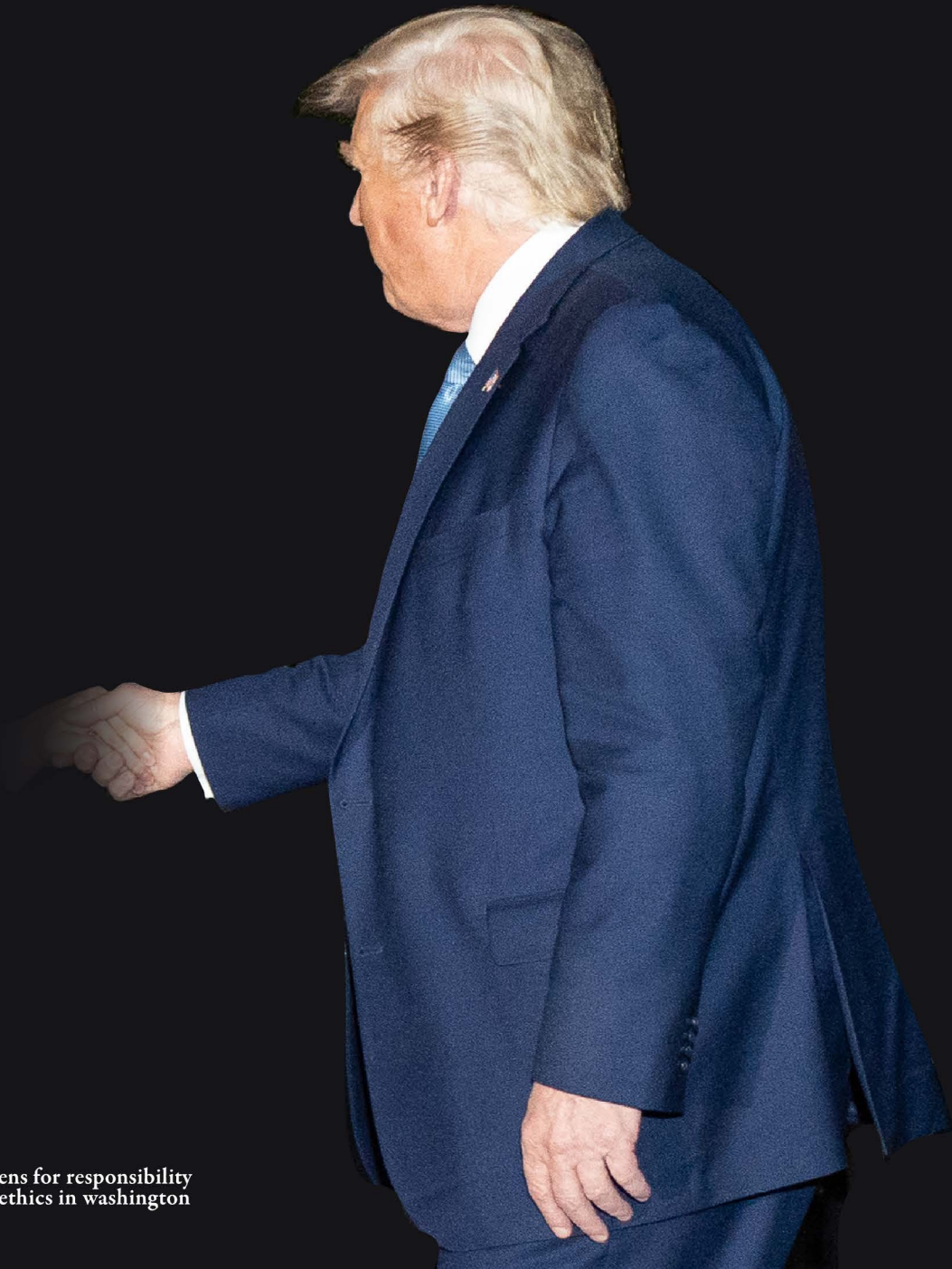


CRIMINAL ABUSE OF POWER:

TRUMP'S FIVE CRIMES CONNECTED TO UKRAINE





President Donald Trump tried to use a foreign government to influence the 2020 election. In doing so, he committed the highest crime: he attempted to deprive the people of the United States of their right to a free and fair election. He has clearly committed numerous impeachable offenses, but this specific offense—attempting to deprive the people of their right to a free and fair election—left the House of Representatives with no real choice but to use their constitutional power of last resort to consider his removal. His conduct shows that he thinks he is above the law and that he can abuse the powers of his office with impunity.

It is also appropriately of great interest to Americans whether, quite apart from constitutional high crimes, the President committed ordinary crimes for which ordinary Americans could be prosecuted and punished. An analysis of the facts and the law reveals that, in addition to his impeachable conduct, President Trump likely committed several criminal offenses. Any other person could be facing the real likelihood of substantial time in federal prison. Instead, because Donald Trump holds the office of President, he faces potential impeachment rather than potential indictment. But to be clear: in our constitutional republic no person, including the President, is above the law.

The Constitution provides that a President “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” Impeachment does not require proof of a crime; Presidents Nixon and Clinton both faced articles of impeachment that incorporated some conduct that was not squarely prohibited by criminal laws. But the fact that a President’s conduct likely broke criminal laws is hardly irrelevant—our criminal laws are an articulation of our country’s values, and the Constitution’s use of the words “bribery” and “high Crimes and Misdemeanors” was intended to require an abuse of power as serious as a criminal offense.

Public reporting and the impeachment inquiry being conducted in the United States House of Representatives have produced thousands of pages of witness testimony and documentary evidence showing that President Trump, directly and by and through his associates, pressured the government of Ukraine to announce investigations of Joe Biden, his political rival, and withheld duly appropriated security assistance and high-level diplomatic meetings until Ukraine did so.

This evidence strongly supports the conclusion that Donald Trump committed crimes like bribery and misappropriation of funds. These are crimes for which most Americans would be prosecuted and for which they could go to prison. Because Trump, a sitting president, cannot be indicted, all Americans must decide whether his criminal conduct merits the most serious punishment he can face: impeachment and removal from office.

I. Bribery

(18 U.S.C. § 201)

The federal bribery statute makes it a criminal offense for a public official to corruptly seek anything of value in return for taking an official action. Offenders can be fined, imprisoned for up to 15 years, and disqualified from holding future public office. Such severe penalties for bribery are meant to deter public officials from taking official actions that are motivated by their own private benefit rather than those that are in the public interest.

The federal bribery statute provides in relevant part that:

(b) Whoever— [...]

(2) **being a public official** or person selected to be a public official, **directly or indirectly, corruptly demands, seeks**, receives, accepts, or agrees to receive or accept **anything of value personally** or for any other person or entity, **in return for:**

A. **being influenced in the performance of any official act;**

B. being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

C. being induced to do or omit to do any act in violation of the official duty of such official or person;

[...]shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

18 U.S.C. § 201 (emphasis added).

To prove the offense of bribery, the government must demonstrate that: (1) a public official (2) corruptly (3) directly or indirectly demanded or sought (4) anything of value personally or for any other person or entity (5) in return for (6) being influenced in the performance of any official act.

President Trump's unacceptable attempts to force the Ukrainian government to investigate Trump's political rival appears to satisfy these six elements. As President, Donald Trump sought public statements from the President of Ukraine that would help Trump win re-election in return for official actions, namely, a White House visit between the two leaders and the release of U.S. security assistance to Ukraine. In doing so, President Trump appears to have acted with a corrupt motive: to bolster his own reelection—rather than to advance the foreign policy and national security interests of the American people.

Public official

The bribery statute defines a “public official” as “an officer or employee or person acting for or on behalf of the United States.” 18 U.S.C. § 201(a)(1). As President of the United States, Trump serves as an officer acting for or on behalf of the United States. In his dealings with Ukraine, including a formal telephone call with a fellow head-of-state, President Trump was acting in this capacity. President Trump was acting in the same official capacity when he issued instructions and directives to subordinate executive branch officials. (HPSCI Report at 12, 35).

Directly or indirectly demands or seeks

According to a [memorandum](#) of the July 25, 2019 telephone conversation, President Trump stated his view that “the United States has been very very good to Ukraine” and that “I wouldn’t say that it’s reciprocal necessarily because things are happening that are not good but the United States has been very very good to Ukraine.” After Ukrainian President Volodymyr Zelensky stated that Ukraine was “almost ready to buy more Javelins [anti tank weapons] from the United States for defense purposes,” President Trump responded, “I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it.”

President Trump proceeded to ask Zelensky for two favors: first, that Zelensky investigate a [conspiracy theory](#) that has been used by Trump and his allies to discredit the U.S. intelligence community’s unanimous conclusion that the Russian government interfered in the 2016 election. (HPSCI Report at 101). The theory, which has been discredited by [federal prosecutors, former homeland security adviser](#) Thomas Bossert, and, according to former Senior Director for Europe and Russia on the National Security Counsel Dr. Fiona Hill, former National Security Advisor H.R. McMaster, claims that CrowdStrike, a cybersecurity firm hired by the Democratic National Committee to investigate the 2016 hack of its servers, fabricated evidence that Russia was behind the attack. (HPSCI Report at 98, 101, 294). Second, President Trump asked Zelensky to investigate former Vice President Joe Biden, a rival candidate in the 2020 presidential election, and to have a follow-up conversation about it with Trump’s personal attorney, Rudy Giuliani, as well as Attorney General William Barr. (HPSCI Report at 102-03).

The memorandum thus reflects two direct demands from President Trump to Zelensky. However, substantial evidence also indicates that President Trump also made these demands indirectly, through U.S. Ambassador to the European Union, Gordon Sondland as well as through his personal attorney, Rudy Giuliani.

In addition, the [evidence](#) shows that:

- Prior to the July 25 call, Trump directed U.S. officials advocating for a White House meeting with Zelensky to work with Giuliani and satisfy his concerns before a meeting. (HPSCI Report at 63).
- On multiple occasions, Giuliani and U.S. officials communicated that those concerns were the need for Ukraine to pursue investigations that would benefit Trump, namely investigations of alleged Ukrainian interference in the 2016 election and of Joe Biden, his son Hunter Biden, and/or Burisma, a Ukrainian company who’s board Hunter Biden served on. (HPSCI Report at 34, 83-97)
- Multiple officials testified that at a July 10 meeting in the White House a top U.S. diplomat told Ukrainian officials the acting White House Chief of Staff had blessed an agreement that a White House meeting would occur if Ukraine pursued specific investigations. (HPSCI Report at 88-90)
- Giuliani and administration officials advocated for a phone call between Trump and Zelensky as a means to obtaining a meeting and suggested ways that Zelensky could satisfy Trump on the call by committing to pursue investigations Trump wanted. (HPSCI Report at 19)
- Because the July 25 call apparently did not adequately appease Trump, Giuliani and Trump administration officials later pressed for Zelensky to publicly commit to investigating “Burisma” and “2016.” (HPSCI Report at 114-125).
- By early September, U.S. officials also communicated that security assistance, in addition to the White House meeting, would be withheld until Zelensky made this commitment. (HPSCI Report at 132).

This represents substantial evidence already in the public record that President Trump directly and indirectly sought or demanded Ukraine’s announcement of investigations into discredited conspiracy theories about the 2016 election and the Bidens.

Any thing of value personally or for any other person or entity

The investigations Trump requested in the July 25 call were things of personal value to President Trump and his reelection.

Courts have interpreted the phrase “anything of value” broadly. *United States v. Williams*, 705 F.2d 603, 623 (2d Cir. 1983) (“Corruption of office occurs when the officeholder agrees to misuse his office in the expectation of gain, whether or not he has correctly assessed the worth of the bribe.”) For example, it can include the promise of future employment, *United States v. Gorman*, 807 F.2d 1299, 1305 (6th Cir. 1986), or a stock that may not have immediate commercial value but that the bribe recipient believed would have future value, *United States v. Williams*, 705 F.2d 603, 622–23 (2d Cir. 1983). The request that another official take action for one’s own benefit likely meets this standard.

Thus, the key question in the case of President Trump’s seeking a bribe is whether President Trump believed the favors he requested of Zelensky would benefit him. Like other questions of fact, this would be assessed based on all relevant evidence, testimonial and circumstantial. Among the most damning evidence is the fact that President Trump appears to have been most fixated on the *announcement* of investigations, rather than the pursuit of a real investigation targeting corruption in Ukraine. (HPSCI Report at 13, 20-24). A public announcement would, of course, be sufficient to benefit President Trump’s reelection effort but would not actually help reduce corruption in Ukraine. In addition, President Trump’s claim that he was concerned about corruption in Ukraine is undermined by his [lack of support for anti-corruption initiatives](#) that would not personally benefit him.

It is also significant that the President directed his subordinates to run Ukraine policy through Rudy Giuliani. (HPSCI Report at 34, 63, 83, 86, 115). Giuliani is not a United States official; rather, he is an attorney who represents President Trump in his personal capacity. (HPSCI Report at 40). In the spring of 2019, Giuliani explained his plans to travel to Ukraine during this period by noting that the Ukrainian government had information that “will be very, very helpful to my client, and may turn out to be helpful to my government,” although Giuliani ultimately canceled his trip soon after his plans were revealed. Giuliani, President Trump’s personal attorney, also explained his actions in seeking to have Ukraine’s government investigate Biden by [saying](#): “I am an attorney. All I did was defend my client.” President Trump’s direction that officials work with Giuliani is strong evidence that President Trump expected to derive a personal benefit from the requests he and his subordinates made of Ukraine.

All told, substantial evidence supports the conclusion that the investigations President Trump sought in exchange for diplomatic steps and security assistance were things of value within the meaning of the bribery statute.

In return for being influenced

This portion of the statute requires a connection between the official act and the thing of value - sometimes referred to as a *quid pro quo*. Courts have long acknowledged that this connection may be demonstrated in various ways. According to the Sixth Circuit,

So long as a public official agrees that payments will influence an official act, that suffices. What is needed is an agreement, full stop, which can be formal or informal, written or oral. As most bribery agreements will be oral and informal, the question is one of inferences taken from what the participants say, mean and do, all matters that juries are fully equipped to assess.

United States v. Terry, 707 F.3d 607, 613 (6th Cir. 2013).

There is abundant evidence that the thing of value sought by President Trump—the public announcement of investigations that would benefit him—were connected to President Trump’s official acts—the withholding of security aid to Ukraine and important diplomatic meetings. The White House’s memorandum of the July 25 call shows that President Trump personally connected the two, because when Ukraine’s president brought up security assistance, President Trump responded, “I would like you to do us a favor though.” At a July 10 meeting in advance of the call, Ambassador Gordon Sondland told Ukrainian officials “we have an agreement with the [White House] Chief of Staff for a meeting if these investigations in the energy sector start.” (HPSCI Report at 88). Multiple witnesses have testified that diplomatic meetings and the release of security aid were conditioned on Ukraine’s public announcement of the investigations sought by President Trump and that this directive came from President Trump. (HPSCI Report at 34, 94-95). For these reasons, the evidence supporting a quid-pro-quo is substantial.

In the performance of any official act

Not every act a public official takes that is connected with his position is an “official act” within the meaning of the statute. The statute defines “official act” as “any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official’s official capacity, or in such official’s place of trust or profit.” 18 U.S.C. § 201(a)(3). An official need not be the only or final decision-maker on a particular issue in order to take an “official act” on that issue; for example, a recommendation to the official who makes the final decision can be an official act, *United States v. Birdsall*, 233 U.S. 223, 235–36 (1914), and *Miserendino v. United States*, 307 F. Supp. 3d 480, 489 (E.D. Va. 2019) (collecting cases). Similarly, a public official “using his official position to exert pressure on another official to perform an ‘official act’” would also violate the statute. *McDonnell v. United States*, 136 S. Ct. 2355, 2372 (2016). However, “[s]etting up a meeting, talking to another official, or organizing an event (or agreeing to do so)—without more—does not fit [the] definition of ‘official act.’” *Id.*

Courts have held that it does not matter whether a public official who asks for a bribe actually follows through on his end of the corrupt bargain, *United States v. Brewster*, 408 U.S. 501, 526 (1972) (“There is no need for the Government to show that appellee fulfilled the alleged illegal bargain; acceptance of the bribe is the violation of the statute, not performance of the illegal promise.”) or whether he in fact intends to follow through at the time he seeks the bribe. *United States v. Valle*, 538 F.3d 341, 347 (5th Cir. 2008) (“Therefore, we hold that an official may be convicted under § 201(b)(2), if he has corruptly entered into a quid pro quo, knowing that the purpose behind the payment that he has received, or agreed to receive, is to induce or influence him in an official act, even if he has no intention of actually fulfilling his end of the bargain.”). Nor does it matter if the bribe is solicited or received in exchange for an official act that would be perfectly legal; in other words, it can be illegal to bribe a public official to do his job. *United States v. Alfisi*, 308 F.3d 144, 151 (2d Cir. 2002) (“For example, if a party to litigation were to pay a judge money in exchange for a favorable decision, that conduct would—and should—constitute bribery, even if a trier of fact might conclude *ex post* that the judgment was on the merits legally proper.”).

Congress had previously approved two batches of military aid for Ukraine: Department of Defense aid amounting to \$250 million for military equipment and intelligence support, and State Department aid amounting to \$141 million to purchase military services or equipment and other efforts to help Ukraine combat Russian aggression. (HPSCI Report at 69-70). In May, a Department of Defense official [certified](#) in a [letter](#) to four congressional committees that “the Government of Ukraine [had] taken substantial actions to make defense institutional reforms for the purposes of decreasing corruption [and] increasing accountability.” (HPSCI Report at 70)

Before the July 25 call, President Trump [reportedly](#) told his acting Chief of Staff and Director of the Office of Management and Budget, Mick Mulvaney, to put a hold on \$391 million in military aid to Ukraine that was intended to help that country counter ongoing threats to its sovereignty from Russia. (HPSCI Report at 71-72). The Trump

administration's withholding of military aid blindsided senior Ukrainian officials. (HPSCI Report at 81-82). On July 25, the day of Trump's call with Zelensky, Ukrainian officials contacted the Department of Defense to ask what was happening with the security funds. (HPSCI Report at 67). By the first week of August, high-level Ukrainian officials were aware that the funds were being withheld and that the problem was not bureaucratic. (HPSCI Report at 67).

President Trump's conduct withholding of security assistance to Ukraine that was duly appropriated by Congress is unquestionably an "official act."

In addition, as discussed above, sworn congressional testimony and documentary evidence provided to Congress show that American officials conditioned calls and face-to-face meetings with President Trump on Ukraine signaling its intention to pursue the investigations President Trump wanted. President Trump also reportedly instructed Vice President Mike Pence not to attend Zelensky's inauguration at a time that Zelensky and Ukraine's incoming government were seeking recognition and support from the Trump administration.

President Trump's withholding a diplomatic visit to the White House may seem to be a closer call given the *McDonnell* court's explicit approval of public officials receiving personal payments for setting up meetings (with themselves or with other officials). However, it should be noted that the *McDonnell* court justified its position at least in part by referring to public officials taking payments for meetings *with their own constituents*:

The basic compact underlying representative government assumes that public officials will hear from their constituents and act appropriately on their concerns—whether it is the union official worried about a plant closing or the homeowners who wonder why it took five days to restore power to their neighborhood after a storm. The Government's position could cast a pall of potential prosecution over these relationships if the union had given a campaign contribution in the past or the homeowners invited the official to join them on their annual outing to the ballgame.

McDonnell v. United States, 136 S. Ct. 2355, 2372 (2016). A face-to-face diplomatic meeting with a leader of a foreign power carries ceremonial and symbolic weight and, unlike a representative's meeting with a constituent, does not threaten basic features of representative democracy. (HPSCI Report at 83). For those reasons, the withholding of an official White House meeting is very different from the types of constituent meetings that worried the Supreme Court and seems much more likely to be construed as an official act.

Nor can President Trump be defended on the grounds that he ultimately released the aid to Ukraine and conducted a one-on-one meeting with Zelensky in New York. What matters is that President Trump personally and through his agents requested "favors" from Zelensky in exchange for the release of aid and a visit to the White House.

Corruptly

"An act is 'corruptly' done if it is done intentionally with an unlawful purpose." Fifth Circuit Pattern Jury Instructions (2015) at 126. In the context of section § 201(b)(1), "a public official acts corruptly when he accepts or receives, or agrees to accept or receive a thing of value, in return for being influenced with the specific intent that, in exchange for the thing of value, some act would be influenced." *United States v. Leyva*, 282 F.3d 623, 626 (9th Cir. 2002). See also Ninth Circuit Pattern Jury Instructions (2012) at 169 (comment) ("[T]he term 'corruptly' refers to the defendant's intent to influence an official act.")

Like other elements of this crime, whether President Trump had the requisite corrupt intent would be assessed based on all relevant evidence, both direct and circumstantial. As explained above, substantial evidence suggests that

President Trump sought Ukraine’s announcement of investigations that would benefit him in return for President Trump’s release of security aid and his agreement to key diplomatic visits. Perhaps the most striking evidence of this is Ambassador Sondland’s testimony that President Trump told him that he wanted Ukraine’s president in a “public box” and demanded that the Ukrainian president personally announce the investigations Trump requested. (HPSCI Report at 126).

It is difficult to imagine an act more plainly corrupt than using the power and prestige of one’s office to get a foreign country to advance one’s own personal, political interests rather than the national security and foreign policy interests of the American people.

All told, the evidence strongly supports a conclusion that the elements of criminal bribery have been met.

II. Soliciting foreign campaign contribution (52 U.S.C. §§ 30109, 30121)

President Trump’s conduct also likely violates federal election laws. By knowingly soliciting a thing of value from a foreign national in connection with a federal election, President Trump violated a strict prohibition on foreign participation in U.S. elections.

The Federal Election Campaign Act (“FECA”) prohibits foreign nationals from making contributions or donations, 52 U.S.C. § 30121, provides:

- a. It shall be unlawful for—
 1. a foreign national, directly or indirectly, to make—
 - A. a **contribution** or donation of money or other **thing of value**, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;
 - B. a contribution or donation to a committee of a political party; or
 - C. an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 30104(f)(3) of this title); or
 - (2) a **person to solicit**, accept, or receive a **contribution or donation** described in subparagraph (A) or (B) of paragraph (1) from a **foreign national**.

The FECA’s enforcement section states that anyone “who knowingly and willfully commits” a violation of the Act that “involves the making, receiving, or reporting of any contribution, donation, or expenditure” aggregating at least \$2,000 can be fined or imprisoned. 52 U.S.C. § 30109(d)(1)(A). If the aggregate amount at issue exceeds \$25,000, the crime is a felony punishable by up to five years’ imprisonment. 52 U.S.C. § 30109(d)(1)(A)(i). Thus, in order to prove that President Trump committed a felony violation of the FECA’s prohibition on soliciting foreign donations, the government would need to prove that President Trump (1) knowingly and willfully (2) solicited (3) a contribution, donation or thing of value worth above \$25,000 (4) from a foreign national (5) in connection with a federal election.

Knowingly and willfully

In order for the case to proceed, the prosecution would need to prove that President Trump knew that his conduct was unlawful in a general sense. That is, he need not have been aware of the particular statutory provision that he was violating in soliciting the announcement of investigations from Ukraine. *United States v. Whittemore*, 944 F. Supp. 2d 1003, 1010 (D. Nev. 2013), *aff'd*, 776 F.3d 1074 (9th Cir. 2015) (holding that the government must prove a defendant facing criminal liability under the FECA “knew his conduct violated some law, but it need not prove which one”). This intent standard was reflected in the jury instructions in the infamous John Edwards case, which explained that the prosecution had to demonstrate that the defendant acted with “knowledge that his course of conduct was unlawful and with the intent to do something the law forbids.” Final Jury Instructions, *United States v. Edwards*, No. 1:11-CR-161 (M.D.N.C. May 18, 2012) at 4.

Though this is normally a complicated element to satisfy, in this case it appears clear that President Trump acted with the requisite intent. It is likely, for example, that President Trump understood that the scheme he was undertaking with Ukraine was generally illegal, as he and his associates had been under criminal investigation for more than two years for an alleged scheme to solicit and accept political interference from the Russian government. He had also seen his personal attorney Michael Cohen jailed for violating the FECA specifically, and when the scheme became public he turned to witness intimidation and obstruction to block any investigation.

On top of this, the Department of Justice itself has outlined four types of evidence that has been used to prove this element—and in this case at least three (if not all four) types are clearly present. First, the Justice Department points to evidence of “the use of surreptitious means, such as ... conduits ... to conceal the violation.” Richard C. Pilger, *Federal Prosecution of Election Offenses*, Eighth Edition, U.S. Dept. of Justice (2017) at 203. Here, President Trump worked in close consultation with a non-governmental conduit, his personal attorney Rudy Giuliani, and various governmental conduits outside the regular diplomatic process, Ambassadors Sondland and Volker and Energy Secretary Perry, in order to secure the investigations. (HPSCI Report at 19, 63). And he had federal officials act as conduits by using potentially illegal action to hold the security aid. (HPSCI Report at 34, 79). Second, the DOJ notes that “in-kind” contributions are inherently more suspicious than cash contributions. Pilger, at 203. In this case, the contribution would have been in-kind: a public news broadcast generated by a third party to benefit the Trump Campaign. Third, the DOJ points to evidence that the offender is “active in political fundraising” and “well-versed in federal campaign finance law.” *Id.* President Trump was undoubtedly “active in political fundraising” and, having just seen his previous personal attorney convicted of felony FECA violations, “well-versed in federal campaign finance law.” Additionally, President Trump has a long history of political contributions, references to contribution limits, and engagement in political fundraising. *See* Noah Bookbinder, Conor Shaw, and Gabe Lezra, *A Campaign to Defraud*, CREW (2019) at 32. Finally, DOJ suggests that evidence that the violation took place as part of “another felonious end” such as “pay[ing] a bribe to a public official” is powerful proof of a FECA violation. As we have already discussed, this FECA violation is a secondary element of the President’s larger scheme to solicit a bribe from the Ukrainian government.

Solicited

The FECA does not define the term “solicit”, but a regulation says it means “to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.” 11 C.F.R. § 300.2(m). The President clearly “asked, requested, or recommended” by saying to President Zelensky, “I would like you to do us a favor, though,” on the July 25th call. This element is not in doubt.

Contribution or thing of value worth above \$25,000

The FECA defines the term contribution as: “any gift . . . of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i). The words thing of value “are are found in so many criminal statutes throughout the United States that they have in a sense become words of art.” *United States v. Girard*, 601 F.2d 69, 71 (2d Cir. 1979). “The word ‘thing’ notwithstanding, the phrase is generally construed to cover intangibles as well as tangibles.” FEC regulations further state that the term “anything of value” includes what are referred to as “in-kind” contributions of things such as facilities, equipment, supplies, personnel, advertising services, and mailing lists (which would be counted at the fair market value of the good or service). 11 C.F.R. § 100.52(d).

Ascertaining the value of the announcement of an investigation of a political rival is harder to value than an amount of currency or an item that is bought and sold on a marketplace, but the legal system exists to make just these kinds of difficult determinations. *See, e.g., Girard*, 601 F.2d at 71; *United States v. Petrovic*, 701 F.3d 849, 858 (8th Cir. 2012) (“Numerous intangible objectives have been held to constitute things of value under a variety of other statutes”). Especially in a campaign setting, it is not difficult to [consider](#) and assign a [value](#) to [media](#) coverage that is damaging to the candidate’s rival. A foreign leader’s public announcement of an investigation into Trump’s most likely rival in the 2020 election would result in media coverage damaging to Trump’s rival and would allow the Trump campaign to exploit the news in its own communications.

Foreign national

President Zelensky and other Ukrainian officials involved in the solicitation of the announcement of investigations are “foreign nationals” as defined by 52 U.S.C. § 30121(b).

In connection with a federal election

At the time of the request, President Trump had already [filed](#) to run for reelection and [publicly launched](#) his reelection campaign. And at the time of the request, Biden was leading [national polls](#) of Democratic candidates for President. There is ample evidence that President Trump designed this scheme in order to benefit his 2020 re-election campaign, including statements by President Trump in public interviews linking Biden to Ukraine, statements by Rudy Giuliani that President Trump fully supported his campaign to pressure Ukraine for political motives, and President Trump’s direction to numerous officials to work with Giuliani on investigating the Bidens. (HPSCI Report at 17, 27, 55, 57, 98). Critically, President Trump’s intent was clear to all who interacted with him: “everyone was in the loop,” as Ambassador Sondland testified. (HPSCI Report at 20). Ambassador Sondland also testified to President Trump’s *intent* in that “President Trump did not require that Ukraine conduct investigations as a prerequisite for the White House meeting so much as publicly *announce* the investigations—making clear that the goal was not the investigations, but the political benefit Trump would derive from their announcement and the cloud they might put over a political opponent.” (HPSCI Report at 21)(emphasis in original). Both Lt. Col. Vindman and Dr. Hill objected to the investigations because, as Dr. Hill described, they were a “domestic political errand” that should not be intertwined with official foreign policy. (HPSCI Report at 19).

Even the Ukrainians understood that the President’s intent was to benefit his reelection campaign. (HPSCI Report at 21-22). President Zelensky himself, through his close advisor Danyliuk, conveyed to Ambassador Taylor that he “did not want to be used as a pawn in a U.S. reelection campaign.” (HPSCI Report at 20, 94).

After the security assistance hold became public, President Trump continued to press for the Ukrainian government to pursue the investigations. When he learned of this Ambassador Taylor texted Ambassadors Volker and Sondland

that “I think it’s crazy to withhold security assistance for help with a political campaign.” (HPSCI Report at 24).

In sum, the statements President Trump solicited from the president of Ukraine about politically helpful investigations were things of value to his campaign. Accordingly, the evidence uncovered so far supports a violation of this crime as well.

III. Coercion of political activity (18 U.S.C. § 610)

President Trump also may have violated federal laws prohibiting individuals from commanding federal officers to engage in political activity. The Hatch Act, 5 U.S.C. § 7322 prohibits most federal employees from engaging in certain types of partisan political activity and from using their “official authority or influence for the purpose of interfering with or affecting the result of an election.” § 7323. To prevent others from coercing federal employees from engaging in prohibited activity, federal law provides that:

It shall be unlawful for **any person** to intimidate, threaten, **command**, or coerce, or attempt to intimidate, threaten, command, or coerce, **any employee of the Federal Government** as defined in section 7322(1) of title 5, United States Code, to **engage in**, or not to engage in, **any political activity**, including, but not limited to, voting or refusing to vote for any candidate or measure in any election, making or refusing to make any political contribution, or working or refusing to work on behalf of any candidate. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

18 U.S.C. § 610 (emphasis added). In addition, federal law provides that “[w]hoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.” 18 U.S.C. § 2. In plain language, that means that if you cause someone else to commit a criminal offense, you can be charged for that crime as if you had carried it out yourself. In this context, it means that President Trump could be liable if he caused subordinate executive branch officers, such as OMB Director Mulvaney or Ambassador Sondland, or his personal attorney Rudy Giuliani to command federal officials to engage in political activity.

The facts available suggest that President Trump personally and by and through his subordinates caused federal officials to request that a foreign country investigate a rival candidate for president and to withhold meetings and security assistance until that investigation was announced.

That President Trump commanded an employee of the federal government to engage in particular acts is not in doubt. (*See, e.g.*, HPSCI Report at 34-35).

The evidence also suggests that Trump commanded these federal officials to engage in “political activity” for purposes of the Hatch Act. Critically, when President Trump commanded Ambassadors Volker and Sondland and Secretary Perry to “talk to Rudy” about Ukraine, he was commanding these three officials to work with his private attorney on a scheme to influence the result of the upcoming 2020 election. (HPSCI Report at 63).

President Trump would later command Ambassador Sondland to instruct President Zelensky to have the Ukrainian Prosecutor General to “go to the mike [sic] and announce the investigations.” President Trump then called Ambassador Sondland to clarify that he wanted President Zelensky himself to announce the investigations. This

was because, as President Trump explained to Ambassador Sondland, he wanted President Zelensky “in a public box.” President Trump demanded to Ambassador Sondland that Zelensky “clear things up”—that is, announce the investigations publicly. (HPSCI Report at 126).

It is even more clear that President Trump caused others (namely, his personal attorney) to direct federal officials to engage in political activity. Ambassadors Volker and Sondland and Secretary Perry were in regular communication with Giuliani throughout the scheme. In particular, Ambassador Sondland testified that, “Mr. Giuliani conveyed to Secretary Perry, Ambassador Volker, and others that President Trump wanted a public statement from President Zelensky committing to investigations of Burisma and the 2016 election. Mr. Giuliani expressed those requests directly to the Ukrainians. Mr. Giuliani also expressed those requests directly to us. We all understood that these prerequisites for the White House call and the White House meeting reflected President Trump’s desires and requirements.” (HPSCI Report at 119).

The incident that is perhaps most indicative of Giuliani’s commands to federal officials is his role in crafting an ultimately-scrapped public statement from President Zelensky. (HPSCI Report at 120-121). The Ukrainians presented Ambassador Volker an initial draft of the public statement, which Ambassador Volker discussed with Giuliani. In a series of phone calls, Giuliani demanded that the statement be amended to include an explicit reference to “Burisma and 2016,” the politically-motivated investigations he and the President were pursuing. Ambassadors Volker and Sondland then circulated an edited draft that included the explicit mention of the politically-motivated investigations, per Giuliani’s direction. This interaction specifically outlines the power Giuliani exerted over these federal officials, and his clear direction that they engage in political activity at the behest of President Trump.

IV. Misappropriation of federal funds (18 U.S.C. § 641)

President Trump’s improper withholding of security assistance for his own political gain may also constitute a misappropriation of federal funds; it is a crime to knowingly take for one’s own use property that belongs to the federal government. A person who commits this crime could go to prison for up to 10 years, be forced to pay a fine, or both. By holding up the security assistance and seeking to condition release of it on helping him win the next election, President Trump used the federal funds for his own ends.

The misappropriation of federal funds statute, 18 U.S.C. § 641, provides:

Whoever embezzles, steals, purloins, or **knowingly converts to his use** or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or **thing of value of the United States** or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof[.]

“A conviction under 18 U.S.C. § 641 requires proof of ‘criminal intent to steal or knowingly convert, that is, wrongfully to deprive another of possession of property.’” *United States v. Wilson*, 636 F.2d 225, 226 (8th Cir. 1980) (quoting *Morissette v. United States*, 342 U.S. 246, 276, 72 S.Ct. 240, 256, 96 L.Ed. 288 (1952)). The statute also provides that “[t]he word ‘value’ means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.” 18 U.S.C. § 641. It is not necessary that someone keep or even take possession of the thing of value to be convicted of “converting” it; for example, a person who illegally cuts down trees on federal land to improve

the value of his neighboring property can be said to have “converted” the trees to his own use. *United States v. Fogel*, 901 F.2d 23, 25–26 (4th Cir. 1990) (“The modern tendency, codified in Section 641, is to broaden the offense of conversion to include intentional and knowing abuses or unauthorized uses of government property”). As the Supreme Court has explained, “Conversion may include misuse or abuse of property. It may reach use in an unauthorized manner or to an unauthorized extent of property placed in one’s custody for limited use.” *Morrisette v. United States*, 342 U.S. 246, 272 (1952).

The facts suggest that President Trump knowingly converted to his own use \$391 million in security assistance that Congress had appropriated for Ukraine by misusing those funds to pressure Ukraine into announcing investigations for Trump’s personal political benefit. In particular, President Trump ordered the OMB in July of 2019 to put a hold on all \$391 million in security assistance to Ukraine, and then ordered the hold kept in place despite the concerns of the entire national security policy establishment, and despite important questions about the hold’s legality. (HPSCI Report at 67, 74). President Trump’s agents used questionable means to maintain the hold at the President’s direction and avoid complying with the Impoundment Control Act (ICA). The ICA limits the President’s ability to impound Congressionally-appropriated funds, and, critically, does not permit the withholding of funds through their date of expiration. (HPSCI Report at 75). President Trump’s agents at OMB maintained the hold despite their obligations under the ICA through a series of footnotes citing an “interagency process,” though no such process occurred while President Trump and his subordinates were pressuring the Ukrainian government throughout August and September. (HPSCI Report at 79). In fact, the agencies with responsibility over disbursing the aid, the Departments of State and Defense, either had already certified that Ukraine had met the requirements to receive aid (DOD) or “did not conduct, and [were] never asked to conduct” such a review (DOS). (HPSCI Report at 79).

All of this indicates that President Trump’s officials at OMB used a pretextual legal device to maintain the hold because President Trump was using the hold to pressure the Ukrainian government. This misuse of federal funds likely constitutes a “conversion” of the funds for President Trump’s personal political use in violation of 18 U.S.C. § 641.

V. Obstruction of Congress (18 U.S.C. §§ 1505, 1512)

President Trump’s conduct during the House impeachment inquiry also likely constitutes one or more crimes that involve obstruction of a congressional proceeding.

Congress has enacted several statutes creating criminal penalties for obstructing its proceedings. It is a crime, punishable by up to five years imprisonment to “corruptly, or by threats or force, or by any threatening letter or communication influence[], obstruct[], or impede[] or endeavor[] to influence, obstruct, or impede . . . the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress.” 18 U.S.C. § 1505. It is a separate crime, punishable by up to twenty years imprisonment for an individual to knowingly intimidate or threaten or corruptly persuade a congressional witness with intent to influence, delay, or prevent their testimony or to cause or induce a witness to withhold testimony or evidence or to be absent from an official proceeding to which such person has been summoned by legal process. 18 U.S.C. § 1512(b). *See also* 18 U.S.C. § 1515(a) (defining “official proceeding” to include “a proceeding before the Congress”). Finally, it is a crime, punishable by three years imprisonment to intentionally harass another person and thereby hinder, delay, prevent, or dissuade any person from attending or

testifying in a Congressional proceeding. 18 U.S.C.A. § 1512(d); *See also* 18 U.S.C. § 1515(a).

President Trump personally and through his subordinates has also engaged in conduct constituting obstruction of Congress and/or harassment or intimidation of a congressional witness. Among other things, the President “categorically directed” the White House and other components of the executive branch not to comply with congressional subpoenas. (HPSCI Report at 208). Pursuant to this directive, White House Counsel Pat Cipollone sent a letter to House Speaker Nancy Pelosi and the Chairs of the investigating Committees on October 8, 2019 confirming this categorical refusal to participate in the impeachment inquiry. (HPSCI Report at 211-12). Multiple congressional witnesses confirmed that the President and his subordinates withheld evidence relevant to the impeachment inquiry. (HPSCI Report at 218-28). The President also refused to let senior executive branch officials testify. (HPSCI Report at 231-44).

The President also unsuccessfully attempted to block other key witnesses from testifying (HPSCI Report at 245-56) and sought to intimidate them when they did testify. (HPSCI Report at 257-60). For instance, the President publicly attacked Ambassador Yovanovitch while she was in the process of testifying before the House Intelligence Committee. (HPSCI Report at 258). The President tweeted that several other witnesses were “NEVER TRUMPERS,” referred to one of them as “human scum,” and questioned their loyalty to the United States. (HPSCI Report at 259). The President also repeatedly threatened and publicly attacked the anonymous member of the intelligence community who filed a whistleblower complaint about President Trump’s conduct. (HPSCI Report at 260).

By and through these actions, the President has sought to influence a congressional proceeding for an improper purpose—to prevent it from gathering facts relevant to the House’s impeachment inquiry and thereby likely committed the crimes of obstruction of congress and/or intimidation of a congressional witness.

VI. Conclusion

Bribery, soliciting illegal campaign contributions from a foreign national, coercing federal employees to participate in politics, misappropriation of federal funds, and obstruction of justice are all serious crimes. They may not be the only crimes President Trump may have committed in his conduct towards Ukraine; as more facts come to light, we may learn more about the apparent scheme to cover up this conduct, which could implicate statutes relating to obstruction of justice, misuse of classification procedures, and more. But the evidence described above is sufficient to demonstrate that the President’s conduct was not only unacceptable and immoral, but also very likely criminal. That the President of the United States has breached criminal standards of conduct is another factor counseling in favor of his impeachment and removal from office.