

February 20, 2020

Geoffrey S. Berman
United States Attorney
Southern District of New York
1 St. Andrew's Plaza
New York City, NY 10007

Re: Request for Investigation into Violations of the Hatch Act by Rudolph W. Giuliani and Others

Dear Mr. Berman,

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the U.S. Attorney’s Office for the Southern District of New York investigate whether Rudolph W. Giuliani and others criminally violated or conspired to violate the Hatch Act by threatening to withhold congressionally-authorized security assistance to pressure Ukrainian President Volodymyr Zelensky to announce investigations that would be politically beneficial to Mr. Giuliani’s client, President Donald J. Trump. Multiple media outlets have reported that your office is conducting a criminal investigation into Mr. Giuliani’s activities, and we request that you consider potential Hatch Act violations as part of that investigation.¹

The Hatch Act broadly prohibits the manipulation of federal funds and federal programs to advance a partisan agenda. One criminal provision of the law, 18 U.S.C. § 601, prohibits anyone from causing or attempting to cause anyone else to make a contribution of anything of value to a candidate by denying or threatening to deny any federal payment or benefit of a program authorized by Congress. That prohibition ensures that the government pursues the national interest—not the personal political interests of powerful individuals, government officials, or foreign powers. Publicly-available information, including testimony in the impeachment inquiry of President Trump, raises questions about whether Mr. Giuliani and others unlawfully threatened President Zelensky with the denial of \$391 million in congressionally-authorized security assistance unless President Zelensky publicly announced investigations related to former Vice President Joe Biden and a conspiracy theory about the 2016 U.S. presidential elections.

Prosecutions under the criminal provisions of the Hatch Act, while rare, are not unprecedented. In 1974, for example, President Richard Nixon’s personal lawyer pled guilty to a criminal Hatch Act violation for attempting to trade an ambassadorship appointment for contributions to support President Nixon’s reelection. Mr. Giuliani’s conduct is similar, if not more egregious, and should be reviewed in the context of the Hatch Act’s criminal provisions.

¹ See, e.g., Kara Scannell, Vicky Ward, and Paul LeBlanc, Subpoena Indicates Federal Investigators Interested in Giuliani’s Business, *CNN*, Nov. 25, 2019, <https://cnn.it/34ZbDh8>; Rebecca Davis O’Brien, Rebecca Ballhaus, and Shelby Holliday, Federal Subpoenas Seek Information on Giuliani’s Consulting Business, *Wall Street Journal*, Nov. 25, 2019, <https://on.wsj.com/30Vkl58>.

Background

In early 2019, Mr. Giuliani, President Trump's personal lawyer, began publicly advocating for two Ukraine-related investigations.² In interviews and on Twitter, Mr. Giuliani pushed for investigations into: (1) former Vice President Joe Biden and a Ukrainian gas company, Burisma, that appointed Vice President Biden's son, Hunter Biden, to serve on its board of directors, and (2) alleged Ukrainian interference in the 2016 U.S. presidential election.³ Mr. Giuliani claimed that Vice President Biden improperly orchestrated the firing of a Ukrainian prosecutor investigating Burisma and that Ukrainians "were working to help Hillary Clinton" in the 2016 election,⁴ and called on the Department of Justice and the Department of State to investigate.⁵

Mr. Giuliani soon also began pressing Ukraine to launch the investigations. In early May 2019, Mr. Giuliani wrote to then-President-Elect Zelensky to ask for a meeting, noting that he "represent[s] [Mr. Trump] as a private citizen, not as President of the United States."⁶ Although Mr. Giuliani's letter did not detail the purpose of the meeting, Mr. Giuliani told the *New York Times* around the same time that he planned to travel to Kiev to encourage Ukrainian officials to pursue investigations into 2016 election interference and Burisma, which he said "will be very, very helpful to my client."⁷

According to Lev Parnas, an associate of Mr. Giuliani,⁸ two days after Mr. Giuliani's letter to President-Elect Zelensky Mr. Parnas personally delivered a direct warning to the newly-elected Ukrainian government: announce the investigations advocated for by Mr. Giuliani or the United States would halt aid to Ukraine.⁹ Speaking in an MSNBC television interview, Mr.

² See, e.g., Rudy Giuliani (@RudyGiuliani), Twitter (Apr. 27, 2019), <https://bit.ly/2OnJw4U> (asking media to "help us and cover it," referring to "the possible Ukrainian-DNC conspiracy in 2016 to find and create damaging information about Trump"); Rudy Giuliani (@RudyGiuliani), Twitter (May 10, 2019), <https://bit.ly/2RXNTG9> ("Explain to me why Biden shouldn't be investigated if his son got millions from a Russian loving crooked Ukrainian oligarch while He was VP and point man for Ukraine."); see also Kenneth P. Vogel and Iuliia Mendel, *Biden Faces Conflict of Interest Questions That Are Being Promoted by Trump and Allies*, *New York Times*, May 1, 2019, <https://nyti.ms/2tVI4k>.

³ *Id.*

⁴ Transcript from "MediaBuzz," *Fox News*, Apr. 7, 2019, <https://fxn.ws/3aU4YrT>.

⁵ Leigh Ann Caldwell, Kristen Welker, Heidi Przybyla, Josh Lederman, and Abigail Williams, *Giuliani Says State Dept Vowed to Investigate After He Gave Ukraine Docs to Pompeo*, *NBC News*, Oct. 4, 2019, <https://nbcnews.to/2Sd4If8>; Vogel and Mendel, *New York Times*, May 1, 2019.

⁶ Letter from Rudolph W. Giuliani, Attorney, to Volodymyr Oleksandrovych Zelensky, President-Elect of Ukraine, May 10, 2019, <https://bit.ly/36mCEuL>.

⁷ Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, *New York Times*, May 9, 2019, <https://nyti.ms/2u7nxIs>.

⁸ Mr. Giuliani and Mr. Parnas had both a business and personal relationship; among other connections, Mr. Giuliani is the godfather to Mr. Parnas's son. Kenneth P. Vogel and Ben Protess, *Lev Parnas, Key Player in Ukraine Affair, Completes Break with Trump and Giuliani*, *New York Times*, Jan. 15, 2020, <https://nyti.ms/3aYNAIz>; Kenneth P. Vogel, Ben Protess, and Sarah Maslin Nir, *Behind the Deal that Put Giuliani Together with a Dirt-Hunting Partner*, *New York Times*, Nov. 6, 2019, <https://nyti.ms/37LNGLz>; see also Transcript from "The Ingraham Angle," *Fox News*, Jan. 20, 2020, <https://fxn.ws/2S8MNPt> (Mr. Giuliani notes that he "was close to" Mr. Parnas).

⁹ Rachel Maddow Interviews Lev Parnas. TRANSCRIPT: 1/15/20, The Rachel Maddow Show, Jan. 15, 2020 ("Maddow Interview: Part I"), <http://www.msnbc.com/transcripts/rachel-maddow-show/2020-01-15>; see also Letter

Parnas asserted that Mr. Giuliani told him—after meeting with President Trump—to advise the Ukrainians that “all aid” would be stopped without the announcement of “the Biden investigation.”¹⁰ Mr. Parnas said that he delivered Mr. Giuliani’s and President Trump’s message to Sergei Shefir, an aide to President-Elect Zelensky, in a meeting on May 12, 2019.¹¹ According to Mr. Parnas, he also told Mr. Shefir that, without the announcement of the Biden investigation, Vice President Mike Pence would not attend President-Elect Zelensky’s inauguration as planned.¹²

Mr. Parnas’s account of the meeting has been disputed. Mr. Giuliani denied telling Mr. Parnas to caution the Ukrainians that continued security assistance was conditioned on their announcement of the investigation into Mr. Biden, and Igor Fruman, another associate of Mr. Giuliani who purportedly was in the meeting, also denied that military aid was discussed.¹³

In his MSNBC interview, Mr. Parnas said that after the meeting with Mr. Shefir he told Mr. Giuliani that he did not believe Ukraine would announce the investigation into Vice President Biden.¹⁴ “I remember Rudy going, ‘OK, they’ll see,’” Mr. Parnas said.¹⁵ The threat that Vice President Pence would not attend the inauguration seemingly was executed immediately. “Basically, the next day Pence—to my awareness, Trump called up and said to make sure Pence doesn’t go there,” Mr. Parnas explained.¹⁶ Vice President Pence cancelled his trip to the inauguration on May 13.¹⁷

Over the next several months, Mr. Giuliani worked closely with key Trump administration officials to pressure Ukraine to launch and publicly announce investigations into Vice President Biden and Burisma and into the alleged Ukrainian interference in the 2016 election.¹⁸ On May 23, shortly after President Zelensky’s inauguration, President Trump

from Joseph A. Bondy to Sen. Mitch McConnell, Jan. 31, 2020 (“Parnas Proffer”), <https://bit.ly/36Stm9R> (asserting that if Mr. Parnas were to testify before the Senate, he would explain the steps he took “to directly convey the Presidents ‘quid pro quo’ of demanding public announcements of anti-corruption proceedings regarding the 2016 election and the Bidens in exchange for American financial aid”).

¹⁰ Maddow Interview: Part I. Mr. Parnas’s lawyer similarly asserted Mr. Parnas delivered the warning at the direction of Mr. Giuliani. Ben Protess, Andrew E. Kramer, Michael Rothfeld, and William K. Rashbaum, [Giuliani Associate Says He Gave Demand for Biden Inquiry to Ukrainians](https://nyti.ms/38TVdhQ), *New York Times*, Nov. 10, 2019, <https://nyti.ms/38TVdhQ>; see also Parnas Proffer at 3 (“Mr. Parnas would testify that at all times he was acting at the direction of Mr. Giuliani, on behalf of his client the President.”).

¹¹ Maddow Interview: Part I; Parnas Proffer at 2.

¹² *Id.*

¹³ Protess, Kramer, Rothfeld, and Rashbaum, *New York Times*, Nov. 10, 2019.

¹⁴ Maddow Interview: Part I.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Deposition of Jennifer Williams by the House Permanent Select Committee on Intelligence, Committee on Oversight and Reform, and Committee on Foreign Affairs, at 37:10–20, Nov. 7, 2019, <https://bit.ly/2RS6HGC>.

¹⁸ See, e.g., Deposition of David A. Holmes by the House Permanent Select Committee on Intelligence, Committee on Oversight and Reform, and Committee on Foreign Affairs, at 17, Nov. 15, 2019 (“Holmes Deposition”), https://intelligence.house.gov/uploadedfiles/holmes_final_version_redacted.pdf (“I became aware that Mr. Giuliani, a private lawyer, was taking a direct role in Ukrainian diplomacy. . . . Over the following months, it became apparent that Mr. Giuliani was having a direct influence on the foreign policy agenda that the Three Amigos were

reportedly directed several U.S. officials to include Mr. Giuliani in diplomatic efforts related to Ukraine.¹⁹ U.S. Ambassador to the European Union Gordon Sondland testified before the three House committees conducting the impeachment inquiry that President Trump was “skeptical” of Ukraine and told Ambassador Sondland, Energy Secretary Rick Perry, and then-U.S. Special Representative for Ukraine Negotiations Kurt Volker to talk to Mr. Giuliani about his concerns.²⁰ “It was apparent to all of us that the key to changing the President’s mind on Ukraine was Mr. Giuliani,” Ambassador Sondland testified. “He just kept saying: Talk to Rudy, talk to Rudy.”²¹

Ambassador Sondland and Ambassador Volker each testified that, based on Mr. Giuliani’s direction, they encouraged Ukrainian officials to publicly announce investigations into the 2016 election and into Burisma,²² which they came to understand was synonymous with an investigation into the Bidens.²³ Ambassador Volker recognized in his testimony before the House that it is “clear” in retrospect that “[Mr.] Giuliani was pushing for these two investigations to serve Donald Trump’s political interests and not the national interests.”²⁴ Ukraine, however, did not issue a satisfactory announcement, as Mr. Parnas told MSNBC: “So [the Ukrainians] announced something about corruption, that he’s going to get corruption, but Giuliani blew his lid on that, saying that’s not what we discussed. That it wasn’t supposed to be a corruption announcement. It has to be about Joe Biden and Hunter Biden and Burisma.”²⁵ Mr. Parnas

executing on the ground in Ukraine.”); Deposition of Ambassador William B. Taylor by the House Permanent Select Committee on Intelligence, Committee on Oversight and Reform, and Committee on Foreign Affairs, at 38:8–12, Oct. 22, 2019 (“Taylor Deposition”), <https://docs.house.gov/meetings/IG/IG00/CPRT-116-IG00-D008.pdf> (“But the push to make President Zelensky publicly commit to investigations of Burisma and alleged interference in the 2016 elections showed how the official foreign policy of the United States was undercut by the irregular efforts led by Mr. Giuliani.”); Testimony of Ambassador Gordon Sondland before the House Permanent Select Committee on Intelligence, at 18, Nov. 20, 2019 (“Sondland Public Testimony”), <https://bit.ly/2RSoFc6> (“Mr. Giuliani demanded that Ukraine make a public statement announcing investigations of the 2016 election/DNC server and Burisma.”).

¹⁹ Deposition of Ambassador Gordon Sondland by the House Permanent Select Committee on Intelligence, Committee on Oversight and Reform, and Committee on Foreign Affairs, at 25:2–15, Oct. 17, 2019 (“Sondland Deposition”), <https://bit.ly/2YlpnAf>; Testimony of Ambassador Kurt Volker before the House Permanent Select Committee on Intelligence, Committee on Oversight and Reform, and Committee on Foreign Affairs, at 5, Oct. 3, 2019 (“Volker Written Testimony”), <https://bit.ly/2S9AsBt>.

²⁰ Sondland Deposition, at 25:2–15.

²¹ *Id.* at 25:12–15, 61:25–62:1.

²² *See, e.g.*, Volker Written Testimony, at 8; Sondland Deposition, at 202:24–25, 203:1–2 (noting he sought a public statement on investigations from President Zelensky “solely because of the Giuliani involvement”); Sondland Public Testimony, at 22–23, 25, 28, <https://bit.ly/2RSoFc6>; *see also* Taylor Deposition, at 26:18–23, 29:4–22, 30:16–19, 39:7–14, 65:3–25, 66:1–3, 201:10–22, 202:1–22; Charlie Savage and Josh Williams, [Read the Text Messages Between U.S. and Ukrainian Officials](https://nyti.ms/31dn6s3), *New York Times*, Oct. 4, 2019, <https://nyti.ms/31dn6s3>.

²³ Sondland Public Testimony, at 34–35, 51; Testimony of Ambassador Kurt Volker and Timothy Morrison before the House Permanent Select Committee on Intelligence, at 92, Nov. 19, 2019, <https://bit.ly/2uZYbfH> (“It’s correct that I learned about the president’s interest in investigating Vice President Biden from the phone call transcript.”).

²⁴ Deposition of Ambassador Kurt Volker by the House Permanent Select Committee on Intelligence, Committee on Oversight and Reform, and Committee on Foreign Affairs, at 210:6–15, Oct. 3, 2019, <https://docs.house.gov/meetings/IG/IG00/CPRT-116-IG00-D007.pdf>.

²⁵ Part two of the Lev Parnas interview. TRANSCRIPT: 1/16/20, The Rachel Maddow Show, Jan. 16, 2020, <http://www.msnbc.com/transcripts/rachel-maddow-show/2020-01-16>.

emphasized, “It was all about Joe Biden, Hunter Biden It was never about corruption. It was never—it was strictly about Burisma, which included Hunter Biden and Joe Biden.”²⁶

In mid-July, the Office of Management and Budget (“OMB”) froze \$391 million in security assistance to Ukraine.²⁷ OMB announced the freeze in an interagency meeting on July 18, stating that the hold was based on a “directive [that] had come from the President to the Chief of Staff to OMB.”²⁸ Ambassador William B. Taylor, the Charge d’Affaires ad interim in the U.S. Embassy in Kiev, testified before the three House committees that OMB provided no other explanation for the freeze during the July 18 meeting.²⁹ According to his testimony, Ambassador Taylor later learned that the security assistance for Ukraine “was conditioned on the investigations.”³⁰

President Trump raised the investigations directly to President Zelensky in a call on July 25, 2019. As the rough transcript released by the White House shows, after President Zelensky introduced the issue of Ukraine buying more weapons from the U.S., President Trump pivoted to his desire for Ukraine to pursue particular investigations, saying “I would like you to do us a favor though.”³¹ President Trump then said he would like President Zelensky to investigate alleged Ukrainian interference in the 2016 presidential election and the Bidens.³² President Zelensky told President Trump that one of his aides had spoken to Mr. Giuliani and that he, President Zelensky, “guarantee[d] as the President of Ukraine that all the investigations will be done openly and candidly.”³³ President Trump replied, “Rudy very much knows what’s happening and he is a very capable guy. If you could speak to him that would be great.”³⁴

In early August, Mr. Giuliani met with Andriy Yermak, a Zelensky aide.³⁵ Mr. Parnas stated in a proffer of potential testimony before the Senate that Mr. Giuliani told Mr. Yermak in the meeting that President Trump wanted Ukraine to publicly announce the investigations into the 2016 election and the Bidens.³⁶ Ambassador Volker said in testimony before the House that on phone calls after the meeting, Mr. Giuliani stated that “he had stressed the importance of

²⁶ Maddow Interview: Part I.

²⁷ The frozen security assistance included \$250 million appropriated to the Department of Defense for the Ukraine Security Assistance Initiative and \$141 from the State Department’s Foreign Military Financing program. *See* Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245 at § 9013 (2018) (appropriating Department of Defense funds); Consolidated Appropriations Act, 2019, Pub. L. 116-6 at § 7046(a)(2) (appropriating State Department funds); *see also* Jacques Singer-Emery and Jack Goldsmith, The Role of OMB in Withholding Ukrainian Aid, *Lawfare*, Oct. 16, 2019, <https://www.lawfareblog.com/role-omb-withholding-ukrainian-aid>.

²⁸ Taylor Deposition, at 27:16–25, 28:1–5.

²⁹ *Id.* at 28:3–5.

³⁰ *Id.* at 36:2–4, 36:18–20.

³¹ Memorandum of Telephone Conversation (July 25, 2019), <https://bit.ly/345adAu>.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Josh Dawsey, Paul Sonne, Michael Kranish, and David L. Stern, How Trump and Giuliani Pressured Ukraine to Investigate the President’s Rivals, *Washington Post*, Sept. 20, 2019, <https://wapo.st/2YsVG0c>.

³⁶ Parnas Proffer at 2.

Ukraine conducting investigations into what happened in the past.”³⁷ The *New York Times* reported that, by around this time, Ukrainian officials knew of the hold on security assistance.³⁸ The same report also described communications from early August in which government officials from the United States and Ukraine discussed the need for Mr. Yermak to participate in discussions with the U.S. government about the freeze on aid.³⁹

In September, Ambassador Sondland reiterated Mr. Parnas’s earlier message to the Ukrainians about the link between security assistance and the investigations. Ambassador Sondland testified publicly before the House that he told Mr. Yermak “the resumption of U.S. aid would likely not occur until Ukraine took some kind of action on the public statement that we had been discussing for many weeks” announcing investigations.⁴⁰ Ambassador Sondland’s testimony did not link his warning to Mr. Yermak to Mr. Giuliani; he noted, however, that he sought the announcement of investigations from President Zelensky “solely because of the Giuliani involvement” and he “came to believe that the resumption of security aid would not occur until there was a public statement from Ukraine committing to the investigations of the 2016 election and Burisma, as Mr. Giuliani had demanded.”⁴¹ Ambassador Taylor testified that Ambassador Sondland confirmed the link between security assistance and investigations in a phone call, in which Ambassador Sondland reported that “everything . . . including security assistance” depended on Ukraine’s announcement of investigations.⁴² According to Ambassador Taylor, a few days later Ambassador Sondland told him that President Zelensky agreed to make a public statement about the investigations in an interview with CNN.⁴³ Ambassador Taylor then wrote in a text message to Ambassador Sondland, “I think it’s crazy to withhold security assistance for help with a political campaign.”⁴⁴

The freeze was ultimately lifted on September 11, 2019⁴⁵—after the Chairs of the House Permanent Select Committee on Intelligence, the Committee on Foreign Affairs, and the Committee on Oversight and Reform announced an investigation into the alleged scheme by President Trump and Mr. Giuliani “to improperly pressure the Ukrainian government to assist the President’s bid for reelection.”⁴⁶ Ambassador Taylor testified that, shortly after the release of security assistance, Ukrainian officials confirmed to him that President Zelensky no longer

³⁷ Volker Written Testimony at 7.

³⁸ Andrew E. Kramer and Kenneth P. Vogel, [Ukraine Knew of Aid Freeze by Early August, Undermining Trump Defense](https://nyti.ms/31cHVUF), *New York Times*, Oct. 23, 2019, <https://nyti.ms/31cHVUF>.

³⁹ *Id.*

⁴⁰ Sondland Public Testimony, at 31.

⁴¹ *Id.* at 19; Sondland Deposition, at 202:24–25, 203:1–2; Kevin Breuninger and Christina Wilkie, [Trump Ordered Ukraine “Quid Pro Quo” Through Giuliani, Key Witness Sondland Testifies](https://cnb.cx/365DoV6), *CNBC*, Nov. 20, 2019, <https://cnb.cx/365DoV6>.

⁴² Taylor Deposition, at 36:10–20.

⁴³ *Id.* at 39:12–14, 207:12–18.

⁴⁴ *Id.* at 39:21–40:1; Charlie Savage and Josh Williams, [Read the Text Messages Between U.S. and Ukrainian Officials](https://nyti.ms/36IftLl), *New York Times*, Oct. 4, 2019, <https://nyti.ms/36IftLl>.

⁴⁵ Taylor Deposition, at 40:19–20.

⁴⁶ U.S. House of Representatives Permanent Select Committee on Intelligence Press Release, [Three House Committees Launch Wide-Ranging Investigation into Trump-Giuliani Ukraine Scheme](https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=685), Sept. 9, 2019, <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=685>.

planned to discuss investigations on CNN.⁴⁷ Discussing the hold on security assistance later, Mr. Mulvaney confirmed that the aid had been frozen in part based on President Trump's desire for politically beneficial investigations.⁴⁸ "Did [President Trump] also mention to me in pass[ing] the corruption related to the DNC server?" Mr. Mulvaney said in a press conference in October 2019. "Absolutely. No question about that. But that's it. And that's why we held up the money."⁴⁹

As noted above, Mr. Giuliani denied telling Mr. Parnas to caution the Ukrainians that continued security assistance was conditioned on their announcement of the investigation into Mr. Biden. More broadly, Mr. Giuliani has denied any involvement in the decisions to delay or release security assistance to Ukraine.⁵⁰

Potential Violations

The Hatch Act protects federal funds, employees, and programs from political manipulation. In particular, the Department of Justice ("DOJ") has explained that one of the statute's criminal provisions, 18 U.S.C. § 601, prohibits the "use [of] government-funded jobs or programs to advance a partisan political agenda rather than to serve the public interest."⁵¹ That provision makes it unlawful for "[w]hoever" to "directly or indirectly, knowingly cause[] or attempt[] to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of . . . any payment or benefit of a program of the United States" if such benefit "is provided for or made possible in whole or in part by an Act of Congress."⁵² Federal criminal law also makes it unlawful for "two or more persons" to "conspire . . . to commit any offense against the United States."⁵³

Here, testimony in the House impeachment proceedings and related public news reporting suggests that Mr. Giuliani—acting personally and through his agent, Mr. Parnas, as well as with others—threatened to withhold security assistance from Ukraine in order to attempt

⁴⁷ Taylor Deposition, at 41:9–14.

⁴⁸ Press Briefing by Acting Chief of Staff Mick Mulvaney, White House, Oct. 17, 2019 ("Mulvaney Press Briefing"), <https://www.whitehouse.gov/briefings-statements/press-briefing-acting-chief-staff-mick-mulvaney/>.

⁴⁹ *Id.* Mr. Mulvaney later denied that security assistance had been withheld from Ukraine over the demand for investigations, claiming "I never said there was a quid pro quo, because there isn't." Bobby Allen, *Mulvaney Walks Back Ukraine Remarks, Admits It Wasn't A 'Perfect Press Conference'*, *NPR*, Oct. 20, 2019, <https://n.pr/36WenMh>.

⁵⁰ Emily Cochrane and Kenneth P. Vogel, *Amid Bipartisan Outcry, White House Agrees to Release Ukraine Aid*, *New York Times*, Sept. 12, 2019, <https://nyti.ms/2SaWWCc>; Jacqueline Alemany, *Power Up: U.S. diplomats' texts reveal internal tensions over possible quid pro quo*, *Washington Post*, Oct. 4, 2019, <https://wapo.st/36kMwVF>; Meg Wagner, Veronica Rocha, Amanda Wills, Mike Hayes, and Fernando Alfonso III, *Three key witnesses testify in impeachment inquiry*, *CNN*, Nov. 20, 2019, <https://cnn.it/2TSMfqq>.

⁵¹ Federal Prosecution of Election Offenses 108 (Richard C. Pilger et al. eds., 8th ed. 2017),

<https://www.justice.gov/criminal/file/1029066/download>.

⁵² 18 U.S.C. § 601.

⁵³ *Id.* § 371.

to cause President Zelensky to announce investigations politically beneficial to President Trump. If true, Mr. Giuliani likely violated or conspired to violate § 601.⁵⁴

First, § 601 applies to both government officials and private persons like Mr. Giuliani. In general, the term “[w]hoever” includes “individuals,”⁵⁵ and § 601’s text does not limit the statute to government officials.⁵⁶ In fact, DOJ has applied related Hatch Act provisions to private persons. In 1974, Herbert Kalmbach, a private individual and Richard Nixon’s personal attorney, pled guilty to violating § 601’s companion statute, 18 U.S.C. § 600, which similarly applies to “whoever” promises employment or other benefits in exchange for political activity.⁵⁷ In that case, Mr. Kalmbach admitted to unlawfully promising a European ambassadorship to J. Fife Symington in return for a \$100,000 contribution to support President Nixon’s re-election campaign.⁵⁸

Second, security assistance for Ukraine constitutes a “payment or benefit” that is “provided for or made possible in whole or in part by an Act of Congress.” As originally enacted, § 601 applied only to the actual or threatened deprivation of federal funds appropriated for “work relief or relief purposes.”⁵⁹ Congress removed the “relief” limitation in 1976.⁶⁰ Representative J. Edward Roush, the sponsor of the bill removing the limitation, explained with respect to an earlier proposal that his intent was to apply § 601 to “ANY program or activity

⁵⁴ Previous reports by CREW and others outline additional criminal statutes implicated by the efforts to pressure Ukraine into announcing investigations of the Bidens and the 2016 election, *see, e.g.*, Citizens for Responsibility & Ethics in Washington, Criminal Abuse of Power: Trump’s Five Crimes Connected to Ukraine, Dec. 12, 2019, <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2019/12/12153411/Ukraine-Crimes-Report-2.pdf>; Max Bergmann and Sam Berger, Trump Committed Crimes in His Ukraine Shakedown, *Center for American Progress*, Jan. 21, 2020, <https://ampr.gs/2UXzBai>, which this office may also find probable cause to investigate. This letter focuses on Mr. Giuliani’s potential liability under § 601 given the lack of prior analysis regarding criminal Hatch Act violations.

⁵⁵ 1 U.S.C. § 1 (“In determining the meaning of any Act of Congress, unless the context indicates otherwise . . . the words ‘person’ and ‘whoever’ include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”).

⁵⁶ *See* Political Activity, Lobbying Laws & Gift Rules Guide, 3d § 20:20 (“Section 600 and 601, however, are not by their terms limited to public officials.”). By contrast, other provisions of the Hatch Act apply only to “employees” – a defined term that applies only to certain federal employees. 5 U.S.C. §§ 7322–25.

⁵⁷ 18 U.S.C. § 600. According to DOJ, “[t]he principal distinction between Sections 600 and 601 is whether the coerced political activity is demanded as a condition precedent to obtaining a publicly funded job or benefit (Section 600), or occurs in the form of a threat to terminate a federal benefit or job the victim already possesses (Section 601).” Federal Prosecution of Election Offenses 108 (Richard C. Pilger et al. eds., 8th ed. 2017), <https://www.justice.gov/criminal/file/1029066/download>.

⁵⁸ Anthony Ripley, Kalmbach Pleads Guilty to 2 Campaign Charges; May Be Jaworski Witness, *New York Times*, Feb. 26, 1974, <https://nyti.ms/33PKBHR>; Final Report of the Senate Select Committee on Presidential Campaign Activities, S. Rep. No. 93-981 (1974), <https://www.maryferrell.org/showDoc.html?docId=144965#tabTableOfContents>; *see also In re Convery*, 166 N.J. 298 (2001) (per curiam) (describing 1998 conviction of a private lawyer under § 600 for promising employment to a local New Jersey official in exchange for assistance in obtaining a favorable decision from the local zoning board).

⁵⁹ Hearing on Legislation Relating to Deprivation of Employment on Account of Political Contribution Before the Subcommittee on Criminal Justice of the House Committee on the Judiciary, at 4–5, Oct. 21, 1975 (“1975 Hatch Act Hearing”) (statement of Rep. J. Edward Roush), available at <https://bit.ly/36bALBr>.

⁶⁰ Pub. L. 94-453, 90 Stat. 1516 (Oct. 2, 1976).

receiving Federal financial assistance.”⁶¹ The legislative history of § 601 also reflects DOJ’s support for § 601’s expanded coverage. The Senate Report accompanying the legislation included DOJ’s position, which stated that “the United States has an obligation to insure that *none of the jobs and benefits* which are funded in whole or in part by federal appropriations is the subject of discrimination on the basis of whether the victim makes a political contribution.”⁶² There can be no dispute that the security assistance for Ukraine was funded by federal appropriations.⁶³ Indeed, the laws appropriating the assistance were passed with overwhelming bipartisan support in 2018 and 2019, and signed by President Trump.⁶⁴ That money thus should fall within the federal “payment[s] or benefit[s]” protected from political manipulation under § 601.

Third, the threatened denial of security assistance likely constitutes an “attempt to cause” President Zelensky to publicly announce investigations into alleged Ukrainian interference in the 2016 election and Burisma, including the Bidens. In the only court decision to substantively consider § 601, the Third Circuit confirmed that the statute reaches scenarios in which the victim refuses the demanded political activity.⁶⁵ In cases of failed “attempts to cause” a person to make a political contribution, “some measure of objective evidence” must corroborate the attempt—such as a “request, direct or indirect, [for] future political services.”⁶⁶ Here, Mr. Parnas has asserted that, at Mr. Giuliani’s direction, he told a Zelensky aide that security assistance would be withheld unless President Zelensky announced an investigation of the Bidens.⁶⁷ Moreover, following the implementation of the freeze on security assistance, Ambassador Sondland told Ambassador Taylor that the security assistance for Ukraine was conditioned on investigations.⁶⁸ Ambassador Sondland noted in his testimony that he conveyed a similar message directly to President Zelensky’s aide in a September 2019 meeting.⁶⁹ As Ambassador Sondland testified, he “came to believe that the resumption of security aid would not occur until there was a public statement from Ukraine committing to the investigations of the 2016 election and Burisma, as Mr. Giuliani had demanded.”⁷⁰ President Zelensky eventually agreed to issue a public statement

⁶¹ 1975 Hatch Act Hearing (statement of Rep. Roush), at 9.

⁶² S. Rep. 94-1245, at 3 (1974) (emphasis added); *see also* 1975 Hatch Act Hearing, at 37 (statement of Roger Pauley, Deputy Chief, Legislation and Special Projects Section, Criminal Division) (“[T]he United States has an obligation to insure that none of its appropriations is used as a means of extorting political favors.”).

⁶³ *See* Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245 at § 9013 (2018); Consolidated Appropriations Act, 2019, Pub. L. 116-6 at § 7046(a)(2).

⁶⁴ Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, H.R. 6157, 115th Cong. (2019), *legislative history available at* <https://bit.ly/3balb1a> (last visited Jan. 29, 2020) (showing the Defense Department appropriations bill passed the House 359-49 and passed the Senate 85-7, and the President signed it on September 28, 2018); Consolidated Appropriations Act, 2019, H.J.Res.31, 115th Cong. (2019) *legislative history available at* <https://bit.ly/393Xtg3> (last visited Jan. 29, 2020) (showing the State Department appropriations bill passed the House 231-140 and passed the Senate 83-16, and the President signed it on February 15, 2019).

⁶⁵ *United States v. Cicco*, 10 F.3d 980, 984 (3d Cir. 1993).

⁶⁶ *Id.* at 984–87.

⁶⁷ Maddow Transcript: Part I.

⁶⁸ Taylor Deposition, at 36:14–20.

⁶⁹ Sondland Public Testimony, at 31.

⁷⁰ *Id.* at 19; Breuninger and Christina, *CNBC*, Nov. 20, 2019.

about the investigations, and changed his plans only after Congress began its investigation into alleged improper pressure on Ukraine and the withheld security assistance was released.⁷¹

Fourth, Ukraine appears to be a “person” under the statute who could be caused to make a contribution of a thing of value. No court has addressed whether the term “person” under § 601 includes foreign sovereigns. Although the word “person” does not generally include a sovereign government, the D.C. Circuit has been clear that the “the purpose, the subject matter, the context, the legislative history, [or] the executive interpretation of the statute” can indicate inclusive intent.⁷² Here, the purpose and context of § 601 support that foreign sovereigns can be “person[s]” and therefore victims of unlawful attempts to manipulate federal funds for partisan ends. As discussed above, both Congress and DOJ intended the statute to broadly reach all activities funded by federal appropriations.⁷³ A broad interpretation of the word “person” would provide the greatest protection for the integrity of federal monies.⁷⁴

Fifth, President Zelensky’s announcement of the investigations would likely be “a contribution of a thing of value” for the benefit of “any candidate.” The term “thing of value” is found in a number of criminal statutes and is “generally construed to cover intangibles as well as tangibles.”⁷⁵ The Third Circuit concluded that § 601, in particular, reaches “demands for services that have no identifiable market value, or which have value only to the person(s) seeking the contribution,” such as “hanging signs, soliciting votes or attending meetings.”⁷⁶ Here, as described above, multiple individuals involved in pressing Ukraine to announce the investigations testified that they believed Mr. Giuliani demanded the announcement in order to benefit President Trump politically. Mr. Giuliani himself described the investigations as “very, very helpful to my client,” meaning President Trump,⁷⁷ and the House committees conducting

⁷¹ Taylor Deposition, at 39:12–14, 41:9–14, 207:12–18.

⁷² *Sturdza v. United Arab Emirates*, 281 F.3d 1287, 1307 (D.C. Cir. 2002) (quotation marks omitted).

⁷³ *See Pfizer, Inc. v. Gov’t of India*, 434 U.S. 308, 312–20 (1978) (finding foreign government to be a “person” entitled to sue under Sherman Act based on the “broad scope of the remedies provided by the antitrust laws” and noting “suits by foreigners who have been victimized by antitrust violations clearly may contribute to the protection of American consumers”).

⁷⁴ Alternatively, President Zelensky may have been acting outside of his official capacity. *Cf. Stoner v. Santa Clara Cty. Office of Educ.*, 502 F.3d 1116, 1123–24 (9th Cir. 2007) (holding that state government employees acting in their personal capacities were “persons” for purposes of the False Claims Act).

⁷⁵ *United States v. Girard*, 601 F.2d 69, 71 (2d Cir. 1979).

⁷⁶ *Cicco*, 10 F.3d at 984. The Third Circuit apparently did not view the term “contribution” as a term of art from campaign finance laws. Instead of analyzing the term “contribution” in accordance with the Federal Election Campaign Act (“FECA”), the court looked to the text of § 601 to decide whether particular activity was a “thing of value” under the statute. *Id.* If the court’s approach is incorrect and “contribution of a thing of value” should be interpreted with reference to the FECA, President Zelensky’s announcement of the investigations still likely is a “contribution.” The FECA defines a “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). Federal Election Commission (“FEC”) regulations further state that the term “anything of value” includes “in-kind” contributions, defined as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods and services.” 11 C.F.R. § 100.52(d)(1). Here, it is likely that President Zelensky’s announcement of an investigation into Vice President Biden—one of the most likely rivals for President Trump in the 2020 election—would result in media coverage damaging to Vice President Biden. Such coverage would likely be valuable to President Trump.

⁷⁷ Vogel, *New York Times*, May 9, 2019.

the impeachment inquiry concluded that President Trump sought the announcement from President Zelensky to “benefit President Trump’s personal political interests and reelection effort.”⁷⁸ In addition, by the time the hold was placed on security assistance and the conditions for release communicated to President Zelensky, President Trump had already filed to run for reelection,⁷⁹ publicly launched his reelection campaign,⁸⁰ and accepted contributions for the campaign.⁸¹ He was thus clearly a “candidate” for purposes of § 601.⁸²

With respect to Mr. Giuliani, Mr. Parnas directly tied him to the conditioning of security assistance on the announcement of investigations. Mr. Parnas, allegedly at Mr. Giuliani’s direction, warned the incoming Zelensky government that the United States would freeze security assistance to Ukraine unless it announced an investigation into the Bidens.⁸³ While Mr. Giuliani disputes Mr. Parnas’s claims, he does not dispute that he called for the investigations being demanded of Ukraine. Moreover, Mr. Giuliani admits to asking Ukrainian officials directly for the investigations into Burisma and the Bidens, as well as the 2016 election.⁸⁴ Indeed, multiple U.S. officials testified that they viewed Mr. Giuliani as the driving force behind the U.S. government effort to press President Zelensky for the announcement of those investigations.⁸⁵ Further, during the time the freeze was in place, Mr. Giuliani was in contact with President Trump and the White House, which ordered implementation of the freeze, as well as with Ambassadors Volker and Sondland, who pressed Ukrainian officials to announce the investigations.⁸⁶

Mr. Parnas’s representations regarding Mr. Giuliani’s role in warning President Zelensky’s advisor about a potential freeze on security assistance, as well as Mr. Giuliani’s involvement in other aspects of the pressure campaign directed towards President Zelensky, raise questions about whether Mr. Giuliani violated or conspired to violate § 601. DOJ should investigate these facts, as well as Mr. Giuliani’s denials, to determine whether criminal charges are warranted.⁸⁷

⁷⁸ House Permanent Select Comm. on Intelligence, The Trump-Ukraine Impeachment Inquiry Report, at 34, Dec. 2019, <https://bit.ly/2Pk01P1>.

⁷⁹ Donald J. Trump for President, Inc., FEC Form 99, Jan. 20, 2017, <https://bit.ly/2OiNkEx>.

⁸⁰ Transcript from “Morning Edition,” Trump Launches Reelection Campaign with Familiar Themes, NPR, June 19, 2019, <https://n.pr/2u6HCOY>.

⁸¹ Aaron Rugar, Trump’s Historic One-Day Fundraising Haul, Explained, Vox, June 19, 2019, <https://bit.ly/31iaZdA>.

⁸² See 18 U.S.C. § 601(b)(1).

⁸³ Maddow Transcript: Part I; see also Protess, Kramer, Rothfeld, and Rashbaum, *New York Times*, Nov. 10, 2019.

⁸⁴ See, e.g., Dawsey, Sonne, Kranish, and Stern, *Washington Post*, Sept. 20, 2019; Kyle Cheney, Of course I did: Giuliani acknowledges asking Ukraine to investigate Biden, *Politico*, Sept. 19, 2019, <https://politi.co/2S68IU2>.

⁸⁵ See, e.g., Holmes Deposition, at 17; Taylor Deposition, at 38:8–12; Sondland Public Testimony, at 18.

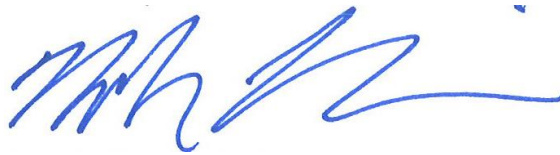
⁸⁶ Volker Written Testimony, at 6–9; see Maddow Transcript: Part I (Mr. Parnas asserting “I was with Rudy when he would speak to the president, plenty of times”); Brett Samuels, Giuliani defends White House calls after Intel report reveals contacts, *The Hill*, Dec. 4, 2019, <https://bit.ly/36NxqIE>.

⁸⁷ Because of this office’s ongoing investigation into Mr. Giuliani’s activities, this complaint focuses on Mr. Giuliani’s potential liability under § 601; however, CREW welcomes an investigation into any co-conspirators or other individuals implicated in criminal conduct by these facts.

Conclusion

CREW respectfully requests that the United States Attorney's Office for the Southern District of New York immediately commence an investigation into this matter and take appropriate action.

Sincerely,

A handwritten signature in blue ink, appearing to read "Noah Bookbinder", with a long horizontal flourish extending to the right.

Noah Bookbinder
Executive Director