and reluctant witness who actually downplayed her White House encounters. In testifying, Ms. Lewinsky demonstrated a remarkable memory, supported by her personal diary, concerning dates and events. Finally, the record includes ample corroboration of her testimony by independent and disinterested witnesses, by documentary evidence, and, in part, by the grand jury testimony of the President himself. Consequently, for the limited purpose of this report, staff suggest that Monica Lewinsky's testimony is both substantial and credible.

Staff Focus

It has been the considered judgment of the staff that the Committee's main focus should be on those alleged acts and omissions by the President which affect the rule of law, and the structure and integrity of our court system. This recommendation, however, in no way should be construed to prejudice any of the Committee's future deliberations. Members of this Committee are appropriately free to emphasize or de-emphasize particular issues, facts, or conclusions. Deplorable as the numerous sexual encounters related in the evidence may be, the staff chose to emphasize the consequences of those acts as they affect the administration of justice and the unique role the President occupies in carrying out his oath faithfully to execute the laws of the nation.

The prurient aspect of the Referral is, at best, merely peripheral to the central issues. The assertions of Presidential misconduct cited in the Referral, though arising initially out of sexual indiscretions, are completely distinct and involve allegations of an ongoing series of deliberate and direct assaults by Mr. Clinton upon the justice system of the United States, and upon the Judicial Branch of our government, which holds a place in the constitutional framework of checks and balances equal to that of the Executive and the Legislative branches.

As a result of the research and review of the Referral and supporting documentation, the staff report concluded that there exists substantial and credible evidence of fifteen separate events directly involving President William Jefferson Clinton that could constitute felonies which, in turn, may constitute grounds to proceed with an impeachment inquiry.

Nothing contained in the report is intended to constitute an accusation against the President or anyone else, nor should it be construed as such. What follows is nothing more than a litany of the crimes that might have been committed based upon the substantial and credible evidence provided by the Independent Counsel, and reviewed, tested and analyzed by the staff.

POTENTIAL FELONIES COMMITTED BY THE PRESIDENT

I

There is substantial and credible evidence that the President may have been part of a conspiracy with Monica Lewinsky and others to obstruct justice and the due administration of justice by:

- (A) Providing false and misleading testimony under oath in a civil deposition and before the grand jury;
- (B) Withholding evidence and causing evidence to be withheld and concealed; and
- (C) Tampering with prospective witnesses in a civil lawsuit and before a federal grand jury.

The President and Ms. Lewinsky had developed a "cover story" to conceal their activities. (M.L. 8/6/98 GJ, at pp. 54-55, 234). On December 6, 1997, the President learned that Ms. Lewinsky's name had appeared on the *Jones v. Clinton* witness list. (Clinton GJ, p. 84). He informed Ms. Lewinsky of that fact on December 17, 1997, and the two agreed that they would employ the same cover story in the *Jones* case. (M.L. 8/6/98 GJ, pp. 122-123; M.L. 2/1/98 Proffer). The President at that time suggested that an affidavit might be enough to prevent Ms. Lewinsky from testifying. (M.L. 8/6/98 GJ, pp. 122-123). On December 19, 1997, Ms. Lewinsky was subpoenaed to give a deposition in the *Jones* case. (M.L. 8/6/98 GJ, p. 128).

Thereafter, the record tends to establish that the following events took place:

(1) In the second week of December, 1997, Ms. Lewinsky told Ms. Tripp that she would lie if called to testify and tried to convince Ms. Tripp to do the same. (M.L. 8/6/98 GJ, p. 127).

(2) Ms. Lewinsky attempted on several occasions to get Ms. Tripp to contact the White House before giving testimony in the *Jones* case. (Tripp 7/16/98 GJ, p. 75; M.L. 8/6/98 GJ, p. 71).

(3) Ms. Lewinsky participated in preparing a false and intentionally misleading affidavit to be filed in the *Jones* case. (M.L. 8/6/98 GJ, pp. 200–203).

(4) Ms. Lewinsky provided a copy of the draft affidavit to a third party for approval and discussed changes calculated to mislead. (M.L. 8/6/98 GJ, pp. 200–202).

(5) Ms. Lewinsky and the President talked by phone on January 6, 1998, and agreed that she would give false and misleading answers to questions about her job at the Pentagon. (M.L. 8/6/98 GJ, p. 197).

(6) On January 7, 1998, Ms. Lewinsky signed the false and misleading affidavit. (M.L. 8/6/98 GJ, p. 203). Conspirators intended to use the affidavit to avoid Ms. Lewinsky's giving a deposition. (M.L. 8/6/98 GJ, pp. 122–123; M.L. 2/1/98 Proffer).

(7) After Ms. Lewinsky's name surfaced, conspirators began to employ code names in their contacts. (M.L. 8/6/98 GJ, pp. 215–217).

(8) On December 28, 1997, Ms. Lewinsky and the President met at the White House and discussed the subpoena she had received. Ms. Lewinsky suggested that she conceal the gifts received from the President. (M.L. 8/6/98 GJ, p. 152).

(9) Shortly thereafter, the President's personal secretary, Betty Currie, picked up a box of the gifts from Ms. Lewinsky. (Currie 5/6/98 GJ, pp. 107–108; M.L. 8/6/98 GJ, pp. 154–156).

(10) Betty Currie hid the box of gifts under her bed at home. (Currie 5/6/98 GJ, pp. 107–108; Currie 1/27/98 GJ, pp. 57–58).

(11) The President gave false answers to questions contained in Interrogatories in the *Jones* case. (V2–DC–53; V2–DC–104).

(12) On December 31, 1997, Ms. Lewinsky, at the suggestion of a third party, deleted 50 draft notes to the President. (M.L. 8/1/98 OIC Interview, p. 13). She had already been subpoenaed in the *Jones* case.

(13) On January 17, 1998, the President's attorney produced Ms. Lewinsky's false affidavit at the President's deposition and the President adopted it as true.

(14) On January 17, 1998, in his deposition, the President gave false and misleading testimony under oath concerning his relationship with Ms. Lewinsky about the gifts she had given him and several other matters. (Clinton Dep., pp. 49–84; M.L. 7/27/98 OIC Interview, pp. 12–15).

(15) The President, on January 18, 1998, and thereafter, coached his personal secretary, Betty Currie, to give a false and misleading account of the Lewinsky relationship if called to testify. (Currie 1/27/98 GJ, pp. 71–74, 81).

(16) The President narrated elaborate detailed false accounts of his relationship with Monica Lewinsky to prospective witnesses with the intention that those false accounts would be repeated in testimony. (Currie 1/27/98 GJ, pp. 71–74, 81; Podesta 6/16/98 GJ, pp. 88–92; Blumenthal 6/4/98 GJ, pp. 49–51; Blumenthal 6/25/98 GJ, p. 8; Bowles 4/2/98 GJ, pp. 83–84; Ickes 6/10/98 GJ, p. 73; Ickes 8/5/98 GJ, p. 88).

(17) On August 17, 1998, the President gave false and misleading testimony under oath to a federal grand jury on the following points: his relationship with Ms. Lewinsky, his testimony in the January 17, 1998 deposition, his conversations with various indi-

viduals and his knowledge of Ms. Lewinsky's affidavit and its falsity.

The following facts illustrate some of the details concerning the events immediately before and after the President's deposition on January 17, 1998.

These facts appear in the Record:

On January 7, 1998, Ms. Lewinsky signed the false Affidavit, and it was furnished to Mr. Clinton's civil lawyer. The President reviewed it, so he knew that she had denied their relationship when the deposition began.

During the questioning, however, it became more and more apparent to the President that Ms. Jones' attorneys possessed a lot more specific detail than the President anticipated. When the President returned to the White House, the following calls were made:

JANUARY 17, 1998

SATURDAY

4:00 p.m. (approx.)—THE PRESIDENT finishes testifying under oath in *Jones v. Clinton, et al.*

5:19 p.m.—Vernon Jordan places a call to the White House from a cellular phone.

5:38 p.m.—THE PRESIDENT telephones Vernon Jordan at home.

7:02 p.m.—THE PRESIDENT telephones Betty Currie at home but does not speak with her.

7:02 p.m.—THE PRESIDENT places a call to Mr. Jordan's office.

7:13 p.m.—THE PRESIDENT contacts Betty Currie at home and asks her to meet with him on Sunday.

JANUARY 18, 1998

SUNDAY

6:11 a.m.—THE PRESIDENT learns about the existence of the Tripp tapes.

11:49 a.m.—Vernon Jordan telephones the White House.

12:30 p.m. (approx.)—Vernon Jordan has lunch with Bruce Lindsey. Lindsey informs Jordan about the existence of the Tripp tapes.

12:50 p.m.—THE PRESIDENT telephones Vernon Jordan at home.

1:11 p.m.—THE PRESIDENT telephones Betty Currie at home.

2:15 p.m.—Vernon Jordan telephones the White House on his cellular phone.

2:55 p.m.—Vernon Jordan telephones THE PRESIDENT.

5:00 p.m.—THE PRESIDENT meets with Betty Currie. He tells her that he was questioned at his deposition about Monica Lewinsky, and he suggests that Ms. Currie could "see and hear everything" that occurred when Ms. Lewinsky visited with him.

5:12 p.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay at home."

6:22 p.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay at home."

7:06 p.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay at home."

7:19 p.m.—Vernon Jordan telephones Cheryl Mills at the White House Counsel's Office.

8:28 p.m.—Betty Currie pages Monica Lewinsky with the message "Call Kay."

10:09 p.m.—Monica Lewinsky telephones Betty Currie at home.

11:02 p.m.—THE PRESIDENT telephones Betty Currie at home.

JANUARY 19, 1998

MONDAY—MARTIN LUTHER KING DAY

7:02 a.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay at home at 8:00 this morning."

8:08 a.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay."

8:33 a.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay at home."

8:37 a.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kay at home. It's a social call. Thank you."

8:41 a.m.—Betty Currie pages Monica Lewinsky with the message "Kay is at home. Please call."

8:43 a.m.—Betty Currie telephones the President from home.

8:44 a.m.—Betty Currie pages Monica Lewinsky with the message "Please call Kate re: family emergency."

8:50 a.m.—THE PRESIDENT telephones Betty Currie at home.

8:51 a.m.—Betty Currie pages Monica Lewinsky with the message "Msg. From Kay. Please call, have good news."

8:56 a.m.—THE PRESIDENT telephones Vernon Jordan at home.

10:29 a.m.—Vernon Jordan telephones the White House from his office.

10:35 a.m.—Vernon Jordan telephones Nancy Hernreich at the White House.

10:36 a.m.—Vernon Jordan pages Monica Lewinsky with the message, "Please call Mr. Jordan at [number redacted]."

10:44 a.m.—Vernon Jordan telephones Erskine Bowles at the White House.

10:53 a.m.—Vernon Jordan telephones Monica Lewinsky's attorney, Frank Carter.

10:58 a.m.—THE PRESIDENT telephones Vernon Jordan at his office.

11:04 a.m.—Vernon Jordan telephones Bruce Lindsey at the White House.

11:16 a.m.—Vernon Jordan pages Monica Lewinsky with the message "Please call Mr. Jordan at [number redacted]."

11:17 a.m.—Vernon Jordan telephones Bruce Lindsey at the White House.

12:31 p.m.—Vernon Jordan telephones the White House from a cellular phone.

1:45 p.m.—THE PRESIDENT telephones Betty Currie at home.

2:29 p.m.—Vernon Jordan telephones the White House from a cellular phone.

2:44 p.m.—Vernon Jordan enters the White House. He meets with THE PRESIDENT, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, Rahm Emanuel and others.

2:46 p.m.—Frank Carter pages Monica Lewinsky with message, "Please call Frank Carter at [number redacted]."

4:51 p.m.—Vernon Jordan telephones Betty Currie at home.

4:53 p.m.—Vernon Jordan telephones Frank Carter at home.

4:54 p.m.—Vernon Jordan telephones Frank Carter at his office. Mr. Carter informs Mr. Jordan that Monica Lewinsky has replaced Mr. Carter with a new attorney.

4:58 p.m.—Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.

4:59 p.m.—Vernon Jordan telephones Cheryl Mills at the White House Counsel's Office.

5:00 p.m.—Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.

5:00 p.m.—Vernon Jordan telephones Charles Ruff at the White House Counsel's Office.

5:05 p.m.—Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.

5:05 p.m.—Vernon Jordan again telephones Bruce Lindsey at the White House Counsel's Office.

5:09 p.m.—Vernon Jordan telephones Cheryl Mills at the White House Counsel's Office.

5:14 p.m.—Vernon Jordan telephones Frank Carter at his office.

5:22 p.m.—Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.

5:22 p.m.—Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.

5:55 p.m.—Vernon Jordan telephones Betty Currie at home.

5:56 p.m.—THE PRESIDENT telephones Vernon Jordan at his office.

6:04 p.m.—Vernon Jordan telephones Betty Currie at home.

6:26 p.m.—Vernon Jordan telephones Stephen Goodin, an aide to THE PRESIDENT.

II

There is substantial and credible evidence that the President may have aided, abetted, counseled, and procured Monica Lewinsky to file and caused to be filed a false affidavit in the case of *Jones v. Clinton, et al.*, in violation of 18 U.S.C. §§ 1623 and 2.

The record tends to establish the following:

In a telephone conversation with Ms. Lewinsky on December 17, 1997, the President told her that her name was on the witness list in the *Jones* case. (M.L. 8/6/98 GJ, p. 123). The President then suggested that she might submit an affidavit to avoid testimony. (Id.). Both the President and Ms. Lewinsky knew that the affidavit would need to be false in order to accomplish that result. In that conversation, the President also suggested "You know, you can always say you were coming to see Betty or that you were bringing me letters." (M.L. 8/6/98 GJ, p. 123). Ms. Lewinsky knew exactly what he meant because it was the same "cover story" that they had agreed upon earlier. (M.L. 8/6/98 GJ, p. 124).

Thereafter, Ms. Lewinsky discussed the affidavit with and furnished a copy to a confidant of the President for approval. (M.L. 8/6/98 GJ, pp. 200–202). Ms. Lewinsky signed the false affidavit and caused her attorney to provide it to the President's lawyer for use in the *Jones* case.

III

There is substantial and credible evidence that the President may have aided, abetted, counseled, and procured Monica Lewinsky in obstruction of justice when she executed and caused to be filed a false affidavit in the case of *Jones v. Clinton, et al.*, with knowledge of the pending proceedings and with the intent to influence, obstruct or impede that proceeding in the due administration of justice, in violation of 18 U.S.C. §§ 1503 and 2.

The record tends to establish that the President not only aided and abetted Monica Lewinsky in preparing, signing and causing to be filed a false affidavit, he also aided and abetted her in using that false affidavit to obstruct justice.

Both Ms. Lewinsky and the President knew that her false affidavit would be used to mislead the Plaintiff's attorneys and the court. Specifically, they intended that the affidavit would be sufficient to avoid Ms. Lewinsky being required to give a deposition in the *Jones* case. Moreover, the natural and probable effect of the false statement was interference with the due administration of justice. If the court and the *Jones* attorneys were convinced by the affidavit, there would be no deposition of Ms. Lewinsky, and the Plaintiff's attorneys would be denied the ability to learn about material facts and to decide whether to introduce evidence of those facts.

Mr. Clinton caused his attorney to employ the knowingly false affidavit not only to avoid Ms. Lewinsky's deposition, but to preclude the attorneys from interrogating the President about the same subject. (Clinton Dep., p. 54).

IV

There is substantial and credible evidence that the President may have engaged in misprision of Monica Lewinsky's felonies of submitting a false affidavit and of obstructing the due administration of justice both by taking affirmative steps to conceal those felonies, and by failing to disclose the felonies though under a constitutional and statutory duty to do so, in violation of 18 U.S.C. § 4.

The record tends to establish the following:

Monica Lewinsky admitted to the commission of two felonies: Signing a false affidavit under oath (M.L. 8/6/98 GJ, pp. 204–205); and endeavoring to obstruct justice by using the false affidavit to mislead the court and the lawyers in the *Jones* case so that she would not be deposed and be required to give evidence concerning her activities with the President. (M.L. 8/6/98 GJ, pp. 122–123; M.L. 2/1/98 Proffer). In addition, the President was fully aware that those felonies had been committed when he gave his deposition testimony on January 17, 1998. (Clinton Dep., p. 54).

Nonetheless, Mr. Clinton took affirmative steps to conceal these felonies, including allowing his attorney, in his presence, to use the affidavit and to suggest that it was true. (Clinton Dep., p. 54). More importantly, the President himself, while being questioned by

his own counsel referring to one of the clearly false paragraphs in Ms. Lewinsky's affidavit, stated, "That is absolutely true." (Clinton Dep., p. 203).

More importantly, the President is the chief law enforcement officer of the United States. He is under a Constitutional duty to take care that the laws be faithfully executed. When confronted with direct knowledge of the commission of a felony, he is required by his office, as is every other law enforcement officer, agent or attorney, to bring to the attention of the appropriate authorities the fact of the felony and the identity of the perpetrator. If he did not do so, the President could be guilty of misprision of felony.

V

There is substantial and credible evidence that the President may have testified falsely under oath in his deposition in *Jones v. Clinton, et al.* on January 17, 1998 regarding his relationship with Monica Lewinsky, in violation of 18 U.S.C. §§ 1621 and 1623.

The record tends to establish the following:

There are three instances where credible evidence exists that the President may have testified falsely about this relationship:

(1) when he denied a "sexual relationship" in sworn Answers to Interrogatories (V2-DC-53 and V2-DC-104);

(2) when he denied having an "extramarital sexual affair" in his deposition (Clinton Dep., p. 78); and

(3) when he denied having "sexual relations" or "an affair" with Monica Lewinsky in his deposition. (Clinton Dep., p. 78).

When the President denied a sexual relationship he was not bound by the definition the court had provided. There is substantial evidence obtained from Ms. Lewinsky, the President's grand jury testimony, and DNA test results that Ms. Lewinsky performed sexual acts with the President on numerous occasions. Those terms, given their common meaning, could reasonably be construed to include oral sex. The President also denied having sexual relations with Ms. Lewinsky (Clinton Dep., p. 78), as the court defined the term. (Clinton Dep., Ex. 1). In the context of the lawsuit and the wording of that definition, there is substantial evidence that the President's explanation given to the grand jury is an afterthought and is unreasonably narrow under the circumstances. Consequently, there is substantial evidence that the President's denial under oath in his deposition of a "sexual relationship," a "sexual affair" or "sexual relations" with Ms. Lewinsky was not true.

VI

There is substantial and credible evidence that the President may have given false testimony under oath before the federal grand jury on August 17, 1998, concerning his relationship with Monica Lewinsky, in violation of 18 U.S.C. §§ 1621 and 1623.

The record tends to establish the following:

During his grand jury testimony, the President admitted only to "inappropriate intimate contact" with Monica Lewinsky. (Clinton GJ, p. 10). He did not admit to any specific acts. He categorically denied ever touching Ms. Lewinsky on the breasts or genitalia for the purpose of giving her sexual gratification. There is, however, substantial contradictory evidence from Ms. Lewinsky. She testified

at length and with specificity that the President kissed and fondled her breasts on numerous occasions during their encounters, and at times there was also direct genital contact. (M.L. 8/26/98 Dep., pp. 30–38, 50–53). Moreover, her testimony is corroborated by several of her friends. (Davis 3/17/98 GJ, p. 20; Erbland 2/12/98 GJ, p. 29, 45; Ungvari 3/19/98 GJ, pp. 23–24; Bleiler 1/28/98 OIC Interview, p. 3).

The President described himself as a non-reciprocating recipient of Ms. Lewinsky's services. (Clinton GJ, p. 151). Therefore, he suggested that he did not engage in "sexual relations" within the definition given him at the *Jones* case deposition. (*Id.*) He also testified that his interpretation of the word "cause" in the definition meant the use of force or contact with the intent to arouse or gratify. (Clinton GJ, pp. 17–18). The inference drawn by the Independent Counsel that the President's explanation was merely an afterthought, calculated to explain away testimony that had been proved false by Ms. Lewinsky's evidence, appears credible under the circumstances.

VII

There is substantial and credible evidence that the President may have given false testimony under oath in his deposition given in *Jones v. Clinton, et al.* on January 17, 1998, regarding his statement that he could not recall being alone with Monica Lewinsky and regarding his minimizing the number of gifts that they had exchanged in violation of 18 U.S.C. §§ 1621 and 1623.

The record tends to establish the following:

President Clinton testified at his deposition that he had "no specific recollection" of being alone with Ms. Lewinsky in any room at the White House. (Clinton Dep., p. 59). There is ample evidence from other sources to the contrary. They include: Betty Currie (1/27/98 GJ, pp. 32–33; 5/6/98 GJ, p. 98; 7/22/98 GJ, pp. 25–26); Monica Lewinsky (M.L. 2/1/98 Proffer; M.L. 8/26/98 GJ); several Secret Service Agents and White House logs. Moreover, the President testified in the grand jury that he was "alone" with Ms. Lewinsky in 1996 and 1997 and that he had a "specific recollection" of certain instances when he was alone with her. (Clinton GJ, pp. 30–32). He admitted to the grand jury that he was alone with her on December 28, 1997, only three weeks prior to his deposition testimony. (Clinton GJ, p. 34).

The President was also asked at this deposition whether he had ever given gifts to Ms. Lewinsky. He responded, "I don't recall." He then asked the *Jones* attorney if he knew what they were. After the attorney named specific gifts, the President finally remembered giving Ms. Lewinsky something from the Black Dog. (Clinton Dep., p. 75). That testimony was given less than three weeks after Ms. Currie had picked up a box of the President's gifts and hid them under her bed. (Currie 1/27/98 GJ, pp. 57–58; Currie 5/6/98 GJ, pp. 107–108).

In his grand jury testimony nearly seven months later, he admitted giving Ms. Lewinsky Christmas gifts on December 28, 1997 (Clinton GJ, p. 33) and "on other occasions." (Clinton GJ, p. 36). When confronted with his lack of memory at his deposition, the President responded that his statement "I don't recall" referred to

the identity of specific gifts, not whether or not he actually gave her gifts. (Clinton GJ, p. 52).

The President also testified at his deposition that Ms. Lewinsky gave him gifts "once or twice." (Clinton Dep., pp. 76-77). Ms. Lewinsky says that she gave a substantial number of gifts to the President. (M.L. 8/6/98 GJ, pp. 27-28, Ex. M.L.-7). This is corroborated by gifts turned over by Ms. Lewinsky to the Independent Counsel and by a letter to the Independent Counsel from the President's attorney. Thus, there is substantial and credible evidence that the President may have testified falsely about being alone with Monica Lewinsky and the gifts he gave to her.

VIII

There is substantial and credible evidence that the President may have testified falsely under oath in his deposition given in *Jones v. Clinton* on January 17, 1998, concerning conversations with Monica Lewinsky about her involvement in the *Jones* case, in violation of 18 U.S.C. §§1621 and 1623.

The record tends to reflect the following:

The President was asked at his deposition if he ever talked to Ms. Lewinsky about the possibility that she would testify in the *Jones* case. He answered, "I'm not sure." He then related a conversation with Ms. Lewinsky where he joked about how the *Jones* attorneys would probably subpoena every female witness with whom he has ever spoken. (Clinton Dep., p. 70). He was also asked whether Ms. Lewinsky told him that she had been subpoenaed. The answer was, "No, I don't know if she had been." (Clinton Dep., p. 68).

There is substantial evidence—much from the President's own grand jury testimony—that those statements are false. The President testified before the grand jury that he spoke with Ms. Lewinsky at the White House on December 28, 1997, about the "prospect that she might have to give testimony." (Clinton GJ, p. 33). He also later testified that Vernon Jordan told him on December 19, 1997, that Ms. Lewinsky had been subpoenaed. (Clinton GJ, p. 42). Mr. Jordan also recalled telling the same thing to the President twice on December 19, 1997, once over the telephone and once in person. (Jordan 5/5/98 GJ, p. 145; Jordan 3/3/98 GJ, pp. 167-170). Despite his deposition testimony, the President admitted that he knew Ms. Lewinsky had been subpoenaed when he met her on December 28, 1997. (Clinton GJ, p. 36). There is substantial and credible evidence that his statement that he was "not sure" if he spoke with Ms. Lewinsky about her testimony is false.

IX

There is substantial and credible evidence that the President may have endeavored to obstruct justice by engaging in a pattern of activity calculated to conceal evidence from the judicial proceedings in *Jones v. Clinton, et al.*, regarding his relationship with Monica Lewinsky, in violation of 18 U.S.C. §1503.

The record tends to establish that on Sunday, December 28, 1997, the President gave Ms. Lewinsky Christmas gifts in the Oval Office during a visit arranged by Ms. Currie. (M.L. 8/6/98 GJ, pp. 149-150). According to Ms. Lewinsky, when she suggested that the

gifts he had given her should be concealed because they were the subject of a subpoena, the President stated, "I don't know" or "Let me think about that." (M.L. 8/6/98 GJ, p. 152).

Ms. Lewinsky testified that Ms. Currie contacted her at home several hours later and stated, "I understand you have something to give me" or "the President said you have something to give me." (M.L. 8/6/98 GJ, pp. 154-155). Later that same day, Ms. Currie picked up a box of gifts from Ms. Lewinsky's home. (M.L. 8/6/98 GJ, pp. 156-158; Currie 5/6/98 GJ, pp. 107-108).

The evidence indicates that the President may have instructed Ms. Currie to conceal evidence. The President has denied giving that instruction, and he contended under oath that he advised Ms. Lewinsky to provide all of the gifts to the *Jones* attorneys pursuant to the subpoena. (Clinton GJ, pp. 44-45). In contrast, Ms. Lewinsky testified that the President never challenged her suggestion that the gifts should be concealed. (M.L. 8/26/98 Dep., pp. 58-59).

X

There is substantial and credible evidence that the President may have endeavored to obstruct justice in the case of *Jones v. Clinton, et al.*, by agreeing with Monica Lewinsky on a cover story about their relationship, by causing a false affidavit to be filed by Ms. Lewinsky and by giving false and misleading testimony in the deposition given on January 17, 1998, in violation of 18 U.S.C. §1503.

The record tends to establish that the President and Ms. Lewinsky agreed on false explanations for her private visits to the Oval Office. Ms. Lewinsky testified that when the President contacted her and told her that she was on the *Jones* witness list, he advised her that she could always repeat these cover stories, and he suggested that she file an affidavit. (M.L. 8/6/98 GJ, p. 123). After this conversation, Ms. Lewinsky filed a false affidavit. The President learned of Ms. Lewinsky's affidavit prior to his deposition in the *Jones* case. (Jordan 5/5/98 GJ, pp. 24-25).

Subsequently, during his deposition, the President stated that he never had a sexual relationship or affair with Ms. Lewinsky. He further stated that the paragraph in Ms. Lewinsky's affidavit denying a sexual relationship with the President was "absolutely true," even though his attorney had argued that the affidavit covered "sex of any kind in any manner, shape or form." (Clinton Dep., pp. 54, 104).

XI

There is substantial and credible evidence that the President may have endeavored to obstruct justice by helping Monica Lewinsky to obtain a job in New York City at a time when she would have given evidence adverse to Mr. Clinton if she told the truth in the case of *Jones v. Clinton, et al.*, in violation of 18 U.S.C. §§1503 and 1512.

The record tends to establish the following:

In October, 1997, the President and Ms. Lewinsky discussed the possibility of Vernon Jordan assisting Ms. Lewinsky in finding a job in New York. (M.L. 8/6/98 GJ, pp. 103-104). On November 5, 1997, Mr. Jordan and Ms. Lewinsky discussed employment possi-

bilities, and Mr. Jordan told her that she came "highly recommended." (M.L. 7/31/98 Int., p. 15; e-mail from Lewinsky to Catherine Davis, 11/6/97).

However, no significant action was taken on Ms. Lewinsky's behalf until December, when the *Jones* attorneys identified Ms. Lewinsky as a witness. Within days, after Mr. Jordan again met with Ms. Lewinsky, he contacted a number of people in the private sector who could help Ms. Lewinsky find work in New York. (Jordan 3/3/98 GJ, pp. 48-49).

Additional evidence indicates that on the day Ms. Lewinsky signed a false affidavit denying a sexual relationship with the President, Mr. Jordan contacted the President and discussed the affidavit. (Jordan 5/5/98 GJ, pp. 223-225). The next day, Ms. Lewinsky interviewed with MacAndrews & Forbes, an interview arranged with Mr. Jordan's assistance. (M.L. 8/6/98 GJ, pp. 205-206). When Ms. Lewinsky told Mr. Jordan that the interview went poorly, Mr. Jordan contacted the CEO of MacAndrews & Forbes. (Perelman 4/23/98 Dep., p. 10; Telephone Calls, Table 37, Call 6). The following day, Ms. Lewinsky was offered the job, and Mr. Jordan contacted the White House with the message "mission accomplished." (Jordan 5/28/98 GJ, p. 39).

In sum, Mr. Jordan secured a job for Ms. Lewinsky with a phone call placed on the day after Ms. Lewinsky signed a false affidavit protecting the President. Evidence indicates that this timing was not coincidental.

XII

There is substantial and credible evidence that the President may have testified falsely under oath in his deposition given in *Jones v. Clinton, et al.* on January 17, 1998, concerning his conversations with Vernon Jordan about Ms. Lewinsky, in violation of 18 U.S.C. §§ 1621 and 1623.

The record tends to establish that Mr. Jordan and the President discussed Ms. Lewinsky on various occasions from the time she was served until she fired Mr. Carter and hired Mr. Ginsburg. This is contrary to the President's deposition testimony. The President was asked in his deposition whether anyone besides his attorney told him that Ms. Lewinsky had been served. "I don't think so," he responded. He then said that Bruce Lindsey was the first person who told him. (Clinton Dep., pp. 68-69). In the Grand Jury, the President was specifically asked if Mr. Jordan informed him that Ms. Lewinsky was under subpoena. "No sir," he answered. (Clinton GJ, p. 40). Later in that testimony, when confronted with a specific date (the evening of December 19, 1997), the President admitted that he spoke with Mr. Jordan about the subpoena. (Clinton GJ, p. 42; Jordan 5/5/98 GJ, p. 145; Jordan 3/3/98 GJ, pp. 167-170). Both the President and Mr. Jordan testified in the Grand Jury that Mr. Jordan informed the President on January 7 that Ms. Lewinsky had signed the affidavit. (Clinton GJ, p. 74; Jordan 5/5/98 GJ, 222-228). Ms. Lewinsky said she too informed the President of the subpoena. (M.L. 8/20/98 GJ, p. 66).

The President was also asked during his deposition if anyone reported to him within the past two weeks (from January 17, 1998) that they had a conversation with Monica Lewinsky concerning the

lawsuit. The President said, "I don't think so." (Clinton Dep., p. 72). As noted, Mr. Jordan told the President on January 7, 1998, that Ms. Lewinsky signed the affidavit. (Jordan 5/5/98 GJ, pp. 222-228). In addition, the President was asked if he had a conversation with Mr. Jordan where Ms. Lewinsky's name was mentioned. He said yes, that Mr. Jordan mentioned that she asked for advice about moving to New York. Actually, the President had conversations with Mr. Jordan concerning three general subjects: Choosing an attorney to represent Ms. Lewinsky after she had been subpoenaed (Jordan 5/28/98 GJ, p. 4); Ms. Lewinsky's subpoena and the contents of her executed Affidavit (Jordan 5/5/98 GJ, pp. 142-145; Jordan 3/3/98 GJ, pp. 167-172; Jordan 3/5/98 GJ, pp. 24-25, 223, 225); and Vernon Jordan's success in procuring a New York job for Ms. Lewinsky. (Jordan 5/28/98 GJ, p. 39).

XIII

There is substantial and credible evidence that the President may have endeavored to obstruct justice and engage in witness tampering in attempting to coach and influence the testimony of Betty Currie before the grand jury, in violation of 18 U.S.C. § 1512.

The record tends to establish the following:

According to Ms. Currie, the President contacted her on the day he was deposed in the *Jones* case and asked her to meet him the following day. (Currie 1/27/98 GJ, pp. 65-66). The next day, Ms. Currie met with the President, and he asked her whether she agreed with a series of possibly false statements, including, "We were never really alone," "You could always see and hear everything," and "Monica came on to me and I never touched her, right?" (Currie 1/27/98 GJ, pp. 71-74). Ms. Currie stated that the President's tone and demeanor indicated that he wanted her to agree with these statements. (Currie 1/27/98 GJ, pp. 73-74). According to Ms. Currie, the President called her into the Oval Office several days later and reiterated his previous statements using the same tone and demeanor. (Currie 1/27/98 GJ, p. 81). Ms. Currie later stated that she felt she was free to disagree with the President. (Currie 7/22/98 GJ, p. 23).

The President testified concerning those statements before the grand jury, and he did not deny that he made them. (Clinton 8/17/98 GJ, pp. 133-139). Rather, the President testified that in some of the statements he was referring only to meetings with Ms. Lewinsky in 1997, and that he intended the word "alone" to mean the entire Oval Office Complex. (Clinton 8/17/98 GJ, pp. 133-139).

XIV

There is substantial and credible evidence that the President may have engaged in witness tampering by coaching prospective witnesses and by narrating elaborate detailed false accounts of his relationship with Ms. Lewinsky as if those stories were true, intending that the witnesses believe the story and testify to it before a grand jury, in violation of 18 U.S.C. § 1512.

The record tends to establish the following:

John Podesta, the President's Deputy Chief of Staff, testified that the President told him that he did not have sex with Ms. Lewinsky "in any way whatsoever" and "that they had not had oral sex." (Po-

desta 6/16/98 GJ, p. 92). Mr. Podesta repeated these statements to the grand jury. (Podesta 6/23/98 GJ, p. 80).

Sidney Blumenthal, an Assistant to the President, said that the President told him more detailed stories. He testified that the President told him that Ms. Lewinsky, who the President claimed had a reputation as a stalker, came at him, made sexual demands of him, and threatened him, but he rebuffed her. (Blumenthal 6/4/98 GJ, pp. 46-51). Mr. Blumenthal further testified that the President told him that he could recall placing only one call to Ms. Lewinsky. (Blumenthal 6/25/98 GJ, p. 27). Mr. Blumenthal mentioned to the President that there were press reports that he, the President, had made telephone calls to Ms. Lewinsky, and also left voice mail messages. The President then told Mr. Blumenthal that he remembered calling Ms. Lewinsky after Betty Currie's brother died. (Blumenthal 6/4/98 GJ, p. 50).

XV

There is substantial and credible evidence that the President may have given false testimony under oath before the federal grand jury on August 17, 1998 concerning his knowledge of the contents of Monica Lewinsky's affidavit and his knowledge of remarks made in his presence by his counsel in violation of 18 U.S.C. §§ 1621 and 1623.

The record tends to establish the following:

During the deposition, the President's attorney attempted to thwart questions pertaining to Ms. Lewinsky by citing her affidavit and asserting to the court that the affidavit represents that there "is absolutely no sex of any kind, manner, shape or form, with President Clinton." (Clinton Dep., p. 54). At several points in his grand jury testimony, the President maintained that he cannot be held responsible for this representation made by his lawyer because he was not paying attention to the interchange between his lawyer and the court. (Clinton GJ, pp. 25-26, 30, 59). The videotape of the deposition shows the President apparently listening intently to the interchange. In addition, Mr. Clinton's counsel represented to the court that the President was fully aware of the affidavit and its contents. (Clinton Dep., p. 54).

The President's own attorney asked him during the deposition whether Ms. Lewinsky's affidavit denying a sexual relationship was "true and accurate." The President was unequivocal; he said, "This is absolutely true." (Clinton Dep., p. 204). Ms. Lewinsky later said the affidavit contained false and misleading statements. (M.L. 8/6/98 GJ, pp. 204-205). The President explained to the grand jury that Ms. Lewinsky may have believed that her affidavit was true if she believed "sexual relationship" meant intercourse. (Clinton GJ, pp. 22-23). However, counsel did not ask the President if Ms. Lewinsky thought it was true; he asked the President if it was, in fact, a true statement. The President was bound by the court's definition at that point, and under his own interpretation of that definition, Ms. Lewinsky engaged in sexual relations. An affidavit denying this, by the President's own interpretation of the definition, is false.

COMMITTEE CONSIDERATION

On October 5, 1998, the Committee met in open session and ordered reported the resolution printed herein by a vote of 21 to 16, a quorum being present.

Need for the Resolution

Because the issue of impeachment is of such overwhelming importance, the Committee decided that it must receive authorization from the full House before proceeding on any further course of action. Because impeachment is delegated solely to the House of Representatives by the Constitution, the full House of Representatives should be involved in critical decision making regarding various stages of impeachment. With the passage of H. Res. 525, the full House has already directed the release of the Referral from the Independent Counsel, set the parameters for public release of other related materials, and directed the Committee to review the Referral and accompanying materials in order to make a recommendation to the House.

Also, a resolution authorizing an impeachment inquiry into the conduct of a president is consistent with past practice. According to Hind's Precedents, the "impeachment of President Johnson was set in motion by a resolution authorizing a general investigation as to the execution of the laws." When the first attempt to impeach President Johnson failed, the House "referred to the Committee on Reconstruction the evidence taken by the Judiciary Committee in the first attempt to impeach President Johnson." 3 Hind's Precedents, § 2408.

The impeachment investigation of President Nixon was explicitly authorized by the full House. During debate of H. Res. 803 in 1974, Congressman Rodino, then chairman of the Committee on the Judiciary, stated:

We have reached the point when it is important that the House explicitly confirm our responsibility under the Constitution.

We are asking the House * * * to authorize and direct the Committee on the Judiciary to investigate the conduct of the President of the United States * * *.

* * * * *

Such a resolution has always been passed by the House. The Committee has voted unanimously to recommend that the House of Representatives adopt this resolution. It is a necessary step if we are to meet our obligations * * *.

Furthermore, numerous other impeachment inquiries were authorized by the House directly, or by providing investigative authorities, such as deposition authority, to the Committee on the Judiciary.

In addition to the historical precedent regarding impeachment investigations of presidents, the House directed the Committee on the Judiciary "to determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced." H. Res. 525 contemplates that the House would consider

the Committee's recommendation before the Committee proceeded further.

Rules Committee Chairman Solomon, the sponsor of H. Res. 525, indicated that the House would have to act to authorize an impeachment investigation. During floor debate, he stated:

If this communication from Independent Counsel Starr should form the basis for future proceedings, it is important to note that Members will need to cast public, to cast recorded, and extremely profound votes in the coming weeks and months.

* * * * *

Mr. Speaker, I want to point out, again, just to clarify, this resolution does not authorize or direct an impeachment inquiry. * * * It is not the beginning of an impeachment process in the House of Representatives. It merely provides the appropriate parameters for the Committee on the Judiciary, the historical proper place to examine these matters, to review this communication and make a recommendation to the House as to whether we should commence an impeachment inquiry. That is what this resolution before us today does.⁴

During debate on H. Res. 525, Congressman Sensenbrenner noted the following:

The resolution charges the Committee on the Judiciary with the awesome responsibility of reviewing the full referral by Mr. Starr to determine if there are sufficient grounds to recommend to the House that an impeachment inquiry be commenced.

* * * * *

After evaluating Mr. Starr's evidence, the Committee on the Judiciary has two choices. Either it will find that there is no substantial evidence of impeachable activity by the President or it will recommend commencing a formal impeachment inquiry.⁵

President's Procedural Rights

Prior to the October 5, Committee meeting, some raised concerns about "procedural fairness" and encouraged the Committee to adopt rules, similar to those adopted by the Committee in 1974, which would provide the President with certain procedural rights. After voting on the Hyde resolution, the Committee adopted, by voice vote, a number of protections for the President. The President and his counsel shall be invited to attend all executive session and open committee hearings. The President's counsel may cross examine witnesses. The President's counsel may make objections regarding the pertinency of evidence. The President's counsel shall be invited to suggest that the Committee receive additional evidence. Lastly, the President or the President's counsel shall be invited to respond to the evidence adduced by the Committee at an appro-

⁴144 Cong. Rec. H7588 (daily ed. September 11, 1998) (statement of Rep. Solomon).

⁵Id. at 7600 (statement of Rep. Sensenbrenner).

priate time. The provisions will ensure that the impeachment inquiry is fair to the President.

Issues Relating to Defining Standards for Impeachment

The minority and the White House have demanded that the Committee needs to adopt standards of impeachment before it proceeds. Standards, however, already exist. They are found in Article Two, Section Four of the Constitution and include "Treason, Bribery, or other high Crimes and Misdemeanors."

Our founding fathers did not adopt these words without debate or forethought. These words are not arbitrary or capricious. They have meaning to which facts must be applied. Indeed, the meaning of these words have been applied in the House of Representatives numerous times, four of which occurred in the past 25 years. Impeachment precedents, like court precedents, can be helpful to the Committee as it proceeds and will help inform the judgment of all Members of the House. It would be presumptuous of this Committee to state as fact the manner in which all Members should judge the evidence. All Members, after a consideration of the facts and the law of impeachment, must exercise their constitutional responsibility as they deem appropriate.

Both The New York Times and The Washington Post recently editorialized that the Committee need not decide in advance what constitutes an impeachable offense. According to The New York Times,

The natural contours of an impeachment inquiry accommodate two converging avenues of work, one dealing with the evidence, the other with the constitutional question of what constitutes an impeachable offense. The Judiciary Committee has wisely chosen to consider these in tandem, with the expectation that each inquiry will inform the other.⁶

The Washington Post observed the following:

Some Democrats also want the panel to decide in advance what constitutes an impeachable offense, and only then begin an inquiry into the President's behavior if the two seem to match up. Judiciary Chairman Hyde is correct to resist that as well. It's true that in eventually deciding whether the President's conduct constituted an impeachable offense, the committee will have to decide, if only implicitly, how serious such an offense must be. But that kind of judgment is all but impossible to make in the abstract, outside the context of facts that are still emerging and that almost daily paint President Clinton's behavior in slightly different hues.⁷

Notwithstanding the assertion made by some Members, neither the House nor the Committee ever adopted a standard for impeachment in 1974. Proponents of the argument that standards were set in 1974 rely on a staff report prepared for the use of the Rodino Committee. However, the report explicitly stated that this "memo-

⁶ Editorial, The New York Times, October 4, 1998.

⁷ Editorial, The Washington Post, October 2, 1998.

random offers no fixed standards for determining whether grounds for impeachment exist. The framers did not write a fixed standard. Instead they adopted from English history a standard sufficiently general and flexible to meet future circumstances and events, the nature and character of which they could not foresee.”⁸ Therefore, one could conclude that impeachable offenses cannot be defined in advance of full investigation of the facts. The report also stated that

Delicate issues of constitutional law are involved. Those issues cannot be defined in detail in advance of full investigation of the facts. The Supreme Court of the United States does not reach out, in the abstract, to rule on the constitutionality of statutes or of conduct. Cases must be brought and adjudicated on particular facts in terms of the Constitution. Similarly, the House does not engage in abstract, advisory or hypothetical debates about the precise nature of conduct that calls for the exercise of its constitutional powers; rather, must await full development of the facts and understanding of the events to which those facts relate.⁹

Furthermore, in the foreword to the report, Chairman Rodino explicitly stated that “the views and conclusions contained in the report are staff views and do not necessarily reflect those of the committee or any of its members.”¹⁰

Issues Relating to Scope of the Inquiry

Some members proposed to limit the scope of the Committee’s inquiry. The Rodino Committee’s impeachment inquiry was not limited. Likewise, this inquiry should not be limited. In fact, the language authorizing the inquiry tracks the language used to authorize the Nixon impeachment inquiry. The charge of the Committee under the proposed resolution will be to determine whether the President has committed impeachable offenses. Chairman Hyde repeated his public statement that he would not troll for new issues to investigate. The inquiry will not be a fishing expedition. However, if information is brought to the Committee’s attention that makes substantial and credible allegations that impeachable offenses may have been committed, then the Committee will have to deal with them. Judge Starr noted in the Referral that other issues may be forthcoming. The grand jury continues to meet and many parts of his investigation are ongoing. No one knows whether Judge Starr or any other source will send the Committee additional information. However, the Committee should be prepared for any eventuality.

Issues Relating to Time Limits/Deadlines

During debate on the proposed resolution and amendments thereto, the minority sought to impose time limits and deadlines on the inquiry. Chairman Hyde disagreed that such a deadline is necessary, but did agree that the Committee should act expeditiously

⁸ Constitutional Grounds for Presidential Impeachment, Report by the Staff of the Impeachment Inquiry, 2nd Sess., 93rd Cong., House Committee Print, 2, (Feb. 22, 1974).

⁹ Id.

¹⁰ Id. at Foreword.

and fairly. He reiterated his public statement that it is his hope that the Committee will complete the inquiry by the end of December—which he has referred to as his “New Year’s Resolution.” He also noted, however, that achieving this goal will only be possible if Committee Democrats and the White House fully cooperate with the inquiry. Many felt that an absolute deadline would do nothing more than discourage cooperation and encourage delay and obstruction.

A time deadline could force the Committee to rush to judgment. The Committee should not be stampeded into making hasty decisions, determinations, or conclusions. Time limits or arbitrary subject matter limits will prevent this Committee from proceeding in an orderly and regular fashion. Courts of law do not have such constraints imposed on them when individuals go to trial, and neither should the Committee as it embarks on one of the most solemn and grave responsibilities imposed on the House by the Constitution. Moreover, the Committee should not invite anyone, through the imposition of an arbitrary time table, to obstruct, impede, or delay the Committee’s proceedings.

In 1974, when the Committee considered H. Res. 803, Rep. McCloy offered an amendment requiring the Committee to submit its final report by April 30, 1974, thus limiting the inquiry to roughly 3 months. The amendment was rejected by a vote of 15 Ayes and 23 Nays.

Based on the time-limited investigation conducted by the Senate Governmental Affairs Committee into fund-raising abuses in the 1996 presidential campaign, The Washington Post recently observed that “experience suggests a time limit could encourage delaying tactics”¹¹ It is important to discourage delaying tactics by avoiding the imposition of the arbitrary deadline suggested by my Democratic colleagues. It is important to remember that the Rodino Committee explicitly rejected the adoption of a deadline when such an amendment was offered. That process lasted a total of nineteen months, and complemented a one and one-half year investigation conducted by the 1974 Ervin Committee in the Senate.

When judging the speed with which the Committee moves to conclude the inquiry, Members of the House and the public should remain mindful of another important fact. On January 21 of this year when the Lewinsky story broke, the President and various White House surrogates denied, delayed, and distracted the American people instead of coming clean early on in the process. The Committee is now asked to hastily fulfill our constitutional responsibility. The process should be concluded as quickly as possible. The Committee should not consume one minute more than is necessary to do a professional and competent job, but we should not take one minute less to do the same. The American people deserve professionalism, competence, the considered judgment of the Committee. Anything less would be a disservice to the nation.

Issues Relating to the Public Printing of Certain Materials

Since the transmission by the OIC of the Referral on September 9, 1998, pursuant to 28 U.S.C. § 595(c) (1994), accompanied by

¹¹ Editorial, The Washington Post, October 2, 1998.

grand jury material, to the House of Representatives, and the subsequent publication and dissemination of the narrative of the Referral and portions of the grand jury material by the Committee on the Judiciary, questions have been raised as to legal authority of the Independent Counsel to transmit such materials and that of the House to publically disseminate it. The House of Representatives and the Committee have been criticized for causing some of the material to be printed as a House document. The following is a brief explanation of the legal bases of these actions.

Under 28 U.S.C. § 595(c), an independent counsel is directed "to advise the House of Representatives of any substantial and credible information which such independent counsel receives, in carrying out the independent counsel's responsibilities under this chapter, that may constitute grounds for an impeachment." The provision does not define the form in which an independent counsel is to "advise" the House, and there has been no prior experience under that provision. However, it hardly stretches the imagination that advice of such importance and magnitude was intended to be in written form and would be accompanied by materials supporting such momentous allegations. Under the only other analogous statutory investigative and reporting mechanism of which we are aware that might lead to an impeachment proceeding, the Judicial Councils Reform and Judicial Conduct and Disability Act, 28 U.S.C. § 372(c) (1994), a certified written determination that impeachment of a judge may be warranted and a record of the proceedings conducted by a judicial council is to be forwarded by the Judicial Conference to the House of Representatives. 28 U.S.C. 372(c)(8)(A). Thus a written report accompanied by supporting evidence is certainly an appropriate advisement vehicle.

Independent counsels traditionally conduct their investigations through grand juries.¹² As a consequence, the strict limitations of Federal Rule of Criminal Procedure 6(e)(2), providing that matters occurring before a grand jury are to be kept secret, are triggered. The interests underlying the principle of grand jury secrecy were enunciated by the Supreme Court in *United States v. Procter & Gamble Co.*, 356 U.S. 677, 681 n. 6 (1958):

(1) To prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; (3) to prevent subornation of perjury or tampering with the witnesses who may testify before [the] grand jury and later appear at the trial of those indicted by it; (4) to encourage free and untrammelled disclosure by persons who have information with respect to the commission of crimes; (5) to protect [the] innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt.

¹² See 28 U.S.C. 594(a)(1) (authorizing the conduct of proceedings before grand juries).

The prohibition on disclosure, however, is not absolute and may be overcome by a showing of "particularized need."¹³ The *Douglas Oil* standard applies to both governmental bodies and private litigants, but it has been recognized by the Supreme Court that the interests that underlie the policy of grand jury secrecy are affected to a lesser extent when disclosure to a governmental body is requested.¹⁴

Moreover, Federal Rule of Criminal Procedure 6 (e)(3)(c)(i) authorizes a court to make disclosures "preliminarily to or in connection with a judicial proceeding." Consistently, and without any exception the Committee is aware of, the courts have held that a House investigation preliminary to impeachment is a judicial proceeding within the scope of the exception to the Rule. Indeed, courts have held that investigations conducted by committees of judicial councils pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act, *supra*, are within the exception and granted access to grand jury material.¹⁵

In addition, in at least three instances the House has directly requested and received grand jury materials in impeachment proceedings. In 1811, a grand jury in Baldwin County in the Mississippi territory forwarded to the House a presentment specifying charges against Washington District Superior Court Judge Harry Toulmin for possible impeachment action.¹⁶ In 1944, the House Committee on the Judiciary received grand jury material pertinent to its investigation into allegations of impeachable offenses committed by Judges Albert W. Johnson and Albert L. Watson.¹⁷ Finally, in 1989, the House Judiciary Committee petitioned and received grand jury material pertinent to impeachable offenses committed by Judge Walter L. Nixon.¹⁸

The case law with respect to what a congressional committee may do with 6(e) material released by a court, while sparse, is unequivocal: a committee is free to do with it as it will, as long as it complies with the rules of the House with respect to dissemination. The courts have conceded that they are powerless to place restrictions on the use of the material once it is in hands of a com-

¹³ See *Douglas Oil Co. v. Petrol Shops Northwest*, 441 U.S. 211, 222 (1979).

¹⁴ *United States v. Sells Engineering, Inc.*, 463 U.S. 418, 445 (1983) ("Nothing in *Douglas Oil*, however, requires a district court to pretend that there are no differences between governmental bodies and private parties.")

¹⁵ See, e.g., In re Report and Recommendations of June 5, 1992 Grand Jury Transmission of Evidence to House of Representatives, 370 F. Supp. 1219, 1228-1230 (D.D.C. 1974), mandamus denied sub nom *Haldeman v. Sirica*, 501 F. 2d 714, 715 (D.C. Cir. 1974)(granting access to House Judiciary Committee in President Nixon impeachment); In re Grand Jury Proceedings of Grand Jury No. 81-1 (Miami), 669 F. Supp. 1072, 1075-76 (S.D. Fla. 1987), aff'd 833 F. 2d 1438, 1444-45 (11th Cir. 1987) (granting access to House Committee on the Judiciary in Judge Hastings impeachment); In re petition to Inspect and Copy Grand Jury Materials, 735 F. 2d 1261 (11th Cir.) cert. denied, 469 U.S. 884 (1984) (granting access to grand jury materials to investigating committee of Judicial Council in preliminary investigation of Judge Hastings under 28 U.S.C. 372(c)). See also *Kilbourn v. Thompson*, 103 U.S. 168, 190 (1880)(dicta)(supporting conclusion that power to impeach includes power to obtain evidence).

¹⁶ 3 Hind's Precedents of the House of Representatives, section 2488 at 985, 986 (1907).

¹⁷ Conduct of Albert W. Johnson and Albert L. Watson, United States District Judges, Middle District of Pennsylvania: Hearings before the Subcommittee of the Committee on the Judiciary to Investigate the Official Conduct of United States District Court Judges Albert W. Johnson and Albert L. Watson, 79th Cong., 1st Sess. (1945).

¹⁸ *Nixon v. United States*, Civ. No. H 88-0052 (G) (S.D. Miss., Hattiesburg Div.), referenced in Impeachment of Walter L. Nixon, Jr., H. Rept. 101-36, 101st Cong., 1st Sess. (1989); See also Judge Walter L. Nixon, Jr. Impeachment Inquiry: Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, 100th Cong., 2nd Sess. (1988).

mittee. Thus Judge Sirica, having ruled that the recommendation of the grand jury and the request of Chairman Rodino of the House Committee on the Judiciary should be honored, noted that "the Court relinquishes its own control of the matter," but took the opportunity to admonish the Committee to "receive, consider and utilize the Report with due regard for avoiding unnecessary interference with the Court's ability to conduct fair trials of persons under indictment."¹⁹

The courts in dealing with the Hastings materials elaborated the rationale for plenary congressional control more fully. In the district court, Judge Hastings asked that the court delay releasing the grand jury materials until the House Committee on the Judiciary had modified its procedures to "permit disclosure only to the extent necessary for the Committee to perform its legitimate functions."²⁰ The court refused to impose the condition, stating:

. . . Ancillary to the sole power of impeachment vested in the House by the Constitution is the power to disclose the evidence that it receives as it sees fit. Again, recognition of the doctrine of separation of powers precluded the judiciary from imposing restrictions on the exercise of the impeachment power. The court cannot review or amend the voluntary restriction that the Committee has placed on disclosure. Nor can the court indirectly compel the Committee to amend its confidentiality procedures by withholding disclosure. The same principles that deny a court the power to enjoin a congressional subpoena duces tecum when Congress is engaged in a legitimate function apply here. See *Eastland*, 421 U.S. at 501-03, 95 S. Ct. at 1820-21.

In any event, limiting disclosure to the Committee would be inappropriate. All members of the House are entitled to examine the record in exercising the power of impeachment. . . .²¹

The appeals court affirmed the district court's ruling that it would not delay Committee access to force it to adopt stricter confidentiality procedures, commenting that "even assuming that the court could withhold disclosure until procedures were adopted which limited access, Congress would be free to amend or abandon the procedures at any time."²² The court then concluded with a succinct statement of the law in this area:

We do not read the District Court opinion either to have imposed or not imposed confidentiality strictures upon the Committee. Judge Butzner's order expressly declined to place limitations upon the Committee. Judge King's order, which Judge Butzner refused to stay, merely took note that the Committee had advised the court that it intended to "receive the requested grand jury materials in executive session in accordance with the confidentiality procedures

¹⁹ 370 F. Supp. at 1231.

²⁰ 669 F. Supp. at 1078 (Hastings had conceded that the court had no power to limit the Committee's power to disclose after it had received the records).

²¹ *Id.*

²² 833 F. 2d at 1445.

agreement." What we must decide is simply whether to disclose the materials to the Judiciary Committee; what the Committee does after disclosure is outside of our jurisdiction. The reason for this conclusion is basic; as stated above, the sole power of impeachment is vested in the House. The Speech and Debate Clause prevents us from questioning. The Speech and Debate Clause is applicable because impeachment is viewed as a legislative activity in the sense that it is one of the "other matters which the Constitution places within the jurisdiction of either House." *Gravel v. United States*, 408 U.S. 606, 625, 92 S. Ct. 2614, 2627, 33 L. Ed. 2d 583 (1972) (defining legislative activity).²³

In the instant situation the transmission of the 6(e) material was properly authorized by a court and the release of certain grand jury materials by your Committee has been authorized by the House. More particularly, on July 2, 1998, Independent Counsel Starr made an "Ex Parte Motion for Approval of Disclosure of Matters Before a Grand Jury"²⁴ to the Special Division for Appointing of Independent Counsels of the U.S. Court of Appeals for the District of Columbia in order to comply with his obligation under 28 U.S.C. §595(c), which was granted by the panel on July 7. The Independent Counsel delivered his Referral together with 36 sealed boxes containing two complete copies of the Referral and supporting materials to the Sergeant of Arms of the House. The Independent Counsel advised that "[t]he contents of the Referral may not be publicly disclosed unless and until authorized by the House of Representatives. Many of the supporting documents contain information of a personal nature that I respectfully urge the House to treat as confidential." On September 11, 1998, the House adopted H. Res. 525, 144 Cong. Rec. H 7607, which directed that the House Judiciary Committee review the Independent Counsel's transmittal. It ordered that the 445 pages comprising an introduction, a narrative, and statement of grounds, be printed as a House document. The balance of the material was deemed to be received by the Committee in executive session and was to be released by September 28, 1998, unless otherwise determined by the Committee. The released material was ordered to be printed as a House document.

In sum, then, it would appear that the transmission of grand jury materials by the Independent Counsel was in conformity with the requirements of Rule 6(e) and that subsequent public release of some of the materials was within the constitutional prerogative of the House to "determine the Rules of its proceedings." Art I, sec. 5, cl. 2.

²³Id. See also, *In re North*, 16 F. 3d 1234 (D.C. Cir. 1994) (Special panel holds that final report of Iran-Contra independent counsel that contained 6(e) material did not preclude release of the report where the material had already lost its protected character by previous disclosure).

²⁴Federal Rule of Criminal Procedure 6(e)(3)(D) explicitly authorizes ex parte proceedings when the government is the party seeking release of grand jury materials. In such circumstances there is no obligation to provide notice to any other interested party. *In re Grand Jury Proceedings of Grand Jury No. 81-1* (Miami), *supra*, 869 F. Supp. At 1070.

SECTION-BY-SECTION ANALYSIS

Resolved Clause

The resolved clause of the resolution authorizes and directs the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the Chairman, to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States. Except for the name of the President, the Resolved clause is the same as the Resolved clause in H. Res. 803, 2d Sess., 93d Cong., (1974), which authorizes the impeachment of Richard M. Nixon.

Section Two

This resolution empowers the Committee to require the attendance and testimony of such witnesses as it deems necessary, by subpoena or otherwise. It authorizes the Committee to take such testimony at hearings or by deposition. Depositions may be taken before counsel to the Committee, without a member of the Committee being present, thus expediting the presentation of information to the Committee. This resolution further authorizes the Committee to require the furnishing of information in response to interrogatories propounded by the Committee. Like the deposition authority, the authority to compel answers to written interrogatories is intended to permit the Committee to conduct a thorough investigation under as expeditious a schedule as possible. Interrogatories should prove particularly useful in providing a basis for the efficient exercise of the Committee's subpoena power, by enabling it to secure inventories and lists of documents, materials, and things and the names of potential witnesses. Like the Resolved clause, section two of the Hyde resolution is the same, word-for-word as section two of H. Res. 803.

The Committee's investigative authority is intended to be fully co-extensive with the power of the House in an impeachment investigation—with respect to the persons who may be required to respond, the methods by which response may be required, and the types of information and materials required to be furnished and produced.

The power to authorize subpoenas and other compulsory process is committed by this resolution in the first instance to the Chairman and the Ranking Minority Member acting jointly. If either declines to act, the other may act alone, subject to the right of either to refer the question to the Committee for decision prior to issuance, and a meeting of the Committee will be convened promptly to consider the question. Thus, meetings will not be required to authorize issuance of process, so long as neither the Chairman nor the Ranking Minority Member refers the matter to the Committee. In the alternative, the Committee possesses the independent authority to authorize subpoenas and other process, should it be felt that action of the whole Committee is preferable under the circumstances. Thus, maximum flexibility and bipartisanship are reconciled in this resolution.

VOTE OF THE COMMITTEE

Pursuant to clause 2(1)(2)(B) of House rule XI, the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, are printed herein. The following rollcall votes occurred during Committee deliberations on the Hyde resolution (October 5, 1998).

1. An amendment in the nature of a substitute by Mr. Boucher and others to the Hyde resolution to establish time limits to conduct the impeachment inquiry and to divide the process of an impeachment inquiry in two phases. The first phase would have involved holding hearings on the constitutional standard for impeachment, comparing the allegations to the constitutional standard for impeachment, and determining the sufficiency of the evidence supporting the allegations. The amendment in the nature of a substitute would have also provided an option for alternative sanctions, if warranted. The second phase would have provided for a formal impeachment inquiry. The amendment was defeated by a vote of 16 Ayes to 21 Nays as follows:

ROLLCALL NO. 1

Subject: An Amendment in the nature of a substitute offered by Mr. Boucher to the Hyde Resolution. Defeated by a vote of 16 ayes to 21 nays.

	Ayes	Nays	Present
MR. SENSENBRENNER		X	
MR. MCCOLLUM		X	
MR. GEKAS		X	
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. CANADY		X	
MR. INGLIS		X	
MR. GOODLATTE		X	
MR. BUYER		X	
MR. BRYANT		X	
MR. CHABOT		X	
MR. BARR		X	
MR. JENKINS		X	
MR. HUTCHINSON		X	
MR. PEASE		X	
MR. CANNON		X	
MR. ROGAN		X	
MR. GRAHAM		X	
MS. BONO		X	
MR. CONYERS	X		
MR. FRANK	X		
MR. SCHUMER	X		
MR. BERMAN	X		
MR. BOUCHER	X		
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON-LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT	X		
MR. WEXLER	X		
MR. ROTHMAN	X		

	Ayes	Nays	Present
MR. BARRETT (WI)	X		
MR. HYDE, CHAIRMAN		X	
TOTAL	16	21	

2. An amendment by Mr. Berman to the Hyde resolution which would have authorized and directed the Committee to review the constitutional standards for impeachment and determine if the facts stated in the narrative portion of the Referral, if assumed to be true, would constitute grounds for impeachment. If the Committee determined the facts would constitute grounds for impeachment, then the Committee would have been authorized to investigate whether "sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach the President." The amendment was defeated by a vote of 16 Ayes to 21 Nays as follows:

ROLLCALL NO. 2

Subject: Amendment offered by Mr. Berman to the Hyde Resolution. Defeated by a vote of 16 ayes to 21 nays.

	Ayes	Nays	Present
MR. SENSENBRENNER		X	
MR. MCCOLLUM		X	
MR. GEKAS		X	
MR. COBLE		X	
MR. SMITH		X	
MR. GALLEGLY		X	
MR. CANADY		X	
MR. INGLIS		X	
MR. GOODLATTE		X	
MR. BUYER		X	
MR. BRYANT		X	
MR. CHABOT		X	
MR. BARR		X	
MR. JENKINS		X	
MR. HUTCHINSON		X	
MR. PEASE		X	
MR. CANNON		X	
MR. ROGAN		X	
MR. GRAHAM		X	
MS. BOND		X	
MR. CONYERS	X		
MR. FRANK	X		
MR. SCHUMER	X		
MR. BERMAN	X		
MR. BOUCHER	X		
MR. NADLER	X		
MR. SCOTT	X		
MR. WATT	X		
MS. LOFGREN	X		
MS. JACKSON-LEE	X		
MS. WATERS	X		
MR. MEEHAN	X		
MR. DELAHUNT	X		
MR. WEXLER	X		
MR. ROTHMAN	X		
MR. BARRETT (WI)	X		
MR. HYDE, CHAIRMAN		X	

	Ayes	Nays	Present
TOTAL	16	21	

3. Hyde motion to favorably report the Hyde resolution, authorizing and directing the Committee on the Judiciary to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, the President of the United States. The resolution was adopted by a vote of 21 Ayes to 16 Nays.

ROLLCALL NO. 3

Subject: Motion to favorably report the Hyde resolution authorizing the Judiciary Committee to conduct an inquiry into whether sufficient grounds exist to impeach the President of the United States. Adopted by a vote of 21 ayes to 16 nays.

	Ayes	Nays	Present
MR. SENSENBRENNER	X		
MR. MCCOLLUM	X		
MR. GEKAS	X		
MR. COBLE	X		
MR. SMITH	X		
MR. GALLEGLY	X		
MR. CANADY	X		
MR. INGLIS	X		
MR. GOODLATTE	X		
MR. BUYER	X		
MR. BRYANT	X		
MR. CHABOT	X		
MR. BARR	X		
MR. JENKINS	X		
MR. HUTCHINSON	X		
MR. PEASE	X		
MR. CANNON	X		
MR. ROGAN	X		
MR. GRAHAM	X		
MRS. BOND	X		
MR. CONYERS		X	
MR. FRANK		X	
MR. SCHUMER		X	
MR. BERMAN		X	
MR. BOUCHER		X	
MR. NADLER		X	
MR. SCOTT		X	
MR. WATT		X	
MS. LOFGREN		X	
MS. JACKSON-LEE		X	
MS. WATERS		X	
MR. MEEHAN		X	
MR. DELAHUNT		X	
MR. WEXLER		X	
MR. ROTHMAN		X	
MR. BARRETT (W)		X	
MR. HYDE, CHAIRMAN	X		
TOTAL	21	16	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activi-

ties under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

Clause 2(l)(3)(D) of rule XI requires each Committee report to contain a summary of the oversight findings and recommendations made by the Government Reform and Oversight Committee pursuant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee on the Judiciary has received no such findings or recommendations from the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the resolution will have no budget effect.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this Resolution in Article I, section 2, clause 5 of the Constitution.

ADDITIONAL VIEWS OF REPRESENTATIVE CHARLES T. CANADY

The President's lawyers have argued that even if all the charges made against the President by the Independent Counsel are true, the President's conduct does not rise to the level of "high crimes and misdemeanors" for which the President can be impeached. These views are submitted as a brief response to that argument.

While it is important that we not rush to judgment concerning the President's guilt, it should be obvious that if the charges against the President are ultimately substantiated, the President has violated his oath of office and breached his constitutional duty to "take care that the laws be faithfully executed." Perjury, obstruction of justice and the other offenses charged against the President are indeed serious matters.

Although Congress has never adopted a fixed definition of "high crimes and misdemeanors," there is much in the background and history of the impeachment process that contradicts the position advanced by the President's lawyers. Here I refer to two reports prepared in 1974 on the background and history of impeachment.

There has been a great deal of comment on the report on "Constitutional Grounds for Presidential Impeachment" prepared in February 1974 by the staff of the Nixon impeachment inquiry. Those who assert that the charges against the President do not rise to the level of "high crimes and misdemeanors" have pulled some phrases from that report out of context to support their position. In fact, the general principles concerning grounds for impeachment set forth in that report indicate that conduct involving perjury and obstruction of justice would be impeachable. Please consider this key language from the staff report describing the type of conduct which gives rise to impeachment:

The emphasis has been on the significant effects of the conduct—*undermining the integrity of office, disregard of constitutional duties and oath of office*, arrogation of power, abuse of the governmental process, adverse impact on the system of government. (emphasis added)

Perjury and obstruction of justice clearly "undermine the integrity of office." Their unavoidable consequence is to erode respect for the office of the President. Such offenses also clearly are in "disregard of [the President's] constitutional duties and oath of office." Thus, the principles contained in the Nixon impeachment inquiry staff report—a report cited time and again by the President's lawyers and his other defenders—actually support the conclusion that the charges against the President constitute "high crimes and misdemeanors."

The thoughtful report on "The Law of Presidential Impeachment" prepared by the Association of the Bar of the City of New York in

January of 1974 also places a great deal of emphasis on the impact of presidential misconduct on the integrity of office:

It is our conclusion, in summary, that the grounds for impeachment are not limited to or synonymous with crimes Rather, we believe that *acts which undermine the integrity of government* are appropriate grounds whether or not they happen to constitute offenses under the general criminal law. In our view, the essential nexus to damaging the integrity of government may be found in acts which constitute corruption in, or flagrant abuse of the powers of, official position. It may also be found in acts which, without directly affecting governmental processes, *undermine that degree of public confidence in the probity of executive and judicial officers that is essential to the effectiveness of government in a free society*. What specific acts meet this test will vary with circumstances, including the particular position in government held by the person charged. At the heart of the matter is the determination—committed by the Constitution to the sound judgement of the two Houses of Congress—that the officeholder has demonstrated by his actions that he is unfit to continue in the office in question. (emphasis added)

The commission of perjury and obstruction of justice by a President are acts which without doubt “undermine that degree of public confidence in the probity of the [the President] that is essential to the effectiveness of government in a free society.” Such acts inevitably subvert the respect for law which is essential to the well-being of our constitutional system.

Finally, it is important to understand that the significance of the offenses charged against the President is not diminished by the fact that they do not directly involve the President’s official conduct. Although the President’s lawyers have argued that the underlying conduct of the President which gave rise to the alleged perjury and obstruction of justice was a private matter which should not be the subject of an impeachment inquiry, elsewhere they have claimed:

Any conduct by the individual holding the Office of the President, whether it is characterized as private or official, can have substantial impact on a President’s official duties.

Perjury and obstruction of justice—even regarding a private matter—are offenses that have a substantial impact on the President’s official duties because they are so clearly at odds with his pre-eminent duty to “take care that the laws be faithfully executed.”

In light of the historic principles regarding impeachment, the charges against the President—charges which are supported by substantial evidence—demand that the House proceed with an impeachment inquiry as recommended by the House Judiciary Committee.

CHARLES T. CANADY.

ADDITIONAL VIEWS OF MR. BERMAN

I am not enthusiastic about setting interim or final deadlines for an impeachment inquiry. Although it appears that most of the facts in the Lewinsky matter have already been gathered by the Independent Counsel, it is unrealistic to determine in advance how long a thorough examination of all evidence—both inculpatory and exculpatory—might take.

It is also unnecessary to set a deadline since any resolution of inquiry adopted by the House will automatically expire at the end of the 105th Congress, and will have to be renewed by the 106th Congress. Chairman Hyde has stated that his goal is to complete an inquiry by the end of this year, and I take the Chairman at his word.

The amendment I proposed did not include a deadline or timetable. Instead, it required the Committee to assume, for the sake of argument, that the facts stated in the narrative portion of the Starr report are true. Operating under that assumption, the Committee would determine whether the President's conduct—as described in the narrative—constitutes grounds for impeachment. If the answer was no, then there would be no need for a prolonged investigation, and we could spare our children from exposure to sexually explicit hearings. Regrettably, my compromise amendment was rejected by the Republican majority.

HOWARD L. BERMAN.

DISSENTING VIEWS TO HYDE IMPEACHMENT INQUIRY RESOLUTION

We strongly oppose the Republican resolution of impeachment inquiry. Although we would support a fair, orderly and expeditious review into whether any of the allegations in the Referral by the Office of Independent Counsel ("OIC") rise to the level of impeachable offenses, we cannot support the Republican proposal. That resolution would permit an investigation of unlimited scope and indefinite duration. It is not difficult to envision this investigation turning into a taxpayer-funded fishing expedition that will delve into irrelevant and embarrassing aspects of the President's and the First Lady's personal lives and rehash previous failed investigations by the Republicans. Such an unlimited and unfocused inquiry is irresponsible, and serves neither the interests of justice or the American people.

We have a number of serious concerns with the resolution of impeachment inquiry proposed by the Republicans. First, the resolution is totally open-ended. There is no limitation on the scope of the impeachment inquiry, which could go well beyond the eleven possible grounds for impeachment submitted by the OIC or the fifteen possible grounds laid out by The Majority Counsel. The Republican leadership has already threatened to broaden the inquiry to include Whitewater and investigations into FBI personnel files, the firing of White House travel employees and campaign finance.

The Republican resolution is also arbitrary. It makes no threshold attempt to decide whether any of the allegations made in the OIC Referral would, if proven, constitute grounds for impeachment. Under the Republican resolution, the Nation could be plunged into months, if not years, of hearings and debate over highly specific and salacious details concerning sexual improprieties. We believe that it is far more sensible for the Committee to first determine which allegations, if any, constitute impeachable offenses. Then, and only then, would it be appropriate to consider whether the actual facts support the allegations.

Finally, the Republican resolution provides no timetable or endpoint. The public rightly wants to resolve this matter in a fair and expeditious manner. If the process requires the Committee to consider a particular factual issue, we believe we can do so quickly. Because of the Independent Counsel's prior investigatory work, the vast majority of the facts are already known, and our own investigatory phase should be far less significant than previous congressional inquiries. There are only a small handful of witnesses who are critical, and all of them, except the President, have already testified before the grand jury on several occasions. By and large their accounts are not significantly at odds, and any differences could be resolved in short order.

Because of these concerns, Democratic Members offered two reasonable and fair alternatives to the Republican inquiry. The first was a substitute amendment offered by Mr. Boucher, Mr. Nadler, Mr. Scott, Ms. Lofgren, and Ms. Waters. The Boucher, et al., amendment would: (1) limit the inquiry to the matters raised in the OIC's Referral; (2) allow a full debate regarding standards of impeachment and whether the facts alleged rise to that standard before formal inquiry proceedings take place; and (3) provide for an orderly process with a fixed deadline of November 25, 1998. In the event the Committee is unable to complete its work within this time frame, the substitute would allow the Committee to request an extension of time from the full House.

As Mr. Boucher explained when offering the amendment:

The public interest requires a fair, thorough and deliberate inquiry by the Judiciary Committee of the allegations arising from the referral of the Independent Counsel. But the public interest also requires an appropriate boundary on the scope of that inquiry * * *. The country has already undergone a substantial trauma. If this Committee carries its work beyond the time that is reasonably needed for a complete resolution of the matter now before us, the injury to the Nation will only deepen. We should be thorough, but we should be prompt.

The Boucher, et al., substitute was defeated on a straight party line vote.

Mr. Berman next offered an alternative addressing the scope of the inquiry that required the Committee to assume, for the sake of argument, that the facts in the narrative portion of the Starr report are true. Using that assumption, the Committee would then determine whether the President's conduct would constitute grounds for impeachment. If the answer were yes, then the Committee could proceed with a careful examination of all factual evidence. However, if the answer was no, then there would be no need for an impeachment inquiry.¹ The amendment would allow each Member to decide if the specific facts alleged by the OIC met whatever standard he or she believes is appropriate for impeachment. The Berman amendment is similar to the summary judgement standard that is routinely applied in courts throughout this country.

Adoption of the Berman amendment would allow the Committee to avoid, to the maximum degree possible, a highly public and embarrassing debate over intimate physical details. As Mr. Berman stated:

[The amendment] is for the sake of the children of America. If we can resolve this question without going through that [damaging] process [of probing into intimate details], if we can accept the Starr narrative as true, and that means we are not talking about exculpatory evidence * * * and then deciding whether or not, based on a sense

¹ Indeed it is worth noting that on a jury of twelve prominent constitutional law professors, all but two believe that from a constitutional standpoint, President Clinton should not be impeached for the things the OIC claims he did. Harvey Beckman, Top Profs: "Not Enough to Impeach," National Law Journal, Oct. 5, 1998, at A1.

of the Constitution and what those standards really mean, whether this constitutes grounds for impeachment, then, if there is no other way and no other alternative, we have to go through that process. But we are making an effort to do this the right way.

The Berman amendment was also rejected along a party-line vote of 16-21.

Throughout the course of the debate over the Boucher and Berman amendments, the Majority sought to argue that Democratic positions were inconsistent with the precedent set in 1974 when the House approved the Watergate impeachment inquiry.² We strongly disagree with this contention. First, we believe it is disingenuous to claim full adherence to the Watergate precedent when the Republicans have already violated many of the principles of fairness and confidentiality observed in Watergate. For example, the OIC Report was released without granting the President any advance opportunity to respond. By contrast, in Watergate, the Judiciary Committee received charges of alleged misconduct by President Nixon in closed-door hearings for seven weeks with the President's lawyer in the same room, and these materials were not released to the public until the conclusion of this evidentiary presentation, well after the White House had full knowledge of their contents and an opportunity to respond. In addition, this Committee has released thousands of pages of confidential grand jury transcripts and FBI interview records without giving any party or their attorneys a chance to review or even to suggest proposed redactions. The Majority has also released a videotape of the President's August 17, 1998 testimony to the public, an act without precedent in the Nation's history, let alone in the Watergate proceedings. By comparison, the grand jury information submitted by Special Prosecutor Jaworski to the Committee during the Watergate investigation was kept strictly confidential in executive session and it remains under seal to this date.

Second, the critical distinction between the present matter and Watergate, and indeed all other impeachment proceedings (presidential and judicial), is that the OIC Report constitutes the first referral made to Congress under the Independent Counsel statute. Independent Counsel Starr has already completed most of the investigatory work performed in Watergate and other impeachments, and the Committee should be in a position to conduct any remaining inquiries in a short and orderly manner. This is because we already have in our possession a more than 400-page report along with more than 60,000 pages of supporting materials resulting from a seven-month investigation. By the same token, it would seem completely inappropriate to use the fact of the OIC Referral as an excuse to launch a renewed inquiry into campaign finance and other wholly unrelated topics, as the Republican resolution would allow us to do.

In addition, with regard to the actual charges involved, there is no credible comparison between Watergate and the OIC Referral. Watergate involved the wholesale corruption of our political system. The abuses included wiretapping of private citizens as well as

²H. Res. 805, 93rd Cong., 2d Sess. (1974).

the misuse of the FBI, CIA and IRS.³ The wrongdoing involved in Watergate was so broad and comprehensive that it defied limitations on congressional inquiry. Today, we start the process four years and \$40 million into the Independent Counsel's inquiry and have already received numerous specific factual allegations purporting to constitute grounds for impeachment. There is no legitimate reason for us to go beyond the OIC Referral at this point, notwithstanding Speaker Gingrich's demands to the contrary.⁴

Finally, it bears emphasis that the Democratic proposals are entirely consistent with the Watergate precedent, in that they would force the Judiciary Committee to come to terms with the seriousness of the charges as a constitutional matter before proceeding into the factual phase. Indeed, in the Watergate matter, the Committee compiled original documents regarding the constitutional grounds for impeachment in October of 1973, and then in February of 1974, the bipartisan staff prepared a comprehensive report entitled "Constitutional Grounds for Presidential Impeachment."⁵ The 1974 report served as the compass for the entire impeachment inquiry.

At our hearings, Chairman Hyde posed the question, "based on what we now know, do we have a duty to look further, or to look away?" Our answer is that if we do look further, we must do so in a fair, reasonable and expeditious manner. If we are to go down the treacherous and polarizing path of an impeachment inquiry, it is imperative that we first grapple with the threshold question of whether the allegations charged by Mr. Starr and the Republicans would, if proven, rise to the level of "treason, bribery, or other high crimes and misdemeanors" as required by the Constitution. It is also imperative that this matter be handled expeditiously and fairly. The Republican resolution does not provide these safeguards, and we urge its rejection.

JOHN CONYERS, JR.
BARNEY FRANK.
CHARLES E. SCHUMER.
HOWARD L. BERMAN.
RICK BOUCHER.
JERROLD NADLER.
BOBBY SCOTT.
MELVIN L. WATT.
ZOE LOFGREN.
SHEILA JACKSON LEE.
MAXINE WATERS.
MARTY MEEHAN.
WILLIAM D. DELAHUNT.
ROBERT WEXLER.
STEVEN R. ROTHMAN.
THOMAS M. BARRETT.

³ See, Impeachment of Richard M. Nixon President of the United States, Report of the Judiciary Committee (Feb. 1974).

⁴ See, e.g., Deborah Orin, "Starr's Report Likely to be Very Sex-licit; Expect Starr Sex-licit," N.Y. Post, Aug. 24, 1998 at 16 ("House Speaker Newt Gingrich said Congress shouldn't act based on a 'single human mistake' and should look at Starr's reports on Whitewater," Travelgate and Filegate.").

⁵ Constitutional Grounds for Presidential Impeachment, Report by the Staff of the Impeachment Inquiry, House Comm. on the Judiciary (Feb. 1974).

DISSENTING VIEWS OF THE HONORABLE WILLIAM D. DELAHUNT OF MASSACHUSETTS

I oppose the resolution of inquiry as reported by the Judiciary Committee. I do so based on the concerns expressed in the Minority's dissenting views, and for the additional reasons set forth below.

I

On September 9, 1998, Independent Counsel Kenneth W. Starr referred information to the House that he alleged may constitute grounds for impeaching the President. In the 30 days that have elapsed since our receipt of that referral, neither the Judiciary Committee nor any other congressional committee has conducted even a preliminary independent review of the allegations it contains.

In the absence of such a review, we have no basis for knowing whether there is sufficient evidence to warrant an inquiry—other than the assertion of the Independent Counsel himself that his information is “substantial and credible” and “may constitute grounds for impeachment.”

I believe that our failure to conduct so much as a cursory examination before launching an impeachment proceeding is an abdication of our responsibility under Article II of the Constitution of the United States. By delegating that responsibility to the Independent Counsel, we sanction an encroachment upon the Executive Branch that could upset the delicate equilibrium among the three branches of government that is our chief protection against tyranny. In so doing, we fulfill the prophecy of Justice Scalia, whose dissent in *Morrison v. Olson* (487 U.S. 654, 697 (1988)) foretold with uncanny accuracy the situation that confronts us.

II

The danger perceived by Justice Scalia flows from the nature of the prosecutorial function itself. He quoted a famous passage from an address by Justice Jackson, which described the enormous power that comes with “prosecutorial discretion”:

What every prosecutor is practically required to do is to select the cases * * * in which the offense is most flagrant, the public harm, the greatest, and the proof the most certain. * * * If the prosecutor is obliged to choose his case, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than cases that need to be prosecuted. With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation

of some act on the part of almost anyone. In such a case, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him. It is in this realm—in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself. *Morrison*, 487 U.S. 654, 728 (Scalia, J., dissenting), *quoting* Robert Jackson, The Federal Prosecutor, Address Delivered at the Second Annual Conference of United States Attorneys (April 1, 1940).

The tendency toward prosecutorial abuse is held in check through the mechanism of political accountability. When federal prosecutors overreach, ultimate responsibility rests with the president who appointed them. But the Independent Counsel is subject to no such constraints. He is appointed, not by the president or any other elected official, but by a panel of judges with life tenure. If the judges select a prosecutor who is antagonistic to the administration, “there is no remedy for that, not even a political one.” 487 U.S. 654, 730 (Scalia, J., dissenting). Nor is there a political remedy (short of removal for cause) when the Independent Counsel perpetuates an investigation that should be brought to an end:

What would normally be regarded as a technical violation (there are no rules defining such things), may in his or her small world assume the proportions of an indictable offense. What would normally be regarded as an investigation that has reached the level of pursuing such picayune matters that it should be concluded, may to him or her be an investigation that ought to go on for another year. 487 U.S. 654, 732 (Scalia, J., dissenting).

Under the Independent Counsel Act, there is no political remedy at any point—unless and until the Independent Counsel refers allegations of impeachable offenses to the House of Representatives under section 595 (c). At that point, the statute gives way to the ultimate political remedy: the impeachment power entrusted to the House of Representatives under Article II of the Constitution.

III

Section 595 (c) of the Independent Counsel Act provides that:

An independent counsel shall advise the House of Representatives of any substantial and credible information which such independent counsel receives, in carrying out the independent counsel’s responsibilities under this chapter, that may constitute grounds for an impeachment. 28 U.S.C. 595 (c).

The statute is silent as to what the House is to do once it receives this information. But under Article II, it is the House—and not the Independent Counsel—which is charged with the determination of whether and how to conduct an impeachment inquiry. He is not our agent, and we cannot allow his judgments to be substituted for our own. Nor can we delegate to him our constitutional responsibilities.

Never in our history—until today—has the House sought to proceed with a presidential impeachment inquiry based solely on the raw allegations of a single prosecutor. The dangers of our doing so have been ably described by Judge Bork, who has written that:

It is time we abandoned the myth of the need for an independent counsel and faced the reality of what that institution has too often become. We must also face another reality. A culture of irresponsibility has grown up around the independent-counsel law. Congress, the press, and regular prosecutors have found it too easy to wait for the appointment of an independent counsel and then to rely upon him *rather than pursue their own constitutional and ethical obligations*. Robert H. Bork, *Poetic Injustice*, National Review, February 23, 1998, at 45, 46 (emphasis added).

We must not fall prey to that temptation. For when impeachment is contemplated, the only check against overzealous prosecution is the House of Representatives. That is why—whatever the merits of the specific allegations contained in the Starr referral—we cannot simply take them on faith. Before we embark on impeachment proceedings that will further traumatize the nation and distract us from the people's business, we have a duty to determine for ourselves whether there is "probable cause" that warrants a full-blown inquiry. And we have not done that.

IV

What will happen if we fail in this duty? We will turn the Independent Counsel Act into a political weapon with an automatic trigger—a weapon aimed at every future president.

In *Morrison*, Justice Scalia predicted that the Act would lead to encroachments upon the Executive Branch that could destabilize the constitutional separation of powers among the three branches of government. He cited the debilitating effects upon the presidency of a sustained and virtually unlimited investigation, the leverage it would give to the Congress in intergovernmental disputes, and the other negative pressures that would be brought to bear upon the decision making process.

Whether these ill-effects warrant the abolition or modification of the Independent Counsel Act is a matter which the House will consider in due course. For the present, we should at least do nothing to exacerbate the problem. Most of all, we must be sure we do not carry it to its logical conclusion by approving an impeachment inquiry based solely on the Independent Counsel's allegations. If all a president's political adversaries must do to launch an impeachment proceeding is secure the appointment of an Independent Counsel and await his referral, we could do permanent injury to the presidency and our system of government itself.

V

If the House approves this resolution, it will not be the first time in the course of this unfortunate episode that it has abdicated its responsibility to ensure due process and conduct an independent review. It did so when it rushed to release Mr. Starr's narrative within hours of its receipt, before either the Judiciary Committee or the President's counsel had any opportunity to examine it. It also did so when the committee released 7,000 pages of secret grand jury testimony and other documents hand-picked by the Independent Counsel—putting at risk the rights of the accused, jeopardizing future prosecutions, and subverting the grand jury system itself by allowing it to be misused for political purposes.

These actions stand in stark contrast to the process used during the last impeachment inquiry undertaken by the House—the Watergate investigation of 1974. In that year, the Judiciary Committee spent weeks behind closed doors, poring over evidence gathered from a wide variety of sources—including the Ervin Committee and Judge Sirica's grand jury report, as well as the report of the Watergate Special Prosecutor. All before a single document was released. Witnesses were examined and cross-examined by the President's own counsel. Confidential material, including secret grand jury testimony, was never made public. In fact, nearly a generation later it remains under seal. The Rodino committee managed to transcend partisanship at a critical moment in our national life, and set a standard of fairness that earned it the lasting respect of the American people.

Today the Majority makes much of the claim that their resolution adopts the language that was used during the Watergate hearings. While it may be the same language, it is not the same process. Too much damage has been done in the weeks leading up to this vote for the Majority to claim with credibility that it is honoring the Watergate precedent. But it is not too late for us to learn from the mistakes of the last three weeks. If we adopt a fair, thoughtful, focused and bipartisan process, I am confident that the American people will honor our efforts and embrace our conclusions, whatever they may be.

WILLIAM D. DELAHUNT.



THE NATIONAL LAW JOURNAL

NOT FOR REPRINT

Click to print or Select 'Print' in your browser menu to print this document.

Page printed from: <https://www.law.com/nationallawjournal/2020/01/03/doj-tells-unelected-and-unaccountable-judges-to-stay-out-of-fight-for-mcgahn-testimony/>

DOJ Tells 'Unelected and Unaccountable' Judges to Stay Out of Fight for McGahn Testimony

Justice Department lawyer Hashim Mooppan said the court should avoid "refereeing" a fight for evidence sought as part of the impeachment proceedings.

By Jacqueline Thomsen | January 03, 2020



Former White House counsel Donald McGahn. Photo by Diego M. Radzinski/ALM.

A Justice Department attorney told a three-judge panel for the U.S. Court of Appeals for the D.C. Circuit that, if they find the House Judiciary Committee can sue to compel testimony from former White House counsel Donald McGahn, it could undermine public trust in the federal courts.

Justice Department lawyer Hashim Mooppan told the court Friday that, if it rules on the McGahn testimony case, it will insert the judiciary into an inherently political dispute.

Referring to judges as “unelected and unaccountable,” Mooppan told the panel that they “can be assured that the opinion this court issues will be waved on the floor of the Senate” as evidence either for or against the removal of President Donald Trump from office.

Judge Judith Rogers repeatedly pushed back against those claims, noting that can happen with any opinion issued by a court.

But Mooppan said the court should avoid “refereeing” this fight for evidence sought as part of the impeachment proceedings.

The arguments were held just weeks after the House impeached Trump for abuse of power and obstruction of Congress. Those charges were the result of a monthslong investigation into Trump’s efforts to push Ukraine to investigate his political opponent, former Vice President Joe Biden, while withholding military aid from the country.

The House Judiciary Committee last year filed two lawsuits for evidence it said it needed in determining whether to impeach Trump: McGahn’s testimony and grand jury materials redacted from former special counsel Robert Mueller’s investigation. However, matters related to that evidence were not directly and explicitly referenced in the Ukraine-focused articles of impeachment.

House attorney Megan Barbero argued the House clearly has standing, saying the lawmakers' legal team does "fundamentally disagree" with DOJ's interpretation of past U.S. Supreme Court rulings on legislators' right to go to court.

"Even if there are political issues the courts will gladly avoid, it is the duty of the court in a case that is otherwise justiciable ... to say what the law is," Barbero said. "That is what we are asking the court to do."

However, Judge Thomas Griffith, who previously served as Senate legal counsel, questioned why the House couldn't use other political tools instead of going to court.

"Cut the appropriations, get the Senate to stop confirming judges," Griffith said. "You're not without remedy here."

Rogers, the only Democratic-appointed judge on the panel, questioned that logic, saying the Senate would also have to sign off on any legislation passed by the House.

"It's nice to write a law review article about. You have two branches at loggerheads here," Rogers told Mooppan.

Griffith also pressed Barbero about how McGahn's testimony could be relevant to the current impeachment. He noted McGahn, who is now at Jones Day, was "long gone" before the Ukraine actions took place.

Barbero said that, in the article passed for obstruction of Congress, it references a pattern of obstructive behavior by Trump that McGahn could testify to. And she read a passage from a House supplemental briefing filed last week about how lawmakers have not ruled out further articles being drafted against Trump, if sparked by newly revealed evidence.

Friday's McGahn arguments are part of a double feature at the D.C. Circuit, with another three-judge panel slated to hear from attorneys in the appeal of the Mueller grand jury (<https://www.law.com/nationallawjournal/2020/01/02/mcgahn-and->

mueller-meet-the-attorneys-and-judges-starring-in-the-dc-circuit-arguments/materials case.

Almost immediately after the House voted last month, largely along party lines, to impeach the president, each panel of judges asked the House and the Justice Department to say how impeachment impacted the cases. And the panel in the Mueller grand jury materials case also asked whether the House has standing to sue for the information.

The House said both sets of materials could be used for the impeachment trial in the Senate, and potentially for additional articles of impeachment against Trump, if they revealed further offenses.

House attorneys said the DOJ hasn't previously disputed lawmakers' right to get the materials, and that "the current status of the impeachment proceedings underscores the continuing controversy regarding the withheld grand-jury material, and increases the need for this Court to rule expeditiously."

But the DOJ indicated in its own filings that it believed the courts should stay out of any impeachment disputes, contrasting with the repeated assertions by House Republicans that their Democratic counterparts had to go to court to try and obtain evidence and witnesses before an impeachment vote.

The D.C. Circuit arguments are the culmination of months of court battles in the impeachment-related fights, which have, so far, largely gone in the House's favor.

U.S. Chief District Judge Beryl Howell said in an opinion last year that the House should be able to view the unredacted grand jury information gathered as part of the Mueller investigation, ruling that the impeachment inquiry was a judicial proceeding, one of the few times that grand jury materials can be shared.

And shortly after, U.S. District Judge Ketanji Brown Jackson found that McGahn could be compelled to testify as part of the impeachment inquiry, writing that the DOJ's claim that the former White House counsel has "absolute immunity" from testifying "is a proposition that cannot be squared with core constitutional values, and for this reason alone, it cannot be sustained."

Read more:**Meet the Big Law Litigators the US House Turned To in 2019**

(<https://www.law.com/nationallawjournal/2019/12/28/meet-the-big-law-litigators-the-u-s-house-turned-to-in-2019/>)

McGahn's Testimony Is 'Urgent,' House Argues, as DOJ Tells Court to Stand Down (<https://www.law.com/nationallawjournal/2019/12/23/mcgahns-testimony-is-urgent-house-argues-as-doj-tells-court-to-stand-down/>)

White House Counsel Isn't 'Personal Lawyer' to President, McGahn Asserts (<https://www.law.com/nationallawjournal/2019/12/12/white-house-counsel-isnt-personal-lawyer-to-president-mcgahn-asserts/>)

Trump's 2019 Court Tab: All the Major Losses, and a Few Big Wins (<https://www.law.com/nationallawjournal/2019/12/27/trumps-2019-court-tab-all-the-major-losses-and-a-few-big-wins/>)

Copyright 2020. ALM Media Properties, LLC. All rights reserved.



POLITICS

'Food fight' or congressional oversight? Appeals court weighs whether to enforce subpoenas issued in impeachment inquiry

Bart Jansen and Kevin Johnson USA TODAY

Published 10:04 a.m. ET Jan. 3, 2020 | Updated 3:56 p.m. ET Jan. 3, 2020

WASHINGTON – House lawyers told a federal appeals court Friday that President Donald Trump faces the prospect of new articles of impeachment as they asked judges to give them access to secret testimony gathered during the Russia investigation and to force former White House counsel Donald McGahn to testify before Congress.

The Justice Department, which appealed rulings by two district courts, vehemently argued against both efforts. But their challenges were met with deep skepticism from some members of the two judicial panels.

“Has there ever been an instance of such a broad scale of defiance of Congress?” Judge Thomas Griffith asked Justice Department lawyer Hashim Mooppan, referring to the Trump administration's refusal to cooperate with the House impeachment inquiry. “Has that ever happened?”

Mooppan acknowledged there may be no precedent, yet he pressed to block McGahn's testimony by arguing the courts have no authority to intervene in a largely political dispute.

The blunt exchange was part of a morning-long clash in back-to-back hearings in which House lawyers said the impeachment inquiry against Trump remains open. New charges could be brought, they said, if McGahn testifies and if the House reviews grand jury testimony behind the conclusions of special counsel Robert Mueller's investigation into Russia's interference in the 2016 election.

Last month, the House approved two articles of impeachment against the president. One article accuses Trump of abusing his power by withholding military aid in order to pressure Ukraine to announce investigations into a political rival. The other accuses him of obstructing Congress by stonewalling most of its subpoenas for documents and testimony.

Megan Barbero, House associate general counsel, told the panel in the McGahn case that his testimony could bolster the obstruction charge, which deals with Trump's alleged efforts to have Ukraine interfere in the 2020 election. And it could lead to additional articles of impeachment regarding Russian interference in the 2016 election, she said.

"It is the pattern of misconduct that would be relevant," Barbero said.

Asked later whether the grand jury information gathered during the Russia inquiry could prompt new impeachment charges, House general counsel Douglas Letter said, "That is on the table; there is no doubt."

Mueller's report described multiple instances in which Trump sought to thwart the investigation, which included ordering McGahn to remove Mueller. The special counsel did not make a decision on bringing criminal charges against Trump, largely because Justice Department policy says a sitting president cannot be charged with a crime.

The House Judiciary Committee subpoenaed McGahn in April, but he refused to appear.

The battle over his testimony could redefine relations between the executive and legislative branches of government, with the Trump administration arguing Congress cannot force any Trump aide to testify.

Judges spent most of the 80-minute hearing in the McGahn case questioning whether they should decide the matter at all.

Mooppan, the deputy assistant attorney general at the Justice Department, argued the court should avoid the "political food fight" between the other two branches and let them resolve the dispute over McGahn's testimony.

But Barbero said the judges must enforce the House's subpoena in order to guard against the Trump administration's unprecedented defiance of Congress' oversight.

Judge Karen Henderson pointedly asked the Justice Department lawyer whether the administration believes the House could never ask the courts to enforce a subpoena against the executive branch.

“That is our position, your honor,” Mooppan said.

Judge Judith Rogers said judges were wrestling with whether and how to mediate in a period of noncooperation between the branches of government, when “either they have to duke it out or nothing happens.”

“That’s what we’re struggling with here,” Rogers said.

Other potential witnesses in the impeachment inquiry, such as acting White House Chief of Staff Mick Mulvaney and former national security adviser John Bolton, have said they wanted clarification from the courts about whether they could be forced to testify.

Since the beginning of the impeachment inquiry, however, McGahn has been a central figure because of his proximity to the president.

U.S. District Judge Ketanji Brown Jackson sided with the Judiciary Committee when it sued to enforce the McGahn subpoena. She rejected the White House’s claims of absolute immunity, writing that the president “does not have the power” to prevent his aides from responding to congressional subpoenas.

“Stated simply, the primary takeaway from the past 250 years of recorded American history is that Presidents are not kings,” Jackson wrote.

The Justice Department appealed her ruling, urging the appeals court to dismiss the lawsuit for having no standing in federal court. The department argued there was no urgency to making a decision because a quick decision could influence the pending Senate trial.

Barbero argued that the Trump administration has directed aides and executive branch agencies to defy House subpoenas for documents and testimony. If the court doesn’t step in, she said, that could hurt the legislative branch’s ability to provide a check on the administration’s power.

The Trump administration has argued that top officials such as McGahn enjoy “absolute immunity” from being compelled to testify, which is necessary for them to offer confidential advice to the president.

Barbero said “absolute immunity” was “unfounded in the law.”

If the court were to force McGahn to testify, he could still refuse to answer specific questions by claiming executive privilege, which also aims to protect confidential advice to the president. But that could lead to more lawsuits.

“This court should not be refereeing who is right or wrong about whether the president is acting totally unusually or Congress is acting totally unusually,” Mooppan said. “That is exactly why this court should stay out of that.”

But Barbero said defiance of subpoenas could thwart all congressional investigations, including those that could lead to legislation to prevent foreign contributions from influencing elections.

“There is also a diminution of power of our branch of government,” she said.

Mooppan argued that the House has no authority to enforce its subpoena and should have relied on the Justice Department for that. He said the court shouldn’t decide the case because Congress has other remedies when facing a defiant administration, such as withholding spending for presidential priorities, refusing to confirm nominees or pursuing impeachment.

“It’s not that there aren’t any remedies – it’s that they are political,” Mooppan said.

RUDOLPH W. GIULIANI

May 10, 2019

President-Elect Volodymyr Oleksandrovych Zelensky
c/o Ministry of Internal Affairs of Ukraine
10 Bogomoltsa str. 01601
Kyiv, Ukraine

Dear President-Elect Zelensky:

I am private counsel to President Donald J. Trump. Just to be precise, I represent him as a private citizen, not as President of the United States. This is quite common under American law because the duties and privileges of a President and a private citizen are not the same. Separate representation is usual process.

Congratulations on a truly impressive victory in the recent election. I have a great fondness for your country and have visited there often. I have even had the privilege of being there most recently on 2017. Along with many others, I am very hopeful that your election is a real turning point and allows the Ukraine to prosper and overcome some of the long-standing problems of the past. Anything I can do to help you or your country would be a great honor.

However, I have a more specific request. In my capacity as personal counsel to President Trump and with his knowledge and consent, I request a meeting with you on this upcoming Monday, May 13th or Tuesday, May 14th. I will need no more than a half-hour of your time and I will be accompanied by my colleague Victoria Toensing, a distinguished American attorney who is very familiar with this matter.

Please have your office let me know what time or times are convenient for you, and Victoria and I will be there.

Sincerely,



Cc: Arsen Avakov
Minister of Internal Affairs

United States Senate

WASHINGTON, DC 20510

February 12, 2016

H.E. Petro Poroshenko
President of Ukraine
Presidential Administration of Ukraine
11 Bankova Street
Kyiv, Ukraine 01220

Dear President Poroshenko,

As members of the U.S. Senate Ukraine Caucus and strong supporters of your government, we write to express our concern regarding the recent resignation of Minister of Economy Aivaras Abromavičius and his allegations of persistent corruption in the Ukrainian political system.

During the past year, Mr. Abromavičius and his team implemented tough but necessary economic reforms, worked to combat endemic corruption, and promoted more openness and transparency in government. He was known to many of us as a respected reformer and supporter of the Ukrainian cause. Minister Abromavičius's allegations raise concerns about the enormous challenges that remain in your efforts to reform the corrupt system you inherited.

We recognize that your governing coalition faces not only endemic corruption left from decades of mismanagement and cronyism, but also an illegal armed seizure of territory by Russia and its proxies. Tackling such obstacles to reforms amidst a war and the loss of much of southeastern Ukraine's economic productivity is a formidable challenge -- one which we remain committed to helping you overcome.

Succeeding in these reforms will show Russian President Vladimir Putin that an independent, transparent, and democratic Ukraine can and will succeed. It also offers a stark alternative to the authoritarianism and oligarchic cronyism prevalent in Russia. As such, we respectfully ask that you address the serious concerns raised by Minister Abromavičius. We similarly urge you to press ahead with urgent reforms to the Prosecutor General's office and judiciary. The unanimous adoption by the Cabinet of Ministers of the Basic Principles and Action Plan is a good step.

We very much appreciate your leadership and commitment to reform since the Ukrainian people demonstrated their resolve on the Maidan two years ago, and we look forward to continued cooperation in the future.

Sincerely,



Senator Rob Portman



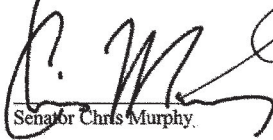
Senator Richard J. Durbin



Senator Jeanne Shaheen



Senator Ron Johnson



Senator Chris Murphy



Senator Mark Kirk



Senator Richard Blumenthal



Senator Sherrod Brown

Congress of the United States
Washington, DC 20515

September 9, 2019

Mr. Pat Cipollone
Counsel to the President
The White House
1600 Pennsylvania Ave, N.W.
Washington, D.C. 20002

Dear Mr. Cipollone:

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

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

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

¹ See tweet @realDonaldTrump, July 25, 2017 ("Ukrainian efforts to sabotage Trump campaign – 'quietly working to boost Clinton.' So where is the investigation A.G. @seanhannity") (online at: <https://twitter.com/realDonaldTrump/status/889788202172780544?s=20>). This tweet was also referenced by Special Counsel Robert Mueller in his investigation of President's Trump's possible obstruction of justice. See Mueller Report, Vol. II, at p 96, FN 660.

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

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

Mr. Pat Cipollone
 September 9, 2019
 Page Two

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

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

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

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

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

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

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

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

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

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

Mr. Pat Cipollone
September 9, 2019
Page Three

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

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

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

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

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

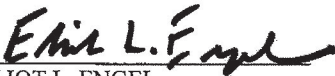
¹³ Any alternate spellings or transliterations of any names reference herein would also render a document responsive to these requests.

Mr. Pat Cipollone
September 9, 2019
Page Four

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

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

Sincerely,



ELIOT L. ENGEL
Chairman
House Foreign Affairs Committee



ADAM SCHIFF
Chairman
House Permanent Select Committee
On Intelligence

Mr. Pat Cipollone
September 9, 2019
Page Five

A handwritten signature in black ink that reads "Elijah E. Cummings". The signature is written in a cursive style with a large, stylized "C" at the end.

ELIJAH E. CUMMINGS

Chairman

House Committee on Oversight and Reform

