

**1:20-cv-01580-RCL** UNITED STATES OF AMERICA v.

BOLTON

Royce C. Lamberth, presiding

**Date filed:** 06/16/2020

**Date of last filing:** 06/17/2020

## History

<b>Doc. No.</b>	<b>Dates</b>	<b>Description</b>
	<i>Filed &amp; Entered:</i> 06/17/2020	Case Assigned/Reassigned
<a href="#">2</a>	<i>Filed &amp; Entered:</i> 06/17/2020	Summons Issued Electronically
<a href="#">3</a>	<i>Filed &amp; Entered:</i> 06/17/2020	Motion for TRO
<a href="#">4</a>	<i>Filed &amp; Entered:</i> 06/17/2020	Notice (Other)
<a href="#">1</a>	<i>Filed &amp; Entered:</i> 06/16/2020	Complaint

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

<hr/>		)
UNITED STATES OF AMERICA,		)
U.S. Attorney’s Office		)
555 Fourth Street, NW		)
Washington, DC 20530		)
		)
Plaintiff,		)
		)
v.		)
		)
JOHN R. BOLTON,		)
9107 Fernwood Rd.		)
Bethesda, MD 20817		)
		)
Defendant,		)
<hr/>		)

Civil Action No.  
**COMPLAINT**

**INTRODUCTION**

1. This is a civil action by the United States to prevent Defendant John R. Bolton, a former National Security Advisor, from compromising national security by publishing a book containing classified information—in clear breach of agreements he signed as a condition of his employment and as a condition of gaining access to highly classified information and in clear breach of the trust placed within him by the United States Government. From April 2018 to September 2019, Defendant served as the Assistant to the President for National Security Affairs, the National Security Advisor to the President, a high-level role in which he regularly came into possession of some of the most sensitive classified information that exists in the U.S. government. Within two months of his departure from government service, Defendant had negotiated a book deal allegedly worth about \$2 million and had drafted a 500-plus page manuscript rife with classified information, which he proposed to release to the world. But in light of agreements he signed obligating him to submit any manuscript to the government for pre-publication review, Defendant sent the book to the National Security Council (“NSC”), which quickly identified

significant quantities of classified information that it asked Defendant to remove. An iterative process between NSC Staff and Defendant then began, as required by the binding agreements he signed, with changes to the book and other information being securely passed between Defendant and NSC staff. Soon, though, Defendant apparently became dissatisfied at the pace of NSC's review. Rather than wait for the process to conclude, Defendant decided to take matters into his own hands. On June 7, 2020, without Defendant giving any prior notice to the NSC, press reports revealed that Defendant and his publisher had resolved to release the book on June 23, without completing the pre-publication review process. Subsequent correspondence with Defendant's attorney confirmed that public reporting. Simply put, Defendant struck a bargain with the United States as a condition of his employment in one of the most sensitive and important national security positions in the United States Government and now wants to renege on that bargain by unilaterally deciding that the prepublication review process is complete and deciding for himself whether classified information should be made public.

2. The United States seeks an order requiring Defendant to abide by his contractual and fiduciary duties to complete the prepublication review process and not disclose classified information without written authorization, thereby protecting the national security of the United States. Because that prepublication review process is ongoing, the United States also seeks an order directing Defendant to specifically perform his contractual obligations by taking all actions within his power to stop the publication and dissemination of his book as currently drafted. The United States is not seeking to censor any legitimate aspect of Defendant's manuscript; it merely seeks an order requiring Defendant to complete the prepublication review process and to take all steps necessary to ensure that only a manuscript that has been officially authorized through that process—and is thus free of classified information—is disseminated publicly. Given that

Defendant has already taken steps to disclose or publish the manuscript to unauthorized persons without prior written authorization, the United States also seeks an order establishing a constructive trust on any profits obtained from the disclosure or dissemination of *The Room Where it Happened*, particularly if Defendant refuses to complete the prepublication review process and obtain the required prior written authorization before proceeding with publishing the book.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1345.

4. Venue is proper in the District of Columbia pursuant to 28 U.S.C. § 1391(b)(2) because the District of Columbia is the judicial district in which the White House and National Security Council is located; in which the NSC performs prepublication reviews; and in which Defendant signed several of his secrecy agreements and exit forms.

### **PARTIES**

5. Plaintiff is the United States of America (hereafter “United States” or “Government”).

6. Defendant is a United States citizen and resident of Maryland who served as United States National Security Advisor in 2018 and 2019. Defendant is an attorney who received his J.D. from Yale Law School in 1974. Defendant previously served through a recess appointment as United States Ambassador to the United Nations in 2005 and 2006, as Under Secretary of State for Arms Control and International Security Affairs from 2001 to 2005, as Assistant Secretary of State for International Organization Affairs from 1989 to 1993, and as Assistant Attorney General in the United States Department of Justice from 1985 to 1989.

## Factual Allegations

### The Responsibilities of the National Security Council and National Security Advisor to the President With Respect to National Security

7. The National Security Advisor, formally known as the Assistant to the President for National Security Affairs, is an advisor to the President of the United States who serves as part of the Executive Office of the President (“EOP”). The National Security Advisor is, apart from the President, the principal leader of the National Security Council, and is appointed to his position by the President without confirmation by the United States Senate. The National Security Advisor frequently leads Principals meetings that require Sensitive Compartmented Information (“SCI”)<sup>1</sup> clearance to attend and generally discuss or concern the latest SCI-derived intelligence. These meetings often, and the National Security Advisor’s role generally, concern activities that produce or relate to SCI.

8. The National Security Council is the President’s principal forum for considering national security and foreign policy matters with his senior national security advisors and Cabinet officials. *See* National Security Presidential Memorandum (“NSPM”)-4 (Apr. 4, 2017). The NSC’s function is to advise and assist the President on national security policies and to serve as the President’s arm for coordinating these policies among various government agencies. The NSC was established by the National Security Act of 1947, 61 Stat. 496; 50 U.S.C. § 402, as amended by the National Security Act Amendments of 1949, 63 Stat. 579; 50 U.S.C. § 401 *et seq.*). Its current constitution and functions are set forth in detail in NSPM-4. The NSC is contained within the EOP.

---

<sup>1</sup> Sensitive Compartmented Information is a subset of Classified National Intelligence concerning or derived from intelligence sources, methods or analytical processes that is required to be protected within formal access control systems established by the Director of National Intelligence.

**Defendant's Employment and Secrecy Agreements With the United States**

9. Defendant was appointed as the National Security Advisor and served in that position from April 9, 2018, until September 10, 2019.

10. As a condition of his appointment and to permit him access to classified information, Defendant entered into and signed a Classified Information Nondisclosure Agreement, titled a Standard Form 312 ("SF 312"). Defendant also entered into and signed two Sensitive Compartmented Information Nondisclosure Agreements, each titled a Standard Form 4414 ("SF 4414"). As noted in these NDAs, unauthorized disclosure of classified information is also illegal and can result in criminal penalties. *See generally* 18 U.S.C. § 798. These non-disclosure agreements were entered into with the United States and the EOP on April 5, 2018. True and correct copies of these secrecy agreements, redacted to omit relevant personal information, are attached as Exhibit A to the Complaint (hereafter "NDAs").

11. Each of these NDAs was signed by Defendant at the White House located within the District of Columbia. Pursuant to Defendant's position, he generally worked in the White House in the District of Columbia.

12. Defendant, who is an attorney, voluntarily, willingly, and knowingly entered into these NDAs. These NDAs were executed as a condition of his employment and appointment as National Security Advisor and as a condition of him being granted access to classified information and other information, which, if disclosed in an unauthorized manner, would jeopardize intelligence activities of the United States Government.

13. By signing the NDAs, Defendant expressly acknowledged that he understood and accepted that the United States Government was placing "special confidence and trust" in him by granting him access to classified information and sensitive compartmented information. *See* Exh. A, SF 312 ¶ 1; *id.*, SF 4414 ¶ 1.

14. As a condition of employment, and under the terms of the NDAs and his exit forms, Defendant was required never to “divulge classified information to anyone” without having “officially verified that the recipient has been properly authorized by the United States Government to receive it” or having received “prior written notice of authorization from the United States Government” entity responsible for its classification. Exh. A, SF 312 ¶ 3; *see id.*, SF 4414 ¶ 3 (requiring Defendant “never [to] divulge anything marked as SCI or . . . know[n] to be SCI to anyone” without authorization.)

15. Given his role as National Security Advisor, *see supra* ¶ 7, and as a condition of employment, and under the terms of the NDAs, Defendant was required to “submit for security review” to the United States Government “any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that [he had] reason to believe are derived from SCI.” Exh. A, SF 4414 ¶ 4. Disclosure of such preparations to anyone without authorized access to SCI is prohibited until “[he has] received written authorization” from the government. *Id.* Likewise, Defendant was required “to confirm from an authorized official that [any other] information is unclassified” before disclosing such information whenever “[he is] uncertain about the classification status.” *Id.*, SF 312, ¶ 3. This prepublication obligation applies both during his employment or other service during which time he had “access to SCI” or “access to classified information,” and “at all times thereafter.” *Id.* SF 312 ¶ 8; *id.* SF 4414 ¶¶ 4, 9.

16. Defendant was required to submit his material for prepublication review “prior to discussing [the work] with or showing it to anyone who is not authorized to have access to” the classified or SCI information. Exh. A, SF 4414 ¶ 4; *see id.*, SF 312, ¶ 3.

17. As Defendant acknowledged in the NDAs, the purpose of this prepublication review “is to give the United States a reasonable opportunity to determine whether” SCI itself, the description of activities that produce or relate to SCI, or information “derived from SCI” is contained in the information submitted. Exh. A, SF 4414 ¶ 5. And upon confirmation that such SCI-related information or classified information existed in a submitted work, he agreed not to disclose the work without obtaining written authorization. *See id.* ¶ 4; *see also* SF 312 ¶ 3.

18. Defendant acknowledged and agreed in the NDAs that the obligations undertaken by him in executing the NDAs would remain valid and binding upon him after the termination of his employment with the NSC, unless he obtained a written release. *See* Exh. A, SF 312 ¶ 8; SF 4414 ¶ 9.

19. Defendant also agreed in the NDAs that all classified information acquired by him during the course of his employment was the property of the United States Government, *see* Exh. A, SF 312 ¶ 7; SF 4414 ¶ 8; that there were established procedures for reporting any concerns about unlawful or improper intelligence activities, *id.* SF 312 ¶¶ 10-11; SF 4414 ¶¶ 13-14; and that if he violated any of the terms of the Agreement, the Government “may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.” *Id.* SF 312 ¶ 6; SF 4414 ¶ 7.

20. Defendant also specifically agreed, in addition to any other remedy to which the United States Government may become entitled, to “assign to the United States Government all rights, title, and interest, and all royalties, remunerations and emoluments that have resulted or will result or may result from any disclosure, publication or revelation not consistent with the terms of the” NDAs. SF 4414 ¶ 12; *see* SF 312 ¶ 5.



21. During his employment as National Security Advisor, Defendant was entrusted with classified information and SCI that related to some of the most sensitive matters of national security, including information regarding intelligence sources and methods as well as numerous codeword programs and SCI access. In granting Defendant access to such information, the United States Government relied on the expectation that Defendant would respect the rights and obligations created by the NDAs and his fiduciary duties, including the prepublication review requirement. Upon separating from his position as National Security Advisor, Defendant signed a Memorandum regarding Post-Employment Obligations acknowledging that he understood that he continued to be “prohibited from disclosing any classified or confidential information,” and that he “may not use or disclose nonpublic information”—defined as “information gained by reason of [his] federal employment” and that “has not been made available to the general public,” including information that is “confidential or classified.” A true and correct redacted copy is attached hereto as Exhibit B. Defendant signed this Memorandum on September 13, 2019.

22. Upon separation, Defendant also received a letter from the Legal Advisor to the NSC dated September 10, 2019, reiterating his “continuing obligations and responsibilities to protect all confidential, privileged, and classified information,” specifically noting the “terms of [his] nondisclosure agreements.” A true and correct redacted copy is attached hereto as Exhibit C. The letter emphasized to Defendant that unauthorized disclosure of such information “could cause irreparable injury to the United States or be used to advantage by a foreign nation.” The letter also reminded Defendant that he had “agreed to consult with the United States Government, even after [his] employment, regarding whether information . . . might be classified,” and to “submit for security review . . . any writing or other material in any form that could contain classified information *before* submitting the writing or material *to anyone* without proper authorization.”

Exh. C (emphasis added). The letter added that the United States Government “will take all appropriate steps . . . to ensure compliance” with the NDAs. *Id.*

23. Defendant’s appointment as the National Security Advisor to the President ended in September 2019. Either before or near November 9, 2019, Defendant entered into a book deal with Simon & Schuster, a publisher, for an unknown sum of money—reported in the press to be approximately \$2 million—for the rights to a book he was drafting concerning his time as National Security Advisor.

24. At no time has Defendant received a release from the terms and conditions of his NDAs. At no time has Defendant received “written authorization” as required by the NDAs that disclosure of the book “is permitted.” The opposite is true. Defendant was repeatedly advised in writing that the prepublication review process was ongoing.

#### **The NSC’s Prepublication Review Process**

25. The NSC is not an agency of the United States and does not act pursuant to any formal regulations governing its prepublication review process. The NSC’s Records Access and Information Security Management Directorate bears primary responsibility for the classification review of written works submitted to the NSC for the prepublication review process.

26. The Records Access and Information Security Management Directorate is headed by a Senior Director who holds original classification authority. The Senior Director is assisted by a staff who review the submitted written works. Generally, the length of the written work, the amount of and sensitivity of the classified information, and the recency of that information are all factors that influence the duration of the review.

27. Practically speaking, a staff employee of the Records Access and Information Security Management Directorate conducts a first-level review of the submitted work by reviewing the work, the Executive Order, and any relevant classification guide and by conducting research

regarding information that may be classified. After completion, a second-level review is conducted by a more senior member of the Records Access and Information Security Management Directorate, who takes whatever additional steps may be needed to ensure the protection of the classified information.

28. The prepublication review process is iterative, and the Records Access and Information Security Management Directorate makes efforts to work with authors to allow them to publish their work consistent with the vital need to protect the national security of the United States. Sometimes this iterative process can involve numerous communications over months to identify and work with an author regarding the classification of information. The author can provide cites to official releases and other information in an effort to show that information has been officially released and is not classified. In other instances, the staff of the Records Access and Information Security Management Directorate might provide suggested edits and changes.

29. As specified in the NDAs, receipt of formal written notice of authorization is necessary to complete the prepublication process. Upon completion of that process, the staff of the Records Access and Information Security Management Directorate generally advises the submitter of a work *in writing*, either by email or letter, that the NSC's classification concerns have been addressed and that the author is free to publish their work.

**Defendant Begins the NSC's Prepublication Review Process But Moves Forward With Publication Without Obtaining Prior Written Authorization After Being Told the Review Process Was Ongoing**

30. Ellen Knight, who holds original classification authority under operative Executive Order, is the Senior Director for Records Access and Information Security Management at the NSC. She has held the position since December 18, 2019.

31. On December 30, 2019, Defendant, through his lawyer, contacted Ms. Knight. During the telephone conversation, Defendant's lawyer informed Ms. Knight that Defendant wanted to submit his book for prepublication review to be in compliance with Defendant's non-disclosure agreement and to be cautious. Defendant's lawyer, in apparent possession of the manuscript, made arrangements to submit it by hand delivery on December 30, 2019. Defendant's lawyer included a letter with the manuscript, a copy of which is attached as Exhibit D, which included that lawyer's understanding of the prepublication process, including his (erroneous) understanding that the prepublication review process was restricted to career government officials and employees conducting the review and that the manuscript would not otherwise be disclosed to others. Ms. Knight's office began immediate review of the manuscript. Ms. Knight contacted NSC's Office of the Legal Advisor ("NSC Legal") at various points throughout the prepublication process.

32. On January 6, 2020, Defendant's lawyer telephoned Ms. Knight to inquire about the status of the review. During that call, Ms. Knight explained that her office was in the process of conducting a first review, after which her office would conduct a second review and quality control, and she would provide feedback as soon as possible. Ms. Knight noted that unlike shorter documents, the process for review of a manuscript (which in this case exceeded 500 pages) often involves an iterative back-and-forth. During that call, Ms. Knight also indicated that her office needed to conduct more research because of how close in time the events described were, as compared to more historical writings. Ms. Knight inquired whether a release date had been set and was informed that one had not yet been set but the publisher was considering an April 2020 release.

33. On January 23, 2020, Ms. Knight informed Defendant's lawyer by letter, a copy of which is attached as Exhibit E, that, "[b]ased on a preliminary review, the manuscript appears to contain significant amounts of classified information," including information classified "at the TOP SECRET" level. The letter further stated that based on the NDAs, the "manuscript may not be published or otherwise disclosed without the deletion of this classified information," and that the "manuscript remains under review in order for us to do our best to assist your client by identifying the classified information within the manuscript, while at the same time ensuring that publication does not harm the national security of the United States." *Id.*

34. Nevertheless, on or about January 25, 2020, the book was made available for pre-sale, and the title was announced as "*The Room Where it Happened*." The publisher describes the book as a "substantive and factual account" of Defendant's "time in the room where it happened." The book's subtitle—"A White House Memoir"—indicates on its face that it is based in large part on information obtained by Defendant in the course of his employment as National Security Advisor.

35. On January 26, 2020, the *New York Times* published an article describing information purportedly "included in drafts of a manuscript" that Defendant, apparently without any protections for classified national security information, had "circulated in recent weeks to close associates." The article set forth information allegedly contained in "dozens of pages" of the manuscript. A true and correct copy of this article is attached hereto as Exhibit F.

36. On information and belief, the January 26, 2020 article led to a tremendous surge in publicity for the pre-sales of the book, including hundreds of news articles, discussion on major television networks, statements by members of Congress, and widespread circulation of the article's content on social media.

37. On January 27, 2020, the *Washington Post* published a separate article describing content contained in *The Room Where it Happened*, relying on the statements of “two people familiar with the book,” indicating, on information and belief, that Defendant had disclosed a draft of the manuscript to others without receiving prior written authorization from the U.S. Government. A true and correct copy of this article is attached hereto as Exhibit G.

38. Thus, notwithstanding this admonition, in late January 2020, prominent news outlets reported that drafts of Defendant’s manuscript had been circulated to associates of Defendant. These articles included reports from individuals supposedly familiar with the book, which indicates, on information and belief, that Defendant had already violated his non-disclosure agreements while purporting to comply with the prepublication review process. *See supra* ¶¶ 27, 29; *see also* Exhs. E & F.

39. In late January 2020, Defendant’s lawyer contacted Ms. Knight to request prioritization of review of certain information in the manuscript because of the possibility that Defendant would be called to testify in the U.S. Senate. Ms. Knight agreed to prioritize review of that information at Defendant’s lawyer’s request but confirmed in writing that the chapter in question contained classified information.

40. On February 7, 2020, Ms. Knight sent an additional letter, a copy of which is attached as Exhibit H, to Defendant’s lawyer confirming that the manuscript contained “numerous instances” of classified information. The February 7, 2020, letter noted that because of “the volume of classified information” Defendant “should modify and revise the manuscript to remove all classified information and resubmit it.” *Id.* Ms. Knight then offered to meet with Defendant as soon as the following week to review each instance of classified information. *Id.* The following

week, citing Defendant's travel schedule that complicated the scheduling of a meeting, Defendant's lawyer asked for a call to identify a date and time for an initial meeting.

41. Ms. Knight and Defendant ultimately agreed to meet the afternoon of February 20, 2020 at the request of Defendant's lawyer. However, Defendant's scheduling issues resulted in a request to delay this meeting until the following morning. Ms. Knight accommodated this request and met with Defendant for four hours on February 21, 2020. Ms. Knight followed up this meeting with Defendant's lawyer in a February 24, 2020, letter, a copy of which is attached as Exhibit I (without attachment), describing the four-hour meeting as "most productive." Over the course of that four-hour meeting, Ms. Knight and Defendant reviewed preliminary results of three chapters in detail and a sample of review findings throughout the manuscript to provide examples. Because it was apparent that additional follow-on meetings would be helpful, Defendant and Ms. Knight agreed to meet again. Ms. Knight also provided a copy of Defendant's notes from that meeting that had undergone a classification review.

42. Ms. Knight and Defendant subsequently met again on March 2, March 3, and March 4, 2020, for multiple hours each day. Around that time, Defendant began to submit revised chapters to the NSC for additional review of his revisions based on the guidance he had received during these meetings. On March 16, 2020, Defendant and Ms. Knight spoke by phone to discuss the status of the review process and Defendant confirmed in writing the following day that the review process of the revised manuscript was ongoing. Ms. Knight advised Defendant again on March 25, 2020, that the review remained in process and was progressing and that she would provide an update when she had one.

43. During one of the meetings in March 2020, Mr. Bolton remarked to Ms. Knight that the release date of his book had been changed by the publisher without his knowledge. On

March 3, 2020, *CNN* published an article indicating that the release date of Defendant's book had moved to May 12, 2020. The article quoted the publisher as stating that the "new date reflects the fact that the government review of the work is ongoing." A true and correct copy of this article is attached hereto as Exhibit J.

44. On March 27, 2020, Ms. Knight advised Defendant that while "[m]any of the changes are satisfactory," the review indicated that "additional edits are required to ensure the protection of national security information." Exhibit K (March 27, 2020 email from E. Knight to C. Cooper). To aid and expedite review, Ms. Knight offered "to provide a list of required edits and language substitutions to guide [Defendant] in this next stage of revising the draft." *Id.* Ms. Knight then stated that even if all the changes were made she "will have to review the edited manuscript again to ensure the edits were completed, checking both your work and mine to ensure no classified information remains in the manuscript." *Id.* Further, Ms. Knight reminded Defendant again that the prepublication review "remains in process" and that "[e]ven after making the edits, you are not authorized to publish or further disseminate the manuscript or its contents until expressly given clearance by me to do so." *Id.* On March 27, 2020, Ms. Knight provided Defendant with 17 single-spaced pages noting specific passages and changes.

45. Defendant submitted a further revised manuscript on March 30, 2020, and Ms. Knight began working on these edits. Defendant and Ms. Knight spoke by phone about these revisions and the status of her continued review on April 3, 2020. Following this call, Defendant continued to provide what he referred to as cites related to specific topics, many of which were references to press reports. Defendant and Ms. Knight spoke again on April 13, 2020, during which Ms. Knight provided additional concerns to Defendant. After the call on April 13, Defendant provided additional changes on April 14 in an effort to meet these concerns. Ms. Knight



continued to work on these revisions and she and Defendant spoke again on April 21, 2020, by phone so that she could discuss a few sections of the draft. This portion of the iterative process continued in late April as Ms. Knight continued to request citations and information and Defendant responded to these requests. Defendant submitted additional changes to Ms. Knight on April 24, 2020, and Defendant provided a corrected page to this submission on April 27, 2020.

46. On or around April 27, 2020, Ms. Knight had completed her review and was of the judgment that the manuscript draft did not contain classified information. Ms. Knight informed NSC Legal of the status of the review.

47. On April 28, 2020, in response to an inquiry from Defendant, Ms. Knight advised that she had no update other than to say the process remained ongoing. In response to Defendant's specific request for a letter regarding Ms. Knight's review, which he sent in writing on April 29, 2020, Ms. Knight stated again that she did not have any new information about the status of the process, but advised Defendant that if there was an update she would reach out.

48. On April 29, 2020, *Politico* published an article indicating that the release date of Defendant's book had moved again from May 12, 2020 to June 23, 2020, citing the ongoing prepublication review process as the reason for the necessary shift in release. A true and correct copy of this article is attached hereto as Exhibit L.

49. On May 1, 2020, and May 6, 2020, Defendant again inquired about whether the letter would be available. In response, on May 7, 2020, Ms. Knight unequivocally stated that she did not have any new information, that "[t]he process remains ongoing," and that she would "reach out as soon as there is an update to provide." A true and correct copy of this email is attached as Exhibit M.

50. Defendant did not inquire further with Ms. Knight about the status of the review or the letter he sought following May 7, 2020. Nor did Ms. Knight correspond further with Defendant. Instead, Defendant had, without such authorization, delivered the book to a publisher and confirmed through counsel that it would in fact be published on June 23, 2020.

51. Yet, as Ms. Knight stated, the process was ongoing. On May 2, 2020, Michael Ellis, the NSC's Senior Director for Intelligence, commenced an additional review of the manuscript. Mr. Ellis assumed his current position on March 1, 2020, and has served as an Original Classification Authority since March 29, 2017. He commenced this review at the request of the Assistant to the President for National Security Affairs, who, upon review of the version of the manuscript reflecting Ms. Knight's latest guidance, was concerned that the manuscript still appeared to contain classified information, in part because the same Administration that the Author served is still in office and that the manuscript described sensitive information about ongoing foreign policy issues. Mr. Ellis completed his initial review on June 9, 2020.

52. Based on Mr. Ellis's position as Senior Director for Intelligence Programs, he routinely receives extremely sensitive intelligence reports and analysis that most members of the NSC staff, including Ms. Knight do not. He also routinely attends senior-level meetings related to national security and foreign policy decisions, including meetings of the Principals Committee and Deputies Committee convened under NSPM-4; convenes Policy Coordination Committee meetings on intelligence activities related to national security and foreign policy decisions; and provides advice to the Assistant to the President for National Security Affairs and other senior White House officials on national security and foreign policy decisions. As such, he is in a position to know intelligence information and internal foreign policy deliberations and developments that others of the NSC staff do not know. For the same reasons, he has a broader base of knowledge

to identify and determine information that is classified that others may not be able to identify and determine as classified.

**Defendant Abandons the Prepublication Review Process He Had Agreed to Follow.**

53. While Mr. Ellis was still conducting his review and finding classified information in the manuscript, on June 7, 2020, media reports indicated that—notwithstanding the absence of prior written authorization and despite repeated written confirmation as recently as May 7 that the process was ongoing—Defendant “is planning to publish even if the White House does not give publication approval.” The *Washington Post* reported that Defendant and his publisher would proceed to release the book on June 23, 2020. A true and correct copy of this article is attached hereto as Exhibit N.

54. On June 8, 2020, the Legal Advisor to the NSC wrote Defendant’s lawyer confirming, yet again, that Defendant may not publish or disseminate the manuscript because the current draft contained classified information and that publication could not occur “until the prepublication review is complete and he receives the necessary authorization at the conclusion of that process . . . .” Exhibit O (June 8, 2020 Letter from J. Eisenberg to C. Cooper). The letter indicated that the NSC would provide Defendant with a copy of Defendant’s manuscript with redactions on or before June 19, 2020.

55. On June 10, 2020, in response to a June 8, 2020 letter from the Legal Advisor to the NSC confirming that Defendant may not publish or disseminate the manuscript because the current draft contained classified information, Defendant’s lawyer confirmed that “Ambassador Bolton and his publisher, Simon & Schuster, moved forward with publication of [Defendant’s] book” and that “[t]he book has now been printed, bound, and shipped to distributors across the country.” A true and correct copy of this letter is attached has Exhibit P.

56. On June 11, 2020, the Legal Advisor to the NSC wrote to Defendant's counsel, emphasizing that "the manuscript still contains classified information, because, among other things, it includes information that he himself classified and designated for declassification only after the lapse of twenty-five years." The Legal Advisor further reminded Mr. Bolton that he "remains under an obligation to stop the dissemination of the manuscript, which still contains classified information that belongs to the United States Government, the unauthorized disclosure of which could reasonably be expected to cause serious damage to national security." A true and correct copy of this letter is attached as Exhibit Q.

**Publication of *The Room Where it Happened* At This Time Would Violate the Terms of Defendant's NDAs**

57. The content of *The Room Where it Happened* is covered by Defendant's NDAs, and the book as submitted for pre-publication review contained classified information that has not been publicly acknowledged or previously released. Although Defendant has eliminated some classified information from the book in response to extensive comments from NSC staff, NSC has determined that classified information remains in the manuscript.

58. NSC has determined that the manuscript in its present form contains certain passages—some up to several paragraphs in length—that contain classified national security information. In fact, the NSC has determined that information in the manuscript is classified at the Confidential, Secret, and Top Secret levels. Accordingly, the publication and release of *The Room Where it Happened* would cause irreparable harm, because the disclosure of instances of classified information in the manuscript reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States. Completion of the prepublication review process and the provision of written authorization to Defendant as specified by the contract would ameliorate such harm.

59. Under the terms of the NDAs, Defendant is obligated not to publish *The Room Where it Happened*, or otherwise share the classified information contained therein with others, until receiving “prior written authorization from the United States Government . . . responsible for the classification of information or last granting [Defendant] a security clearance that such disclosure is permitted.”

60. In response to his most recent specific request for such prior written authorization, Defendant was expressly informed in writing on May 7, 2020, that there was no new information that could be provided at that time and that the process remained ongoing. Defendant was further advised that the NSC would reach out as soon as there was an update.

61. Despite previously having agreed to delay the release date, Defendant did not advise or indicate to the NSC, following the May 7, 2020, written communication, that he and his publisher had decided to press forward with the June 23, 2020 release date for *The Room Where it Happened* regardless of whether he obtained the legally-required prior written authorization.

62. Instead, the NSC first learned that Defendant had proceeded with steps to publish the book without final authorization from June 7, 2020 media reports. On June 8, 2020, the NSC stated again that the iterative prepublication review process was ongoing and that the book contained classified information. Exh. O. The NSC further stated that it would provide Defendant, no later than June 19, 2020, a copy of his draft manuscript with redactions for that information that has been identified as classified. *Id.*

63. On June 10, 2020, counsel for Defendant confirmed that “Ambassador Bolton and his publisher, Simon & Schuster, moved forward with publication of [Defendant’s] book” and that “[t]he book has now been printed, bound, and shipped to distributors across the country.” Exh. P.

64. Pursuant to the terms of Defendant's NDAs, the United States Government is entitled to apply for a court order prohibiting the disclosure of the information in *The Room Where it Happened* in breach of the NDAs and Defendant's contractual obligations and fiduciary duties to the United States.

65. Pursuant to the express terms of Defendant's NDAs, all rights, title, and interest in any and all royalties, remunerations, and emoluments that have resulted, or will result from any disclosure, publication, or revelation of classified information contained in *The Room Where it Happened* that is not consistent with the terms of the NDA have been assigned to the United States Government.

66. Given that Defendant and his publisher twice agreed to shift the release date of Defendant's book based on the ongoing prepublication review process, on information and belief, Defendant and the publisher possess the authority to continue to delay the release date until such time as the prepublication review process results in a written authorization that publication of Defendant's book is permitted.

### **CLAIMS FOR RELIEF**

#### **Count One: Breach of Contract and Fiduciary Duty; Violation of Prepublication Review Requirement**

67. All preceding paragraphs are incorporated by reference, as if fully set forth herein.

68. Defendant voluntarily, willingly, and knowingly entered into contractual agreements with the United States of America when he signed his NDAs and he agreed to be bound by their terms and conditions. Among those terms and conditions is a requirement that Defendant submit the material in *The Room Where it Happened* to the United States Government for prepublication review. Moreover, having been advised that the draft manuscript contained

classified information, Defendant had an obligation not to divulge or disclose it to anyone until receiving written authorization from the United States Government to do so.

69. Defendant knowingly, willfully, and deliberately breached his NDAs by sharing drafts of the manuscript with others prior to completion of the prepublication review process, and before Defendant had received prior written authorization from the United States Government to do so.

70. Under both the common law and the NDAs, and in equity, Defendant had a fiduciary relationship with the United States of America based on his placement in positions of trust and special confidence. Defendant served as National Security Advisor to the President, made recommendations to the President regarding national security and foreign policy, represented the United States in its relations with other countries, was entrusted with classified and SCI information that related to some of the most sensitive matters of national security, and entered into the NDAs.

71. Defendant owes to the United States a fiduciary duty of loyalty to protect from unauthorized disclosure of information pertaining to or derived from classified information, sensitive compartmented information and intelligence sources and methods, including signals intelligence activities and information; to submit to the United States Government for review any materials subject to his prepublication review obligations; and to not disseminate those materials or information unless and until the United States Government completes its prepublication review processes and provides written approval of disclosure.

72. Defendant breached his fiduciary duties by sharing drafts of *The Room Where it Happened* with others prior to the completion of the prepublication security review and prior to receiving written permission to share information in the manuscript.

73. As a direct and proximate result of Defendant's breach of his contractual and fiduciary duties, the United States has been damaged and harmed by, *inter alia*, the public disclosure of classified information, which reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States.

74. Allowing Defendant's breach of his contractual and fiduciary duties to result in the release of his book on June 23, 2020 without specific performance and completion of the prepublication review process will compound this damage and result in irreparable harm.

75. Defendant has engaged in a course of conduct evidencing a propensity to commit further breaches of his contractual and/or fiduciary duties and to cause further damage to the United States, including irreparable injury for which the United States has no adequate remedy at law.

**Count Two: Breach of Contract and Fiduciary Duty; Violation of Duty Not to Disseminate Classified Information**

76. All preceding paragraphs are incorporated by reference, as if fully set forth herein.

77. Among the terms and conditions in Defendant's NDA was an express requirement that Defendant never "divulge classified information to anyone" without having "officially verified that the recipient has been properly authorized by the United States Government to receive it" or having received "prior written notice of authorization from the United States Government" entity responsible for its classification. Exh. A, SF 312 ¶ 3.

78. Without receiving prior written notice of authorization from the United States Government, Defendant distributed his draft manuscript—containing classified information—to numerous persons not authorized by the United States Government to receive it. On information and belief, those individuals included his attorney, his publisher, numerous acquaintances and



friends, and members of the news media. He did so numerous times at various stages of his never-completed prepublication review.

79. By disclosing classified information, some instances of which reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States, Defendant caused irreparable harm to the United States for which there is no remedy at law.

**Count Three: Breach of Contract and Fiduciary Duty; Unjust Enrichment; Constructive Trust**

80. All preceding paragraphs are incorporated by reference, as if fully set forth herein.

81. Defendant undertook unauthorized disclosures of classified information in violation of his NDAs in order to profit from classified information learned in the course of his employment as the highest national security advisor to the President of the United States.

82. Prior to obtaining written authorization, Defendant also undertook unauthorized publication of his book despite being expressly advised that the prepublication review was ongoing and that he would be notified with an update on its status.

83. Several of his unauthorized disclosures were undertaken for the specific purpose of garnering publicity for his book in order to increase sales and revenue.

84. Defendant has been, and will continue in the future to be, unjustly enriched in the amount of profits, advances, royalties, and other advantages resulting from the publicity given to the unauthorized disclosure of the draft of his book.

85. Defendant agreed in the contract he signed to “assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation of classified information not consistent with the terms” of the non-disclosure agreements.

**PRAYER FOR RELIEF**

**WHEREFORE**, the United States of America respectfully requests that the Court award the following relief:

A. Declare that Defendant has breached his legal obligations, embodied in his NDAs, as well as his fiduciary obligations, by submitting for publication and otherwise disclosing information in *The Room Where it Happened* without completing prepublication review;

B. Declare that Defendant has breached his contractual obligations, embodied in his NDAs, as well as his fiduciary obligations, by submitting for publication and otherwise disclosing information in *The Room Where it Happened* that contains classified information;

C. Enter an Order directing Defendant to notify his publisher that he was not authorized to disclose *The Room Where It Happened* because he has not completed prepublication review and because it contains classified information; to instruct or request his publisher, insofar as he has the authority to do so, to further delay the release date of *The Room Where it Happened* until completion of the prepublication review process; and to instruct or request his publisher, insofar as he has the authority to do so, to take any and all available steps to retrieve and dispose of any copies of *The Room Where it Happened* that may be in the possession of any third party in a manner acceptable to the United States;

D. Enjoin Defendant from any further violations of the terms and conditions of the NDAs and his contractual obligations and fiduciary duties to the United States by taking any steps towards publicly disclosing the information in *The Room Where it Happened* without first obtaining written permission from the United States through the prepublication review process; by releasing *The Room Where it Happened* in any form or media; by otherwise exercising any and all rights in and to *The Room Where it Happened*; or by otherwise breaching his NDAs and contractual and fiduciary duties;

E. In light of the steps already taken by Defendant to disclose or publish *The Room Where it Happened*, and especially in the event that Defendant does not complete the prepublication review process by obtaining prior written authorization as required by the contract, impose a constructive trust for the benefit of the United States over, and require an accounting of, all monies, gains, profits, royalties, and other advantages that Defendant and his agents, assignees, or others acting on his behalf have derived, or will derive, from the publication, sale, serialization, or republication in any form, including any movie rights or other reproduction rights, of *The Room Where it Happened*;

F. Declare that, pursuant to Fed. R. Civ. P. 65(d)(2), this order binds Defendant's agents and other persons who are in active concert or participation with Defendant or his agents, if they receive actual notice of the order, including Simon & Schuster, Inc. and other such persons in the commercial distribution chain of Defendant's book;

G. Grant to the United States such other relief as the Court may deem just and proper, including, but not limited to, the Government's attorneys' fees and costs herein.

\* \* \*

Dated: June 16, 2020

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

MICHAEL SHERWIN  
Acting United States Attorney

ETHAN P. DAVIS  
Principal Deputy Assistant Attorney General

DAVID M. MORRELL  
Deputy Assistant Attorney General

ALEXANDER K. HAAS  
Director  
Federal Programs Branch

*/s/ Daniel F. Van Horn*

---

Daniel F. Van Horn (D.C. Bar. No. 924092)  
Assistant United States Attorney  
555 Fourth Street N.W., Room E4226,  
Washington, D.C. 20530  
Tel: 202-252-2506  
Email: daniel.vanhorn@usdoj.gov

*/s/ Michael J. Gerardi*

---

Michael J. Gerardi (D.C. Bar No. 1017949)  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street NW, Room 11514  
Washington, D.C. 20005  
Tel: (202) 616-0680  
Fax: (202) 616-8460  
E-mail: michael.j.gerardi@usdoj.gov

*Counsel for Plaintiff*

# Exhibit

# A

**CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT****AN AGREEMENT BETWEEN**

John Robert Bolton

**AND THE UNITED STATES***(Name of Individual - Printed or typed)*

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to classified information. As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 13526, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security, and unclassified information that meets the standards for classification and is in the process of a classification determination as provided in sections 1.1, 1.2, 1.3 and 1.4(e) of Executive Order 13526, or under any other Executive order or statute that requires protection for such information in the interest of national security. I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge classified information to anyone unless: (a) I have officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) responsible for the classification of information or last granting me a security clearance that such disclosure is permitted. I understand that if I am uncertain about the classification status of information, I am required to confirm from an authorized official that the information is unclassified before I may disclose it, except to a person as provided in (a) or (b), above. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.

4. I have been advised that any breach of this Agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; or termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. In addition, I have been advised that any unauthorized disclosure of classified information by me may constitute a violation, or violations, of United States criminal laws, including the provisions of sections 641, 793, 794, 798, \*952 and 1924, title 18, United States Code; \*the provisions of section 783(b), title 50, United States Code; and the provisions of the Intelligence Identities Protection Act of 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation of classified information not consistent with the terms of this Agreement.

6. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.

7. I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law. I agree that I shall return all classified materials which have, or may come into my possession or for which I am responsible because of such access: (a) upon demand by an authorized representative of the United States Government; (b) upon the conclusion of my employment or other relationship with the Department or Agency that last granted me a security clearance or that provided me access to classified information; or (c) upon the conclusion of my employment or other relationship that requires access to classified information. If I do not return such materials upon request, I understand that this may be a violation of sections 793 and/or 1924, title 18, United States Code, a United States criminal law.

8. Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.

9. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.


10. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

*(Continue on reverse.)*

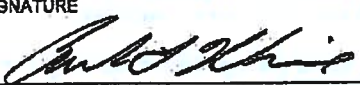
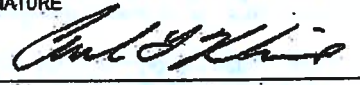
11. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 13526 (75 Fed. Reg. 707), or any successor thereto section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b) (8) of title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); sections 7(c) and 8H of the Inspector General Act of 1978 (5 U.S.C. App.) (relating to disclosures to an inspector general, the inspectors general of the Intelligence Community, and Congress); section 103H(g)(3) of the National Security Act of 1947 (50 U.S.C. 403-3h(g)(3)) (relating to disclosures to the inspector general of the Intelligence Community); sections 17(d)(5) and 17(e)(3) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g(d)(5) and 403g(e)(3)) (relating to disclosures to the Inspector General of the Central Intelligence Agency and Congress); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, \*952 and 1924 of title 18, United States Code, and \*section 4 (b) of the Subversive Activities Control Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive Order and listed statutes are incorporated into this agreement and are controlling.

12. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me the Executive Order and statutes referenced in this agreement and its implementing regulation (32 CFR Part 2001, section 2001.80(d)(2)) so that I may read them at this time, if I so choose.

\* NOT APPLICABLE TO NON-GOVERNMENT PERSONNEL SIGNING THIS AGREEMENT.

SIGNATURE 	DATE 04/05/2018	SOCIAL SECURITY NUMBER (See Notice below) [REDACTED]
ORGANIZATION (IF CONTRACTOR, LICENSEE, GRANTEE OR AGENT, PROVIDE: NAME, ADDRESS, AND, IF APPLICABLE, FEDERAL SUPPLY CODE NUMBER) (Type or print)		

EOP/WHO

WITNESS		ACCEPTANCE	
THE EXECUTION OF THIS AGREEMENT WAS WITNESSED BY THE UNDERSIGNED.		THE UNDERSIGNED ACCEPTED THIS AGREEMENT ON BEHALF OF THE UNITED STATES GOVERNMENT.	
SIGNATURE 	DATE 04/05/2018	SIGNATURE 	DATE 04/05/2018
NAME AND ADDRESS (Type or print)  Carl L. Kline 725 17th Street, NW Washington, DC 20503		NAME AND ADDRESS (Type or print)  Carl L. Kline 725 17th Street, NW Washington, DC 20503	

**SECURITY DEBRIEFING ACKNOWLEDGEMENT**

I reaffirm that the provisions of the espionage laws, other federal criminal laws and executive orders applicable to the safeguarding of classified information have been made available to me; that I have returned all classified information in my custody; that I will not communicate or transmit classified information to any unauthorized person or organization; that I will promptly report to the Federal Bureau of Investigation any attempt by an unauthorized person to solicit classified information, and that I (have) (have not) (strike out inappropriate word or words) received a security debriefing.

SIGNATURE OF EMPLOYEE	DATE
NAME OF WITNESS (Type or print)	SIGNATURE OF WITNESS

NOTICE: The Privacy Act, 5 U.S.C. 552a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Number (SSN) is Public Law 104-134 (April 26, 1996). Your SSN will be used to identify you precisely when it is necessary to certify that you have access to the information indicated above or to determine that your access to the information indicated has been terminated. Furnishing your Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent you being granted access to classified information.

UNCLASSIFIED

Apply appropriate classification level and any control markings (if applicable) when filled in.

**(U) SENSITIVE COMPARTMENTED INFORMATION NONDISCLOSURE AGREEMENT**

An Agreement between

John Robert Bolton

and the United States.

(Name - Printed or Typed)

1. (U) Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information or material protected within Special Access Programs, hereinafter referred to in this Agreement as Sensitive Compartmented Information (SCI). I have been advised that SCI involves or derives from intelligence sources or methods and is classified or is in process of a classification determination under the standards of Executive Order 13526 or other Executive order or statute. I understand and accept that by being granted access to SCI, special confidence and trust shall be placed in me by the United States Government.
2. (U) I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures. I understand that I may be required to sign subsequent agreements upon being granted access to different categories of SCI. I further understand that all my obligations under this agreement continue to exist whether or not I am required to sign such subsequent agreements.
3. (U) I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be, or related to or derived from SCI, is considered by such Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.
4. (U) In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation with, or show it to, anyone who is not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.
5. (U) I understand that the purpose of the review described in paragraph 4 is to give the United States a reasonable opportunity to determine whether the preparation submitted pursuant to paragraph 4 sets forth any SCI. I further understand that the Department or Agency to which I have made a submission will act upon it, coordinating within the Intelligence Community when appropriate, and make a response to me within a reasonable time, not to exceed 30 working days from date of receipt.
6. (U) I have been advised that any breach of this Agreement may result in my termination of my access to SCI and removal from a position of special confidence and trust requiring such access, as well as the termination of my employment or other relationships with any Department or Agency that provides me with access to SCI. In addition, I have been advised that any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including provisions of Sections 793, 794, 798, and 952, Title 18, United States Code, and of Section 783(b), Title 50, United States Code. Nothing in this agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.
7. (U) I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I have been advised that the action can be brought against me in any of the several appropriate United States District Courts where the United States Government may elect to file the action. Court costs and reasonable attorney's fees incurred by the United States Government may be assessed against me if I lose such action.
8. (U) I understand that all information to which I may obtain access by signing this Agreement is now and will remain the property of the United States Government unless and until otherwise determined by an appropriate official or final ruling of a court of law. Subject to such determination, I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials that may have come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such materials. If I do not return such materials upon request, I understand this may be a violation of Section 793, Title 18, United States Code.
9. (U) Unless and until I am released in writing by an authorized representative of the Department or Agency that last provided me with access to SCI, I understand that all conditions and obligations imposed on me by this Agreement apply during the time I am granted access to SCI, and at all times thereafter.
10. (U) Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement concerns SCI and does not set forth such other



UNCLASSIFIED

Apply appropriate classification level and any control markings (if applicable) when filled in.

conditions and obligations not related to SCI as may now or hereafter pertain to my employment by or assignment or relationship with the Department or Agency.

11. (U) I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available Sections 793, 794, 798 and 952 of Title 18, United States Code, and Section 783(b) of Title 50, United States Code, and Executive Order 13526, as amended, so that I may read them at this time, if I so choose.

12. (U) I hereby assign to the United States Government all rights, title and interest, and all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation not consistent with the terms of this Agreement.

13. (U) These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

14. (U) These restrictions are consistent with and do not supersede conflict with or otherwise alter the employee obligations rights or liabilities created by Executive Order 13526; or any successor thereto, Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosures to Congress by members of the Military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosure of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents), sections 7(c) and 8H of the Inspector General Act of 1978 (5 U.S.C. App.) (relating to disclosures to an inspector general, the inspectors general of the Intelligence Community; and Congress); section 103H(g)(3) of the National Security Act of 1947 (50 U.S.C. 403-3h(g)(3) (relating to disclosures to the inspector general of the Intelligence Community); sections 17(d)(5) and 17(e)(3) of the CIA Act of 1949 (50 U.S.C. 403q(d)(5) and 403q(e)(3)) (relating to disclosures to the Inspector General of the Central Intelligence Agency and Congress); and the statutes which protect agent disclosure which may compromise the national security, including Section 841, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. Section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

15. (U) This Agreement shall be interpreted under and in conformance with the law of the United States.

16. (U) I make this Agreement without any mental reservation or purpose of evasion.

John R Bolton Signature 04/05/2018 Date

The execution of this Agreement was witnessed by the undersigned who accepted it on behalf of the United States Government as a prior condition of access to Sensitive Compartmented Information.

WITNESS and ACCEPTANCE: [Signature] Signature 04/05/2018 Date

SECURITY BRIEFING / DEBRIEFING ACKNOWLEDGMENT

SI TK G HCS-P  
(Special Access Programs by Initials Only)

[Redacted] John Robert Bolton EOP / WHO  
SSN (See Notice Below) Printed or Typed Name Organization

BRIEF Date 04/05/2018  
I hereby acknowledge that I was briefed on the above SCI Special Access Program(s):  
John R Bolton  
Signature of Individual Briefed

DEBRIEF Date \_\_\_\_\_  
Having been reminded of my continuing obligation to comply with the terms of this Agreement, I hereby acknowledge that I was debriefed on the above SCI Special Access Program(s):  
\_\_\_\_\_  
Signature of Individual Briefed

I certify that the briefing presented by me on the above date was in accordance with relevant SCI procedures.  
[Signature] Signature of Briefing/Debriefing Officer [Redacted] SSN (See notice below)  
CARL L. KLINE EOP/OA/PSO  
Printed or Typed Name Organization (Name and Address)

(U) NOTICE: The Privacy Act, 5 U.S.C. 522a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397, as amended. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above, 2) determine that your access to the information has terminated, or 3) certify that you have witnessed a briefing or debriefing. Although disclosure of your SSN is not mandatory, your failure to do so may impede such certifications or determinations.

**SENSITIVE COMPARTMENTED INFORMATION NONDISCLOSURE AGREEMENT**

An agreement between John Robert Bolton and the United States.  
*(Name - Printed or Typed)*

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information or material protected within Special Access Programs, hereinafter referred to in this Agreement as Sensitive Compartmented Information (SCI). I have been advised that SCI involves or derives from intelligence sources or methods and is classified or is in process of a classification determination under the standards of Executive Order 12958 or other Executive order or statute. I understand and accept that by being granted access to SCI, special confidence and trust shall be placed in me by the United States Government.
2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures. I understand that I may be required to sign subsequent agreements upon being granted access to different categories of SCI. I further understand that all my obligations under this agreement continue to exist whether or not I am required to sign such subsequent agreements.
3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be, or related to or derived from SCI, is considered by such Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.
4. In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation with, or showing it to, anyone who is not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.
5. I understand that the purpose of the review described in paragraph 4 is to give the United States a reasonable opportunity to determine whether the preparation submitted pursuant to paragraph 4 sets forth any SCI. I further understand that the Department or Agency to which I have made a submission will act upon it, coordinating within the Intelligence Community when appropriate, and make a response to me within a reasonable time, not to exceed 30 working days from date of receipt.
6. I have been advised that any breach of this Agreement may result in my termination of my access to SCI and removal from a position of special confidence and trust requiring such access, as well as the termination of my employment or other relationships with any Department or Agency that provides me with access to SCI. In addition, I have been advised that any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including provisions of Sections 793, 794, 798, and 952, Title 18, United States Code, and of Section 783(b), Title 50, United States Code. Nothing in this agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.
7. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I have been advised that the action can be brought against me in any of the several appropriate United States District Courts where the United States Government may elect to file the action. Court costs and reasonable attorneys fees incurred by the United States Government may be assessed against me if I lose such action.
8. I understand that all information to which I may obtain access by signing this Agreement is now and will remain the property of the United States Government unless and until otherwise determined by an appropriate official or final ruling of a court of law. Subject to such determination, I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials that may have come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such materials. If I do not return such materials upon request, I understand this may be a violation of Section 793, Title 18, United States Code.
9. Unless and until I am released in writing by an authorized representative of the Department or Agency that last provided me with access to SCI, I understand that all conditions and obligations imposed on me by this Agreement apply during the time I am granted access to SCI, and at all times thereafter.
10. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement concerns SCI and does not set forth such other conditions and obligations not related to SCI as may now or hereafter pertain to my employment by or assignment or relationship with the Department or Agency.

11. I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available Sections 793, 794, 798 and 952 of Title 18, United States Code, and Section 783(b) of Title 50, United States Code, and Executive Order 12958, as amended, so that I may read them at this time, if I so choose.

12. I hereby assign to the United States Government all rights, title and interest, and all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation not consistent with the terms of this Agreement.

13. These restrictions are consistent with and do not supersede conflict with or otherwise alter the employee obligations rights or liabilities created by Executive Order 12958; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosures to Congress by members of the Military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosure of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 USC 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes which protect agent disclosure which may compromise the national security, including Section 641, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. Section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

14. This Agreement shall be interpreted under and in conformance with the law of the United States.

15. I make this Agreement without any mental reservation or purpose of evasion.

X John Robert Bolton 20180405  
 Signature Date

The execution of this Agreement was witnessed by the undersigned who accepted it on behalf of the United States Government as a prior condition of access to Sensitive Compartmented Information.

Fritzeen Brent W Bfritzeen Digitally signed by Fritzeen Brent W Bfritzeen Date: 2018.04.05 10:17:48 -04'00' 20180405  
 Signature Date

WITNESS and ACCEPTANCE:

## SECURITY BRIEFING / DEBRIEFING ACKNOWLEDGMENT

<u>FOR ALD</u>	<u>ASP BIR</u>	<u>BON CAC</u>	<u>CHE EB Y</u>	<u>HOL MES</u>	<u>RSE OLI</u>
<u>IRO JUN</u>	<u>MAP MYR</u>	<u>PER PNE</u>	<u>PLU RED</u>	<u>SGB TEA</u>	<u>WAL WIL</u>
<u>MAH CYP</u>					

(Special Access Programs by Initials Only)

<u>[Redacted]</u> SSN (See Notice Below)	<u>John Robert Bolton</u> Printed or Typed Name	<u>WH/NSC/APNSA</u> Organization
---	--	-------------------------------------

**BRIEF** DATE 20180405

I hereby acknowledge that I was briefed on the above SCI Special Access Program(s):

X John Robert Bolton  
 Signature of Individual Briefed

**DEBRIEF** DATE \_\_\_\_\_

Having been reminded of my continuing obligation to comply with the terms of this Agreement, I hereby acknowledge that I was debriefed on the above SCI Special Access Program(s):

\_\_\_\_\_  
 Signature of Individual Debriefed

I certify that the briefing presented by me on the above date was in accordance with relevant SCI procedures.

<u>Fritzeen Brent W Bfritzeen</u> Digitally signed by Fritzeen Brent W Bfritzeen Date: 2018.04.05 10:18:02 -04'00' Signature of Briefing/Debriefing Officer <u>Brent W. Fritzeen</u> Printed or Typed Name	<u>[Redacted]</u> SSN (See Notice Below) <u>NSC (INTELLIGENCE PROGRAMS)</u> Organization (Name and Address)
---	--

NOTICE: The Privacy Act, 5 U.S.C. 522a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above, 2) determine that your access to the information has terminated, or 3) certify that you have witnessed a briefing or debriefing. Although disclosure of your SSN is not mandatory, your failure to do so may impede such certifications or determinations.

# Exhibit B

**THE WHITE HOUSE**

WASHINGTON, D.C.

September 13, 2019

MEMORANDUM FOR AMBASSADOR JOHN R. BOLTON, ASSISTANT TO THE  
PRESIDENT FOR NATIONAL SECURITY AFFAIRS (NATIONAL SECURITY ADVISOR)

FROM: SCOTT GAST, SENIOR COUNSEL TO THE PRESIDENT

SUBJECT: POST-EMPLOYMENT OBLIGATIONS

This memo provides an overview of the Executive Branch post-employment restrictions that our office discussed with you prior to your departure from the White House. As a former Assistant to the President, you are covered by certain post-employment restrictions under both the criminal law, 18 U.S.C. § 207, and the Ethics Pledge you signed under Executive Order 13770. As a commissioned officer, you are also required to file a termination financial disclosure report within 30 days of leaving Government service.

These restrictions limit: the appearances and communications that you may make on behalf of a third party back to the federal government; certain other types of assistance that you may provide to third parties; and your profit-sharing with a future employer who did business with the government during your tenure here. The purpose behind the restrictions is threefold: to prevent you from “switching sides” on a matter in which you were involved when you worked in the Executive Office of the President (EOP); to provide a “cooling off” period in which you may not seek official action on behalf of a third party from EOP and other federal officials on any matter; and to preclude you from sharing in certain profits that your new employer may have received in connection with a matter that was pending before the government during your White House tenure.

Many of the post-employment restrictions carry criminal penalties, so please review the entire memorandum carefully, sign the last page where indicated, and provide a copy of the signature page to Counsel's Office. Our office remains available to answer any questions you may have about any post-employment restrictions.

**I. SUMMARY AND ANALYSIS OF CRIMINAL POST-EMPLOYMENT RULES**

As a former Executive Branch official, you are subject to two criminal statutes that limit your post-employment activities. Generally, 18 U.S.C. § 207 limits your ability, depending on the circumstances, to communicate to or appear before many federal officials, both within and outside EOP, and 18 U.S.C. § 203 prohibits you from receiving compensation for any representational services that were provided by a former employer in which the United States was a party or had a direct and substantial interest during the time that you were a government employee. You are also subject to post-employment restrictions included in the Ethics Pledge (Executive Order 13770).

**A. The Lifetime Ban on "Switching Sides": 18 U.S.C. § 207(a)(1)**

This lifetime ban aims to prevent Executive Branch employees who have participated in particular matters from later "switching sides" and representing someone else on the same matter before the United States. Under 18 U.S.C. § 207(a)(1), you are prohibited from communicating with, or appearing before, any employee of the United States, with the intent to influence that employee on behalf of another person (other than yourself), on any particular matter involving specific parties in which you "personally" and "substantially" participated at any time during your White House employment. This is a permanent restriction commencing upon your termination from government service and lasting for the lifetime of all such particular matters as they existed during your tenure.

- For purposes of this rule, an "employee of the United States" includes the President as well as any current officer or employee of any department, agency (including a government corporation), court or court-martial of the United States or the District of Columbia. It does not, however, include a member of Congress.
- A communication or appearance can be formal or informal, and includes telephone calls and emails.
- A "particular matter involving a specific party or parties" is a fairly case-specific restriction that "typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case." 5 C.F.R. § 2641.201(h)(1). It does not include rulemaking, legislation, or policy-making unless it focuses narrowly on identified parties. *See* 5 C.F.R. § 2641.201(h)(2).
- To "participate" means to take action as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action, or to purposefully forbear in order to affect the outcome of a matter. An employee does not participate in a matter merely because he had knowledge of its existence or because it was pending under his official responsibility. A government employee participates "personally" even when he merely directs a subordinate's participation. He participates "substantially" if his involvement is "of significance" to the matter. Thus, while a series of peripheral involvements may be insubstantial, participation in a single critical step may be substantial. *See* 5 C.F.R. § 2641.201(i).

**B. Two-Year Ban on Matters Pending Under an Employee's Official Responsibility: 18 U.S.C. § 207(a)(2)**

This two-year ban covers the same types of representational contacts as Section 207(a)(1), except that it extends to all matters involving a specific party or parties that were pending under the government employee's "official responsibility" during his last year of service—not only those in which he participated personally and substantially. An employee has "official responsibility" over a particular matter when he has "direct administrative or operating authority, whether

intermediate or final," to approve, disapprove, or otherwise direct governmental action, including when he delegates his authority to others. 5 C.F.R. § 2641.202(j)(1).

**C. The One-Year Ban on Participating in Ongoing Trade or Treaty Negotiations: 18 U.S.C. § 207(b)**

For one year from the date you terminate Government service, you may not knowingly represent, aid, or advise any other person concerning any ongoing trade or treaty negotiation in which, during your last year of Government service, you participated personally and substantially as an employee, on the basis of covered information.

The definition of "covered information" is any information which you know or should have known were designated as exempt from release under the Freedom of Information Act. A "Trade Negotiation" refers only to those ongoing trade negotiations that the President determines to undertake pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 2902). That authority has lapsed. A "treaty" is an international agreement made by the President that requires the advice and consent of the Senate. A negotiation on a treaty commences to be "ongoing" at the point when both (1) the determination has been made by a competent authority that the outcome of a negotiation will be a treaty, and (2) discussions with a foreign government have begun on a text.

It is important to note that even if a post-employment activity is not prohibited by section 207(b), the negotiation may nevertheless have had specific parties identified to it, thus triggering the lifetime restriction set forth in section 207(a)(1).

**D. Communicating with Former Colleagues and Other Government Officials: Two-Year "Cooling Off Period for Very Senior Employees: 18 U.S.C. § 207(d)**

As an Assistant to the President you are considered a "Very Senior Employee" for purposes of the criminal post-employment laws. See 18 U.S.C. § 207(d)(1)(C).

For two years after leaving the White House, it is a crime for you to communicate to, or appear before, any EOP employee (including the President) and certain other high-level government officials not in EOP (see Attachment A) (collectively, "covered employees"), if the communication or appearance is made on behalf of another person and is intended to influence official action on any matter.

For purposes of this prohibition, the EOP includes all components (WHO, OVP, EXR, NSC, OA, OMB, ONDCP, OSTP, PIAB, USTR, CEA, CEQ). As you'll see from Attachment A, the prohibition also extends to communications with Cabinet officials and high-level officials in most Executive Branch agencies.

This restriction is broader than the others in Section 207 as it applies to any matter on which official action is sought, *regardless* of whether you worked on the matter or whether it was pending before you, or whether it involves specific parties. Notably, like Sections 207(a)(1) and (a)(2), the restriction does not apply to your communications to or appearances before Members of Congress.

- Representation. Like the restrictions in Section 207(a)(1) and (a)(2), § 207(d) prohibits only representational communications and appearances – i.e., only those made on behalf of someone else. It does not limit your ability to talk to the President or any of your friends and colleagues in government on your own behalf or in your personal capacity on any topic.

You communicate or appear on behalf of another when you act as the other person/company's agent, or if you act with the express or implied consent of the person/company and subject to some degree of control or direction by the person/company in relation to the communication or appearance. 5 C.F.R. § 2641.201(g)(1)(i). An "appearance" extends to mere physical presence (i.e., non-speaking) at a meeting when the circumstances make it clear that attendance is intended to influence the United States. *Id.* at § 2641.201(e)(4).

You do not act on behalf of another merely because your communication or appearance is consistent with the interests of another person/company, is in support of another person/company, or may cause another person/company to derive some benefit as a consequence of your activity. *Id.* at § 2641.201(g)(1)(ii).

- Behind the Scenes Assistance. Section 207(d) does not restrict your "behind-the-scenes" assistance to your employer; it only prohibits your oral and written communications to or physical appearances before the designated government employees. *Id.* at § 2641.201(d)(1)-(3). Note, however, that "behind-the-scenes" assistance does not include communications conveyed by another that are intended to be attributed to you, even if you are not recognized as the source of the information. *See id.* at § 2641.201(d)(1).
- Matter. A "matter" includes not only those involving specific parties (as above), but also "the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons." 5 C.F.R. § 2641.205(i)(2)(ii). Further, the definition includes "new matters" (i.e., it is not limited to matters previously pending or of interest to the White House), as well as matters currently "pending at any other agency in the executive branch, an independent agency, the legislative branch, or the judicial branch." *Id.* at § 2641.204(i)(2)(iii - iv).
- Intent to influence official action. To commit a § 207(d) crime, a former employee must, in making his representational communication or appearance, "seek[] official action" with an "intent to influence." An employee "seeks official action" if his communication aims to induce a current employee to make a decision or otherwise act "in his official capacity." *See* 5 C.F.R. § 2641.204(i)(1).

A communication or appearance is made with an "intent to influence" when it is made for the purpose of "[s]eeking a Government ruling, benefit, approval, or other discretionary Government action," or "[a]ffecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy." 5 C.F.R. § 2641.201(e)(1).



If, over the next two years, a question arises about a particular circumstance, feel free to contact us for fact-specific guidance.

#### **Exceptions to 207(d)**

As noted, 18 U.S.C. § 207(d) does not restrict contacts made on your own behalf, contacts where you are not seeking official action, or contacts of a purely personal nature.

Additionally, there are several statutory exceptions to the prohibitions of § 207(d) that permit you to represent another person before covered employees on official matters during your two-year cooling off period. *See* 18 U.S.C. § 207(d); 5 C.F.R. § 2641.301. While these other exceptions do not appear immediately relevant to your new position, we note them briefly for your awareness.

First, none of the restrictions apply to representational activities that you may perform on behalf of the United States or the District of Columbia or as an elected official of a State or local government. 18 U.S.C. § 207(a)(1), 207(j)(1)(A). There is also an exception for certain acts that you may perform on behalf of tribal governments. *See id.* at § 207(j)(1)(B).

Second, additional exceptions apply for the provision of testimony, the provision of scientific or technological information under certain circumstances, and the provision of information about which the former employee has special knowledge when no compensation is received, *id.* at §§ 207(j)(4)-(6), but you should consult with Counsel's Office before attempting to rely on any of these exceptions.

Third, the restrictions on communications with White House or other senior administration officials will not apply to you if you become exclusively employed by certain purely political entities (i.e., a candidate in his capacity as a candidate for Federal or State office; an authorized committee; a national committee; a national Federal campaign committee; a State committee; or a political party) or a person or entity that exclusively represents, aids, or advises only such political entities. *See* 18 U.S.C. § 207(j)(7); 5 C.F.R. § 2641.301(g). This exception is not available to you if you are employed by a firm that represents both political entities and private industry clients. *This exception does not apply to political action committees (PACs) or super PACs or any other political entity (such as a social welfare organization engaged in political activity).*

#### **E. Criminal Restrictions Relating to Foreign Entities: 18 U.S.C. § 207(f)**

For one year from the date of your departure from the EOP as a "Very Senior Employee," you may not represent *or aid or advise* a government of a foreign country or a foreign political party with the intent to influence an agency or department of the United States, *including Members of Congress and the legislative branch*. A foreign commercial corporation is not generally covered under § 207(f) unless it exercises the functions of a sovereign. Please note that, unlike the other provisions we have discussed, Section 207(f) goes beyond representational activities and extends to providing any assistance to an instrumentality of a foreign government. This provision would thus bar a former "Very Senior Employee" for one year from providing a covered foreign entity with such "behind-the-scenes" assistance as, for example, drafting a proposed communication to

a U.S. agency, advising on an appearance before Congress, or consulting on other strategies designed to persuade departmental or agency decision-makers to take action.

**F. Restriction on Compensation for Representational Services Provided by Another:  
18 U.S.C. § 203**

It is a crime for you to receive compensation for representational services rendered by another on particular matters in which the United States was a party or had a direct and substantial interest during the time that you were a government employee. Section 203 does not apply to a fixed salary. Nor would Section 203 apply to payments that are fixed or based on your personal job performance, your seniority, or your position. See OGE Opinion 99x24 (Dec. 14, 1999), *Receipt for Compensation for Representational Services under 18 U.S.C. § 203* (summarizing prior opinions).

If, in the future, your compensation involves equity participation (i.e., profit-sharing, bonuses, or other compensation tied to the company's actual profits from its representational services before the government), you may not receive or accept compensation for any representational services rendered at any time by a future employer on particular matters that were pending before any United States department, agency, court, officer, or commission during your tenure at EOP.

If the Section 203 prohibition is implicated in the future and you need further guidance, please feel free to contact us.

**II. EXECUTIVE ORDER 13770, ETHICS PLEDGE PROHIBITIONS**

As a Trump Administration appointee you were required to sign the "Ethics Pledge" set forth in section 1 of Executive Order 13770. Under the Pledge, you have agreed to certain restrictions after you leave your appointee position. Violation of any of these provisions may result in your debarment from the EOP, or civil judicial proceedings for declaratory, injunctive, or monetary relief, including the establishment of a constructive trust and the requirement that you pay all money or things of value received by, or payable to, you as a result of your breach.

**A. 5-Year Ban on Lobbying Former Agency**

For five years from the date on which an appointee leaves an appointee position, he or she is precluded from engaging in lobbying activities, as that term is defined in the Lobbying Disclosure Act and Exec. Ord. 13770, with respect to any EOP component (WHO, OVP, EXR, NSC, OA, OMB, ONDCP, OSTP, PIAB, USTR, CEA, CEQ).

OGE has determined that for purposes of this provision, lobbying activities are deemed to be carried out "with respect to" an agency only to the extent that they involve the following:

1. Any oral or written communication to a covered executive branch official of that agency; or
2. Efforts that are intended, at the time of performance, to support a covered lobbying contact to a covered executive branch official of that agency.

**B. Administration-Long Ban on Lobbying Covered Non-Career Officials**

Upon terminating government service, you are precluded from engaging in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee in any agency of the Executive Branch or any component of the EOP for the remainder of the Trump Administration. "Covered executive branch official" includes those positions listed in Attachment A.

OGE has determined that for purposes of this provision, lobbying activities are deemed to be carried out "with respect to" covered executive branch official or non-career Senior Executive Service appointee only to the extent that they involve the following:

1. Any oral or written communication to a covered executive branch official or non-career Senior Executive Service appointee; or
2. Efforts that are intended, at the time of performance, to support a covered lobbying contact to a covered executive branch official or non-career Senior Executive Service appointee of that agency.

**C. Permanent Ban on Acting as an Agent of a Foreign Entity**

Upon terminating government service, you are permanently prohibited from engaging in any activity on behalf of any foreign government or foreign political party which would require you to register under the Foreign Agents Registration Act of 1938, as amended.

**III. NONPUBLIC INFORMATION AND SPEAKING ENGAGEMENTS**

**A. Use of Nonpublic Information**

You are prohibited from disclosing any classified or confidential information. 18 U.S.C. § 1905; 18 U.S.C. § 798; Executive Order 13526.

You also may not use or disclose nonpublic information in any post-employment teaching, speaking or writing. Nonpublic information is information gained by reason of your federal employment and that you know or should know has not been made available to the general public. *See* 5 C.F.R. § 2635.703(b). Nonpublic information includes information that (1) is exempt from disclosure by statute, Executive Order or regulations; (2) is designated as confidential or classified; or (3) has not been disseminated to the general public and is not authorized to be made available to the public upon request. *Id.* This limitation does not restrict your ability to teach, speak or write on a subject within your area of expertise based on publicly available information, your educational background or your personal experiences, even if that teaching, speaking or writing deals generally with a subject related to your former area of responsibility.

**B. Public Speaking and Media Appearances**

None of the post-employment rules prohibits you from teaching, speaking publicly, or making media appearances, provided that your activity does not otherwise run afoul of the

representational prohibitions under Section 207 (i.e., you aren't communicating to or appearing before a covered official, on behalf of someone else, with the intent to influence official action) or the restrictions on the disclosure of nonpublic information. If you decide to address a public gathering during your two-year cooling-off period, OGE regulations provide the following guidance:

- The forum must not be sponsored or co-sponsored by EOP;
- A large number of people must attend the event; and
- A significant portion of attendees must not be EOP employees.

See 5 C.F.R. § 2641.204(g)(4). If these criteria are met, you may engage in exchanges with any other speaker or with any member of the audience. You may also permit the publication of your statements and opinions in a newspaper, periodical, or similar widely available publication.

**IV. TERMINATION FINANCIAL DISCLOSURE REQUIREMENT**

You are required to file a termination Public Financial Disclosure Report (OGE 278) with the White House Counsel within 30 days of your departure. The form will be sent to your *Integrity.gov* account. To ensure that we can reach you, you are required to provide a personal email address to the White House Counsel's Office before you leave. Similarly, it is your responsibility to reach out to the White House Counsel's Office to ensure that you can access the form in the event of technical issues. Your form will be forwarded to the Office of Government Ethics for final certification, as required by 5 C.F.R. § 2634.602(c)(1)(5).

Failure to file your form timely can result in a late filing penalty and may lead to civil or criminal prosecution. 5 U.S.C. app § 104.

**V. FOR FURTHER INFORMATION**

The White House Counsel's Office has a continuing obligation to provide you with post-employment advice, even after you leave government service. Please feel free to contact us if you have a question about how the post-employment rules might apply to a specific situation, please feel free to contact Scott Gast, 202-456- [REDACTED] ([REDACTED]@who.eop.gov) or David Jones, 202-456- [REDACTED] ([REDACTED]@who.eop.gov) in the Office of the White House Counsel.

**ACKNOWLEDGMENT OF RECEIPT**

SIGNATURE:

JLR Balto

DATE:

7/13/19

PERSONAL EMAIL ADDRESS: [REDACTED]

**ATTACHMENT A**

**Executive Schedule Positions listed in 5 U.S.C. §§ 5312-5316 (as of March 30, 2017)**

**(No Contact List for 18 U.S.C. § 207(d))**

**Executive Schedule I (5 U.S.C. § 5312)**

Secretary of State.  
Secretary of the Treasury.  
Secretary of Defense.  
Attorney General.  
Secretary of the Interior.  
Secretary of Agriculture.  
Secretary of Commerce.  
Secretary of Labor.  
Secretary of Health and Human Services.  
Secretary of Housing and Urban Development.  
Secretary of Transportation.  
United States Trade Representative.  
Secretary of Energy.  
Secretary of Education.  
Secretary of Veterans Affairs.  
Secretary of Homeland Security.  
Director of the Office of Management and Budget.  
Commissioner of Social Security, Social Security Administration.  
Director of National Drug Control Policy.  
Chairman, Board of Governors of the Federal Reserve System.  
Director of National Intelligence.

**Executive Schedule II (5 U.S.C. § 5313)**

Deputy Secretary of Defense.  
Deputy Secretary of State.  
Deputy Secretary of State for Management and Resources.

Administrator, Agency for International Development.  
Administrator of the National Aeronautics and Space Administration.  
Deputy Secretary of Veterans Affairs.  
Deputy Secretary of Homeland Security.  
Under Secretary of Homeland Security for Management.  
Deputy Secretary of the Treasury.  
Deputy Secretary of Transportation.  
Chairman, Nuclear Regulatory Commission.  
Chairman, Council of Economic Advisers.  
Director of the Office of Science and Technology.  
Director of the Central Intelligence Agency.  
Secretary of the Air Force.  
Secretary of the Army.  
Secretary of the Navy.  
Administrator, Federal Aviation Administration.  
Director of the National Science Foundation.  
Deputy Attorney General.  
Deputy Secretary of Energy.  
Deputy Secretary of Agriculture.  
Director of the Office of Personnel Management.  
Administrator, Federal Highway Administration.  
Administrator of the Environmental Protection Agency.  
Under Secretary of Defense for Acquisition, Technology, and Logistics.  
Deputy Secretary of Labor.  
Deputy Director of the Office of Management and Budget.  
Independent Members, Thrift Depositor Protection Oversight Board.  
Deputy Secretary of Health and Human Services.  
Deputy Secretary of the Interior.  
Deputy Secretary of Education.  
Deputy Secretary of Housing and Urban Development.

Deputy Director for Management, Office of Management and Budget.  
Director of the Federal Housing Finance Agency.  
Deputy Commissioner of Social Security, Social Security Administration.  
Administrator of the Community Development Financial Institutions Fund.  
Deputy Director of National Drug Control Policy.  
Members, Board of Governors of the Federal Reserve System.  
Under Secretary of Transportation for Policy.  
Chief Executive Officer, Millennium Challenge Corporation.  
Principal Deputy Director of National Intelligence.  
Director of the National Counterterrorism Center.  
Director of the National Counter Proliferation Center.  
Administrator of the Federal Emergency Management Agency.  
Federal Transit Administrator.

**Executive Schedule III (5 U.S.C. § 5314)**

Solicitor General of the United States.  
Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, Under Secretary of Commerce for Export Administration, and Under Secretary of Commerce for Travel and Tourism.  
Under Secretaries of State (6).  
Under Secretaries of the Treasury (3).  
Administrator of General Services.  
Administrator of the Small Business Administration.  
Deputy Administrator, Agency for International Development.  
Chairman of the Merit Systems Protection Board.  
Chairman, Federal Communications Commission.  
Chairman, Board of Directors, Federal Deposit Insurance Corporation.  
Chairman, Federal Energy Regulatory Commission.  
Chairman, Federal Trade Commission.  
Chairman, Surface Transportation Board.  
Chairman, National Labor Relations Board.

Chairman, Securities and Exchange Commission.  
Chairman, National Mediation Board.  
Chairman, Railroad Retirement Board.  
Chairman, Federal Maritime Commission.  
Comptroller of the Currency.  
Commissioner of Internal Revenue.  
Under Secretary of Defense for Policy.  
Under Secretary of Defense (Comptroller).  
Under Secretary of Defense for Personnel and Readiness.  
Under Secretary of Defense for Intelligence.  
Deputy Chief Management Officer of the Department of Defense.  
Under Secretary of the Air Force.  
Under Secretary of the Army.  
Under Secretary of the Navy.  
Deputy Administrator of the National Aeronautics and Space Administration.  
Deputy Director of the Central Intelligence Agency.  
Director of the Office of Emergency Planning.  
Director of the Peace Corps.  
Deputy Director, National Science Foundation.  
President of the Export-Import Bank of Washington.  
Members, Nuclear Regulatory Commission.  
Members, Defense Nuclear Facilities Safety Board.  
Director of the Federal Bureau of Investigation, Department of Justice.  
Administrator of the National Highway Traffic Safety Administration.  
Administrator of the Federal Motor Carrier Safety Administration.  
Administrator, Federal Railroad Administration.  
Chairman, National Transportation Safety Board.  
Chairman of the National Endowment for the Arts the incumbent of which also serves as  
Chairman of the National Council on the Arts.  
Chairman of the National Endowment for the Humanities.  
Director of the Federal Mediation and Conciliation Service.



President, Overseas Private Investment Corporation.  
Chairman, Postal Regulatory Commission.  
Chairman, Occupational Safety and Health Review Commission.  
Governor of the Farm Credit Administration.  
Chairman, Equal Employment Opportunity Commission.  
Chairman, Consumer Product Safety Commission.  
Under Secretaries of Energy (3).  
Chairman, Commodity Futures Trading Commission.  
Deputy United States Trade Representatives (3).  
Chief Agricultural Negotiator, Office of the United States Trade Representative.  
Chief Innovation and Intellectual Property Negotiator, Office of the United States Trade Representative.  
Chairman, United States International Trade Commission.  
Under Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Administrator of the National Oceanic and Atmospheric Administration.  
Under Secretary of Commerce for Standards and Technology, who also serves as Director of the National Institute of Standards and Technology.  
Associate Attorney General.  
Chairman, Federal Mine Safety and Health Review Commission.  
Chairman, National Credit Union Administration Board.  
Deputy Director of the Office of Personnel Management.  
Under Secretary of Agriculture for Farm and Foreign Agricultural Services.  
Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.  
Under Secretary of Agriculture for Natural Resources and Environment.  
Under Secretary of Agriculture for Research, Education, and Economics.  
Under Secretary of Agriculture for Food Safety.  
Under Secretary of Agriculture for Marketing and Regulatory Programs.  
Director, Institute for Scientific and Technological Cooperation.  
Under Secretary of Agriculture for Rural Development.  
Administrator, Maritime Administration.  
Executive Director Property Review Board.

Deputy Administrator of the Environmental Protection Agency.  
Archivist of the United States.  
Executive Director, Federal Retirement Thrift Investment Board.  
Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics.  
Director, Trade and Development Agency.  
Under Secretary for Health, Department of Veterans Affairs.  
Under Secretary for Benefits, Department of Veterans Affairs.  
Under Secretary for Memorial Affairs, Department of Veterans Affairs.  
Under Secretaries, Department of Homeland Security.  
Director of the Bureau of Citizenship and Immigration Services.  
Director of the Office of Government Ethics.  
Administrator for Federal Procurement Policy.  
Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.  
Director of the Office of Thrift Supervision.  
Chairperson of the Federal Housing Finance Board.  
Executive Secretary, National Space Council.  
Controller, Office of Federal Financial Management, Office of Management and Budget.  
Administrator, Office of the Assistant Secretary for Research and Technology of the Department of Transportation.  
Deputy Director for Demand Reduction, Office of National Drug Control Policy.  
Deputy Director for Supply Reduction, Office of National Drug Control Policy.  
Deputy Director for State and Local Affairs, Office of National Drug Control Policy.  
Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.  
Register of Copyrights.  
Commissioner of U.S. Customs and Border Protection, Department of Homeland Security.  
Under Secretary of Education.  
Administrator of the Centers for Medicare & Medicaid Services.  
Administrator of the Office of Electronic Government.  
Administrator, Pipeline and Hazardous Materials Safety Administration.

Director, Pension Benefit Guaranty Corporation.  
Deputy Administrators, Federal Emergency Management Agency.  
Chief Executive Officer, International Clean Energy Foundation.  
Independent Member of the Financial Stability Oversight Council (1).  
Director of the Office of Financial Research.

**Executive Schedule IV (5 U.S.C. § 5315)**

Deputy Administrator of General Services.  
Associate Administrator of the National Aeronautics and Space Administration.  
Assistant Administrators, Agency for International Development (6).  
Regional Assistant Administrators, Agency for International Development (4).  
Assistant Secretaries of Agriculture (3).  
Assistant Secretaries of Commerce (11).  
Assistant Secretaries of Defense (14).  
Assistant Secretaries of the Air Force (4).  
Assistant Secretaries of the Army (5).  
Assistant Secretaries of the Navy (4).  
Assistant Secretaries of Health and Human Services (6).  
Assistant Secretaries of the Interior (6).  
Assistant Attorneys General (11).  
Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training.  
Administrator, Wage and Hour Division, Department of Labor.  
Assistant Secretaries of State (24) and 4 other State Department officials to be appointed by the President, by and with the advice and consent of the Senate.  
Assistant Secretaries of the Treasury (10).  
Members, United States International Trade Commission (5).  
Assistant Secretaries of Education (10).  
General Counsel, Department of Education.  
Director of Civil Defense, Department of the Army.  
Deputy Director of the Office of Emergency Planning.

Deputy Director of the Office of Science and Technology.  
Deputy Director of the Peace Corps.  
Assistant Directors of the Office of Management and Budget (3).  
General Counsel of the Department of Agriculture.  
General Counsel of the Department of Commerce.  
General Counsel of the Department of Defense.  
General Counsel of the Department of Health and Human Services.  
Solicitor of the Department of the Interior.  
Solicitor of the Department of Labor.  
General Counsel of the National Labor Relations Board.  
General Counsel of the Department of the Treasury.  
First Vice President of the Export-Import Bank of Washington.  
Members, Council of Economic Advisers.  
Members, Board of Directors of the Export-Import Bank of Washington.  
Members, Federal Communications Commission.  
Member, Board of Directors of the Federal Deposit Insurance Corporation.  
Directors, Federal Housing Finance Board.  
Members, Federal Energy Regulatory Commission.  
Members, Federal Trade Commission.  
Members, Surface Transportation Board.  
Members, National Labor Relations Board.  
Members, Securities and Exchange Commission.  
Members, Merit Systems Protection Board.  
Members, Federal Maritime Commission.  
Members, National Mediation Board.  
Members, Railroad Retirement Board.  
Director of Selective Service.  
Associate Director of the Federal Bureau of Investigation, Department of Justice.  
Members, Equal Employment Opportunity Commission (4).  
Director, Community Relations Service.

Members, National Transportation Safety Board.  
General Counsel, Department of Transportation.  
Deputy Administrator, Federal Aviation Administration.  
Assistant Secretaries of Transportation (5).  
Deputy Federal Highway Administrator.  
Administrator of the Saint Lawrence Seaway Development Corporation.  
Assistant Secretary for Science, Smithsonian Institution.  
Assistant Secretary for History and Art, Smithsonian Institution.  
Deputy Administrator of the Small Business Administration.  
Assistant Secretaries of Housing and Urban Development (8).  
General Counsel of the Department of Housing and Urban Development.  
Commissioner of Interama.  
Federal Insurance Administrator, Federal Emergency Management Agency.  
Executive Vice President, Overseas Private Investment Corporation.  
Members, National Credit Union Administration Board (2).  
Members, Postal Regulatory Commission (4).  
Members, Occupational Safety and Health Review Commission.  
Deputy Under Secretaries of the Treasury (or Assistant Secretaries of the Treasury) (2).  
Members, Consumer Product Safety Commission (4).  
Members, Commodity Futures Trading Commission.  
Director of Nuclear Reactor Regulation, Nuclear Regulatory Commission.  
Director of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission.  
Director of Nuclear Regulatory Research, Nuclear Regulatory Commission.  
Executive Director for Operations, Nuclear Regulatory Commission.  
President, Government National Mortgage Association, Department of Housing and Urban Development.  
Assistant Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the National Oceanic and Atmospheric Administration.  
Director, Bureau of Prisons, Department of Justice.  
Assistant Secretaries of Energy (8).  
General Counsel of the Department of Energy.

Administrator, Economic Regulatory Administration, Department of Energy.  
Administrator, Energy Information Administration, Department of Energy.  
Director, Office of Indian Energy Policy and Programs, Department of Energy.  
Director, Office of Science, Department of Energy.  
Assistant Secretary of Labor for Mine Safety and Health.  
Members, Federal Mine Safety and Health Review Commission.  
President, National Consumer Cooperative Bank.  
Special Counsel of the Merit Systems Protection Board.  
Chairman, Federal Labor Relations Authority.  
Assistant Secretaries, Department of Homeland Security.  
General Counsel, Department of Homeland Security.  
Officer for Civil Rights and Civil Liberties, Department of Homeland Security.  
Chief Financial Officer, Department of Homeland Security.  
Chief Information Officer, Department of Homeland Security.  
Deputy Director, Institute for Scientific and Technological Cooperation.  
Director of the National Institute of Justice.  
Director of the Bureau of Justice Statistics.  
Chief Counsel for Advocacy, Small Business Administration.  
Assistant Administrator for Toxic Substances, Environmental Protection Agency.  
Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.  
Assistant Administrators, Environmental Protection Agency (8).  
Director of Operational Test and Evaluation, Department of Defense.  
Director of Cost Assessment and Program Evaluation, Department of Defense.  
Special Representatives of the President for arms control, nonproliferation, and disarmament matters, Department of State.  
Ambassadors at Large.  
Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.  
Assistant Secretaries, Department of Veterans Affairs (7).  
General Counsel, Department of Veterans Affairs.  
Commissioner of Food and Drugs, Department of Health and Human Services [1]

Chairman, Board of Veterans' Appeals.  
Administrator, Office of Juvenile Justice and Delinquency Prevention.  
Director, United States Marshals Service.  
Chairman, United States Parole Commission.  
Director, Bureau of the Census, Department of Commerce.  
Director of the Institute of Museum and Library Services.  
Chief Financial Officer, Department of Agriculture.  
Chief Financial Officer, Department of Commerce.  
Chief Financial Officer, Department of Education.  
Chief Financial Officer, Department of Energy.  
Chief Financial Officer, Department of Health and Human Services.  
Chief Financial Officer, Department of Housing and Urban Development.  
Chief Financial Officer, Department of the Interior.  
Chief Financial Officer, Department of Justice.  
Chief Financial Officer, Department of Labor.  
Chief Financial Officer, Department of State.  
Chief Financial Officer, Department of Transportation.  
Chief Financial Officer, Department of the Treasury.  
Chief Financial Officer, Department of Veterans Affairs.  
Chief Financial Officer, Environmental Protection Agency.  
Chief Financial Officer, National Aeronautics and Space Administration.  
Commissioner, Office of Navajo and Hopi Indian Relocation.  
Principal Deputy Under Secretary of Defense for Policy.  
Principal Deputy Under Secretary of Defense for Personnel and Readiness.  
Principal Deputy Under Secretary of Defense (Comptroller).  
Principal Deputy Under Secretary of Defense for Intelligence.  
General Counsel of the Department of the Army.  
General Counsel of the Department of the Navy.  
General Counsel of the Department of the Air Force.  
Liaison for Community and Junior Colleges, Department of Education.

Director of the Office of Educational Technology.  
Director of the International Broadcasting Bureau.  
The [2] Commissioner of Labor Statistics, Department of Labor.  
Administrator, Rural Utilities Service, Department of Agriculture.  
Chief Information Officer, Department of Agriculture.  
Chief Information Officer, Department of Commerce.  
Chief Information Officer, Department of Defense (unless the official designated as the Chief Information Officer of the Department of Defense is an official listed under section 5312, 5313, or 5314 of this title).  
Chief Information Officer, Department of Education.  
Chief Information Officer, Department of Energy.  
Chief Information Officer, Department of Health and Human Services.  
Chief Information Officer, Department of Housing and Urban Development.  
Chief Information Officer, Department of the Interior.  
Chief Information Officer, Department of Justice.  
Chief Information Officer, Department of Labor.  
Chief Information Officer, Department of State.  
Chief Information Officer, Department of Transportation.  
Chief Information Officer, Department of the Treasury.  
Chief Information Officer, Department of Veterans Affairs.  
Chief Information Officer, Environmental Protection Agency.  
Chief Information Officer, National Aeronautics and Space Administration.  
Chief Information Officer, Agency for International Development.  
Chief Information Officer, Federal Emergency Management Agency.  
Chief Information Officer, General Services Administration.  
Chief Information Officer, National Science Foundation.  
Chief Information Officer, Nuclear Regulatory Agency.  
Chief Information Officer, Office of Personnel Management.  
Chief Information Officer, Small Business Administration.  
Chief Information Officer of the Intelligence Community.  
General Counsel of the Central Intelligence Agency.



Principal Deputy Administrator, National Nuclear Security Administration.

Additional Deputy Administrators of the National Nuclear Security Administration (3), but if the Deputy Administrator for Naval Reactors is an officer of the Navy on active duty, (2).

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

General Counsel of the Office of the Director of National Intelligence.

Chief Medical Officer, Department of Homeland Security.

**Executive Schedule V (5 U.S.C. § 5316)**

Administrator, Bonneville Power Administration, Department of the Interior.

Administrator of the National Capital Transportation Agency.

Associate Administrators of the Small Business Administration (4).

Associate Administrators, National Aeronautics and Space Administration (7).

Associate Deputy Administrator, National Aeronautics and Space Administration.

Deputy Associate Administrator, National Aeronautics and Space Administration.

Archivist of the United States.

Assistant Secretary of Health and Human Services for Administration.

Assistant Attorney General for Administration.

Assistant and Science Adviser to the Secretary of the Interior.

Chairman, Foreign Claims Settlement Commission of the United States, Department of Justice.

Chairman of the Renegotiation Board.

Chairman of the Subversive Activities Control Board.

Chief Counsel for the Internal Revenue Service, Department of the Treasury.

Commissioner, Federal Acquisition Service, General Services Administration.

Director, United States Fish and Wildlife Service, Department of the Interior.

Commissioner of Indian Affairs, Department of the Interior.

Commissioners, Indian Claims Commission (5).

Commissioner, Public Buildings Service, General Services Administration.

Commissioner of Reclamation, Department of the Interior.

Commissioner of Vocational Rehabilitation, Department of Health and Human Services.

Commissioner of Welfare, Department of Health and Human Services.

Director, Bureau of Mines, Department of the Interior.  
Director, Geological Survey, Department of the Interior.  
Deputy Commissioner of Internal Revenue, Department of the Treasury.  
Associate Director of the Federal Mediation and Conciliation Service.  
Associate Director for Volunteers, Peace Corps.  
Associate Director for Program Development and Operations, Peace Corps.  
Assistants to the Director of the Federal Bureau of Investigation, Department of Justice (2).  
Assistant Directors, Office of Emergency Planning (3).  
Fiscal Assistant Secretary of the Treasury.  
General Counsel of the Agency for International Development.  
General Counsel of the Nuclear Regulatory Commission.  
General Counsel of the National Aeronautics and Space Administration.  
Manpower Administrator, Department of Labor.  
Members, Renegotiation Board.  
Members, Subversive Activities Control Board.  
Assistant Administrator of General Services.  
Director, United States Travel Service, Department of Commerce.  
Assistant Director (Program Planning, Analysis and Research), Office of Economic Opportunity.  
Deputy Director, National Security Agency.  
Director, Bureau of Land Management, Department of the Interior.  
Director, National Park Service, Department of the Interior.  
National Export Expansion Coordinator, Department of Commerce.  
Staff Director, Commission on Civil Rights.  
Assistant Secretary for Administration, Department of Transportation.  
Director, United States National Museum, Smithsonian Institution.  
Director, Smithsonian Astrophysical Observatory, Smithsonian Institution.  
Administrator of the Environmental Science Services Administration.  
Associate Directors of the Office of Personnel Management (5).  
Assistant Federal Highway Administrator.  
Deputy Administrator of the National Highway Traffic Safety Administration.

Deputy Administrator of the Federal Motor Carrier Safety Administration.  
Assistant Federal Motor Carrier Safety Administrator.  
Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice.  
Vice Presidents, Overseas Private Investment Corporation (3).  
Deputy Administrator, Federal Transit Administration, Department of Transportation.  
General Counsel of the Equal Employment Opportunity Commission.  
Executive Director, Advisory Council on Historic Preservation.  
Additional Officers, Department of Energy (14).  
Additional officers, Nuclear Regulatory Commission (5).  
Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.  
Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.  
Assistant Administrators (3), National Oceanic and Atmospheric Administration.  
General Counsel, National Oceanic and Atmospheric Administration.  
Members, Federal Labor Relations Authority (2) and its General Counsel.  
Additional officers, Institute for Scientific and Technological Cooperation (2).  
Additional officers, Office of Management and Budget (6).  
Chief Scientist, National Oceanic and Atmospheric Administration.  
Director, Indian Health Service, Department of Health and Human Services.  
Commissioners, United States Parole Commission (8).  
Commissioner, Administration on Children, Youth, and Families.  
Chairman of the Advisory Council on Historic Preservation.

## ATTACHMENT B

### Intent to influence (5 C.F.R. § 2641.201(e)) and Examples

With the intent to influence- (1) Basic concept. The prohibition applies only to communications or appearances made by a former Government employee with the intent to influence the United States. A communication or appearance is made with the intent to influence when made for the purpose of:

- (i) Seeking a Government ruling, benefit, approval, or other discretionary Government action;

or

- (ii) Affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy.

Example 1 to paragraph (e)(1): A former employee of the Administration on Children and Families (ACF) signs a grant application and submits it to ACF on behalf of a nonprofit organization for which she now works. She has made a communication with the intent to influence an employee of the United States because her communication was made for the purpose of seeking a Government benefit.

Example 2 to paragraph (e)(1): A former Government employee calls an agency official to complain about the auditing methods being used by the agency in connection with an audit of a Government contractor for which the former employee serves as a consultant. The former employee has made a communication with the intent to influence because his call was made for the purpose of seeking Government action in connection with an issue involving an appreciable element of dispute.

(2) Intent to influence not present. Certain communications to and appearances before employees of the United States are not made with the intent to influence, within the meaning of paragraph (e)(1) of this section, including, but not limited to, communications and appearances made solely for the purpose of:

- (i) Making a routine request not involving a potential controversy, such as a request for publicly available documents or an inquiry as to the status of a matter;
- (ii) Making factual statements or asking factual questions in a context that involves neither an appreciable element of dispute nor an effort to seek discretionary Government action, such as conveying factual information regarding matters that are not potentially controversial during the regular course of performing a contract;
- (iii) Signing and filing the tax return of another person as preparer;
- (iv) Signing an assurance that one will be responsible as principal investigator for the direction and conduct of research under a Federal grant (see example 4 to paragraph (d) of this section);

- (v) Filing a Securities and Exchange Commission (SEC) Form 10-K or similar disclosure forms required by the SEC;
- (vi) Making a communication, at the initiation of the Government, concerning work performed or to be performed under a Government contract or grant, during a routine Government site visit to premises owned or occupied by a person other than the United States where the work is performed or would be performed, in the ordinary course of evaluation, administration, or performance of an actual or proposed contract or grant; or
- (vii) Purely social contacts (see example 4 to paragraph (t) of this section).

Example 1 to paragraph (e)(2): A former Government employee calls an agency to ask for the date of a scheduled public hearing on her client's license application. This is a routine request not involving a potential controversy and is not made with the intent to influence.

Example 2 to paragraph (e)(2): In the previous example, the agency's hearing calendar is quite full, as the agency has a significant backlog of license applications. The former employee calls a former colleague at the agency to ask if the hearing date for her client could be moved up on the schedule, so that her client can move forward with its business plans more quickly. This is a communication made with the intent to influence.

Example 3 to paragraph (e)(2): A former employee of the Department of Defense (DOD) now works for a firm that has a DOD contract to produce an operator's manual for a radar device used by DOD. In the course of developing a chapter about certain technical features of the device, the former employee asks a DOD official certain factual questions about the device and its properties. The discussion does not concern any matter that is known to involve a potential controversy between the agency and the contractor. The former employee has not made a communication with the intent to influence.

Example 4 to paragraph (e)(2): A former medical officer of the Food and Drug Administration (FDA) sends a letter to the agency in which he sets out certain data from safety and efficacy tests on a new drug for which his employer, ABC Drug Co., is seeking FDA approval. Even if the letter is confined to arguably "factual" matters, such as synopses of data from clinical trials, the communication is made for the purpose of obtaining a discretionary Government action, i. e., approval of a new drug. Therefore, this is a communication made with the intent to influence.

Example 5 to paragraph (e)(2): A former Government employee now works for a management consulting firm, which has a Government contract to produce a study on the efficiency of certain agency operations. Among other things, the contract calls for the contractor to develop a range of alternative options for potential restructuring of

certain internal Government procedures. The former employee would like to meet with agency representatives to present a tentative list of options developed by the contractor. She may not do so. There is a potential for controversy between the Government and the contractor concerning the extent and adequacy of any options presented, and, moreover, the contractor may have its own interest in emphasizing certain options as opposed to others because some options may be more difficult and expensive for the contractor to develop fully than others.

Example 6 to paragraph (e)(2): A former employee of the Internal Revenue Service (IRS) prepares his client's tax return, signs it as preparer, and mails it to the IRS. He has not made a communication with the intent to influence. In the event that any controversy should arise concerning the return, the former employee may not represent the client in the proceeding, although he may answer direct factual questions about the records he used to compile figures for the return, provided that he does not argue any theories or positions to justify the use of one figure rather than another.

Example 7 to paragraph (e)(2): An agency official visits the premises of a prospective contractor to evaluate the testing procedure being proposed by the contractor for a research contract on which it has bid. A former employee of the agency, now employed by the contractor, is the person most familiar with the technical aspects of the proposed testing procedure. The agency official asks the former employee about certain technical features of the equipment used in connection with the testing procedure. The former employee may provide factual information that is responsive to the questions posed by the agency official, as such information is requested by the Government under circumstances for its convenience in reviewing the bid. However, the former employee may not argue for the appropriateness of the proposed testing procedure or otherwise advocate any position on behalf of the contractor.

# Exhibit C

THE WHITE HOUSE  
WASHINGTON

September 10, 2019

The Hon. John R. Bolton  
9107 Fernwood Road  
Bethesda, MD 20817  
[REDACTED]

Dear Ambassador Bolton:

I write to continue the orderly process of your separation from service following your resignation as Assistant to the President for National Security Affairs. I know that you are committed to protecting confidential information you received while at the White House, but in an abundance of caution, I write to remind you of your continuing obligations and responsibilities to protect all confidential, privileged, and classified information and to provide for the safe return of all government property that you received in connection with your position at the Executive Office of the President ("EOP"). As the Assistant to the President for National Security Affairs, you were entrusted with information protected from disclosure, including classified information that related to some of the most sensitive matters of national security. You were previously advised that unauthorized disclosure, unauthorized retention, or negligent handling of certain classified information could cause irreparable injury to the United States or be used to advantage by a foreign nation. You agreed to consult with the EOP, even after your employment, regarding whether information in your possession might be classified. You also agreed to submit for security review to the EOP any writing or other material in any form that could contain classified information *before* submitting the writing or material to anyone without proper authorization to access such information. You also agreed to secure written authorization from the EOP before disclosing or showing such classified information to any unauthorized individual. All of these obligations extend beyond your period of employment at the EOP and the period in which you have access to classified information.

I understand that NSC security and information technology personnel visited your home today to begin the retrieval of both any classified information stored at your home and any government property provided for your use for secure communications or storage of classified material. Thank you for your cooperation in that process. Please ensure that all classified information or government property has been returned to NSC security and information technology personnel. In addition, given the nature of your former position advising the President on national security affairs, any documents that you created that have not yet been subject to classification review, including notes of meetings or telephone calls, must be submitted for a classification review before you retain them in an unsecured manner.

You also must return all U.S. government property in your possession, custody, or control, including handwritten notes, electronic notes, faxes, documents, memoranda, calendar entries, address book entries, voicemail, and other electronic data, regardless of the form in

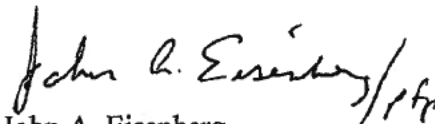


which you have possession, custody, or control. Please contact my office to schedule a mutually convenient time for the return or affirm in writing that you have no U.S. government property in your possession, custody, or control.

Your obligations under the terms of your nondisclosure agreements concerning classified information and other obligations of confidentiality remain binding, and we will take all appropriate steps, which we are sure you will cooperate with, to ensure compliance. Any confidential, privileged, or classified information provided to you during your employment must be kept confidential, and under no circumstances are you authorized to reveal any such information.

My office will follow up with you separately to discuss other post-government employment matters, including your ethics and financial disclosure obligations. Please let me know if you would like to discuss any of the points above, and thank you for your continued cooperation in these matters.

Sincerely,

A handwritten signature in black ink that reads "John A. Eisenberg" with a stylized flourish at the end.

John A. Eisenberg  
*Assistant to the President, Deputy Counsel to the  
President and Legal Advisor to the NSC*

# Exhibit D

# Cooper & Kirk

Lawyers

A Professional Limited Liability Company

1523 New Hampshire Avenue, N.W.

Washington, D.C. 20036

Charles J. Cooper  
(202) 220-9660  
ccooper@cooperkirk.com

(202) 220-9600  
Fax (202) 220-9601

December 30, 2019

## **BY HAND**

Ellen J. Knight  
Senior Director, Records Management Directorate  
Executive Office of the President  
Washington, D.C. 20500

Re: Prepublication Security Review of Book Manuscript by Ambassador John Bolton

Dear Ms. Knight:

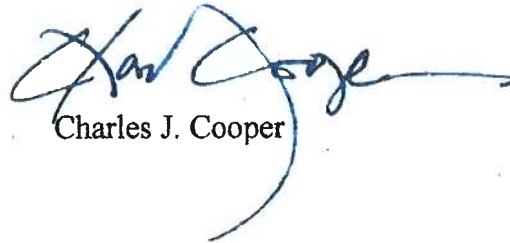
Thank you again for your helpful guidance in our telephone conversation earlier today concerning my submission, on behalf of Ambassador John Bolton, for prepublication security review of the enclosed manuscript of a book that he has prepared relating in large part to his service as National Security Advisor to the President. As I mentioned, Ambassador Bolton has carefully sought to avoid any discussion in the manuscript of sensitive compartmented information ("SCI") or other classified information, and we accordingly do not believe that prepublication review is required. We are nonetheless submitting this manuscript out of an abundance of caution, as contemplated by the nondisclosure agreements that he entered, commencing with those of April 5, 2018 immediately prior to his entry on duty.

I appreciate your assurance that the sole purpose of prepublication security review is to ensure that SCI or other classified information is not publicly disclosed. In keeping with that purpose, it is our understanding that the process of reviewing submitted materials is restricted to those career government officials and employees regularly charged with responsibility for such reviews. Accordingly, we understand that the contents of Ambassador Bolton's manuscript will not be reviewed by or otherwise disclosed to any persons not regularly involved in that process. *See* 28 CFR § 17.18(h) ("Material submitted for pre-publication review will be reviewed solely for the purpose of identifying and preventing the disclosure of sensitive compartmented information and other classified information. . . . Materials submitted for review will be disseminated to other persons or agencies only to the extent necessary to identify classified information.") (Justice Department prepublication review regulation). Ambassador Bolton is relying specifically on this understanding of the prepublication review process in submitting his manuscript for such review.

Ellen J. Knight  
December 30, 2019  
Page 2

Finally, I reiterate that the editorial and publication schedule for the manuscript is highly time sensitive, and so any efforts to complete the review before expiration of the 30-working-day deadline established in the April 5, 2018, agreement will be greatly appreciated. Please do not hesitate to contact me if you have any questions. We stand ready to be of assistance in any way possible in order to expedite your review.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles J. Cooper", with a long, sweeping flourish extending to the right.

Charles J. Cooper

# Exhibit E

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

January 23, 2020

Charles J. Cooper  
Cooper & Kirk  
1523 New Hampshire Avenue NW  
Washington, DC 20036

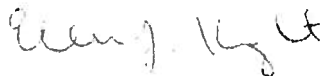
SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

Thank you for speaking yesterday by telephone. As we discussed, the National Security Council (NSC) Access Management directorate has been provided the manuscript submitted by your client, former Assistant to the President for National Security Affairs John Bolton, for prepublication review. Based on our preliminary review, the manuscript appears to contain significant amounts of classified information. It also appears that some of this classified information is at the TOP SECRET level, which is defined by Executive Order 13526 as information that "reasonably could be expected to cause exceptionally grave harm to the national security" of the United States if disclosed without authorization. Under federal law and the nondisclosure agreements your client signed as a condition for gaining access to classified information, the manuscript may not be published or otherwise disclosed without the deletion of this classified information.

The manuscript remains under review in order for us to do our best to assist your client by identifying the classified information within the manuscript, while at the same time ensuring that publication does not harm the national security of the United States. We will do our best to work with you to ensure your client's ability to tell his story in a manner that protects U.S. national security. We will be in touch with you shortly with additional, more detailed guidance regarding next steps that should enable you to revise the manuscript and move forward as expeditiously as possible.

Sincerely,



Ellen J. Knight  
Senior Director for Records, Access, and  
Information Security Management

# Exhibit F

## *Trump Tied Ukraine Aid to Inquiries He Sought, Bolton Book Says*

Drafts of the book outline the potential testimony of the former national security adviser if he were called as a witness in the president's impeachment trial.



By Maggie Haberman and Michael S. Schmidt

Published Jan. 26, 2020 Updated June 10, 2020

WASHINGTON — President Trump told his national security adviser in August that he wanted to continue freezing \$391 million in security assistance to Ukraine until officials there helped with investigations into Democrats including the Bidens, according to an unpublished manuscript by the former adviser, John R. Bolton.

The president's statement as described by Mr. Bolton could undercut a key element of his impeachment defense: that the holdup in aid was separate from Mr. Trump's requests that Ukraine announce investigations into his perceived enemies, including former Vice President Joseph R. Biden Jr. and his son Hunter Biden, who had worked for a Ukrainian energy firm while his father was in office.

Mr. Bolton's explosive account of the matter at the center of Mr. Trump's impeachment trial, the third in American history, was included in drafts of a manuscript he has circulated in recent weeks to close associates. He also sent a draft to the White House for a standard review process for some current and former administration officials who write books.

Multiple people described Mr. Bolton's account of the Ukraine affair.

The book presents an outline of what Mr. Bolton might testify to if he is called as a witness in the Senate impeachment trial, the people said. The White House could use the pre-publication review process, which has no set time frame, to delay or even kill the book's publication or omit key passages.

Just after midnight on Monday, Mr. Trump denied telling Mr. Bolton that the aid was tied to investigations. "If John Bolton said this, it was only to sell a book," he wrote on Twitter, reprising his argument that the Ukrainians themselves felt "no pressure" and falsely asserting that the aid was released ahead of schedule.

Over dozens of pages, Mr. Bolton described how the Ukraine affair unfolded over several months until he departed the White House in September. He described not only the president's private disparagement of Ukraine but also new details about senior cabinet officials who have publicly tried to sidestep involvement.

For example, Secretary of State Mike Pompeo acknowledged privately that there was no basis to claims by the president's lawyer Rudolph W. Giuliani that the ambassador to Ukraine was corrupt and believed Mr. Giuliani may have been acting on behalf of other clients, Mr. Bolton wrote.

Mr. Bolton also said that after the president's July phone call with the president of Ukraine, he raised with Attorney General William P. Barr his concerns about Mr. Giuliani, who was pursuing a shadow Ukraine policy encouraged by the president, and told Mr. Barr that the president had mentioned him on the call. A spokeswoman for Mr. Barr denied that he learned of the call from Mr. Bolton; the Justice Department has said he learned about it only in mid-August.

And the acting White House chief of staff, Mick Mulvaney, was present for at least one phone call where the president and Mr. Giuliani discussed the ambassador, Mr. Bolton wrote. Mr. Mulvaney has told associates he would always step away when the president spoke with his lawyer to protect their attorney-client privilege.





Marie L. Yovanovitch, the former United States ambassador to Ukraine, testified that she was “devastated” that the president vilified her. Anna Moneymaker/The New York Times

During a previously reported May 23 meeting where top advisers and Senator Ron Johnson, Republican of Wisconsin, briefed him about their trip to Kyiv for the inauguration of President Volodymyr Zelensky, Mr. Trump railed about Ukraine trying to damage him and mentioned a conspiracy theory about a hacked Democratic server, according to Mr. Bolton.

The White House did not provide responses to questions about Mr. Bolton’s assertions, and representatives for Mr. Johnson, Mr. Pompeo and Mr. Mulvaney did not respond to emails and calls seeking comment on Sunday afternoon.

Mr. Bolton’s lawyer blamed the White House for the disclosure of the book’s contents. “It is clear, regrettably, from the New York Times article published today that the pre-publication review process has been corrupted and that information has been disclosed by persons other than those properly involved in reviewing the manuscript,” the lawyer, Charles J. Cooper, said Sunday night.

He said he provided a copy of the book to the White House on Dec. 30 — 12 days after Mr. Trump was impeached — to be reviewed for classified information, though, he said, Mr. Bolton believed it contained none.

The submission to the White House may have given Mr. Trump’s aides and lawyers direct insight into what Mr. Bolton would say if he were called to testify at Mr. Trump’s impeachment trial. It also intensified concerns among some of his advisers that they needed to block Mr. Bolton from testifying, according to two people familiar with their concerns.

The White House has ordered Mr. Bolton and other key officials with firsthand knowledge of Mr. Trump’s dealings not to cooperate with the impeachment inquiry. Mr. Bolton said in a statement this month that he would testify if subpoenaed.

In recent days, some White House officials have described Mr. Bolton as a disgruntled former employee, and have said he took notes that he should have left behind when he departed the administration.

Mr. Trump told reporters last week that he did not want Mr. Bolton to testify and said that even if he simply spoke out publicly, he could damage national security.

“The problem with John is it’s a national security problem,” Mr. Trump said at a news conference in Davos, Switzerland. “He knows some of my thoughts. He knows what I think about leaders. What happens if he reveals what I think about a certain leader and it’s not very positive?”

“It’s going to make the job very hard,” he added.

The Senate impeachment trial could end as early as Friday without witness testimony. Democrats in both the House and Senate have pressed for weeks to include any new witnesses and documents that did not surface during the House impeachment hearings to be fair, focusing on persuading the handful of Republican senators they would need to join them to succeed.

But a week into the trial, most lawmakers say the chances of 51 senators agreeing to call witnesses are dwindling, not growing.

Democrats, including Speaker Nancy Pelosi and Senator Chuck Schumer, the minority leader, said the Bolton manuscript underscored the need for him to testify, and the House impeachment managers demanded after this article was published that the Senate vote to call him. “There can be no doubt now that Mr. Bolton directly contradicts the heart of the president’s defense,” they said in a statement.

Republicans, though, were mostly silent; a spokesman for the Senate majority leader, Mitch McConnell of Kentucky, declined to comment.

Mr. Bolton would like to testify for several reasons, according to associates. He believes he has relevant information, and he has also expressed concern that if his account of the Ukraine affair emerges only after the trial, he will be accused of holding back to increase his book sales.

Mr. Bolton, 71, a fixture in conservative national security circles since his days in the Reagan administration, joined the White House in 2018 after several people recommended him to the president, including the Republican megadonor Sheldon Adelson.

But Mr. Bolton and Mr. Trump soured on each other over several global crises, including Iranian aggression, Mr. Trump's posture toward Russia and, ultimately, the Ukraine matter. Mr. Bolton was also often at odds with Mr. Pompeo and Mr. Mulvaney throughout his time in the administration.

Key to Mr. Bolton's account about Ukraine is an exchange during a meeting in August with the president after Mr. Trump returned from vacation at his golf club in Bedminster, N.J. Mr. Bolton raised the \$391 million in congressionally appropriated assistance to Ukraine for its war in the country's east against Russian-backed separatists. Officials had frozen the aid, and a deadline was looming to begin sending it to Kyiv, Mr. Bolton noted.

He, Mr. Pompeo and Defense Secretary Mark T. Esper had collectively pressed the president about releasing the aid nearly a dozen times in the preceding weeks after lower-level officials who worked on Ukraine issues began complaining about the holdup, Mr. Bolton wrote. Mr. Trump had effectively rebuffed them, airing his longstanding grievances about Ukraine, which mixed legitimate efforts by some Ukrainians to back his Democratic 2016 opponent, Hillary Clinton, with unsupported accusations and outright conspiracy theories about the country, a key American ally.

Mr. Giuliani had also spent months stoking the president's paranoia about the American ambassador to Ukraine at the time, Marie L. Yovanovitch, claiming that she was openly anti-Trump and needed to be dismissed. Mr. Trump had ordered her removed as early as April 2018 during a private dinner with two Giuliani associates and others, a recording of the conversation made public on Saturday showed.

In his August 2019 discussion with Mr. Bolton, the president appeared focused on the theories Mr. Giuliani had shared with him, replying to Mr. Bolton's question that he preferred sending no assistance to Ukraine until officials had turned over all materials they had about the Russia investigation that related to Mr. Biden and supporters of Mrs. Clinton in Ukraine.

The president often hits at multiple opponents in his harangues, and he frequently lumps together the law enforcement officials who conducted the Russia inquiry with Democrats and other perceived enemies, as he appeared to do in speaking to Mr. Bolton.

Mr. Bolton also described other key moments in the pressure campaign, including Mr. Pompeo's private acknowledgment to him last spring that Mr. Giuliani's claims about Ms. Yovanovitch had no basis and that Mr. Giuliani may have wanted her removed because she might have been targeting his clients who had dealings in Ukraine as she sought to fight corruption.

Ms. Yovanovitch, a Canadian immigrant whose parents fled the Soviet Union and Nazis, was a well-regarded career diplomat who was known as a vigorous fighter against corruption in Ukraine. She was abruptly removed last year and told the president had lost trust in her, even though a boss assured her she had "done nothing wrong."



Rudolph W. Giuliani, Mr. Trump's personal lawyer, pursued a shadow foreign policy in Ukraine with the president's encouragement. Anna Moneymaker/The New York Times

Mr. Bolton also said he warned White House lawyers that Mr. Giuliani might have been leveraging his work with the president to help his private clients.

At the impeachment trial, Mr. Trump himself had hoped to have his defense call a range of people to testify who had nothing to do with his efforts related to Ukraine, including Hunter Biden, to frame the case around Democrats. But Mr. McConnell repeatedly told the president that witnesses could backfire, and the White House has followed his lead.

Mr. McConnell and other Republicans in the Senate, working in tandem with Mr. Trump's lawyers, have spent weeks waging their own rhetorical battle to keep their colleagues within the party tent on the question of witnesses, with apparent success. Two of the four Republican senators publicly open to witness votes have sounded notes of skepticism in recent days about the wisdom of having the Senate compel testimony that the House did not get.

Since Mr. Bolton's statement, White House advisers have floated the possibility that they could go to court to try to obtain a restraining order to stop him from speaking. Such an order would be unprecedented, but any attempt to secure it could succeed in tying up his testimony in legal limbo and scaring off Republican moderates wary of letting the trial drag on when its outcome appears clear.

Katie Benner, Nicholas Fandos and Sheryl Gay Stolberg contributed reporting.

# Exhibit G

## Manuscript leak spurs calls for Bolton testimony

The Washington Post

January 27, 2020 Monday, Suburban Edition

Copyright 2020 The Washington Post All Rights Reserved



**Distribution:** Every Zone

**Section:** A-SECTION; Pg. A01

**Length:** 1433 words

**Byline:** Seung Min Kim;Felicia Sonmez;Josh Dawsey

### Body

---

Alleges Trump directly

tied withholding Ukraine aid to probe of Bidens

Congressional Democrats called for former national security adviser John Bolton to testify in President Trump's impeachment trial following a new report that the president told Bolton last August that he wanted to withhold military aid to Ukraine unless it aided investigations into the Bidens.

The New York Times reported Sunday evening that in last summer's conversation, Trump directly tied the holdup of nearly \$400 million in military assistance to the investigations of former vice president Joe Biden and his son Hunter Biden. That is according to an unpublished manuscript of Bolton's forthcoming book, the Times said.

The book, 'The Room Where It Happened,' is scheduled for publication March 17, but a White House review could attempt to delay its publication or block some of its contents.

Two people familiar with the book, who spoke on the condition of anonymity because of the sensitivity of the project, confirmed that it details Trump tying aid to the desire for Biden probes and details a number of conversations about Ukraine that he had with Trump and key advisers, such as Secretary of State Mike Pompeo. They said Bolton is ready to testify in the Senate impeachment trial.

In a joint statement, the seven House impeachment managers called the report 'explosive' and urged the Senate, controlled by Republicans, to agree to call Bolton as a witness in Trump's trial, which kicks off its second full week on Monday. Bolton has said that he would testify before the Senate if subpoenaed.

'The Senate trial must seek the full truth and Mr. Bolton has vital information to provide,' the managers said in a statement Sunday. 'There is no defensible reason to wait until his book is published, when the information he has to offer is critical to the most important decision senators must now make " whether to convict the president of impeachable offenses.'

Trump is on trial, facing two charges " abuse of power and obstruction of Congress.

Melanie Michaelson

Manuscript leak spurs calls for Bolton testimony

The assertion from Bolton could undermine one core defense that has repeatedly been laid out by Trump, his defenders and his legal team: that there was no explicit quid pro quo involved when the administration withheld the military assistance, as well as a White House visit coveted by Ukraine.

The White House has said that Trump's request for Ukrainian President Volodymyr Zelensky to investigate the Bidens, as well as a discredited theory that Ukraine interfered in the 2016 elections, was because he was interested in rooting out corruption and that he did nothing improper.

The president's legal defense team is expected to mount a vigorous defense on Monday when they deliver a full day of arguments against the impeachment charges.

The revelation from the Bolton book was certain to roil the dynamics of the trial this week, when the Senate was expected to face a critical vote on whether to allow witnesses at all.

Charles Cooper, a lawyer for Bolton, said he submitted the manuscript to the National Security Council's records management division on Dec. 30 for a standard review process to examine potentially classified information. Cooper said they believed that the book manuscript did not include any classified material and that its contents would not be shared with officials outside that review process.

'It is clear, regrettably, from The New York Times article published today that the prepublication review process has been corrupted and that information has been disclosed by persons other than those properly involved in reviewing the manuscript,' Cooper said in the statement.

Sarah Tinsley, a spokeswoman for Bolton, added: 'The ambassador has not passed the draft manuscript to anyone else. Period.'

Senate Majority Leader Mitch McConnell (R-Ky.) and many Senate Republicans would prefer the Senate avoid witnesses, but at least four GOP senators are seen as potential votes for favoring more testimony: Susan Collins (Maine), Lisa Murkowski (Alaska), Mitt Romney (Utah) and Lamar Alexander (Tenn.).

Romney and Collins have already indicated that they are likely to support hearing from witnesses and getting more evidence, and Romney has also said that he would like to hear from Bolton.

'The odds of deposition for new witnesses is certainly rising dramatically,' one senior Republican official, who spoke on the condition of anonymity to candidly assess party dynamics, said Sunday evening after the publication of the Times report.

'John Bolton has the evidence. It's up to four Senate Republicans to ensure that John Bolton, Mick Mulvaney, and the others with direct knowledge of President Trump's actions testify in the Senate trial,' Senate Minority Leader Charles E. Schumer (D-N.Y.) said in a tweet.

Earlier Sunday, Trump escalated his attacks on Rep. Adam B. Schiff (D-Calif.), issuing what appears to be a veiled threat against the chairman of the House Intelligence Committee.

'Shifty Adam Schiff is a CORRUPT POLITICIAN, and probably a very sick man,' Trump tweeted Sunday morning. 'He has not paid the price, yet, for what he has done to our Country!'

Schiff is the lead impeachment manager in the Senate trial.

Schiff responded in an interview on NBC News's 'Meet the Press,' saying he believes that Trump's remarks were intended as a threat.

'This is a wrathful and vindictive president; I don't think there's any doubt about it,' Schiff said in the interview. 'And if you think there is, look at the president's tweets about me today, saying that I should 'pay a price.' '

'Do you take that as a threat?' host Chuck Todd asked.

Manuscript leak spurs calls for Bolton testimony

'I think it's intended to be,' Schiff replied.

White House press secretary Stephanie Grisham said it was 'ridiculous' for Schiff to claim that Trump was threatening him. In an appearance on Fox News Channel's 'Media Buzz,' she accused the California Democrat of 'grandstanding,' although she acknowledged that she had not had an opportunity to ask Trump what he meant by the tweet.

'I think he means . . . [Schiff] hasn't yet paid the price with the voters,' Grisham said.

She also echoed Trump's attack earlier Sunday on Schiff, saying: 'I mean, it seems he's having a little bit of a mental issue when you sit on the floor for hours and hours and hours. He's obsessed with this president and trying to take him down.'

Democrats contend that Trump has continued to publicly solicit foreign interference in U.S. elections and that the integrity of the 2020 race is at risk. The president fired back Sunday by leveling the same accusation at his political opponents.

'The Impeachment Hoax is a massive election interference the likes of which has never been seen before,' he said in a tweet.

Some Republicans on Sunday defended Trump's remarks about Schiff. In an interview on CNN's 'State of the Union,' Sen. James Lankford (R-Okla.) said he was not troubled by Trump's declaration that Schiff 'has not paid the price.'

'I don't think it's a death threat. I don't think he's encouraging a death threat,' Lankford said.

Host Jake Tapper responded by saying that 'people who are supporters of the president have heard his rhetoric and then actually tried to bomb and kill politicians and the media.'

This prompted Lankford to refer to the 2017 congressional baseball shooting that targeted Republicans and injured several people, including House Minority Whip Steve Scalise (R-La.).

'So to be able to say the president's trying to be able to spur this on would be able to say Democrats were trying to spur on the killing' of Republicans, Lankford said.

Rep. Zoe Lofgren (D-Calif.), who is also an impeachment manager, called Trump's tweet about Schiff 'really unfortunate' and said the president has said things before 'that seem threatening to people.'

'He really ought to get a grip and be a little more presidential,' she said on 'State of the Union.'

In a tweet later Sunday morning, Trump also took aim at Todd, accusing the 'Meet the Press' host of holding a 'softball interview' with Schiff and 'never even calling Shifty out on his fraudulent statement to Congress, where he made up ALL of the words of my conversation with the Ukrainian President!'

Both sides continue to spar over the question of whether the Senate trial will include witnesses. Some key Senate Republicans, already hesitant on the issue, became even more so over the weekend after Schiff referred to a CBS News report in which an anonymous Trump ally was quoted as having warned lawmakers, 'Vote against the president and your head will be on a pike.'

seung-min.kim@washpost.com

felicia.sonmez@washpost.com

Tom Hamburger contributed to this report.

**Load-Date:** January 27, 2020

Melanie Michaelson

Manuscript leak spurs calls for Bolton testimony

---

End of Document



# Exhibit H

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

February 7, 2020

Charles J. Cooper  
Cooper & Kirk  
1523 New Hampshire Avenue NW  
Washington, DC 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

As you are aware, Executive Order 13526 defines "classified information" as information, the unauthorized disclosure of which could reasonably be expected to cause at the very least "identifiable or describable damage to the national security" of the United States. In order to avoid such damage, as a condition for access to classified national security information, the Executive Branch has long required its employees to submit to a critically important prepublication review process with respect to any such information in advance of publication. These nondisclosure requirements, agreed to by your client as a condition of access to classified information, supplement the legal obligations that federal law imposes upon all persons who receive access to classified information. I would be happy to provide you copies of agreements signed by your client if that would be helpful.

As I noted in my letter of January 23, 2020, our preliminary review determined that the draft contains numerous instances of classified information. For example, the draft contains classified discussions between the President and foreign heads of state, classified foreign government information, details about classified military plans and operations, and classified details about intelligence sharing and activities. As the former Assistant to the President for National Security Affairs, your client understands the sensitivity of these categories of information and the potential harm that could be expected to result from its unauthorized disclosure.

Given the volume of classified information currently contained in the draft, your client should modify and revise the manuscript to remove all classified information and resubmit it to us for review. To further the iterative review process, it would be most efficient for me to meet with your client to review each instance of classified information in detail and, as necessary, assist in the prioritization of any particular portions. I am available any day next week. In the meantime, your client has a duty not to publish or otherwise disclose the manuscript or any of its underlying information until he has addressed our concerns and received authorization to do so from our office.

As written, the manuscript is very detailed, suggesting that it was likely produced from notes written by your client during his service at the White House. When your client received his employee debriefing, he stated that he did not have any notes or other records from his government service. Any notes that remain in your client's possession regarding the accounts in

the manuscript may fall under the requirements of the Presidential Records Act and be subject to litigation holds. Please confirm whether your client has retained any notes or other records from his government service.

Of more immediate concern, as my letter of January 23, 2020, informed you, is that the manuscript contains classified information. NSC staff will be in contact with your client to provide additional guidance on how to safeguard any classified information in your client's possession and in the possession of anyone with whom your client has shared the draft manuscript or any of the manuscript's underlying information. In that regard, please also provide us, as soon as possible, with the names and contact information of anyone with whom your client has shared the manuscript or its underlying information or confirm that he has not shared it.

Please note that this letter, along with my letter of January 23, 2020, constitute NSC's initial response for the purposes of the nondisclosure agreements signed by your client.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellen J. Knight". The signature is written in a cursive, flowing style.

Ellen J. Knight  
Senior Director for Records, Access,  
and Information Security Management

# Exhibit I

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

February 24, 2020

Charles J. Cooper  
Cooper & Kirk  
1523 New Hampshire Avenue NW  
Washington, DC 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

Last Friday, I was pleased to meet with your client, Ambassador John Bolton, to discuss our preliminary review results concerning the draft manuscript submitted for prepublication review on December 30, 2019. As I noted in my letters dated January 23, 2020, and February 7, 2020, our preliminary review determined that the draft contains numerous instances of classified information. The meeting furthered the iterative review process by providing an opportunity to inform your client of many of the specific instances of classified information identified in the draft manuscript and offer guidance to prevent unauthorized disclosure of this information for the protection of national security.

During our meeting, which lasted four hours and was most productive, I discussed with your client our use of the classification standards and categories found in Executive Order 13526, "Classified National Security Information," to identify classified information found in the draft manuscript, and he appeared to acknowledge the need to revise the manuscript to address our concerns regarding classified information. I provided guidance as to when and how he should modify language that is classified in its current form so that it no longer meets the standards to be classified. In addition, we discussed with your client guidance as to when he should delete instances of classified information found in the draft manuscript, as even with revisions the information would remain classified and thus would not be publicly releasable. Finally, I advised him on the use of citations of authorized releases and publicly available information related to national security.

I reviewed the preliminary results of three chapters in the draft manuscript in detail with your client during our meeting. Additionally, I discussed the details of a sample of review findings throughout the draft manuscript to convey instances of identified classified information. We discussed how your client can potentially avoid including classified information when discussing matters related to national security. These examples should aid your client as he revises the draft manuscript.

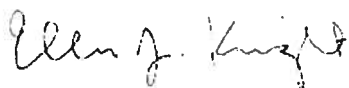
It became apparent during our meeting that it would be most helpful to the process if we hold one or more follow-on meetings. We agreed to meet again at my office to discuss the remaining portions of the draft manuscript. In order to ensure the safeguarding of identified classified

information, we discussed your proposal to locate a secure facility for your client to complete the edits of the draft manuscript. Once we complete our follow-on meetings, your client may then implement the required changes in a secure location. We can discuss the appropriate method for resubmitting the manuscript as the process moves forward.

The notes your client took at our meeting, as well as the draft manuscript he annotated, remain secured at my office. I have reviewed your client's notes to identify and redact any classified information and am enclosing a copy with this letter.

Please note the prepublication review remains in process, and your client may not publish or further disseminate the manuscript or any of its contents until authorized. Please feel free to contact me if you have any questions about next steps in the prepublication review process.

Sincerely,

A handwritten signature in black ink that reads "Ellen J. Knight". The signature is written in a cursive style with a large initial "E".

Ellen J. Knight  
Senior Director for Records Access,  
and Information Security Management

Enclosure: a/s

# Exhibit J

## John Bolton's book has been delayed until May due to White House review

CNN Wire

March 3, 2020 Tuesday 5:18 PM GMT

Copyright 2020 Cable News Network All Rights Reserved

**Length:** 475 words

**Dateline:** NEW YORK (CNN Business)

### Body

---

NEW YORK (CNN Business) -- The publication of John Bolton's book about his time working for President Trump, "The Room Where It Happened," has been pushed back from March until May due to the Trump White House's review of the manuscript.

The delay revives questions about whether the government is unfairly holding up Bolton's book for partisan political reasons.

"I hope it's not suppressed," Bolton said at a public speaking engagement on February 17.

Bolton struck a deal to write the book shortly after stepping aside as Trump's national security adviser in September, after 17 months in that post. Simon & Schuster reportedly paid about \$2 million for the rights to the book.

On January 26, Simon & Schuster announced the book's title -- which alludes to the Oval Office -- and a March 17 release date.

That same day, The New York Times reported that the book contained information that was relevant to the Trump impeachment inquiry.

According to The Times, Bolton's manuscript alleges that Trump directed him to help with his pressure campaign to get damaging information about Democrats from Ukraine.

Bolton said on February 17 that "there are portions of the manuscript that deal with Ukraine," but he called those portions "the sprinkles on an ice cream sundae, in terms of the book. This is an effort to write history."

Bolton's lawyer submitted the manuscript to the White House for "prepublication security review" on December 30.

This is a normal process for former government officials like Bolton, to ensure that no classified information is disclosed.

But what's unfolded since then is not normal.

President Trump has lashed out at Bolton and, according to the Washington Post, has "directly weighed in on the White House review."

The Post reported on February 21 that Trump has told staffers that "everything he uttered to the departed aide about national security is classified and that he will seek to block the book's publication, according to two people familiar with the conversations."

In response, Bolton's lawyer said the "pre-publication review" is proceeding and "we have nothing to say beyond that."

Melanie Michaelson



John Bolton's book has been delayed until May due to White House review

Publishers typically need more than a few weeks to print and distribute books, so the March 17 date has been looking untenable.

On Tuesday morning Simon & Schuster adjusted the online pre-order pages for the book and announced May 12 as the new release date.

"The new date reflects the fact that the government review of the work is ongoing," a company spokesperson said.

Some people who already pre-ordered the book on Amazon received messages on Tuesday letting them know about the new publication date.

"The Room Where It Happened" is already listed in the top 100 of Amazon's bestselling books of 2020 to date, indicating a significant number of pre-orders.

TM & © 2020 Cable News Network, Inc., a WarnerMedia Company. All rights reserved.

**Load-Date:** March 3, 2020

---

End of Document

# Exhibit K

**Knight, Ellen J. EOP/NSC**

---

**From:** Knight, Ellen J. EOP/NSC  
**Sent:** Friday, March 27, 2020 3:52 PM  
**To:** John R. Bolton  
**Cc:** Christine Samuelian  
**Subject:** Prepublication Review Edits for Pick-Up

Good afternoon Ambassador Bolton,

Thank you for submitting your revised manuscript to the National Security Council (NSC) Access Management directorate for pre-publication review. I appreciate your efforts to address the classification concerns in the latest draft version you submitted. Many of the changes are satisfactory. However, additional edits are required to ensure the protection of national security information.

To assist in making the additional required changes, I will provide a list of required edits and language substitutions to guide you in this next stage of revising the draft. I have made this list available in printed copy for you or a courier to pick-up as it contains unclassified information. After receiving the list, I ask that you review the edits and make the changes to the draft. To expedite the review process, I ask that you use "track changes" or another type of formatting convention to identify all of the edits you make so that I may distinguish between the version just reviewed and the new version you plan to submit.

It would be helpful for you to note on the list provided those edits you did not make and/or those you wish to discuss with me. Please let me know when you have finished editing the draft manuscript and completed the annotations to the list and we can then discuss the best way to address any concerns you may have with the required changes. We can also discuss the most efficient method for resubmitting the revised manuscript.

Please note I will have to review the edited manuscript again to ensure the edits were completed, checking both your work and mine to ensure no classified information remains in the manuscript. As such, I must reiterate that the prepublication review remains in process. Even after making the edits, you are not authorized to publish or further disseminate the manuscript or its contents until expressly given clearance by me to do so.

Please feel free to contact me if you have any questions about next steps in the prepublication review process.

Thank you,  
Ellen

Ellen J. Knight | Senior Director  
Records Access and Information Security Management  
National Security Council  
Executive Office of the President  
202.456.██████ (desk)  
202.456.9201 (main office)  
██████@nsc.eop.gov

# Exhibit L





Definitive Guide to Public Cloud Security Across AWS, Azure, and GCP  
Lessons for IT Security Cloud Management

## Public Cloud Security Guide

See How The Major Cloud Providers Stack Up





Get The Guide

## WHITE HOUSE

### Bolton book release pushed back again, to late June

The book has already been the subject of letters between Bolton's lawyer and the NSC's lawyers.



Former national security adviser John Bolton. | Jacquelyn Martin/AP Photo

By **DANIEL LIPPMAN**

04/29/2020 05:54 PM EDT



The publication of former Trump national security adviser John Bolton's tell-all book has been pushed back again to at least late June, according to a notice from Amazon.com, amid an extensive prepublication review by the National Security Council.

Bolton's book, "The Room Where It Happened: A White House Memoir," is now scheduled to be published on June 23, more than three months after it was originally supposed to be released. This is the second delay for the much-anticipated book; after the March 17 publication date slipped, it got [pushed back](#) to May 12.

Advertisement

AD

A spokesperson for Bolton declined to comment, while a spokesperson for the National Security Council, whose records management division is reviewing Bolton's draft for classified material, also did not have a comment.

Bolton's book, to be published by Simon & Schuster, has already been the subject of letters back and forth between Bolton's lawyer and NSC lawyers as the government decides what he can publicly reveal about his time in the White House.

His lawyer, Chuck Cooper, has in the past accused the White House of corrupting the prepublication review process. He also disputed the idea that Bolton put any classified information in the book in the first place.

“Ambassador Bolton has carefully sought to avoid any discussion in the manuscript of sensitive compartmented information (‘SCI’) or other classified information, and we accordingly do not believe that prepublication review is required,” he wrote in a Dec. 30 letter to the NSC.

But Ellen Knight, NSC’s senior director for records, access and information security management, sent a [letter](#) in January to Cooper warning him that the book appeared to have “significant amounts of classified information” that led Cooper to urge her to speed up the review of Bolton’s chapter on Ukraine. President Donald Trump tweeted that Bolton wrote a “nasty & untrue book” that had “All Classified National Security.”

But parts of the book, although not in formal written form, entered the public eye during Trump’s impeachment. The New York Times [reported](#) that Trump told Bolton he wanted to continue withholding U.S. government aid from Ukraine until officials publicly pledged to investigate Joe and Hunter Biden. The White House did not respond to questions about Bolton’s claims at the time, the Times reported.

Bolton offered to testify during Trump’s Senate trial, but a vote to allow witnesses [failed](#), largely along party lines.

**FILED UNDER:** BOOKS, JOHN BOLTON

[SHOW COMMENTS](#)

# Exhibit

# M



**Knight, Ellen J. EOP/NSC**

---

**From:** Knight, Ellen J. EOP/NSC  
**Sent:** Thursday, May 7, 2020 9:56 AM  
**To:** John R. Bolton  
**Subject:** Re: [EXTERNAL] Checking in

Hi Amb. Bolton,

I do not have any new information to provide at this time. The process remains ongoing. I will reach out as soon as there is an update to provide.

Thank you,  
Ellen

Ellen J. Knight  
Senior Director  
Records Access & Information Security Management  
National Security Council  
Executive Office of the President  
202-456-  
@nsc.eop.gov

On May 6, 2020, at 4:32 PM, John R. Bolton > wrote:

Ellen: Hope springs eternal - any news on the letter? Thanks, John Bolton

# Exhibit

# N

## NewsRoom

6/7/20 WashingtonPost.com (Pg. Unavail. Online)  
2020 WLNR 15934013

WashingtonPost.com  
Copyright (c) 2020 The Washington Post

June 7, 2020

Section: /politics

**John Bolton** plans to publish a tell-all about his time in the White House in late June

Josh Dawsey;Tom Hamburger

**John Bolton** is forging ahead with plans to publish a scathing memoir about his time in President Trump's White House and is in negotiations with network television channels to promote the book, according to people familiar with the talks.

Bolton, who served as national security adviser from April 2018 to September 2019, plans to publish "The Room Where It Happened: A White House Memoir" on June 23, after embarking on a media tour to promote the book the weekend before, according to people with knowledge of the negotiations who spoke on the condition of anonymity to describe private conversations.

The White House has not formally signed off on the tome, and officials in the Trump administration have delayed the book for months due to a classification review process led by the National Security Council.

The president has said that Bolton should not publish the book until after the election and has called him a "traitor" in private for writing a negative tell-all book, The Washington Post has previously reported.

Bolton is planning to publish even if the White House does not give publication approval, people familiar with his thinking say, and believes he has removed all classified material.

The White House did not respond to a request for comment. A lawyer and spokeswoman for Bolton declined to comment. Charles Cooper, Bolton's lawyer, has previously said the ambassador "is continuing to pursue the prepublication process in good faith."

The 592-page book is expected to provide an unvarnished and caustic account of life inside the White House from the national security adviser's perspective. It is expected to describe the president's decision-making process, his warring advisers and a number of foreign policy topics, from Ukraine and Venezuela to North Korea and Iran.

The book caused a ruckus earlier this year, after the New York Times reported that Bolton's book would substantiate claims that Trump withheld military aid to pressure Ukraine's leader to launch a political investigation. People familiar with the book say Bolton will describe Ukrainian interactions in detail.

Bolton left the White House with fiercely negative views of the president, associates say. Though he has generally stayed quiet in media interviews, he has been more pointed during paid public speaking engagements.

Some of Bolton's former White House colleagues have privately criticized him as a narcissist and a knife-fighter with a temper, according to current and former White House officials. He reportedly butted heads with both Secretary of State Mike Pompeo and Treasury Secretary Steven Mnuchin, along with many other aides.

Trump still occasionally mocks Bolton for his mustache, administration officials say, and jokes that Bolton wanted to "bomb everybody," in the words of an administration official.

But he is well-respected in Republican foreign policy circles for his hawkish views and has decades of experience in the foreign policy community.

A chorus of former administration and military officials who have criticized the president publicly have often been attacked sharply by Trump in return. Last week, former secretary of defense Jim Mattis said the president had sought to divide the nation and had not engaged in "mature leadership" in an essay in *The Atlantic*. Other officials, including former secretary of state Rex Tillerson and former chief of staff John Kelly, have echoed some of those criticisms.

People with knowledge of the book said it would be the most detailed criticism yet from a former administration official who served at a high level of government.

What the White House could do to stop the book is unclear. Theoretically, Bolton could lose his security clearance, experts say, or be forced to forgo profits from the book.

In a 2016 settlement, Matt Bissonnette, who wrote "No Easy Day" under the pen name Mark Owen, agreed to turn over to the government all the profits and future royalties stemming from his book, at least \$6.6 million at the time.

As part of the deal, Bissonnette acknowledged he failed to get his manuscript properly cleared by the Pentagon. In exchange, the Justice Department agreed to dismiss any other claims and drop any plans to prosecute him for the release of classified information.

At the end of 2019, Bolton received a letter from Ellen Knight, the National Security Council's senior director for records, access and information security management, reminding him about the importance of submitting his manuscript for review. She said Bolton would be breaking his nondisclosure agreement with the U.S. government if he published the book without review.

"The manuscript may not be published or otherwise disclosed without the deletion of this classified information," she wrote.

Cooper had submitted the manuscript to the National Security Council for vetting on Dec. 30.

"Ambassador Bolton has carefully sought to avoid any discussion in the manuscript of . . . classified information, and we accordingly do not believe that prepublication review is required," Cooper wrote to Knight in a letter accompanying the draft. "We are nonetheless submitting this manuscript out of an abundance of caution."

People familiar with Bolton's interaction with that office said he has carefully reviewed the manuscript and has cooperated with the office and feels the book is being held up for political reasons.

josh.dawsey@washpost.com

tom.hamburger@washpost.com

---- **Index References** ----

Company: GRAHAM HOLDINGS CO

News Subject: (Government (1GO80); Legislation (1LE97); U.S. Legislation (1US12))

Industry: (Aerospace & Defense (1AE96); Book Publishing (1BO18); Books (1BO26); Defense (1DE43); Defense Intelligence (1DE90); Defense Policy (1DE81); Publishing (1PU26); Security (1SE29); Security Agencies (1SE35); Traditional Media (1TR30))

Region: (CIS Countries (1CI64); Eastern Europe (1EA48); Europe (1EU83); USA (1US73); Ukraine (1UK09))

Language: EN

Other Indexing: (Ellen Knight; Trump; Charles Cooper; John Kelly; Mark Owen; Rex Tillerson; Mike Pompeo; Matt Bissonnette; John Bolton; Steven Mnuchin; Jim Mattis)

Word Count: 859

---

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

**NewsRoom**

# Exhibit O

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

June 8, 2020

Charles J. Cooper  
Cooper & Kirk, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

Recently, we have become aware of press reports indicating that your client, John Bolton, intends to publish his manuscript imminently. This is inconsistent with the prepublication review process under the agreements signed by your client and under which we have been proceeding thus far. As we explained on January 23, February 7, February 24, and March 27, 2020, until the prepublication review process is complete and he receives the necessary authorization at the conclusion of that process, he may not publish or disseminate the manuscript.

The current draft manuscript still contains classified information. As we advised your client when he signed the nondisclosure agreements, and as he should be well aware as a former Assistant to the President for National Security Affairs in this Administration, the unauthorized disclosure of classified information could be exploited by a foreign power, thereby causing significant harm to the national security of the United States.

As we work to finish the iterative prepublication review process, we will provide you, no later than June 19, 2020, a copy of your client's draft manuscript with redactions for the information that has been identified as classified. Please confirm by June 10, 2020, that your client understands his legal obligations under the nondisclosure agreements and that he will not publish or disseminate any portion of the manuscript until after the prepublication review process has concluded and he has received the necessary authorization.

Please contact me if you have any questions.

Sincerely,



John A. Eisenberg  
Assistant to the President,  
Deputy Counsel to the President, and  
Legal Advisor to the National Security Council

# Exhibit P



# Cooper & Kirk

Lawyers

A Professional Limited Liability Company

Charles J. Cooper  
(202) 220-9660  
ccooper@cooperkirk.com

1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036

(202) 220-9600  
Fax (202) 220-9601

June 10, 2020

## Via Electronic Mail

John A. Eisenberg  
Assistant to the President,  
Deputy Counsel to the President, and  
Legal Advisor to the National Security Council  
1600 Pennsylvania Ave., NW,  
Washington, DC 20500

**Re: Prepublication review of Ambassador John Bolton's manuscript**

Dear Mr. Eisenberg:

I write in response to your letter of June 8, 2020. Ambassador Bolton has fully discharged all duties that the Federal Government may lawfully require of him under the nondisclosure agreements that he signed upon assuming the office of National Security Advisor. As described below, Ambassador Bolton undertook, in good faith, an exhaustive and lengthy prepublication review process of his book, *The Room Where It Happened: A White House Memoir*, and the senior career professional at the National Security Council (NSC) tasked with performing such a review, Ms. Ellen Knight, assured Ambassador Bolton that there were no remaining issues of classified information in his manuscript. His own independent judgment, based on decades of experience handling classified information, confirms that his manuscript contains no classified information. It is readily apparent that the White House seeks to block publication of Ambassador Bolton's book for purely political reasons, in violation of the First and Fifth Amendments to the United States Constitution, the covenant of good faith and fair dealing implicit in the nondisclosure agreements, and the executive order and regulations governing the classification of information.

Ambassador Bolton's long and distinguished service to the government of the United States, in senior positions both in national security and law enforcement, testifies to his close familiarity with classified information at the highest levels and his extensive experience in handling it properly. And his well-deserved reputation as a fierce defender of American interests in dealing with foreign powers, both allies and enemies, establish that he would never — *never* — take an action that would compromise the national security of the United States. In drafting the manuscript for his book, Ambassador Bolton was careful to avoid including any

John A. Eisenberg  
June 10, 2020  
Page 2 of 5

classified information. Nonetheless, to ensure that there could be no question of his good-faith compliance with the nondisclosure agreements he signed in April 2018, Ambassador Bolton instructed me, as his lawyer, to submit the draft of his manuscript to the National Security Council for a prepublication review. As you know, the purpose of this review, as stated in one of the agreements, is “to give the United States a reasonable opportunity to determine whether the [manuscript] . . . sets forth any” classified information, and it gives the NSC 30 business days to review the material and provide its response.

I submitted the manuscript on December 30, 2019, to Ms. Knight, Senior Director for Records, Access, and Information Security Management at the National Security Council, the office responsible for conducting the prepublication review process for the NSC. In doing so, I emphasized to Ms. Knight that Ambassador Bolton was relying on regulations restricting the scope of prepublication reviews to “identifying and preventing the disclosure of . . . classified information,” and limiting disclosure of the material under review to those government officials necessary for carrying out that responsibility. These regulations are in line with Executive Order 13526’s prohibition on classifying information “in order to prevent embarrassment to a person” or to “prevent or delay the release of information that does not require protection in the interest of national security.” Ms. Knight assured me that the sole purpose of the NSC’s review would be to ensure that Ambassador Bolton’s manuscript did not disclose classified information.

Over the course of four months, Ambassador Bolton and Ms. Knight, who personally conducted the review with the assistance of a senior member of Ms. Knight’s staff, painstakingly reviewed the nearly 500-page manuscript *four times*, page by page and often line by line. During that period, the book’s announced publication date had to be pushed back twice.

Round one of the process began on January 23, as the President’s impeachment trial was getting underway on the Senate floor. Ms. Knight wrote to say that Ambassador Bolton’s manuscript contained “significant amounts of classified information” and that she would provide “detailed guidance regarding next steps that should enable [Bolton] to revise the manuscript and move forward as expeditiously as possible.” A few days later, *Vanity Fair* reported that “the president is out for revenge against his adversaries.” The article stated that the President “has an enemies list,” that “Bolton is at the top of the list,” and that the “campaign against Bolton” included Ms. Knight’s January 23 letter asserting that the manuscript contained classified information. It also reported that the President “wants Bolton to be criminally investigated.” Six days later, the President tweeted that the Ambassador had written “a nasty & untrue book” — an assessment of the book’s content that he could only have made if the manuscript had been shared with those outside the normal prepublication-review process — and he described the book as “All Classified National Security.” Notwithstanding these alarming

John A. Eisenberg  
June 10, 2020  
Page 3 of 5

indications that the prepublication-review process had already been corrupted, Ambassador Bolton pressed onward and continued to cooperate in good faith with the review.

On February 7 (after the White House acknowledged that NSC staff had provided a briefing about the book to White House Counsel Pat Cipollone, then leading President Trump's impeachment defense), Ms. Knight advised that "to further the iterative process, it would be most efficient for me to meet with [Ambassador Bolton] to review each instance of classified information in detail." Their first meeting took place on February 21, the same day on which the *Washington Post* reported that "President Trump has directly weighed in on the White House [prepublication] review of a forthcoming book by his former national security adviser, telling his staff that he views John Bolton as 'a traitor,' that everything he uttered to the departed aide about national security is classified and that he will seek to block the book's publication." The story also reported that the President vowed to a group of television news anchors that "we're going to try and block publication of [his] book. After I leave office, he can do this."

In the February 21 meeting, which lasted four hours, Ms. Knight, as she described it, "reviewed the preliminary results of three chapters in the draft manuscript in detail with" Ambassador Bolton. The Ambassador took five pages of handwritten notes, as he and Ms. Knight discussed her specific concerns page by page, line by line, and sometimes word by word. Three days later, Ms. Knight wrote that the meeting had been "most productive," and she suggested that "it would be most helpful to the process if we hold one or more following meetings . . . to discuss the remaining portions of the draft manuscript." Ambassador Bolton and Ms. Knight met again three times, on March 2 (approximately four hours), March 3 (over four hours), and March 4 (approximately three hours). In these meetings, they reviewed in meticulous detail each of Ms. Knight's concerns in the remaining 11 chapters, producing 34 pages of handwritten notes. Following his notes and the guidance provided by Ms. Knight, Ambassador Bolton revised his manuscript, and by March 9 he had resubmitted all 14 chapters to begin the second round of the iterative review process.

Ambassador Bolton did not hear from Ms. Knight again until March 27, when she wrote: "I appreciate your efforts to address the classification concerns in the latest draft version you submitted. Many of the changes are satisfactory. However, additional edits are required to ensure the protection of national security information. To assist in making the additional required changes, I will provide a list of required edits and language substitutions to guide you in this next stage of revising the draft." Her list amounted to 17 typed, single-spaced pages of comments, questions, suggestions of specific alternative language, and citations to publicly available source material. Working through the weekend, Ambassador Bolton responded to all

John A. Eisenberg  
June 10, 2020  
Page 4 of 5

17 pages on Monday, March 30, accepting the vast majority of Ms. Knight's suggestions and proposing alternative solutions to others.

The third round in the iterative review process occurred on April 13, in a telephone conversation in which Ms. Knight provided her much shorter list of remaining concerns after reviewing Ambassador Bolton's March 30 revisions. Their conversation resulted in entirely agreed-upon language changes, which were delivered to Ms. Knight the next day, April 14.

During the April 13 call, Ms. Knight also said she would review the entire manuscript one more time, to recheck the issues previously resolved and ensure that she had not overlooked any. That final review resulted in two further telephone calls, on April 21 and 24, in which she conveyed her final round of edits and some additional citations to publicly available sources. Ambassador Bolton promptly responded with the requested revisions, and on April 27, Ms. Knight, after clarifying one previously discussed edit, confirmed "that's the last edit I really have to provide for you." Thus, the lengthy, laborious process finally came to an end.

When Ambassador Bolton asked when he could expect to receive the pro-forma closing letter confirming that the prepublication review process had been concluded, Ms. Knight cryptically replied that her "interaction" with unnamed others in the White House about the book had "been very delicate," and that there were "some internal process considerations to work through." She nonetheless thought the letter might be ready that afternoon but would "know more by the end of the day." They even discussed whether the letter should be transmitted by electronic transmission or by him physically picking up the hard copy. It has now been more than six weeks since the final revisions to the book, and Ambassador Bolton has not received the letter to which Ms. Knight thought he was entitled. His inquiries of Ms. Knight as to when he would receive the letter documenting her agreement that the book contains no classified information have been answered with stiff and formal replies that she had nothing new to report. He had not heard from her, or anyone else at the NSC, since May 7, until I received your letter two days ago.

In light of the foregoing, there can be no serious dispute that Ambassador Bolton discharged in good faith any duty, contractual or otherwise, he had to undertake the prepublication-review process. The process was exhaustive, involving innumerable, often picayune changes to his manuscript. It required multiple delays in the publication date for the book, which Ambassador Bolton accommodated to allow the prepublication-review process to continue. It ended with the career professional in charge of the prepublication-review process at NSC determining that the manuscript contained no classified information and that no further changes to the manuscript were required. And it continued for four months – with Ambassador

John A. Eisenberg  
June 10, 2020  
Page 5 of 5

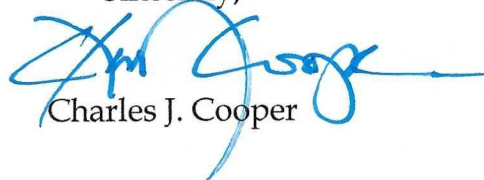
Bolton's full cooperation—even though the President repeatedly made clear throughout the review that he would seek to block the book's publication. Ambassador Bolton has fulfilled any lawful obligations he had under his nondisclosure agreements or otherwise.

Again, your June 8 letter was the first communication we have received from the White House (including from Ms. Knight) concerning the Ambassador's manuscript since May 7, and it is the first time anyone from the White House has suggested that any remaining information in the book is classified since Ms. Knight signed off on the manuscript on April 27. This last-minute allegation of classified information, coming as it does after weeks of silence from the NSC despite Ambassador Bolton's urgent inquiries, after the conclusion of an intensive four-months-long review, and—as you acknowledge—only after press reports alerted you that the Ambassador's book would be published on June 23, is a transparent attempt on the part of the White House to use national security concerns as a pretext to censor, or at least indefinitely delay, Ambassador Bolton's constitutional right to speak on matters of the utmost public import. The attempt to suppress Ambassador Bolton's book is a clear violation of the First and Fifth Amendments and the covenant of good faith and fair dealing governing the nondisclosure agreements.

It also, as a practical matter, comes too late. In reliance on Ms. Knight's assurances that his manuscript contained no classified information, that she had no further changes to his manuscript, and that she would attempt to deliver promptly the pro-forma closing letter, and after hearing *nothing* for weeks in response to his urgent requests for the closing letter, Ambassador Bolton and his publisher, Simon & Schuster, moved forward with publication of his book. The book has now been printed, bound, and shipped to distributors across the country. Ambassador Bolton has no authority to stop the book from being made available to the public on June 23.

I trust that this will conclude the matter.

Sincerely,



Charles J. Cooper

# Exhibit Q

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

June 11, 2020

Charles J. Cooper  
Cooper & Kirk, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

I was shocked and dismayed to learn from your letter of June 10, 2020, that—in brazen disregard of his obligations under his nondisclosure agreements and applicable law—your client has already provided his manuscript to a publisher, which has now printed, bound, and shipped copies to distributors across the country. Your client is well aware that the manuscript still contains classified information, because, among other things, it includes information that he himself classified and designated for declassification only after the lapse of twenty-five years. He is also well aware that the prepublication review process was still ongoing and that he never received clearance to disseminate the manuscript in its current form to *anyone* who was not authorized to handle classified information. You expressly admit that you have received no written prepublication clearance from the National Security Council. To the contrary, your client was repeatedly warned, in writing, that he was not authorized to publish the manuscript and that the process remained ongoing. Any suggestion that your client believed he had completed the prepublication process is preposterous.

By authorizing the publisher to proceed, your client has plainly violated both the classified information nondisclosure agreements that he signed and applicable law, and has betrayed his obligations to the Nation in a manner that threatens to cause significant harm to the national security of the United States. Your client is well aware that publicizing information that he learned when he served as a principal national security official would aid our Nation's adversaries. Yet he was willing to sell the Nation's secrets for a book contract. At this point, your client must do everything in his power to prevent further dissemination of the manuscript until the classified information can be removed. Your client's refusal to do so would only prove further that he is acting in his own personal interest without concern for the harm that he is causing to our Nation.

I also write to correct some of the more serious mischaracterizations and falsehoods in your letter.

**First**, the NSC never represented that “there were no remaining issues of classified information in [your client's] manuscript” or that “no further changes to the manuscript were required.”<sup>1</sup> To the contrary, Ms. Knight repeatedly explained that the prepublication process remains ongoing

---

<sup>1</sup> Letter from Charles J. Cooper to John A. Eisenberg at 1, 4 (June 10, 2020) (June 10 Letter).

and that until that process is complete and your client receives the necessary authorization at its conclusion, he may not publish or disseminate the manuscript.<sup>2</sup>

**Second**, the NSC did not advise your client that it had provided its “last edit” for the prepublication process on April 27, 2020.<sup>3</sup> In fact, even after the April 27, 2020 exchange, your client repeatedly reached out to NSC to seek “news” regarding the progress of the prepublication process. Subsequently, on April 28 and again on May 7, your client was explicitly informed that the “process remains ongoing.”<sup>4</sup>

**Third**, you suggest that NSC needed to conclude the entire review process within 30 working days of your client’s first submission.<sup>5</sup> As you are well aware, that claim is absurd. The relevant nondisclosure agreement provides that NSC has 30 working days to *respond* to the submission. And we did.<sup>6</sup> But nothing in the nondisclosure agreement requires the prepublication process to *conclude* within 30 working days or any other set period of time.<sup>7</sup> The length of the process depends on a host of factors, including the volume and type of information contained in the draft. In this case, your client’s manuscript was roughly 500 pages, and your client knowingly included voluminous amounts of classified information in it. As a result, it has required substantial effort to assess the full extent of the classified information contained within it to ensure that it is removed.

**Fourth**, your self-serving insinuations that the NSC review process has been directed at anything other than a good faith effort to protect national security information is offensive. Your client has taken classified information, including some that he himself classified, and sold it to the highest bidder in an attempt to make a personal profit from information that he held in trust as a public servant—and has done so without regard for the harm it would do to the national security

---

<sup>2</sup> See, e.g., Letter from Ellen J. Knight to Charles J. Cooper at 2 (Feb. 24, 2020) (“Please note the prepublication review remains in process, and *your client may not publish or further disseminate the manuscript or any of its contents until authorized.*”) (Emphasis added); Email from Ellen J. Knight to Charles J. Cooper (March 27, 2020) (“I must reiterate that the prepublication review remains in process. Even after making the edits, you are not authorized to publish or further disseminate the manuscript or its contents *until expressly given clearance by me to do so.*”) (Emphasis added); Email from Ellen J. Knight to Charles J. Cooper (May 7, 2020) (“I do not have any new information to provide at this time. *The process remains ongoing.* I will reach out as soon as there is an update to provide.”) (Emphasis added.).

<sup>3</sup> June 10 Letter at 4.

<sup>4</sup> Email from Ellen J. Knight to John R. Bolton (April 28, 2020); Email from Ellen J. Knight to John R. Bolton (May 7, 2020).

<sup>5</sup> June 10 Letter at 2.

<sup>6</sup> See Letter from Ellen J. Knight to Charles J. Cooper (Jan. 23, 2020) (“Based on our preliminary review, the manuscript appears to contain significant amounts of classified information.”); Letter from Ellen J. Knight to Charles J. Cooper at 1 (Feb. 7, 2020) (“In the meantime, your client has a duty not to publish or otherwise disclose the manuscript or any of its underlying information until he has addressed our concerns and received authorization to do so from our office.”).

<sup>7</sup> See Sensitive Compartmented Information Nondisclosure Agreement Between John Robert Bolton and the United States § 5 (April 5, 2018) (“I further understand that the Department or Agency to which I have made a submission will . . . *make a response* to me within a reasonable time, not to exceed 30 working days from date of receipt.”) (Emphasis added.).



of the United States. The NSC's sole interest in this matter is to protect the national security of the United States.

Although your client has plainly placed personal profit ahead of duty to country at this point, he still has binding obligations under the nondisclosure agreements he signed and applicable law. He is under a continuing obligation to prevent the unauthorized disclosure of classified information.<sup>8</sup> In addition, as your client acknowledged, "all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law."<sup>9</sup>

Accordingly, and for the reasons discussed above, your client remains under an obligation to stop the dissemination of the manuscript, which still contains classified information that belongs to the United States Government, the unauthorized disclosure of which could reasonably be expected to cause serious damage to national security. Please be advised that we have also referred this matter to the Department of Justice for appropriate action.

Please confirm immediately that your client will take all actions necessary to halt dissemination of his manuscript.

Sincerely,



John A. Eisenberg  
Assistant to the President,  
Deputy Counsel to the President, and  
Legal Advisor to the National Security Council

---

<sup>8</sup> See, e.g., Classified Information Nondisclosure Agreement Between John Robert Bolton and the United States § 8 (April 5, 2018) ("Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.").

<sup>9</sup> *Id.* § 7.

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

<b>I. (a) PLAINTIFFS</b> United States of America  (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES)	<b>DEFENDANTS</b> John R. Bolton  COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <b>88888</b> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
---	--

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Daniel F. Van Horn Assistant United States Attorney 555 Fourth Street N.W., Washington, D.C. 20530 202-252-2506	ATTORNEYS (IF KNOWN) Charles J. Cooper Cooper & Kirk 1523 New Hampshire Ave, NW, Washington, DC 20036 202-220-9660
--	--

<b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY) <table style="width:100%;"> <tr> <td><input checked="" type="radio"/> 1 U.S. Government Plaintiff</td> <td><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input type="radio"/> 2 U.S. Government Defendant</td> <td><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</td> </tr> </table>	<input checked="" type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)	<input type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b> <table style="width:100%;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
<input checked="" type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)																												
<input type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)																												
	PTF	DFT		PTF	DFT																								
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4																								
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5																								
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																								

**IV. CASE ASSIGNMENT AND NATURE OF SUIT**

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> <b>C. Administrative Agency Review</b> <input type="checkbox"/> 151 Medicare Act  <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*
---	--	--	--

<input type="radio"/> <b>E. General Civil (Other)</b>		OR	<input type="radio"/> <b>F. Pro Se General Civil</b>	
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement  <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609  <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)	

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input checked="" type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input checked="" type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge  
  8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 28 U.S.C. 1345 - United States as Plaintiff

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: June 16, 2020	SIGNATURE OF ATTORNEY OF RECORD: /s/ Daniel F. Van Horn
---------------------	---

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

United States of America

Plaintiff(s)

v.

John R. Bolton

Defendant(s)

Civil Action No. 20-1580

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) John R. Bolton
9107 Fernwood Rd.
Bethesda, MD 20817

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel F. Van Horn
Assistant United States Attorney
555 Fourth Street N.W., Washington, D.C. 20530
202-252-2506

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 20-1580

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

United States of America

Plaintiff(s)

v.

John R. Bolton

Defendant(s)

Civil Action No. 20-1580

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) John R. Bolton
9107 Fernwood Rd.
Bethesda, MD 20817

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel F. Van Horn
Assistant United States Attorney
555 Fourth Street N.W., Washington, D.C. 20530
202-252-2506

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



ANGELA D. CAESAR, CLERK OF COURT

/s/ Simone Bledsoe

Signature of Clerk or Deputy Clerk

Date: 06/17/2020

Civil Action No. 20-1580

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT AND BANKRUPTCY COURTS  
FOR THE DISTRICT OF COLUMBIA**

*ANGELA D. CAESAR*  
*Clerk of Court*

**NOTICE OF RIGHT TO CONSENT TO TRIAL  
BEFORE A UNITED STATES MAGISTRATE JUDGE**

The substantial criminal caseload in this Court and the requirements of the criminal Speedy Trial Act frequently result in the delay in the trial of civil cases. Aware of the hardship and expense to the parties, counsel, and witnesses caused by the delays which are beyond the control of the Court, this notice is to advise you of your right to trial of your case by a United States Magistrate Judge. By statute, 28 USC §636(c), Fed.R.Civ.P. 73 and Local Civil Rule 73.1, the parties, by consent, can try their case by means of a jury trial or bench trial before a United States Magistrate Judge. Appeals from judgments and final orders are taken directly to the United States Court of Appeals for the District of Columbia Circuit, in the same manner as an appeal from a judgment of a United States District Judge in a civil case.

**WHAT IS THE PROCEDURE?**

One of the matters you are required to discuss at the meet-and-confer conference mandated by Local Civil Rule 16.3 is whether the case should be assigned to a United States Magistrate Judge for all purposes, including trial

All parties must consent before the case is assigned to a Magistrate Judge for trial. You may consent at any time prior to trial. If you expressly decline to consent or simply fail to consent early in the case, you are not foreclosed from consenting later in the case. However, a prompt election to proceed before a Magistrate Judge is encouraged because it will facilitate a more orderly scheduling of the case.

Counsel for the plaintiff has been furnished a copy of the "Consent to Proceed Before a United States Magistrate Judge for all Purposes" form. If and when the form is executed, your response should be made to the Clerk of the United States District Court only.

**WHAT IS THE ADVANTAGE?**

The case will be resolved sooner and less expensively. The earlier the parties consent to assigning the case to a Magistrate Judge the earlier a firm and certain trial date can be established, even if the case is to be tried to a jury.

Upon the filing of the consent form the case will be randomly assigned for all purposes to a Magistrate Judge.



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

\_\_\_\_\_  
*Plaintiff*

v.

Civil Action No.

\_\_\_\_\_  
*Defendant*

**NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE**

*Notice of a magistrate judge's availability.* A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. Once judgment is entered an appeal must be taken to the U.S. Court of Appeals for the D.C. Circuit and not to the United States District Judge. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

*Consent to a magistrate judge's authority.* The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

<i>Parties' printed names</i>	<i>Signatures of parties or attorneys</i>	<i>Dates</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Note: Return this form to the clerk of court only if you are consenting to the exercise jurisdiction by a United States magistrate judge. Do not return this form to a judge.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 20-1580 (RCL)
	)	
JOHN R. BOLTON,	)	
	)	
Defendant.	)	
_____	)	

**EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER  
AND MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff, the United States of America, by and through its attorneys, respectfully files this Emergency Application for Temporary Restraining Order and Motion for Preliminary Injunction (“Application”) against Defendant John R. Bolton seeking to enjoin publication of a book containing classified information. Prior to filing this Application, and consistent with Local Civil Rule 65.1(a), the United States contacted counsel for Mr. Bolton, provided him notice that the United States would be filing this Application today, and sent him copies of all papers submitted with the United States’ complaint in this action and the materials submitted herewith (except for the classified declarations noted below). The United States understands the Mr. Bolton opposes the relief sought by this Application.

The United States respectfully requests that the Court schedule a hearing on this Application at the Court’s earliest convenience on Friday, June 19, 2020, because Mr. Bolton’s book is scheduled to be released on Tuesday, June 23, 2020.

In support of this Application, Plaintiff refers the Court to (1) the Complaint and relevant attachments thereto; (2) Plaintiff’s Memorandum of Law In Support of Its Application for Temporary Restraining Order and Preliminary Injunction, attached to this Application; (3) the

unclassified declarations attached to this Application; and (4) the classified declarations of Michael Ellis and William R. Evanina, which have been lodged with the Court *ex parte* for purposes of *in camera* review. A proposed order is attached for the Court's consideration.

Dated: June 17, 2020

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

MICHAEL SHERWIN  
Acting United States Attorney

ETHAN P. DAVIS  
Principal Deputy Assistant Attorney General

DAVID M. MORRELL  
Deputy Assistant Attorney General

ALEXANDER K. HAAS  
Director  
Federal Programs Branch

*/s/ Daniel F. Van Horn*

---

Daniel F. Van Horn (D.C. Bar. No. 924092)  
Assistant United States Attorney  
555 Fourth Street N.W., Room E4226,  
Washington, D.C. 20530  
Tel: 202-252-2506  
Email: daniel.vanhorn@usdoj.gov

*/s/ Michael J. Gerardi*

---

Michael J. Gerardi (D.C. Bar No. 1017949)  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street NW, Room 11514  
Washington, D.C. 20005  
Tel: (202) 616-0680  
Fax: (202) 616-8460  
E-mail: michael.j.gerardi@usdoj.gov

*Counsel for Plaintiff*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

<hr/>		)	
UNITED STATES OF AMERICA,		)	
		)	
Plaintiff,		)	
		)	
v.		)	Civil Action No. 20-1580 (RCL)
		)	
JOHN R. BOLTON,		)	
		)	
Defendant.		)	
<hr/>		)	

**MEMORANDUM OF LAW IN SUPPORT OF THE UNITED STATES' APPLICATION  
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**TABLE OF CONTENTS**

INTRODUCTION.....1

FACTUAL BACKGROUND.....1

    A. Defendant Assumed Statutory and Contractual Obligations Not to Disclose Classified Information, to Submit Manuscripts for Prepublication Review, and to Abide by the Results of Such Review.....2

    B. Defendant Wrote a Book Subject to Prepublication Review, Submitted it for Prepublication Review, and Did Not Receive Written Authorization to Publish the Book, which Continues to Contain Classified Information.....4

    C. Without Written Authorization and Without Notice, Defendant Submitted His Book to Simon & Schuster For Publication Containing Classified Material.....6

LEGAL STANDARD.....8

ARGUMENT.....9

    I. The Government Is Likely to Succeed on the Merits.....9

        A. By Publishing Classification Information Without Written Approval After Completion Of Prepublication Review, Defendant Has Breached His Secrecy Obligations To the Federal Government..... 10

            1. Defendant Breached His SF 4414 Agreement by Walking Away From the Pre-Publication Process Before It Was Complete.....12

            2. Defendant Breached His SF 312 Agreement by Disclosing Classified Information Without Prior Approval.....14

        B. Courts Consistently Have Upheld, Over First Amendment Objections, the Government’s Right to Enforce Secrecy Agreements Like Those Defendant Signed.....15

        C. Defendant Lacks Any Valid Defenses, Contractual or Otherwise, to Enforcement of His Secrecy Obligations.....19

    II. The United States Will Be Irreparably Harmed Without an Injunction.....23

    III. The Balance of the Equities and the Public Interest Factors Also Weigh in Favor of an Injunction.....25

    IV. The Injunction Should Provide Full Relief to the United States.....27

CONCLUSION.....30

**TABLE OF AUTHORITIES**

**Cases**

*Aevoe Corp. v. AE Tech Co.*, 727 F.3d 1375 (Fed. Cir. 2013) ..... 28, 29

*Alfred A. Knopf, Inc. v. Colby*, 509 F.2d 1362 (4th Cir. 1975) ..... 18

*Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986)..... 28

*Armenian Assembly of America v. Cafesjian*, 692 F. Supp. 2d 20 (D.D.C. 2010) ..... 10

*Bartnicki v. Vopper*, 532 U.S. 514 (2001)..... 28

*Branzburg v. Hayes*, 408 U.S. 665 (1972)..... 28

*Davis v. PBGC*, 571 F.3d 1288 (D.C. Cir. 2009) ..... 8

*Dep’t of Health & Human Servs. v. Alley*, 556 U.S. 1149 (2009) ..... 24

*Dep’t of Navy v. Egan*, 484 U.S. 518 (1988) ..... 12

*Edgar v. Coats*, No. GJH-19-985, 2020 WL 1890509 (D. Md. Apr. 16, 2020)..... 22

*Elec. Privacy Info. Ctr. v. FTC*, 844 F. Supp. 2d 98 (D.D.C. 2012) ..... 8

*Fox TV Stations, Inc. v. FilmOn X LLC*, 966 F. Supp. 2d 30 (D.D.C. 2013) ..... 8

*In re Navy Chaplaincy*, 738 F.3d 425 (D.C. Cir. 2013)..... 8

*In re Papandreou*, 139 F.3d 247 (D.C. Cir. 1998)..... 23

*John Doe Agency v. John Doe Corp.*, 488 U.S. 1306 (1989) ..... 23

*Johnson v. Zerbst*, 304 U.S. 458 (1938). ..... 21

*Marshak v. Treadwell*, 595 F.3d 478 (3d Cir. 2009) ..... 28

*\*McGehee v. Casey*,718 F.2d 1137 (D.C. Cir. 1983). ..... 18, 20, 22

*Morgan Stanley DW Inc. v. Rothe*, 150 F. Supp. 2d 67 (D.D.C. 2001))..... 8

*New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam)..... 18

*Nken v. Holder*, 556 U.S. 418 (2009). ..... 25

*People for the Am. Way Found. v. U.S. Dep’t of Educ.*, 518 F. Supp. 2d 174 (D.D.C. 2007) ..... 24

*Providence Journal v. FBI*, 595 F.2d 889 (1st Cir. 1979) ..... 23, 24

*Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945) ..... 28

*Savarese v. Agriss*, 883 F.2d 1194 (3d Cir. 1989) ..... 27

*Singh v. Carter*, 185 F. Supp. 3d 11 (D.D.C. 2016) ..... 8

*\*Snepp v. United States*, 444 U.S. 507 (1980) ..... passim

*Stillman v. CIA*, 319 F.3d 546 (D.C. Cir. 2003) ..... 15, 18, 21

*Stillman v. CIA*, 517 F. Supp. 2d 32 (D.D.C. 2007) ..... 17

*U.S. Ass’n of Reptile Keepers, Inc. v. Jewell*, 103 F. Supp. 3d 133 (D.D.C. 2015)..... 25

*United States v. Aguilar*, 515 U.S. 593 (1995) ..... 16

*United States v. Bin Laden*, 58 F. Supp. 2d 113, 122 (S.D.N.Y. 1999)..... 25

*United States v. Hashmi*, 621 F. Supp. 2d 76 (S.D.N.Y. 2008)..... 25

*\*United States v. Marchetti*, 466 F.2d 1309 (4th Cir. 1972), ..... passim

*United States v. Pappas*, 94 F.3d 795 (2d Cir.1996) ..... 15

*United States v. Ring*, 628 F. Supp. 2d 195 (D.D.C. 2009) ..... 10

*United States v. Silvano*, 812 F.2d 754 (1st Cir.1987)..... 10

*United States v. Snepp*, 897 F.2d 138 (4th Cir. 1990) ..... 17, 22

*Veit & Co. v. United States*, 46 Fed. Cl. 30, (2003)..... 22

*Wilson v. C.I.A.*, 586 F.3d 171 (2d Cir. 2009) ..... 15, 20, 21

*Winter v. NRDC, Inc.*, 555 U.S. 7 (2008). ..... 8, 26

**Constitutional Provisions**

U.S. Const., Art. II, § 2 ..... 12

**Rules**

Federal Rule of Civil Procedure 65(d)(2), ..... 27

**Other Authorities**

Executive Order 13526 ..... 4

Intelligence Community Directive 703 (June 21, 2013),  
<https://www.dni.gov/files/documents/ICD/ICD%20703.pdf>..... 2

John Bolton, “Edward Snowden’s leaks are a grave threat to US national security,” The  
Guardian, <https://www.theguardian.com/commentisfree/2013/jun/18/edward-snowden-leaks-grave-threat> (June 18, 2013). ..... 25



## **INTRODUCTION**

A National Security Advisor to a sitting President possesses national security information like few others. Were such a person to offer such information for sale to foreign governments, all would readily acknowledge the wrongdoing involved. That is why, when similar risks occur from the proposed dissemination of books, such individuals are required by contractual and fiduciary obligations to submit their manuscripts for prepublication review and not to publish them without having received written approval to do so. In this case, defendant John Bolton has not received any such approval, but unilaterally has decided to abandon the prepublication review process that he agreed to and instead plans to disseminate classified information as he sees fit in order to profit from his book. To be clear: Defendant's manuscript still contains classified information, as confirmed by some of the Government's most senior national-security and intelligence officials—the Director of National Intelligence, the Director of the National Security Agency (“NSA”), the Director of the National Counterintelligence and Security Center, and the National Security Counsel's (“NSC's”) Senior Director for Intelligence Programs. Disclosure of the manuscript will damage the national security of the United States. The United States asks this Court to hold Defendant to the legal obligations he freely assumed as a condition of receiving access to classified information and prevent the harm to national security that will result if his manuscript is published to the world.

## **FACTUAL BACKGROUND**

Defendant is an experienced public official, with nearly four decades of service in positions of public trust in the United States Government. He is an attorney, having graduated from Yale Law School, who previously served as, among other things, General Counsel and Assistant Administrator for the U.S. Agency for International Development; Assistant Attorney General at

the Department of Justice; Assistant Secretary and Under Secretary at the Department of State; and as U.S. Ambassador to the United Nations. This case arises out of Defendant’s most recent service—his appointment by the President as National Security Advisor on April 9, 2018, and his voluntary acceptance of that appointment. Compl. ¶ 9. As National Security Advisor, Defendant directed and supervised the work of the National Security Council staff on behalf of the President. Defendant knew he would be privy to and responsible for safeguarding the Nation’s most sensitive national-security matters, and that his responsibilities would entail access to sensitive classified materials of the highest order. Compl. ¶ 21. The President entrusted this position to Defendant and gave him access to classified information so that he could serve the Nation and carry out his responsibilities as National Security Advisor.

**A. Defendant Assumed Statutory and Contractual Obligations Not to Disclose Classified Information, to Submit Manuscripts for Prepublication Review, and to Abide by the Results of Such Review.**

When he assumed the role of National Security Advisor, and in consideration for his appointment and access to classified information, Defendant entered into a series of agreements setting forth binding nondisclosure and prepublication review obligations. In particular, he executed a Classified Information Nondisclosure Agreement, titled Standard Form 312 (“SF 312”), and two Sensitive Compartmented Information (“SCI”) Nondisclosure Agreements,<sup>1</sup> each titled Standard Form 4414 (“Form 4414”).<sup>2</sup> By signing the SF 312, Defendant acknowledged that “the unauthorized disclosure . . . of classified information by me could cause damage or irreparable

---

<sup>1</sup> SCI is “[a] subset of [Classified National Intelligence] concerning or derived from intelligence sources, methods or analytical processes that is required to be protected within formal access control systems established by the [Director of National Intelligence].” Intelligence Community Directive 703 (June 21, 2013), <https://www.dni.gov/files/documents/ICD/ICD%20703.pdf>

<sup>2</sup> These agreements between Defendant and the United States are included in Exhibit A to the Declaration of Matthias Mitman (“Mitman Decl.”).

injury to the United States” and agreed “never [to] divulge classified information” without “prior written notice of authorization from” the relevant government agency. SF 312 ¶ 3. By signing the Form 4414, he similarly promised “never [to] divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization.” Form 4414 ¶ 3. In both agreements, Defendant acknowledged the disclosure of classified information “may constitute a violation, or violations, of United States criminal laws.” SF 312 ¶ 4; Form 4414 ¶ 6. He further agreed that he would “submit for security review . . . any writing or other preparation in any form . . . that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure.” Form 4414 ¶ 4. Defendant also committed “to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI,” and “not [to] disclose the contents of such preparation with, or show it to, anyone who is not authorized to have access to SCI until I have received written authorization[.]”

*Id.* In the event Defendant was “uncertain about the classification status of information,” Defendant agreed that he would be “required to confirm from an authorized official that the information is unclassified before [he could] disclose it” to an unauthorized recipient. SF 312 ¶ 3. These obligations were reinforced in multiple post-employment memoranda. Mitman Decl., Exh. B, Memo. From S. Gast to J. Bolton, Sept. 13, 2019; Exh. C, Letter from J. Eisenberg to J. Bolton, Sept. 10, 2019.

When a former NSC employee, like Defendant, submits a manuscript for prepublication review pursuant to these obligations, the proposed publication is reviewed by the Records Access and Information Security Management Directorate at NSC. Compl. ¶ 25. NSC staff reviews the

submitted written work, requests removal of any classified information (or suggests edits to make otherwise classified language unclassified), and concludes the process by providing written authorization for the former employee to disseminate the revised materials once all classified information has been removed. Compl. ¶¶ 26-28. NSC staff may also work with the former employee on an iterative basis to ensure the final product is free of classified information. Compl. ¶ 27. The duration of the review can depend on many factors, such as the length of the written work, the amount of classified information, the sensitivity of classified information included, and how recent the information might be. Compl. ¶ 26.

**B. Defendant Wrote a Book Subject to Prepublication Review, Submitted it for Prepublication Review, and Did Not Receive Written Authorization to Publish the Book, which Continues to Contain Classified Information.**

Defendant's service as National Security Advisor concluded on September 10, 2019. Compl. ¶ 9. By November 9, 2019, Defendant had a book deal with publisher Simon & Schuster for the rights to a memoir of his time in the White House. Compl. ¶ 23. Public reports suggest that Defendant received approximately \$2 million in the deal. *Id.* By late January 2020, Defendant's book was being marketed for pre-sale under the title *The Room Where It Happened*, Compl. ¶ 34—in apparent reference to the song, “The Room Where It Happens,” from the hit Broadway musical *Hamilton*. At the same time, the *New York Times* published an article that purported to describe the contents of Defendant's manuscript. *See* Compl. ¶ 35.

Four weeks before this media surge, on December 30, 2019, counsel for Defendant initiated the prepublication review process by submitting a hard copy of Defendant's manuscript to Ellen Knight, the Senior Director for Records Access and Information Security Management Directorate at the NSC. Mitman Decl., Exh. D, Letter from C. Cooper to E. Knight, Dec. 30, 2019. Ms. Knight is an Original Classification Authority, meaning she is “authorized to classify information in the first instance.” Executive Order 13,526, § 6.1(gg). After conducting an initial review of the

manuscript, on January 23, 2020, Ms. Knight informed Defendant, through his counsel, that the manuscript “appears to contain significant amounts of classified information,” including information classified at the Top Secret level. Mitman Decl., Exh. E, Letter from E. Knight to C. Cooper, Jan. 23, 2020. Ms. Knight thus instructed Defendant that his manuscript “may not be published or otherwise disclosed without the deletion of this classified information.” *Id.*

Over the next few months, Ms. Knight worked with Defendant to review his manuscript and to excise classified information. *See* Compl. ¶¶ 32-46. On multiple occasions, Defendant was told that he would need final written approval before he could proceed with publication.<sup>3</sup> By April 27, Ms. Knight had completed her review and was of the view that the manuscript draft did not contain classified information. Compl. ¶ 46; Unclassified Declaration of Michael Ellis (“Ellis Decl.”) ¶ 9. Ms. Knight did not, however, provide Defendant with written authorization to proceed with publishing the manuscript. *See* Ellis Decl. ¶ 13. To the contrary, on May 7, 2020, Ms. Knight informed Defendant that “[t]he process remains ongoing” and that her staff would “reach out as soon as there is an update to provide.” Mitman Decl., Exh. I, E-mail from E. Knight to J. Bolton, May 7, 2020. This was Ms. Knight’s last communication with Defendant.

In the meantime, after Ms. Knight’s review of the draft manuscript, the Assistant to the President for National Security Affairs (“APNSA”) reviewed the manuscript and concluded that it still appeared to contain classified information. Ellis Decl. ¶ 10. The APNSA asked the NSC’s

---

<sup>3</sup> Mitman Decl., Exh. F, Letter from K. Knight to C. Cooper, Feb. 7, 2020, at 1 (“In the meantime, your client has a duty not to publish or otherwise disclose the manuscript or any of its underlying information until he has addressed our concerns and received authorization to do so from our office.”); Mitman Decl., Exh. G, Letter from K. Knight to C. Cooper, Feb. 24, 2020, at 2 (“Please note that the prepublication review remains in process, and your client may not publish or further disseminate the manuscript or any of its contents until authorized.”); *Id.*, Exh. H, E-Mail from K. Knight to J. Bolton, Mar. 27, 2020 (“I must reiterate that the prepublication review remains in process. Even after making the edits, you are not authorized to publish or further disseminate the manuscript or its contents until expressly given clearance by me to do so.”).

Senior Director for Intelligence Programs, Michael Ellis, to conduct a further review of the manuscript and on May 2, 2020, Mr. Ellis commenced that review. Ellis Decl. ¶¶ 10-11. Like Ms. Knight, Mr. Ellis is an Original Classification Authority. Ellis Decl. ¶ 8. Mr. Ellis completed his initial review of the manuscript on June 9. Ellis Decl. ¶ 12. Mr. Ellis concluded that the manuscript contains information subject to both the Standard Form 312 and the Form 4414 signed by Defendant, and that the revisions already made to the manuscript had not removed all classified information, including information classified at the Confidential, Secret, Top Secret, and Top Secret/SCI levels. Ellis Decl. ¶¶ 19, 20. In Mr. Ellis’s judgment, disclosure of certain passages in the manuscript “will damage the national security of the United States.” Ellis Decl. ¶ 22. A description of examples of classified information that remains in the manuscript—and the basis for Mr. Ellis’s determination that their disclosure reasonably could be expected to cause damage to national security—appears in the classified Declaration of Michael Ellis, which will be made available to the Court solely for *in camera*, *ex parte* review. *See* Classified Decl. of Michael Ellis (lodged *ex parte* with the Court).

Mr. Ellis’s conclusion is shared by other senior intelligence officials. John L. Ratcliff, the Director of National Intelligence, has concluded “that the[] passages of the manuscript” reviewed by Mr. Ellis “contain classified national security information” and “if made public, will damage national security.” Decl. of John L. Ratcliff (“Ratcliff Decl.”) ¶¶ 6-7. William R. Evanina, the Director of the National Counterintelligence and Security Center, concluded “that the information contained in the passages I have reviewed is precisely what foreign adversaries’ intelligence services seek to target and collect,” and “unauthorized disclosure of this information could reasonably be expected to enable foreign threat actors to cause serious, and sometimes grave, damage to our national and economic security.” Decl. of William R. Evanina ¶ 6; *see also*

Classified Decl. of William R. Evanina (lodged *ex parte* with the Court). And Paul M. Nakasone, the Director of the National Security Agency and a general in the U.S. Army, concluded that disclosure of some of the classified information contained in the manuscript “could result in the permanent loss of a valuable [signal intelligence] source and cause irreparable damage to the U.S. [singal intelligence] system.” Decl. of Paul M. Nakasone (“Nakasone Decl.”) ¶ 8.

Neither Ms. Knight, nor Mr. Ellis, nor any other NSC official provided written authorization for Defendant to proceed with publication of his manuscript. *See* Ellis Decl. ¶ 13.

**C. Without Written Authorization and Without Notice, Defendant Submitted His Book to Simon & Schuster For Publication Containing Classified Material.**

The Government learned through June 7, 2020 press reports that Defendant already had submitted his manuscript for publication and that he and Simon & Schuster were “planning to publish even if the White House does not give publication approval.” Compl. ¶ 53; Mitman Decl., Exh. J, Letter from J. Eisenberg to C. Cooper, June 8, 2020. On June 8, 2020, the NSC Legal Adviser wrote to Defendant, through Defendant’s counsel, reminding him that he was not authorized to publish his book because it contained classified material and because he had not yet completed prepublication review. Mitman Decl., Exh. J. The NSC Legal Adviser further indicated that the NSC would provide Defendant with a copy of Defendant’s manuscript, with redactions for classified information, on or before June 19, 2020. *Id.* Two days later, on June 10, Defendant’s counsel informed the Government that Defendant “and his publisher, Simon & Schuster, moved forward with publication” scheduled for June 23, 2020, and that the book had already been “printed, bound, and shipped to distributors across the country.” Compl. ¶ 55; Mitman Decl., Exh. K, Letter from C. Cooper to J. Eisenberg, June 10, 2020.

On June 11, 2020, the NSC Legal Advisor wrote to Defendant’s counsel, emphasizing that “the manuscript still contains classified information, because, among other things, it includes

information that he himself classified and designed for declassification only after the lapse of twenty-five years.” Mitman Decl., Exh. L, Letter from J. Eisenberg to C. Cooper, June 11, 2020. The Legal Advisor further reminded Defendant that he “remains under an obligation to stop the dissemination of the manuscript, which still contains classified information that belongs to the United States Government, the unauthorized disclosure of which could reasonably be expected to cause serious damage to national security.” *Id.* This suit followed.

On June 16, 2020—three days in advance of the June 19 date Mr. Eisenberg had indicated in his June 8 letter—Mr. Ellis sent Defendant a complete marked copy of the current version of the manuscript identifying passages that he had determined, based on his initial review, appeared to contain classified information. He offered to meet with Defendant “to discuss the removal of classified information from the manuscript.”

### LEGAL STANDARD

“To obtain a preliminary injunction, the movant must establish that: (a) it is likely to succeed on the merits; (b) it is likely to suffer irreparable harm in the absence of preliminary relief; (c) the balance of equities tips in its favor; and (d) an injunction is in the public interest.” *Fox TV Stations, Inc. v. FilmOn X LLC*, 966 F. Supp. 2d 30, 37 (D.D.C. 2013) (citing *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008)). “The D.C. Circuit has further instructed that ‘the movant has the burden to show that all four factors . . . weigh in favor of the injunction.’” *Id.* (quoting *Davis v. PBGC*, 571 F.3d 1288, 1292 (D.C. Cir. 2009)).<sup>4</sup> “The court considers the same factors in ruling on a motion for a temporary restraining order and a motion for preliminary injunction.” *Elec.*

<sup>4</sup> The D.C. Circuit “has, in the past, followed the ‘sliding scale’ approach to evaluating preliminary injunctions . . . . The continued viability of the sliding scale approach is highly questionable, however, in light of the Supreme Court’s holding in *Winter*[.]” *Singh v. Carter*, 185 F. Supp. 3d 11, 16 (D.D.C. 2016) (citing *In re Navy Chaplaincy*, 738 F.3d 425, 428 (D.C. Cir. 2013)); *see also Davis v. PBGC*, 571 F.3d 1288, 1295-96 (D.C. Cir. 2009) (Kavanaugh, J., concurring).



*Privacy Info. Ctr. v. FTC*, 844 F. Supp. 2d 98, 101 (D.D.C. 2012) (quoting *Morgan Stanley DW Inc. v. Rothe*, 150 F. Supp. 2d 67, 72 (D.D.C. 2001)).

## ARGUMENT

### **I. The Government Is Likely to Succeed on the Merits.**

The basis for preliminary relief in this matter is straightforward: Defendant, who as National Security Advisor enjoyed access to the most sensitive information in the Government's possession, has decided to publish a work containing classified information without completing prepublication review and without receiving written authorization to publish. This action is contrary to Defendant's fiduciary duties toward the Government, and puts Defendant in breach of his non-disclosure agreements. Defendant assumed the obligations in these agreements as a condition of both obtaining his employment in one of the most sensitive and important national security positions in the United States Government and of gaining access to the highly classified information necessary to perform his job. These obligations are not mere bureaucratic contrivances; indeed, Defendant acknowledged that the "unauthorized disclosure of classified information by me may constitute a violation, or violations, of United States criminal laws." SF 312 ¶ 4; *see also* Form 4414 ¶ 6. The criminal penalties associated with unauthorized disclosure of classified information underscore the seriousness of the Defendant's commitments. *See, e.g.*, 18 U.S.C. §§ 641, 793, 794, 798, 952, 1924. Courts routinely enforce secrecy agreements between the United States and former Government personnel who, like Defendant, have been given access to classified information as a necessary part of their employment. The United States is therefore likely to succeed on its request for specific performance of his contractual and fiduciary obligations not to publish classified information without completing prepublication review and receiving written authorization to publish.

**A. By Publishing Classification Information Without Written Approval After Completion Of Prepublication Review, Defendant Has Breached His Secrecy Obligations To the Federal Government.**

As one of the most senior national security officials of the United States, Compl. ¶ 7, Defendant has a fiduciary relationship with the United States Government based on his placement in a position of trust and special confidence. *See United States v. Ring*, 628 F. Supp. 2d 195, 207 (D.D.C. 2009) (recognizing that a public official acts as ‘trustee for the citizens and the State . . . and thus owes the normal fiduciary duties of a trustee, e.g., honesty and loyalty’ to them”) (quoting *United States v. Silvano*, 812 F.2d 754, 759 (1st Cir.1987)); *Armenian Assembly of Am. v. Cafesjian*, 692 F. Supp. 2d 20, 43 (D.D.C. 2010) (recognizing protection of proprietary information as among fiduciary duties). The National Security Advisor to the President has unique access to classified information based on his position atop the NSC hierarchy, his responsibility to make recommendations to the President regarding national security and foreign policy, and his representation of the United States in its relations with other countries. Compl. ¶ 8. In this capacity, Defendant was entrusted with classified and SCI information that related to some of the most sensitive matters of national security, and Defendant owes to the United States a fiduciary duty of loyalty to protect from unauthorized disclosure classified information. This duty of loyalty includes his duty to submit to the United States Government for review any materials subject to his prepublication review obligations and to refrain from the dissemination of those materials or information unless and until the United States Government completes its prepublication review processes and affirmatively and expressly approves disclosure. *See Snepp*, 544 U.S. 515 n. 11.

At the heart of this case are the three confidentiality agreements Defendant executed to protect the classified information to which he gained access as the National Security Advisor to the President. While “the law would probably imply a secrecy agreement” where the information involved is “highly sensitive to the conduct of foreign affairs and the national defense,” *United*

*States v. Marchetti*, 466 F.2d 1309, 1316 (4th Cir. 1972), the duty of confidentiality undoubtedly arises where there is an express agreement. The three agreements entered into by Defendant included Classified Information Nondisclosure Agreement (a Standard Form 312 or SF 312), and two SCI Nondisclosure Agreements (titled a Standard Form 4414 or Form 4414). *See* Compl. at Exh. A (hereafter “NDAs”). Each of these NDAs was signed by Defendant at the White House in connection with his duties as National Security Advisor to the President. Compl. ¶ 11. Defendant reaffirmed his obligations when his employment as National Security Advisor ended, acknowledging that he understood that he continued to be “prohibited from disclosing any classified or confidential information,” and that he “may not use or disclose nonpublic information,” including information that is “confidential or classified.” Mitman Decl., Exh. B; *see also* Exh. C. Before Defendant signed this acknowledgment, the NSC Legal Advisor reminded Defendant that his obligations included the submission for “security review [of] . . . any writing or other material in any form that could contain classified information before” sharing that information with anyone. Mitman Decl., Exh. B.

As Defendant’s own conduct tacitly conceded, he was obligated to undertake the prepublication review process, and the contents of Defendant’s manuscript fall within the scope of the NDAs. *See* Ellis Decl. ¶¶ 19-20. The premise of Defendant’s book is that it is a “White House Memoir” recounting information from “The Room Where it Happened,” *i.e.*, material obtained by Defendant in the course of his employment as National Security Advisor, where he gained access to highly classified national security information. Compl. ¶ 34. Defendant apparently recognized that nothing about his position, his manuscript, his contract, or his separation from Government service exempted him from the routine obligation imposed on Government personnel to complete pre-publication review prior to disclosures like those Defendant seeks to make, and he initiated

the prepublication review process. Mitman Decl., Exh. D. Initial review of Defendant's manuscript identified numerous instances of classified information in various categories—so many instances, in fact, that a single four-hour meeting proved adequate to cover only three chapters in detail. Mitman Decl., Exh. G. In recognition of the need to revise his manuscript to protect classified information, Defendant then made edits and submitted revised manuscripts and pages in both March, 2020 and April, 2020. Compl. ¶ 45; Mitman Decl., Exh. H. Even after that, however, the draft manuscript still contains classified information, including information classified at the Secret and Top Secret/SCI levels. Ellis Decl. ¶ 19.

All of this demonstrates that the requirement of pre-publication review applies, and in that review, the authority to determine when review is complete rests with the Executive Branch, not with a self-serving, unilateral judgment by Defendant to withdraw from the review process. *See Dep't of Navy v. Egan*, 484 U.S. 518, 527 (1988) (the protection of classified information “is committed by law to the appropriate agency of the Executive Branch,” and “flows primarily from [a] constitutional investment of power in the President”) (citing U.S. Const., Art. II, § 2); *Marchetti*, 466 F.2d at 1317 (noting that burden is on the author, not the Government, to seek judicial review of prepublication process). As explained below, Defendant's decision to proceed with publication of classified material before completion of this process violated his ongoing contractual obligations to the Government.

**1. Defendant Breached His Form 4414 Agreement by Walking Away From the Pre-Publication Process Before It Was Complete**

Defendant's actions to date, including his unilateral decision to proceed with publication before receiving official authorization to do so, cannot be reconciled with the obligations imposed by his Form 4414. Indeed, as the unclassified Ellis Declaration explains, even after making changes to the manuscript, the latest manuscript contains information classified at the Top Secret/

SCI level and is subject to the Form 4414 signed by Defendant. *See* Ellis Decl. ¶¶ 19-20. Under that agreement, Defendant was required to “submit for security review” to the United States Government “any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that [he has] reason to believe are derived from SCI.” Form 4414 ¶ 4. He further agreed he “will not disclose the contents of such preparation with, or show it to, anyone who is not authorized to have access to SCI until [he had] received written authorization . . . that such disclosure is permitted.” *Id.*

Defendant is proceeding, and already has advanced substantially, on a course that defies his obligations to complete pre-publication review of, and obtain written approval to publish, his manuscript. As noted, Defendant tacitly acknowledged that his manuscript must be submitted for such review by commencing and participating in an iterative process to finalize a manuscript that did not disclose classified information. Mitman Decl., Exh. D. Defendant then decided to walk away from that process prior to completion, and to move forward with the printing and distribution of his book based only on edits provided to that point by the Government but without further edits that would be required to complete the pre-publication review, including a final, written authorization to proceed. Mitman Decl., Exh. K. This unilateral decision to disregard the final steps in the pre-publication review process and to publish without the required approval cannot be reconciled with Defendant’s contractual and fiduciary duties.

Defendant’s disregard for his obligations is underscored by how abruptly he shifted from participating in the pre-publication review process to deciding unilaterally—and without any notice to the Government—to defy that process and to publish his book before the process was complete. Defendant was participating in the pre-publication review process by submitting

changes to the manuscript based on feedback from the NSC’s review. Mitman Decl., Exh. L. On May 6, 2020—just ten days after his last submission—Defendant dispatched a follow-up inquiry to Ms. Knight, who responded that “[t]he process remains ongoing.” Mitman Decl., Exh. I. Defendant did not communicate further with the Government until after it had already been reported in the press that he had decided to release the book on June 23, without completing the review process. After the NSC Legal Advisor wrote to defendant’s counsel on June 8, Defendant informed the NSC, through counsel, that his book had already been “printed, bound, and shipped to distributors across the country.” Mitman Decl., Exh. K. By sharing his manuscript with his publisher—and preparing to share it with the world—before completing prepublication review, Defendant breached his contractual obligations to complete prepublication review.

**2. Defendant Breached His SF 312 Agreement By Disclosing Classified Information Without Prior Approval.**

Defendant has also violated his SF 312 agreement by proceeding with publication of his book without receiving appropriate authorization. Defendant acknowledged in that agreement that “the unauthorized disclosure . . . of classified information by me could cause damage or irreparable injury to the United States” and agreed “never [to] divulge classified information” without “prior written notice of authorization from” the relevant government agency. SF 312 ¶ 3. Defendant has violated that contractual duty by proceeding with publication of his book containing classified material without receiving written authorization. Moreover, Defendant was required “to confirm from an authorized official that [any other] information is unclassified” before disclosing such information whenever “[he is] uncertain about the classification status.” *Id.*, SF 312 ¶ 3.

Defendant has disregarded these requirements. As early as January 2020, it was reported that he had disseminated copies of his manuscript to members of the press—a manuscript Ms. Knight later concluded was rife with classified information, and that Defendant removed from the

manuscript at her request. Compl. ¶¶ 35-36. And even after Defendant made changes to the manuscript, it still contains classified information, including information classified at the Confidential, Secret, Top Secret, and Top Secret/SCI levels. *See* Ellis Decl. ¶ 19. This means that in some instances disclosure reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States. *Id.* Defendant nevertheless decided, on his own accord, not only again to share the manuscript with his publisher but to authorize its printing and distribution to the public. By so doing, Defendant has violated the obligations he accepted by signing the SF 312. Publication of the book in its current state would constitute additional unauthorized disclosures of classified information in violation of Defendant's SF 312 obligations.

**B. Courts Consistently Have Upheld, Over First Amendment Objections, the Government's Right To Enforce Secrecy Agreements Like Those Defendant Signed**

Nothing in the First Amendment prevents the United States from securing an injunction requiring a former high-ranking official with unique access to sensitive information, such as Defendant, to abide by the agreements he signed. It is settled law that restrictions on the publication of classified information are judicially enforceable. Where "a government employee signs an agreement not to disclose information properly classified pursuant to executive order, that employee 'simply has no first amendment right to publish' such information." *Wilson v. CIA*, 586 F.3d 171, 183 (2d Cir. 2009) (quoting *Stillman v. CIA*, 319 F.3d 546, 548 (D.C. Cir. 2003)). The Government is thus "entitled to enforce its agreements to maintain the confidentiality of classified information," *United States v. Pappas*, 94 F.3d 795, 801 (2d Cir.1996), without needing to comply with "the same stringent standards that would apply to efforts to impose restrictions on unwilling members of the public," *United States v. Aguilar*, 515 U.S. 593, 606 (1995).

The seminal case in this area is *Snepp v. United States*, 444 U.S. 507 (1980), which involved a former CIA agent who, in violation of his secrecy agreement, published a book about CIA activities without first obtaining the Agency's approval. After the book had been published, the United States sued Snepp for breach of contract and breach of fiduciary duties. The government secured not only the imposition of a constructive trust over all of Snepp's profits from the book, but also a forward-looking injunction against future unauthorized disclosures by Snepp. *See id.* at 508. The Supreme Court affirmed both remedies. *See id.* at 514-16.

The Supreme Court explained that a prepublication review requirement imposed on a government employee with access to classified information is not an unconstitutional prior restraint. *See id.* at 510-11. The Court found the secrecy agreement to be a "reasonable means" for vindicating the Government's "compelling interest in protecting both the secrecy of information important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service." *Id.* at 509 n.3. The Court also concluded that "[w]hether Snepp violated his trust does not depend upon whether his book actually contained classified information." *Id.* at 511. Rather, Snepp violated that trust when he published his book without first obtaining authorization from the CIA to do so, as required by his secrecy agreement. "When a former agent relies on his own judgment about what information is detrimental, he may reveal information that the CIA—with its broader understanding of what may expose classified information and confidential sources—could have identified as harmful." *Id.* at 512. The Court held that, because Snepp "deliberately and surreptitiously violated his obligation to submit all material for prepublication review," *id.* at 511, a constructive trust over his book's proceeds would appropriately "require[] him to disgorge the benefits of his faithlessness." *Id.* at 515.



Even before *Snepp*, the Fourth Circuit upheld the validity and enforceability of secrecy agreements in *United States v. Marchetti*, 466 F.2d 1309 (4th Cir. 1972). In *Marchetti*, as in *Snepp* and the instant case, the United States sued a former employee to enforce a secrecy agreement; the United States sought to prevent Marchetti from publishing a book about his intelligence experiences in the CIA. *Id.* at 1311. The court held that the United States could properly require Marchetti to submit all intelligence-related materials intended for publication for prepublication review to protect classified information. *Id.* at 1313-17. The court further held that there was no First Amendment problem with the secrecy agreements, because Marchetti could seek judicial review of any action by the CIA disapproving publication of the material. *Id.*; see also *United States v. Snepp*, 897 F.2d 138, 143 (4th Cir. 1990) (confirming that the burden is on the author to seek judicial review of any agency decision not to approve publication).

Consistent with these authorities, courts regularly have upheld the validity of secrecy agreements in the face of First Amendment challenges. In *Stillman v. CIA*, for example, a former employee of the Los Alamos National Laboratories sought to publish a book about China's nuclear weapons program and challenged the delay on publication imposed by pre-publication review, as well as determinations by various agencies that portions of his manuscript were classified. See 517 F. Supp. 2d 32, 34 (D.D.C. 2007) ("*Stillman I*"). In rejecting Stillman's First Amendment challenge, this Court explained that "[c]ourts have uniformly held that current and former government employees have no First Amendment right to publish properly classified information to which they gain access by virtue of their employment." *Id.* at 38. The D.C. Circuit, in earlier proceedings in *Stillman*, had reached the same conclusion: "If the Government classified the information properly, then Stillman simply has no first amendment right to publish

it.” *Stillman v. CIA*, 319 F.3d 546, 548 (D.C. Cir. 2003) (“*Stillman I*”) (reversing district court’s preliminary order granting Stillman’s counsel access to the manuscript and remanding for further proceedings). Relying on *Snepp*, this Court granted judgment to the Government, emphasizing that “the government’s ability to maintain secrecy is essential and [recognizing] that the government is in the best position to judge the harm that would result from disclosure.” *Stillman II*, 517 F. Supp. 2d at 39.

Likewise, in *McGehee v. Casey*, a former CIA officer brought a declaratory judgment action, before publication, challenging “an agreement that on its face bar[red] him from revealing classified information without prior . . . approval.” This Court denied relief, and the D.C. Circuit affirmed. 718 F.2d 1137, 1139 (D.C. Cir. 1983). The D.C. Circuit reasoned that the “classification and censorship scheme,” including the requirement of pre-publication review, “protects critical national interests” and “satisf[ies] the applicable constitutional tests.” *Id.* The court further added that, even though the CIA officer had “adhered to his secrecy agreement[,] submitted his manuscript for prepublication review, and deleted portions” of it in accordance with Government instructions, he was not entitled to declassification of portions of a magazine article he published that the CIA had determined to be classified, because affidavits gave the court “reason to believe that disclosure of the censored portions of McGehee’s article could reasonably be expected to cause serious damage to the national security.” *Id.* at 1149-50.<sup>5</sup>

---

<sup>5</sup> In dicta, the court noted that the CIA had “not sought an injunction against publication of the censored items” and stated that if the CIA had sought “judicial action to restrain publication, it would [have borne] a much heavier burden.” *McGehee*, 718 F.2d at 1147 n. 22 (citing, e.g., *Snepp*, 444 U.S. at 513 n. 8, and *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam)). But the cited language in *Snepp* does not support this assertion. Indeed, the cited portion of *Snepp* cited to two cases, which include language that, if anything, undermines the notion that the government would bear a heavier burden where it—rather than the author—sought relief. *See Alfred A. Knopf, Inc. v. Colby*, 509 F.2d 1362 (4th Cir. 1975) (“We decline to modify our previous holding that the First Amendment is no[] bar against an injunction forbidding the disclosure of

It follows from these decisions that there is no First Amendment bar to enforcement of Defendant's secrecy agreements here. The Government is seeking, as it has done in the past, to enforce the terms of its NDAs regarding classified information executed by Defendant when he joined the Government as National Security Advisor. Defendant willingly accepted the terms of these NDAs in consideration for his access to this information, and there is no valid constitutional objection to the Government seeking relief under their terms.

**C. Defendant Lacks Any Valid Defenses, Contractual or Otherwise, to Enforcement of His Secrecy Obligations.**

To date, Defendant has refused to accept that he is in breach of his obligations to the Government. In a June 10, 2020 letter from his counsel, he asserts that he has substantially complied with the prepublication review requirement and that, in light of his purported "substantial compliance" and supposed assurances from Ms. Knight, he should be excused from the remainder of his fiduciary and contractual obligations. Mitman Decl., Exh. K. Neither this argument, nor any other effort to defend his about-face on pre-publication review, can justify his unilateral decision to print and distribute copies of his book without prior written authorization.

At the outset, the express terms of the NDAs make clear that Defendant has not "substantially compl[ied]" with his obligations by submitting his manuscript and engaging with the Government for a time; rather, the NDAs required *full* compliance. Defendant is expressly required to obtain express and "written notice of authorization" before making a disclosure of

---

classifiable information within the guidelines of the Executive Orders when (1) the classified information was acquired, during the course of his employment, by an employee of a United States agency or department in which such information is handled and (2) its disclosure would violate a solemn agreement made by the employee at the commencement of his employment. With respect to such information, by his execution of the secrecy agreement and his entry into the confidential employment relationship, he effectively relinquished his First Amendment rights."); *United States v. Marchetti*, 466 F.2d 1309 (4th Cir. 1972) (granting the United States' request for injunction against future publication in violation of secrecy agreement).

classified information. SF 312 ¶ 3; *see also* Form 4414 ¶ 4. He never received such notice. Even though Ms. Knight had completed her review in April and was of the view that the manuscript did not contain classified information, Compl. ¶ 46; Ellis Decl. ¶ 9, Ms. Knight did not authorize Mr. Bolton to proceed with publication, and instead informed him that “[t]he process remain[ed] ongoing,” Mitman Decl., Exh. I. That process involved an additional classification review by Mr. Ellis, who concluded that the manuscript, even as revised, contained classified material, including information classified at the Confidential, Secret, Top Secret, and Top Secret/SCI levels. In other words, as Mr. Ellis explains, the manuscript, even as revised, contains instances of information that, if disclosed, reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States—and, indeed, Mr. Ellis concluded that disclosure of “certain passages in the draft manuscript ... will damage the national security of the United States.” *See* Ellis Decl. ¶¶ 19, 22. The conclusion that the draft still contains classified information is shared by Mr. Ratcliffe, Mr. Evanina, and Gen. Nakasone. Ratcliffe Decl. ¶ 7; Evanina Decl. ¶¶ 6-7; Nakasone Decl. ¶ 8. Mr. Bolton’s decision nevertheless to proceed with the publication of a book containing such material is a breach of his contractual and fiduciary duties.

Nor does Mr. Bolton have a First Amendment right to publish classified information that would allow him to sidestep the breach of his contractual duties. As previously discussed, the legal obligations he freely assumed—namely, his obligation to obtain authorization before publishing classified information—is fully in accord with constitutional requirements, as the Supreme Court and the D.C. Circuit have confirmed. *See Snapp*, 444 U.S. at 509 n.3; *McGehee*, 718 F.2d at 1139. Where “a government employee signs an agreement not to disclose information properly classified pursuant to executive order, that employee ‘simply has no first amendment right to publish’ such information.” *Wilson v. CIA*, 586 F.3d 171, 183 (2d Cir. 2009) (quoting

*Stillman v. CIA*, 319 F.3d 546, 548 (D.C. Cir. 2003)). Defendant signed *three* such agreements in this case. He affirmatively agreed that he “will never divulge classified information to anyone unless: (a) [he has] officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) [he has] been given prior written notice of authorization from the United States Government Department . . . that such disclosure is permitted.” SF 312 ¶ 3. And he twice agreed to “submit for security review” “any writing . . . that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI . . . that I have prepared for public disclosure” and “further agree[d] that I will not disclose the contents of such preparation with, or show it to, anyone who is not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI until I have received written authorization . . . that such disclosure is permitted.” Form 4414 ¶ 4. Defendant further attested his understanding that “the United States Government may seek any remedy available to it to enforce this Agreement, including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.” SF 312 ¶ 6; *see also* Form 4414 ¶ 7 (same).

Accordingly, even assuming that the First Amendment applies in the context of a former high-ranking government employee disclosing classified information without authorization after completion of prepublication review, any such rights would be waived by the agreements that Defendant entered into. Waiver of a constitutional right must be knowing and voluntary. *Cf. Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). There can be no suggestion that Defendant, a Yale-trained attorney and sophisticated public official with decades of experience in positions of trust within the Federal Government, did not know and understand these obligations. Indeed, the text of Defendant’s security agreements make clear that he could not release such material absent

written confirmation at the end of the prepublication review process. These provisions also provide that the United States would and could seek to enforce these agreements via a court order preventing disclosure, *see* SF 312 ¶ 6; Form 4414 ¶ 7, contract terms that would be superfluous if they did not constitute an acknowledgement that those very proceedings were proper. *See Veit & Co. v. United States*, 46 Fed. Cl. 30, 35 (2003) (“The Court is to attempt to avoid an interpretation that leaves a portion of the contract useless, inexplicable, inoperative, void, insignificant, meaningless, superfluous, or achieves a weird and whimsical results.”) (citation and internal quotation marks omitted). Nor can Defendant claim that such provisions constitute a prior restraint, as courts have recognized that such prepublication review, as here, “is not . . . a ‘system of prior restraints’ in the classic sense.” *Edgar v. Coats*, No. GJH-19-985, 2020 WL 1890509, at \*19 (D. Md. Apr. 16, 2020) (quoting *Wilson v. CIA*, 586 F.3d 171, 183 (2d Cir. 2009), and additionally citing *McGehee v. Casey*, 718 F.2d 1137, 1147-48 (D.C. Cir. 1983)) *appeal docketed* No. 20-1568 (4th Cir.). Defendant should be held to the obligations of his bargain.

Moreover, to the extent Defendant contends he has a constitutional right to publish his book in its current form, the proper course would have been to complete the prepublication review or to seek judicial review of any alleged denial or undue delay of permission to publish. Indeed, case law makes clear that it is the *author’s* burden to seek judicial review of the Government’s denial or delay of permission to publish. *See Snepp*, 897 F.2d at 143; *Marchetti*, 466 F.2d at 1317. What is not Defendant’s right is to decide for the Executive Branch—indeed, for the entire nation—that sufficient edits have been made and thereby usurp the Government’s proper role in determining whether a manuscript contains classified information.

## **II. The United States Will Be Irreparably Harmed Without an Injunction.**

The United States will be irreparably injured absent preliminary relief. The book Defendant intends to publish on June 23 contains classified information, including information

classified at the Confidential, Secret, Top Secret, and Top Secret/SCI levels. This means it contains instances of information that, if disclosed, reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States. *See* Ellis Decl. ¶ 19. And Mr. Ellis specifically concluded, moreover, that “certain passages in the draft manuscript . . . , if disclosed, will damage the national security of the United States.” Ellis Decl. ¶ 22; *see also* Ratcliffe Decl. ¶¶ 6-7; Evanina Decl. ¶ 6; Nakasone Decl. ¶ 8. The rights that the United States contracted for to protect national security—including the right to prepublication review of writings that Defendant might disseminate with sensitive information—will be severely undermined, if not entirely lost, if Defendant is not enjoined from further disseminating this information. *See Snepp*, 444 U.S. at 513 (“both the District Court and the Court of Appeals recognized that Snepp’s breach of his explicit obligation to submit his material—classified or not—for prepublication clearance has irreparably harmed the United States Government.”); *cf. Providence Journal v. FBI*, 595 F.2d 889, 890 (1st Cir. 1979) (“Once the documents are surrendered pursuant to the lower court’s order, confidentiality will be lost for all time. The status quo could never be restored.”); *In re Papandreou*, 139 F.3d 247, 251 (D.C. Cir. 1998) (“Disclosure followed by appeal after final judgment is obviously not adequate in such cases [where privilege is claimed over information] – the cat is out of the bag.”); *John Doe Agency v. John Doe Corp.*, 488 U.S. 1306, 1309 (1989) (Marshall, J., in chambers) (disclosure of materials pending a stay would create an irreparable injury). Only by completing the review process can the Government ensure that any personal benefits Defendant hopes to reap from this writing will not come at the expense of the national security.

Courts routinely grant equitable relief to prevent the public release of confidential information of all sorts on the ground that such public disclosure necessarily constitutes irreparable

harm given that the confidentiality of information, once lost, can never be restored. For example, courts will stay pending appeal orders to the Government to release documents, on the ground that the public disclosure of information constitutes irreparable harm. *See Providence Journal*, 595 F.2d at 890 (granting stay of disclosure pending final appeal, as “denial of a stay will utterly destroy the status quo”); *Dep’t of Health & Human Servs. v. Alley*, 556 U.S. 1149 (2009) (ordering stay of district court’s order that directed agency to disclose records to plaintiff pending final disposition of appeal); *People for the Am. Way Found. v. U.S. Dep’t of Educ.*, 518 F. Supp. 2d 174, 177 (D.D.C. 2007) (stay necessary “to avoid irreparable injury [to the government] by having to release documents prior to having the opportunity to seek meaningful appellate review”). While the forced disclosure of non-public information alone may constitute irreparable harm, that harm is heightened where classified information is involved. Unlike ordinary confidential information the Government holds, the information at stake here is classified, including in some instances at the Secret or Top Secret/SCI levels, which means by definition that its disclosure reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States. Ellis Decl. ¶ 19. And, in Mr. Ellis’s judgment, certain passages, if disclosed, “will damage the national security of the United States.” Ellis Decl. ¶ 22; *see also* Ratcliffe Decl. ¶¶ 6–7; Evanina Decl. ¶ 6; Nakasone Decl. ¶ 8.

This is not surprising. When an official leaks classified information to the world it can cause serious damage to the United States’ relationships with foreign powers or endanger future military and intelligence activities by revealing U.S. intelligence capabilities or gaps in those capabilities. And, as common sense suggests, “it is practically impossible to remedy the damage of an unauthorized disclosure [of classified information] *ex post*.” *United States v. Bin Laden*, 58 F. Supp. 2d 113, 122 (S.D.N.Y. 1999); *see also Snepp*, 444 U.S. at 514; *United States v. Hashmi*,



621 F. Supp. 2d 76, 83 (S.D.N.Y. 2008) (“The Government has a strong interest in preventing the irreparable harm of disclosing classified information, which might jeopardize national security.”). Defendant knows well the threat posed by disclosing classified information that might benefit the Nation’s adversaries. *See* John Bolton, “Edward Snowden’s leaks are a grave threat to US national security,” *The Guardian*, <https://www.theguardian.com/commentisfree/2013/jun/18/edward-snowden-leaks-grave-threat> (June 18, 2013). Congress does as well, as reflected in its decision to criminalize the unauthorized disclosure of classified information. *See, e.g.*, 18 U.S.C. §§ 641, 793, 794, 798, 952, 1924.

### **III. The Balance of Equities and Public Interest Factors Also Weigh In Favor of an Injunction**

“The final two factors in the Court’s analysis of a request for preliminary relief [are] the balance of equities and the public interest.” *U.S. Ass’n of Reptile Keepers, Inc. v. Jewell*, 103 F. Supp. 3d 133, 163 (D.D.C. 2015). These two factors “merge” in cases where one of the parties is the Government. *Cf. Nken v. Holder*, 556 U.S. 418, 435 (2009). This is particularly true in the context of the possible disclosure of classified information, where the public interest is served by ensuring that classified information vital to our nation’s security is protected from either intentional or inadvertent disclosure.

In evaluating the equities, the Court is to “balance the competing claims of injury and . . . consider the effect on each party of the granting or withholding of the requested relief.” *Winter*, 555 U.S. at 24 (internal quotation marks omitted). Here, the effect on the national security, the responsibility for which is entrusted to the Government, is immense: the manuscript—even as revised—contains instances of information that, if disclosed, reasonably could be expected to cause serious damage, or exceptionally grave damage, to the national security of the United States—and Mr. Ellis concluded that release of certain passages “will damage the national security

of the United States.” See Ellis Decl. ¶¶ 19, 22; see also Ratcliffe Decl. ¶¶ 6-7; Evanina Decl. ¶ 6; Nakasone Decl. ¶ 8. As discussed above, see *supra* Part II, this kind of harm is not reversible or remediable once it occurs. In balancing the equities, the Court must “pay particular regard for the[se] public consequences” *Winter*, 555 U.S. at 7. In contrast, any harm to Defendant is merely a delay of the publication of his book for the duration of the preliminary injunction (*i.e.*, until the Court can render a decision on the merits of the claims raised by the United States), or until Defendant removes the remaining classified information from the manuscript. In fact, that delay need only encompass the time required to complete the very pre-publication review process that Defendant voluntarily commenced. And any concern Defendant raises about the effect of an injunction on his ability to speak is diminished, if not altogether eliminated, by the fact that Defendant voluntarily agreed to condition his right to speak on securing a determination from the Government that what he wanted to say would not reveal the classified information he was sworn to protect. Defendant’s interest in disregarding that agreement does not outweigh the government’s substantial interest in adhering to it. At bottom, any delay is simply the consequence of Defendant’s voluntary decision to accept a position of confidence and trust as National Security Advisor to the President and to agree to the contractual obligations attendant to that position.

Permitting the final resolution of the instant dispute will further the Government’s interest and the broader public interest in the observance of proper procedures to control national security information and reduce the possibility of serious damage to the national security. As against an interim delay in Defendant’s ability to reap the financial rewards from trading on the confidential information he learned in his position of public trust, the merged public-interest and balance-of-equities prongs overwhelmingly favor the requested injunction.

#### **IV. The Injunction Should Provide Full Relief to the United States**

For the reasons discussed above, the United States is entitled to an injunction barring Defendant from publishing the book. To ensure that the injunction cannot be circumvented, the injunction should also prohibit the Defendant from proceeding with the publication of his book in any form or media; require Defendant to notify his publisher that the book contains classified information that he was not authorized to disclose; instruct his publisher to delay the release date of the book; and to instruct his publisher to take any and all available steps to retrieve and destroy any copies of the book that may be in the possession of any third party. The Court should further enjoin Defendant from taking any additional steps towards publicly disclosing classified information without first obtaining authorization from the United States through the prepublication review process.

Furthermore, if this Court enjoins Defendant from distributing his book until he receives written authorization after the conclusion of the government's prepublication review, then that injunction should also bind his publisher, Simon & Schuster.

Under Federal Rule of Civil Procedure 65(d)(2), an injunction binds not only "the parties" but also their "officers, agents, servants, employees, and attorneys," and all "other persons who are in active concert or participation with" them and who have "actual notice" of the injunction. This rule "is derived from the common law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control." *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945). It provides, "[i]n essence[,] . . . that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding." *Id.*; *see also Marshak v. Treadwell*, 595 F.3d 478, 486 (3d Cir. 2009) ("non-parties 'guilty of aiding or

abetting or acting in concert with a named defendant or his privy in violating the injunction .... may be held in contempt.”” (quoting *Savarese v. Agriss*, 883 F.2d 1194, 1209 (3d Cir. 1989)).

Under these principles, when the producer of a product is enjoined from distributing it, courts have subjected the product’s distributors to the same injunction. For example, in *Aevoe Corp. v. AE Tech Co.*, 727 F.3d 1375 (Fed. Cir. 2013), the Federal Circuit explained that the distributor of an infringing product—which obtained the product from the infringing producer and sold it in the marketplace—was “‘acting in concert’ with [the producer] in connection with the resale of” the product and thus was bound by an injunction against the sale of the product. *Id.* at 1384. “Failure to enjoin” the distributor’s conduct, the court explained, “would thwart the purposes of that injunction.” *Id.*; *see also, e.g., CBS, Inc. v. PrimeTime 24 Joint Venture*, 9 F. Supp. 2d 1333, 1325 (S.D. Fla. 1998) (distributors were bound by an injunction because, “[i]f the injunction did not apply to [them], the injunction would be effectively nullified”). That basic principle of federal remedies applies equally where the product at issue is a book, because the Free Speech Clause does not entitle book sellers to special exemptions from the application of general, speech-neutral laws such as Rule 65. *See Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986) (“[T]he First Amendment is not implicated by the enforcement of a public health regulation of general application against the physical premises in which respondents happen to sell books.”); *see also Branzburg v. Hayes*, 408 U.S. 665, 682-83 (1972) (“[O]therwise valid laws serving substantial public interests may be enforced against the press as against others, despite the possible burden that may be imposed.”); *cf. Bartnicki v. Vopper*, 532 U.S. 514, 526-27 (2001) (applying First Amendment scrutiny to suit against recipient of unlawfully obtained information under a statute that specifically regulated the disclosure and use of such information and thus was not speech-neutral, although it was content-neutral in certain applications).

These principles subject Simon & Schuster to any injunction against Defendant's distribution of his book. As in *Aevoe*, Simon & Schuster is the exclusive commercial distributor of Defendant's book and obtained the book exclusively from him. Defendant can properly be enjoined from unlawfully disseminating the book to the public, *see supra* pp. 23–26, and he therefore cannot be permitted to circumvent that injunction by unlawfully delivering the manuscript to Simon & Schuster before an injunction is entered—indeed, before press reports even revealed that he and Simon & Schuster intended to release the book prior to the completion of the prepublication review process.<sup>6</sup>

\* \* \*

---

<sup>6</sup> Commercial resellers further down the distribution chain, such as booksellers, likewise would be subject to the injunction under Rule 65(d) once they have actual notice of it, as Simon & Schuster does.

**CONCLUSION**

For the foregoing reasons, the Court should grant the motion for a temporary restraining order and preliminary injunction. A proposed order accompanies this motion.

Dated: June 17, 2020

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

MICHAEL SHERWIN  
Acting United States Attorney

ETHAN P. DAVIS  
Principal Deputy Assistant Attorney General

DAVID M. MORRELL  
Deputy Assistant Attorney General

ALEXANDER K. HAAS  
Director  
Federal Programs Branch

*/s/ Daniel F. Van Horn*

---

Daniel F. Van Horn (D.C. Bar. No. 924092)  
Assistant United States Attorney  
555 Fourth Street N.W., Room E4226,  
Washington, D.C. 20530  
Tel: 202-252-2506  
Email: daniel.vanhorn@usdoj.gov

*/s/ Michael J. Gerardi*

---

Michael J. Gerardi (D.C. Bar No. 1017949)  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street NW, Room 11514  
Washington, D.C. 20005  
Tel: (202) 616-0680  
Fax: (202) 616-8460  
E-mail: michael.j.gerardi@usdoj.gov

*Counsel for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

---

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:20-cv-01580-RCL
	)	
JOHN R. BOLTON,	)	
	)	
Defendant.	)	
	)	
	)	

---

**DECLARATION OF MICHAEL J. ELLIS**

I, Michael J. Ellis, declare the following to be true and correct:

1. I serve as Senior Director for Intelligence Programs at the National Security Council (NSC). I have held this position since March 1, 2020. This declaration is based on my personal knowledge and information I received in my official capacity. I submit this declaration in support of the United States Government’s motion for a preliminary injunction in the above captioned matter.

2. I have worked in a variety of national security positions for more than 12 years. In my current position, I am responsible for planning, directing, and coordinating the development of policies related to the intelligence activities of the United States Government. As part of my duties, I support the Assistant to the President for National Security Affairs in advising the President, representing the NSC in senior-level meetings with executive departments and agencies, and engaging in negotiations with representatives of foreign governments on sensitive national security issues. In my

current position, I am also responsible for, among other things, protecting classified information against unauthorized disclosure.

3. Before starting in my current position, I served from February 2017 to February 2020 as Special Assistant to the President, Senior Associate Counsel to the President, and Deputy Legal Advisor at the NSC. Previously, I served from August 2013 to February 2017 in a number of positions on the staff of the U.S. House Permanent Select Committee on Intelligence, including as General Counsel of the Committee.

4. Since September 2007, I have served as an intelligence officer in the U.S. Navy Reserve. I currently hold the rank of Lieutenant Commander, and my assignments have included the Defense Intelligence Agency, the Joint Staff Directorate for Intelligence (J-2), the Office of Naval Intelligence, and the U.S. Africa Command Intelligence Directorate (J-2), where I received security and foreign disclosure training.

5. The National Security Act of 1947, as amended, established the NSC to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security. Under National Security Presidential Memorandum (NSPM)-4, the Assistant to the President for National Security Affairs and the staff of the NSC advise the President, convene meetings to develop and implement national security policies by executive departments and agencies, and help coordinate the national-security-related policies of the United States.

6. My current position and duties, including policy responsibilities related to the intelligence activities of the United States Government, necessarily require me to have extensive knowledge about the full range of United States Government intelligence activities, as well as related confidential deliberations on matters of national security and



foreign policy, that is more comprehensive than the knowledge of most other NSC officials. Additionally, I routinely attend senior-level meetings related to national security and foreign policy decisions, including meetings of the Principals Committee and Deputies Committee convened under NSPM-4; convene Policy Coordination Committee meetings on intelligence activities related to national security and foreign policy decisions; and provide advice to the Assistant to the President for National Security Affairs and other senior White House officials on national security and foreign policy decisions. As such, I am aware of intelligence information and internal foreign policy deliberations and developments that others of the NSC staff are not and have a broader base of knowledge than others to identify and determine information that is classified.

7. Most others of the NSC staff do not have access to the same quantity of classified intelligence reporting that I do. Neither do most NSC staff routinely attend senior-level meetings related to national security and foreign policy decisions, as I do.

8. The President's Order of December 29, 2009 delegated TOP SECRET Original Classification Authority to the Assistant to the President for National Security Affairs. Under a delegation of authority from the Assistant to the President for National Security Affairs dated March 29, 2017, I am a TOP SECRET Original Classification Authority. This means that I am authorized to classify information up to the TOP SECRET level. I have held Original Classification Authority since March 1, 2020. I can also assess the current and proper classification of information at the TOP SECRET/Sensitive Compartmented Information (SCI) level.

9. My understanding is that another Original Classification Authority within the NSC staff, Ms. Ellen Knight, had reviewed the draft manuscript submitted by John Bolton (Author) and had been engaged in an ongoing process with the Author regarding the need to remove classified information from the draft manuscript. I understand that Ms. Knight believed that the manuscript as revised had removed all classified information.

10. After Ms. Knight completed her review of the draft manuscript, the Assistant to the President for National Security Affairs reviewed the manuscript and concluded that it still appeared to contain classified information. For this reason, the Assistant to the President for National Security Affairs asked me, as the Senior Director for Intelligence Programs, to review the manuscript.

11. On Saturday, May 2, 2020, I began my review of the draft manuscript that reflected Ms. Knight's latest guidance to the Author.

12. I completed my initial review of the draft manuscript on Tuesday, June 9, 2020.

13. I understand that neither Ms. Knight nor her staff has provided the Author or his counsel written authorization to publish the manuscript, and that the prepublication review process remains ongoing.

14. Based on my professional training and experience, I have determined that the manuscript in its present form contains certain passages—some up to several paragraphs in length—that contain classified national security information.

15. Based on my professional training and experience, it is my opinion that certain passages of the manuscript, if made public, reasonably could be expected to cause

damage, serious damage, or exceptionally grave damage to the national security of the United States. In this Declaration, I describe the regulatory basis for classifying national security information. In a classified declaration submitted with this declaration, solely for *ex parte*, *in camera* review, I describe six examples of passages in the manuscript that require protection under the national security information classification system, and the reasons for classifying each example. Because the prepublication review of the manuscript remains ongoing, these examples are not an exhaustive list of the passages in the manuscript that contain classified information. These descriptions of the examples, as well as my reasons for determining that they are classified, are being provided in a classified declaration because to disclose them on the public record would expose classified information, and, as a result, damage national security.

16. Section 1.1(a) of Executive Order 13526, "Classified National Security Information," provides that information may be originally classified if: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the United States Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of the Executive Order; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, and the original classification authority is able to identify or describe the damage.

17. Section 1.4 of the Executive Order provides that information shall not be considered for classification unless it pertains to one or more of eight specifically

enumerated categories of information. The examples described in my classified declaration fall within the following categories of section 1.4:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including covert action), intelligence sources or methods, or cryptology; and
- (d) foreign relations or foreign activities of the United States, including confidential sources.

18. Section 1.1(d) of the Executive Order provides that the unauthorized disclosure of foreign government information is presumed to cause damage to the national security.

19. The examples from the manuscript described in my classified declaration are all classified at the SECRET, TOP SECRET, or TOP SECRET/SCI level. The manuscript also contains information classified at the CONFIDENTIAL level. Section 1.2 of Executive Order 13526 describes classification at the CONFIDENTIAL level as information that “the unauthorized disclosure of which reasonably could be expected to cause damage to the national security,” classification at the SECRET level as information that “the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security,” and classification at the TOP SECRET level as information that “the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.” Intelligence Community Directive 703 defines SCI as “a subset of CNI [classified national intelligence] concerning or derived from intelligence sources, methods or analytical processes that is

required to be protected within formal access control systems established by the DNI [Director of National Intelligence].”

20. The information identified in the examples from the manuscript is owned by the United States Government. Moreover, it is information specifically covered by the nondisclosure agreements signed by the Author, which I have reviewed. The Standard Form 312, Classified Information Nondisclosure Agreement states, in relevant part, that “I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law.” The Form 4414, Sensitive Compartmented Information Nondisclosure Agreement states, in relevant part, that “In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation with, or show it to, anyone who is not

authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.” Based on my review, the draft manuscript contains information subject to both the Standard Form 312 and the Form 4414 signed by the Author.

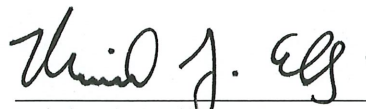
21. All of the examples described in my classified declaration remain classified.

22. In summary, it is my judgment that certain passages in the draft manuscript in its present form are properly classified in accordance with E.O. 13526 and, if disclosed, will damage the national security of the United States.

23. Attached as Exhibit M is a true and correct copy of a letter I sent to the Author, dated June 16, 2020. The letter states that “your manuscript in its current form is still not approved for public release and will not be approved until the pre-publication review process is complete. The manuscript still contains classified information. The review process required by the agreements you signed has not been completed.” I refer the Court to Exhibit M for a complete and accurate statement of its contents.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 17th day of June, 2020 in the City of Washington, District of Columbia.

  
\_\_\_\_\_  
Michael J. Ellis

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 20-cv-1580
	)	
JOHN R. BOLTON,	)	
	)	
Defendant.	)	
	)	

**DECLARATION OF WILLIAM R. EVANINA**

I, William R. Evanina, declare under penalty of perjury that the following is true and correct:

1. I am the Director of the National Counterintelligence and Security Center and have led this organization since June 2, 2014. And, on May 6, 2020, I was confirmed by the Senate into the position. In this role, I lead Counterintelligence for the United States Government and am the principal counterintelligence and security advisor to the Director of National Intelligence. I am responsible for leading and supporting the counterintelligence and security activities of the U.S. Intelligence Community, the U.S. Government, and U.S. private sector entities at risk from intelligence collection or attack by foreign adversaries. I am also responsible for overseeing production of the President’s National Counterintelligence Strategy of the United States of America. I have served in the federal government for over 30 years, and have been a member of the Senior Executive Service since 2013.

2. I chair both the National Counterintelligence Policy Board and the Allied Security and Counterintelligence Forum of senior counterintelligence and security leaders

from Australia, Canada, New Zealand, and the United Kingdom. I also serve as Chair of NATO's Counterintelligence Panel.

3. Previously, I served as the Chief of the Central Intelligence Agency's Counterespionage Group. Under my leadership, the Intelligence Community agencies identified, prevented, and neutralized espionage-related activities by foreign intelligence services. I also have 23 years of experience as a Special Agent with the Federal Bureau of Investigation (FBI). Among other positions held during my tenure with the FBI, I served as the Assistant Special Agent in Charge of the FBI's Washington Field Office, where I led the Counterintelligence and Counterterrorism Divisions. I also served on the FBI's Joint Terrorism Task Force, where I was selected as a Supervisory Special Agent and received the FBI Director's Award for Excellence.

4. This declaration is based on my personal knowledge and information provided to me in my official capacity.

5. I have reviewed several passages from what I understand is the current version of the draft manuscript authored by the former Assistant to the President for National Security Affairs, John Bolton. I have also reviewed the classified declaration submitted by Michael Ellis, Senior Director for Intelligence Programs at the National Security Council detailing why these passages are currently and properly classified.

6. Based on my background, knowledge, and experience, as well as information available to me as Director of the National Counterintelligence and Security Center, it is my judgment that the information contained in the passages I have reviewed is precisely what foreign adversaries' intelligence services seek to target and collect. The unauthorized disclosure of this information could reasonably be expected to enable

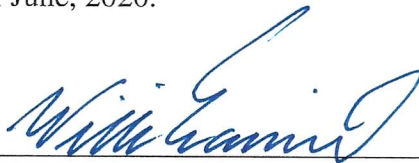


foreign threat actors to cause serious, and sometimes grave, damage to our national and economic security.

7. I have submitted a classified declaration with this declaration for *ex parte*, *in camera* review to explain the passages that I have reviewed and my reasons for determining that public disclosure of the passage can reasonably be expected to enable foreign threat actors to cause at least serious damage to the national security of the United States.. This information is being provided in a classified declaration because to disclose them on the public record would expose classified information, and, as a result, damage national security.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 17<sup>th</sup> day of June, 2020.

A handwritten signature in blue ink, appearing to read "William R. Evanina", written over a horizontal line.

William R. Evanina  
Director, National Counterintelligence and Security Center

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
JOHN R. BOLTON,	)	
	)	
Defendant.	)	
	)	

**DECLARATION OF MATTHIAS MITMAN**

I, Matthias Mitman, make the following Declaration pursuant to 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I am the Executive Secretary of the National Security Council (NSC). I was appointed Executive Secretary of the NSC on October 29, 2019. I also serve as Deputy Assistant to the President. I am a career member of the Senior Foreign Service, class of Minister-Counselor. Per 50 U.S.C. § 3021, the National Security Council shall “have a staff headed by a civilian executive secretary appointed by the President.” National Security Presidential Memorandum (NSPM)-4 further clarifies that “[a]ll policy and staff activity decisions will be transmitted to the Executive Secretary for appropriate distribution and awareness.” By virtue of my duties and authorities as Executive Secretary, I have access to and personal knowledge of the following information.

2. Attached as Exhibit A are true and correct copies of the security agreements Defendant signed when he assumed the role of Assistant to the President for National Security

Affairs (National Security Advisor), including a Classified Information Nondisclosure Agreement, titled Standard Form 312 (“SF 312”), and two Sensitive Compartmented Information (“SCI”) Nondisclosure Agreements, each titled Form 4414 (“Form 4414”). SF 312 states, “I hereby agree that I will never divulge classified information to anyone unless: (a) I have officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) I have been given prior notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) responsible for the classification of information or last granting me a security clearance that such disclosure is permitted.” SF 312 ¶ 3. Form 4414 states, “I further agree that I will not disclose the contents of such preparation with, or show it to, anyone who is not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.” Form 4414 ¶ 4. I refer the Court to Exhibit A for a complete and accurate statement of its contents.

3. Attached as Exhibit B is a true and correct copy of a Memorandum for Ambassador John R. Bolton, National Security Advisor, from Scott Gast, Senior Counsel to the President, regarding post-employment obligations, dated September 13, 2019. The memorandum states that, “You also may not use or disclose nonpublic information in any post-employment teaching, speaking, or writing.” The memorandum further states that, “Nonpublic information includes information that (1) is exempt from disclosure by statute, Executive Order or regulations; (2) is designated as confidential or classified; or (3) has not been disseminated to the general public and is not [sic] authorized to be made available to the public upon request.” I refer the Court to Exhibit B for a complete and accurate statement of its contents.

4. Attached as Exhibit C is a true and correct copy of a letter from John A. Eisenberg, Assistant to the President, Deputy Counsel to the President and Legal Advisor to the NSC, to Defendant, dated September 10, 2019. The letter states, “I write to remind you of your continuing obligations and responsibilities to protect all confidential, privileged, and classified information, and to provide for the safe return of all government property that you received in connection with your position at the Executive Office of the President (‘EOP’).” I refer the Court to Exhibit C for a complete and accurate statement of its contents.

5. Attached as Exhibit D is a true and correct copy of a letter from Charles J. Cooper to Ellen Knight, Senior Director for Records, Access, and Information Security Management, dated December 30, 2019. The letter states that Mr. Cooper, on behalf of Defendant, was “submitting [Defendant’s] manuscript out of an abundance of caution” for prepublication security review, “as contemplated by the nondisclosure agreements that [Defendant] entered, commencing with those of April 5, 2018 immediately prior to his entry on duty.” I refer the Court to Exhibit D for a complete and accurate statement of its contents.

6. Attached as Exhibit E is a true and correct copy of a letter from Ms. Knight to Mr. Cooper, dated January 23, 2020. The letter states, “As we discussed, the National Security Council (NSC) Access Management directorate has been provided the manuscript submitted by your client, [Defendant], for prepublication review. Based on our preliminary review, the manuscript appears to contain significant amounts of classified information.” I refer the Court to Exhibit E for a complete and accurate statement of its contents.

7. Attached as Exhibit F is a true and correct copy of a letter from Ms. Knight to Mr. Cooper, dated February 7, 2020. The letter states that, “Given the volume of classified information currently contained in the draft, [Defendant] should modify and revise the

manuscript to remove all classified information and resubmit it to us for review. To further the iterative review process, it would be most efficient for me to meet with your client to review each instance of classified information in detail and, as necessary, assist in the prioritization of any particular portions. I am available any day next week.” I refer the Court to Exhibit F for a complete and accurate statement of its contents.

8. Attached as Exhibit G is a true and correct copy of a letter from Ms. Knight to Mr. Cooper, dated February 24, 2020. The letter describes a meeting between Defendant and Ms. Knight on February 21, 2020. The letter states that, “During our meeting, which lasted four hours and was most productive, I discussed with your client our use of the classification standards and categories found in Executive Order 13526, ‘Classified National Security Information,’ to identify classified information found in the draft manuscript, and he appeared to acknowledge the need to revise the manuscript to address our concerns regarding classified information.” The letter further states that, “It became apparent during our meeting that it would be most helpful to the process if we hold one or more follow-on meetings.” I refer the Court to Exhibit G for a complete and accurate statement of its contents.

9. Attached as Exhibit H is a true and correct copy of an e-mail from Ms. Knight to Defendant, dated March 27, 2020. The letter states, “I appreciate your efforts to address the classification concerns in the latest draft version you submitted. Many of the changes are satisfactory. However, additional edits are required to ensure the protection of national security information.” I refer the Court to Exhibit H for a complete and accurate statement of its contents.

10. Attached as Exhibit I is a true and correct copy of an e-mail from Ms. Knight to Defendant, dated May 7, 2020. The letter states, “I do not have any new information to provide

at this time. The process remains ongoing. I will reach out as soon as there is an update to provide.” I refer the Court to Exhibit I for a complete and accurate statement of its contents.

11. Attached as Exhibit J is a true and correct copy of a letter from Mr. Eisenberg to Mr. Cooper, dated June 8, 2020. The letter states, “As we explained on January 23, February 7, February 24, and March 27, 2020, until the prepublication review process is complete and [Defendant] receives the necessary authorization at the conclusion of that process, he may not publish or disseminate the manuscript.” I refer the Court to Exhibit J for a complete and accurate statement of its contents.

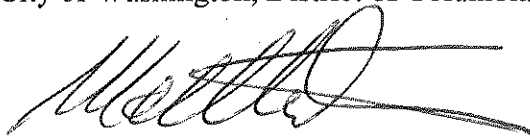
12. Attached as Exhibit K is a true and correct copy of a letter from Mr. Cooper to Mr. Eisenberg, dated June 10, 2020. The letter states, “In reliance on Ms. Knight’s assurances that his manuscript contained no classified information, that she had no further changes to his manuscript, and that she would attempt to deliver promptly the pro-forma closing letter, and after hearing *nothing* for weeks in response to his urgent requests for the closing letter, Ambassador Bolton and his publisher, Simon & Schuster, moved forward with publication of his book. The book has now been printed, bound, and shipped to distributors across the country. Ambassador Bolton has no authority to stop the book from being made available to the public on June 23.” I refer the Court to Exhibit K for a complete and accurate statement of its contents.

13. Attached as Exhibit L is a true and correct copy of a letter from Mr. Eisenberg to Mr. Cooper, dated June 11, 2020. The letter states that, “[Defendant] is well aware that the manuscript still contains classified information, because, among other things, it includes information that he himself classified and designated for declassification only after the lapse of twenty-five years.” It further states, “[Defendant] remains under an obligation to stop the dissemination of the manuscript, which still contains classified information that belongs to the

United States Government, the unauthorized disclosure of which could reasonably be expected to cause serious damage to national security.” I refer the Court to Exhibit L for a complete and accurate statement of its contents.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 16th day of June, 2020 in the City of Washington, District of Columbia.

A handwritten signature in black ink, appearing to read 'Matthias Mitman', written over a horizontal line.

MATTHIAS MITMAN

UNCLASSIFIED

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:20-cv-01580-RCL
	)	
JOHN R. BOLTON,	)	
	)	
Defendant.	)	
	)	
_____	)	

**DECLARATION OF PAUL M. NAKASONE**

(U) I, Paul M. Nakasone, make the following Declaration pursuant to 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. (U) I am the Director of the National Security Agency (NSA) and have served in that position since May 4, 2018. In my role as NSA Director, I am responsible the collection and maintenance of foreign Signals Intelligence (SIGINT). I am also the Commander of United States Cyber Command and Chief of the Central Security Service. I am a General in the U.S. Army and previously commanded U.S. Army Cyber Command. I commanded the Cyber National Mission Force at U.S. Cyber Command, as well as a company, battalion, and brigade; and I have served as the senior intelligence officer at the battalion, division, and corps levels. I have held command and staff positions across all levels of the Army, with assignments in the United States, the Republic of Korea, Iraq,

UNCLASSIFIED



UNCLASSIFIED

and Afghanistan. On two occasions, I served as a staff officer on the Joint Chiefs of Staff.

2. (U) As the Director of the NSA, I am responsible for planning, organizing, directing, and managing all NSA-assigned missions and resources. I am accountable to the Director of National Intelligence (“DNI”), the Under Secretary of Defense for Intelligence, and the Department of Defense Chief Information Officer. Further, by specific charge of the President and the DNI, I am ultimately responsible for protecting NSA activities and intelligence sources and methods. I have been designated an original TOP SECRET classification authority under Executive Order No. 13526, 75 Fed. Reg. 707 (Jan. 5, 2010), and Department of Defense Manual No. 5200.1, Vol. 1, Information and Security Program (Feb. 24, 2012).
3. (U) The NSA was established by Presidential Directive in 1952 as a separately organized agency within the Department of Defense. The NSA’s foreign intelligence mission includes the responsibility to collect, process, analyze, produce, and disseminate signals intelligence (“SIGINT”) information for (a) national foreign intelligence purposes, (b) counterintelligence purposes, and (c) the support of military operations. See Executive Order 12333, § 1.7(c), as amended.
4. (U) SIGINT consists of three subcategories: (1) communications intelligence (“COMINT”); (2) electronic intelligence (“ELINT”); and (3) foreign instrumentation signals intelligence (“FISINT”). COMINT is defined as “all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients.” 18 U.S.C. § 798. COMINT includes information derived from the interception of foreign and international

UNCLASSIFIED

UNCLASSIFIED

communications, such as voice, facsimile, and computer-to-computer information conveyed via a number of means (e.g., microwave, satellite links, HF/VHF broadcast). ELINT is technical intelligence information derived from foreign non-communications electromagnetic radiations except atomic detonation or radioactive sources—in essence, radar systems affiliated with military weapons platforms (e.g., anti-ship) and civilian systems (e.g., shipboard and air traffic control radars). FISINT is derived from the intercept of foreign electromagnetic emissions associated with the testing and operational deployment of non-U.S. aerospace, surface, and subsurface systems.

5. (U) The NSA's SIGINT responsibilities include establishing and operating an effective unified organization to conduct SIGINT activities set forth in E.O. 12333, § 1.7(c)(2), as amended. In performing its SIGINT mission, the NSA has developed a sophisticated worldwide SIGINT collection network that acquires, among other things, foreign and international electronic communications and related information. The technological infrastructure that supports the NSA's foreign intelligence information collection network has taken years to develop at a cost of billions of dollars and untold human effort. It relies on sophisticated electronic data collection and processing technology.
6. (U) There are two primary reasons for gathering and analyzing foreign intelligence information. The first, and most important, is to gain information required to direct U.S. resources as necessary to counter external threats and in support of military operations. The second reason is to obtain information necessary to the formulation and promotion of U.S. foreign policy. Foreign intelligence information provided by the NSA is thus relevant to a wide range of important issues, including military order of battle; threat

UNCLASSIFIED

UNCLASSIFIED

warnings and readiness; cyber-security; arms proliferation; international terrorism; counter-intelligence; and foreign aspects of international narcotics trafficking.

7. (U) The NSA's ability to produce foreign intelligence information depends on its access to foreign and international electronic communications. Foreign intelligence produced by COMINT activities is an extremely important part of the overall foreign intelligence information available to the United States and is often unobtainable by other means. Public disclosure of either the capability to collect specific communications or the substance of the information derived from such collection itself can easily alert targets to the vulnerability of their communications. Disclosure of even a single communication holds the potential of revealing intelligence collection techniques that are applied against targets around the world. Once alerted, targets can frustrate COMINT collection by using different or new encryption techniques, by disseminating disinformation, or by utilizing a different communications link. Such evasion techniques may inhibit access to the target's communications and therefore deny the United States access to information crucial to the defense of the United States both at home and abroad. COMINT is provided special statutory protection under 18 U.S.C. § 798, which makes it a crime to knowingly disclose to an unauthorized person classified information "concerning the communication intelligence activities of the United States or any foreign government."
8. (U) At the request of the National Security Council legal advisor, I have reviewed a limited portion of the Defendant's draft manuscript, and have identified classified information in that portion of the manuscript. Compromise of this information could result in the permanent loss of a valuable SIGINT source and cause irreparable damage to the U.S. SIGINT system. Significant manpower and monetary investments have been and

UNCLASSIFIED

UNCLASSIFIED

continue to be made to enable and maintain this capability. Further, exposure of this information could also cause considerable difficulties in U.S. and allied relations with specific nations and other entities. In particular, I have determined that the unauthorized disclosure of the classified information in the draft manuscript reasonably could be expected to result in exceptionally grave damage to the national security of the United States.

9. The information supporting my determination is highly classified and extraordinarily sensitive and cannot be described in an unclassified declaration. Specifically, a portion of the manuscript implicates sensitive information at the TOP SECRET/Sensitive and Compartmented Information (SCI) level. That information should only be disclosed to individuals with the appropriate security clearance and an official need to know the information. In relation to civil proceedings, the disclosure of that information would normally occur only to the assigned District Judge, ex parte and in camera with appropriate security precautions as arranged through the Court Security Office at the Department of Justice with appropriate security precautions in place to ensure that we appropriately safeguard this intelligence information.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 17th day of June, 2020 in the City of Washington, District of Columbia.



PAUL M. NAKASONE

UNCLASSIFIED

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____		)	
UNITED STATES OF AMERICA,		)	
		)	
Plaintiff,		)	
		)	
v.		)	Civil Action No. 20-cv-1580
		)	
JOHN R. BOLTON,		)	
		)	
		)	
Defendant.		)	
_____		)	

**DECLARATION OF JOHN L. RATCLIFFE**

I, John L. Ratcliffe, make the following Declaration pursuant to 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. Currently, I serve as the Director of National Intelligence at the Office of the Director of National Intelligence. In my current position, I oversee all 17 elements of the Intelligence Community, including the Central Intelligence Agency, the National Security Agency, the National Geospatial-Intelligence Agency, the Defense Intelligence Agency, the National Reconnaissance Office, and the intelligence elements of the military services, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, the Department of State, the Department of Homeland Security, and the Drug Enforcement Administration.

2. The responsibilities and authorities of the DNI are set forth in the National Security Act of 1947, as amended. *See* 50 U.S.C. § 3024. The National Security Act provides, among other things, that “[t]he Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). Consistent with this

responsibility, the DNI establishes and implements guidelines for the IC for classification of information under applicable law, Executive orders, or other Presidential directives, and access to and dissemination of intelligence. *Id.* § 3024(i)(2)(A), (B). By virtue of my position as DNI, and unless otherwise directed by the President, I have access to all intelligence related to the national security that is collected by any department, agency, or other entities of the United States. *See* 50 U.S.C. § 3024(b); section 1.3(a) of Executive Order 12333, as amended.

3. Prior to assuming my current position, I represented the people of the Fourth District of Texas in the U.S. House of Representatives for three terms. During that time, I served on the House Permanent Select Committee on Intelligence, the House Judiciary Committee, the House Committee on Homeland Security, and the House Committee on Ethics.

4. Prior to serving in the U.S. House of Representatives, from 2007 to 2008, I served as the United States Attorney in the U.S. Attorney's Office for the Eastern District of Texas. From 2005 to 2007, I served as the First Assistant United States Attorney, as well as Chief of the Anti-Terrorism and National Security Section, in the U.S. Attorney's Office for the Eastern District of Texas. In these positions, I managed the investigations and prosecutions of numerous national security and anti-terrorism cases and represented the United States in connection with these cases. I also managed the Department of Justice Joint Terrorism Task Force for the Eastern District of Texas.

5. I have reviewed what I understand to be the draft manuscript submitted by John Bolton (Author) as modified by the Author during the pre-publication review process by the National Security Council (NSC).

6. I have reviewed selected excerpts from the current version of the draft manuscript, identified by the Senior Director for Intelligence Programs at the NSC (Senior Director). In addition, I have reviewed the classified declaration submitted by the Senior

Director. Based on my professional training and experience, as well as the information available to me as Director of National Intelligence, I concur that these passages contain classified national security information.

7. Based on my professional training and experience, as well as the information available to me as Director of National Intelligence, it is my opinion that these passages of the manuscript, if made public, will damage national security. The type of classified information in these passages is the type of information that foreign adversaries of the United States seek to obtain, at great cost, through covert intelligence collection. Unauthorized disclosure of these types of classified information could reveal, in some instances, the limits and, in some instances, the capabilities of U.S. intelligence collection and would cause irreparable damage to national security.

Executed this 17th day of June 2020.



---

JOHN L. RATCLIFFE

# Exhibit A



**CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT****AN AGREEMENT BETWEEN**

John Robert Bolton

**AND THE UNITED STATES***(Name of Individual - Printed or typed)*

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to classified information. As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 13526, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security, and unclassified information that meets the standards for classification and is in the process of a classification determination as provided in sections 1.1, 1.2, 1.3 and 1.4(e) of Executive Order 13526, or under any other Executive order or statute that requires protection for such information in the interest of national security. I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge classified information to anyone unless: (a) I have officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) responsible for the classification of information or last granting me a security clearance that such disclosure is permitted. I understand that if I am uncertain about the classification status of information, I am required to confirm from an authorized official that the information is unclassified before I may disclose it, except to a person as provided in (a) or (b), above. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.

4. I have been advised that any breach of this Agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; or termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. In addition, I have been advised that any unauthorized disclosure of classified information by me may constitute a violation, or violations, of United States criminal laws, including the provisions of sections 641, 793, 794, 798, \*952 and 1924, title 18, United States Code; \*the provisions of section 783(b), title 50, United States Code; and the provisions of the Intelligence Identities Protection Act of 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation of classified information not consistent with the terms of this Agreement.

6. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.

7. I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law. I agree that I shall return all classified materials which have, or may come into my possession or for which I am responsible because of such access: (a) upon demand by an authorized representative of the United States Government; (b) upon the conclusion of my employment or other relationship with the Department or Agency that last granted me a security clearance or that provided me access to classified information; or (c) upon the conclusion of my employment or other relationship that requires access to classified information. If I do not return such materials upon request, I understand that this may be a violation of sections 793 and/or 1924, title 18, United States Code, a United States criminal law.

8. Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.

9. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.


10. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

*(Continue on reverse.)*

11. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 13526 (75 Fed. Reg. 707), or any successor thereto section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b) (8) of title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); sections 7(c) and 8H of the Inspector General Act of 1978 (5 U.S.C. App.) (relating to disclosures to an inspector general, the inspectors general of the Intelligence Community, and Congress); section 103H(g)(3) of the National Security Act of 1947 (50 U.S.C. 403-3h(g)(3)) (relating to disclosures to the inspector general of the Intelligence Community); sections 17(d)(5) and 17(e)(3) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g(d)(5) and 403g(e)(3)) (relating to disclosures to the Inspector General of the Central Intelligence Agency and Congress); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, \*952 and 1924 of title 18, United States Code, and \*section 4 (b) of the Subversive Activities Control Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive Order and listed statutes are incorporated into this agreement and are controlling.

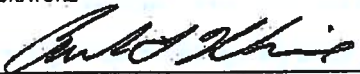

12. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me the Executive Order and statutes referenced in this agreement and its implementing regulation (32 CFR Part 2001, section 2001.80(d)(2)) so that I may read them at this time, if I so choose.

\* NOT APPLICABLE TO NON-GOVERNMENT PERSONNEL SIGNING THIS AGREEMENT.

SIGNATURE 	DATE 04/05/2018	SOCIAL SECURITY NUMBER (See Notice below) [REDACTED]
--	--------------------	---

ORGANIZATION (IF CONTRACTOR, LICENSEE, GRANTEE OR AGENT, PROVIDE: NAME, ADDRESS, AND, IF APPLICABLE, FEDERAL SUPPLY CODE NUMBER) (Type or print)

EOP/WHO

WITNESS		ACCEPTANCE	
THE EXECUTION OF THIS AGREEMENT WAS WITNESSED BY THE UNDERSIGNED.		THE UNDERSIGNED ACCEPTED THIS AGREEMENT ON BEHALF OF THE UNITED STATES GOVERNMENT.	
SIGNATURE 	DATE 04/05/2018	SIGNATURE 	DATE 04/05/2018
NAME AND ADDRESS (Type or print)  Carl L. Kline 725 17th Street, NW Washington, DC 20503		NAME AND ADDRESS (Type or print)  Carl L. Kline 725 17th Street, NW Washington, DC 20503	

**SECURITY DEBRIEFING ACKNOWLEDGEMENT**

I reaffirm that the provisions of the espionage laws, other federal criminal laws and executive orders applicable to the safeguarding of classified information have been made available to me; that I have returned all classified information in my custody; that I will not communicate or transmit classified information to any unauthorized person or organization; that I will promptly report to the Federal Bureau of Investigation any attempt by an unauthorized person to solicit classified information, and that I (have) (have not) (strike out inappropriate word or words) received a security debriefing.

SIGNATURE OF EMPLOYEE	DATE
-----------------------	------

NAME OF WITNESS (Type or print)	SIGNATURE OF WITNESS
---------------------------------	----------------------

NOTICE: The Privacy Act, 5 U.S.C. 552a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Number (SSN) is Public Law 104-134 (April 26, 1996). Your SSN will be used to identify you precisely when it is necessary to certify that you have access to the information indicated above or to determine that your access to the information indicated has been terminated. Furnishing your Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent you being granted access to classified information.

UNCLASSIFIED

Apply appropriate classification level and any control markings (if applicable) when filled in.

**(U) SENSITIVE COMPARTMENTED INFORMATION NONDISCLOSURE AGREEMENT**

An Agreement between

John Robert Bolton

and the United States.

(Name - Printed or Typed)

1. (U) Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information or material protected within Special Access Programs, hereinafter referred to in this Agreement as Sensitive Compartmented Information (SCI). I have been advised that SCI involves or derives from intelligence sources or methods and is classified or is in process of a classification determination under the standards of Executive Order 13526 or other Executive order or statute. I understand and accept that by being granted access to SCI, special confidence and trust shall be placed in me by the United States Government.
2. (U) I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures. I understand that I may be required to sign subsequent agreements upon being granted access to different categories of SCI. I further understand that all my obligations under this agreement continue to exist whether or not I am required to sign such subsequent agreements.
3. (U) I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be, or related to or derived from SCI, is considered by such Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.
4. (U) In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation with, or show it to, anyone who is not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.
5. (U) I understand that the purpose of the review described in paragraph 4 is to give the United States a reasonable opportunity to determine whether the preparation submitted pursuant to paragraph 4 sets forth any SCI. I further understand that the Department or Agency to which I have made a submission will act upon it, coordinating within the Intelligence Community when appropriate, and make a response to me within a reasonable time, not to exceed 30 working days from date of receipt.
6. (U) I have been advised that any breach of this Agreement may result in my termination of my access to SCI and removal from a position of special confidence and trust requiring such access, as well as the termination of my employment or other relationships with any Department or Agency that provides me with access to SCI. In addition, I have been advised that any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including provisions of Sections 793, 794, 798, and 952, Title 18, United States Code, and of Section 783(b), Title 50, United States Code. Nothing in this agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.
7. (U) I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I have been advised that the action can be brought against me in any of the several appropriate United States District Courts where the United States Government may elect to file the action. Court costs and reasonable attorney's fees incurred by the United States Government may be assessed against me if I lose such action.
8. (U) I understand that all information to which I may obtain access by signing this Agreement is now and will remain the property of the United States Government unless and until otherwise determined by an appropriate official or final ruling of a court of law. Subject to such determination, I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials that may have come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such materials. If I do not return such materials upon request, I understand this may be a violation of Section 793, Title 18, United States Code.
9. (U) Unless and until I am released in writing by an authorized representative of the Department or Agency that last provided me with access to SCI, I understand that all conditions and obligations imposed on me by this Agreement apply during the time I am granted access to SCI, and at all times thereafter.
10. (U) Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement concerns SCI and does not set forth such other

UNCLASSIFIED

Apply appropriate classification level and any control markings (if applicable) when filled in.

conditions and obligations not related to SCI as may now or hereafter pertain to my employment by or assignment or relationship with the Department or Agency.

11. (U) I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available Sections 793, 794, 798 and 952 of Title 18, United States Code, and Section 783(b) of Title 50, United States Code, and Executive Order 13526, as amended, so that I may read them at this time, if I so choose.

12. (U) I hereby assign to the United States Government all rights, title and interest, and all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation not consistent with the terms of this Agreement.

13. (U) These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

14. (U) These restrictions are consistent with and do not supersede conflict with or otherwise alter the employee obligations rights or liabilities created by Executive Order 13526; or any successor thereto, Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosures to Congress by members of the Military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosure of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents), sections 7(c) and 8H of the Inspector General Act of 1978 (5 U.S.C. App.) (relating to disclosures to an inspector general, the inspectors general of the Intelligence Community; and Congress); section 103H(g)(3) of the National Security Act of 1947 (50 U.S.C. 403-3h(g)(3) (relating to disclosures to the inspector general of the Intelligence Community); sections 17(d)(5) and 17(e)(3) of the CIA Act of 1949 (50 U.S.C. 403q(d)(5) and 403q(e)(3)) (relating to disclosures to the Inspector General of the Central Intelligence Agency and Congress); and the statutes which protect agent disclosure which may compromise the national security, including Section 841, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. Section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

15. (U) This Agreement shall be interpreted under and in conformance with the law of the United States.

16. (U) I make this Agreement without any mental reservation or purpose of evasion.

John R Bolton 04/05/2018  
Signature Date

The execution of this Agreement was witnessed by the undersigned who accepted it on behalf of the United States Government as a prior condition of access to Sensitive Compartmented Information.

WITNESS and ACCEPTANCE: [Signature] 04/05/2018  
Signature Date

SECURITY BRIEFING / DEBRIEFING ACKNOWLEDGMENT

SI TK G HCS-P  
\_\_\_\_\_  
\_\_\_\_\_  
(Special Access Programs by Initials Only)

[Redacted] John Robert Bolton EOP / WHO  
SSN (See Notice Below) Printed or Typed Name Organization

**BRIEF** Date 04/05/2018  
I hereby acknowledge that I was briefed on the above SCI Special Access Program(s):  
John R Bolton  
Signature of Individual Briefed

**DEBRIEF** Date \_\_\_\_\_  
Having been reminded of my continuing obligation to comply with the terms of this Agreement, I hereby acknowledge that I was debriefed on the above SCI Special Access Program(s):  
\_\_\_\_\_  
Signature of Individual Briefed

I certify that the briefing presented by me on the above date was in accordance with relevant SCI procedures.  
[Signature] [Redacted]  
Signature of Briefing/Debriefing Officer SSN (See notice below)  
CARL L. KLINE EOP/OA/PSO  
Printed or Typed Name Organization (Name and Address)

(U) NOTICE: The Privacy Act, 5 U.S.C. 522a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397, as amended. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above, 2) determine that your access to the information has terminated, or 3) certify that you have witnessed a briefing or debriefing. Although disclosure of your SSN is not mandatory, your failure to do so may impede such certifications or determinations.

SECURITY FILE NUMBER (AIN)

**SENSITIVE COMPARTMENTED INFORMATION NONDISCLOSURE AGREEMENT**

An agreement between

John Robert Bolton

and the United States.

*(Name - Printed or Typed)*

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information or material protected within Special Access Programs, hereinafter referred to in this Agreement as Sensitive Compartmented Information (SCI). I have been advised that SCI involves or derives from intelligence sources or methods and is classified or is in process of a classification determination under the standards of Executive Order 12958 or other Executive order or statute. I understand and accept that by being granted access to SCI, special confidence and trust shall be placed in me by the United States Government.
2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures. I understand that I may be required to sign subsequent agreements upon being granted access to different categories of SCI. I further understand that all my obligations under this agreement continue to exist whether or not I am required to sign such subsequent agreements.
3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be, or related to or derived from SCI, is considered by such Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.
4. In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation with, or showing it to, anyone who is not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.
5. I understand that the purpose of the review described in paragraph 4 is to give the United States a reasonable opportunity to determine whether the preparation submitted pursuant to paragraph 4 sets forth any SCI. I further understand that the Department or Agency to which I have made a submission will act upon it, coordinating within the Intelligence Community when appropriate, and make a response to me within a reasonable time, not to exceed 30 working days from date of receipt.
6. I have been advised that any breach of this Agreement may result in my termination of my access to SCI and removal from a position of special confidence and trust requiring such access, as well as the termination of my employment or other relationships with any Department or Agency that provides me with access to SCI. In addition, I have been advised that any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including provisions of Sections 793, 794, 798, and 952, Title 18, United States Code, and of Section 783(b), Title 50, United States Code. Nothing in this agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.
7. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I have been advised that the action can be brought against me in any of the several appropriate United States District Courts where the United States Government may elect to file the action. Court costs and reasonable attorneys fees incurred by the United States Government may be assessed against me if I lose such action.
8. I understand that all information to which I may obtain access by signing this Agreement is now and will remain the property of the United States Government unless and until otherwise determined by an appropriate official or final ruling of a court of law. Subject to such determination, I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials that may have come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such materials. If I do not return such materials upon request, I understand this may be a violation of Section 793, Title 18, United States Code.
9. Unless and until I am released in writing by an authorized representative of the Department or Agency that last provided me with access to SCI, I understand that all conditions and obligations imposed on me by this Agreement apply during the time I am granted access to SCI, and at all times thereafter.
10. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement concerns SCI and does not set forth such other conditions and obligations not related to SCI as may now or hereafter pertain to my employment by or assignment or relationship with the Department or Agency.

11. I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available Sections 793, 794, 798 and 952 of Title 18, United States Code, and Section 783(b) of Title 50, United States Code, and Executive Order 12958, as amended, so that I may read them at this time, if I so choose.

12. I hereby assign to the United States Government all rights, title and interest, and all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation not consistent with the terms of this Agreement.

13. These restrictions are consistent with and do not supersede conflict with or otherwise alter the employee obligations rights or liabilities created by Executive Order 12958; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosures to Congress by members of the Military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosure of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 USC 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes which protect agent disclosure which may compromise the national security, including Section 641, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. Section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

14. This Agreement shall be interpreted under and in conformance with the law of the United States.

15. I make this Agreement without any mental reservation or purpose of evasion.

X John Robert Bolton 20180405  
 Signature Date

The execution of this Agreement was witnessed by the undersigned who accepted it on behalf of the United States Government as a prior condition of access to Sensitive Compartmented Information.

Fritzeen Brent W Bfritzeen Digitally signed by Fritzeen Brent W Bfritzeen Date: 2018.04.05 10:17:48 -04'00' 20180405  
 Signature Date

WITNESS and ACCEPTANCE:

## SECURITY BRIEFING / DEBRIEFING ACKNOWLEDGMENT

<u>FOR ALD</u>	<u>ASP BIR</u>	<u>BON CAC</u>	<u>CHE EBY</u>	<u>HOL MES</u>	<u>RSE OLI</u>
<u>IRO JUN</u>	<u>MAP MYR</u>	<u>PER PNE</u>	<u>PLU RED</u>	<u>SGB TEA</u>	<u>WAL WIL</u>
<u>MAH CYP</u>					

(Special Access Programs by Initials Only)

<u>[Redacted]</u> SSN (See Notice Below)	<u>John Robert Bolton</u> Printed or Typed Name	<u>WH/NSC/APNSA</u> Organization
---	--	-------------------------------------

**BRIEF** DATE 20180405

I hereby acknowledge that I was briefed on the above SCI Special Access Program(s):

X John Robert Bolton  
 Signature of Individual Briefed

**DEBRIEF** DATE \_\_\_\_\_

Having been reminded of my continuing obligation to comply with the terms of this Agreement, I hereby acknowledge that I was debriefed on the above SCI Special Access Program(s):

\_\_\_\_\_  
 Signature of Individual Debriefed

I certify that the briefing presented by me on the above date was in accordance with relevant SCI procedures.

Fritzeen Brent W Bfritzeen Digitally signed by Fritzeen Brent W Bfritzeen Date: 2018.04.05 10:18:02 -04'00'  
 Signature of Briefing/Debriefing Officer

Brent W. Fritzeen  
 Printed or Typed Name

[Redacted]  
 SSN (See Notice Below)

NSC (INTELLIGENCE PROGRAMS)  
 Organization (Name and Address)

NOTICE: The Privacy Act, 5 U.S.C. 522a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above, 2) determine that your access to the information has terminated, or 3) certify that you have witnessed a briefing or debriefing. Although disclosure of your SSN is not mandatory, your failure to do so may impede such certifications or determinations.

# Exhibit B

**THE WHITE HOUSE**

WASHINGTON, D.C.

September 13, 2019

MEMORANDUM FOR AMBASSADOR JOHN R. BOLTON, ASSISTANT TO THE  
PRESIDENT FOR NATIONAL SECURITY AFFAIRS (NATIONAL SECURITY ADVISOR)

FROM: SCOTT GAST, SENIOR COUNSEL TO THE PRESIDENT

SUBJECT: POST-EMPLOYMENT OBLIGATIONS

This memo provides an overview of the Executive Branch post-employment restrictions that our office discussed with you prior to your departure from the White House. As a former Assistant to the President, you are covered by certain post-employment restrictions under both the criminal law, 18 U.S.C. § 207, and the Ethics Pledge you signed under Executive Order 13770. As a commissioned officer, you are also required to file a termination financial disclosure report within 30 days of leaving Government service.

These restrictions limit: the appearances and communications that you may make on behalf of a third party back to the federal government; certain other types of assistance that you may provide to third parties; and your profit-sharing with a future employer who did business with the government during your tenure here. The purpose behind the restrictions is threefold: to prevent you from “switching sides” on a matter in which you were involved when you worked in the Executive Office of the President (EOP); to provide a “cooling off” period in which you may not seek official action on behalf of a third party from EOP and other federal officials on any matter; and to preclude you from sharing in certain profits that your new employer may have received in connection with a matter that was pending before the government during your White House tenure.

Many of the post-employment restrictions carry criminal penalties, so please review the entire memorandum carefully, sign the last page where indicated, and provide a copy of the signature page to Counsel's Office. Our office remains available to answer any questions you may have about any post-employment restrictions.

**I. SUMMARY AND ANALYSIS OF CRIMINAL POST-EMPLOYMENT RULES**

As a former Executive Branch official, you are subject to two criminal statutes that limit your post-employment activities. Generally, 18 U.S.C. § 207 limits your ability, depending on the circumstances, to communicate to or appear before many federal officials, both within and outside EOP, and 18 U.S.C. § 203 prohibits you from receiving compensation for any representational services that were provided by a former employer in which the United States was a party or had a direct and substantial interest during the time that you were a government employee. You are also subject to post-employment restrictions included in the Ethics Pledge (Executive Order 13770).



**A. The Lifetime Ban on "Switching Sides": 18 U.S.C. § 207(a)(1)**

This lifetime ban aims to prevent Executive Branch employees who have participated in particular matters from later "switching sides" and representing someone else on the same matter before the United States. Under 18 U.S.C. § 207(a)(1), you are prohibited from communicating with, or appearing before, any employee of the United States, with the intent to influence that employee on behalf of another person (other than yourself), on any particular matter involving specific parties in which you "personally" and "substantially" participated at any time during your White House employment. This is a permanent restriction commencing upon your termination from government service and lasting for the lifetime of all such particular matters as they existed during your tenure.

- For purposes of this rule, an "employee of the United States" includes the President as well as any current officer or employee of any department, agency (including a government corporation), court or court-martial of the United States or the District of Columbia. It does not, however, include a member of Congress.
- A communication or appearance can be formal or informal, and includes telephone calls and emails.
- A "particular matter involving a specific party or parties" is a fairly case-specific restriction that "typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case." 5 C.F.R. § 2641.201(h)(1). It does not include rulemaking, legislation, or policy-making unless it focuses narrowly on identified parties. *See* 5 C.F.R. § 2641.201(h)(2).
- To "participate" means to take action as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action, or to purposefully forbear in order to affect the outcome of a matter. An employee does not participate in a matter merely because he had knowledge of its existence or because it was pending under his official responsibility. A government employee participates "personally" even when he merely directs a subordinate's participation. He participates "substantially" if his involvement is "of significance" to the matter. Thus, while a series of peripheral involvements may be insubstantial, participation in a single critical step may be substantial. *See* 5 C.F.R. § 2641.201(i).

**B. Two-Year Ban on Matters Pending Under an Employee's Official Responsibility: 18 U.S.C. § 207(a)(2)**

This two-year ban covers the same types of representational contacts as Section 207(a)(1), except that it extends to all matters involving a specific party or parties that were pending under the government employee's "official responsibility" during his last year of service—not only those in which he participated personally and substantially. An employee has "official responsibility" over a particular matter when he has "direct administrative or operating authority, whether

intermediate or final," to approve, disapprove, or otherwise direct governmental action, including when he delegates his authority to others. 5 C.F.R. § 2641.202(j)(1).

**C. The One-Year Ban on Participating in Ongoing Trade or Treaty Negotiations: 18 U.S.C. § 207(b)**

For one year from the date you terminate Government service, you may not knowingly represent, aid, or advise any other person concerning any ongoing trade or treaty negotiation in which, during your last year of Government service, you participated personally and substantially as an employee, on the basis of covered information.

The definition of "covered information" is any information which you know or should have known were designated as exempt from release under the Freedom of Information Act. A "Trade Negotiation" refers only to those ongoing trade negotiations that the President determines to undertake pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 2902). That authority has lapsed. A "treaty" is an international agreement made by the President that requires the advice and consent of the Senate. A negotiation on a treaty commences to be "ongoing" at the point when both (1) the determination has been made by a competent authority that the outcome of a negotiation will be a treaty, and (2) discussions with a foreign government have begun on a text.

It is important to note that even if a post-employment activity is not prohibited by section 207(b), the negotiation may nevertheless have had specific parties identified to it, thus triggering the lifetime restriction set forth in section 207(a)(1).

**D. Communicating with Former Colleagues and Other Government Officials: Two-Year "Cooling Off Period for Very Senior Employees: 18 U.S.C. § 207(d)**

As an Assistant to the President you are considered a "Very Senior Employee" for purposes of the criminal post-employment laws. See 18 U.S.C. § 207(d)(1)(C).

For two years after leaving the White House, it is a crime for you to communicate to, or appear before, any EOP employee (including the President) and certain other high-level government officials not in EOP (see Attachment A) (collectively, "covered employees"), if the communication or appearance is made on behalf of another person and is intended to influence official action on any matter.

For purposes of this prohibition, the EOP includes all components (WHO, OVP, EXR, NSC, OA, OMB, ONDCP, OSTP, PIAB, USTR, CEA, CEQ). As you'll see from Attachment A, the prohibition also extends to communications with Cabinet officials and high-level officials in most Executive Branch agencies.

This restriction is broader than the others in Section 207 as it applies to any matter on which official action is sought, *regardless* of whether you worked on the matter or whether it was pending before you, or whether it involves specific parties. Notably, like Sections 207(a)(1) and (a)(2), the restriction does not apply to your communications to or appearances before Members of Congress.

- Representation. Like the restrictions in Section 207(a)(1) and (a)(2), § 207(d) prohibits only representational communications and appearances – i.e., only those made on behalf of someone else. It does not limit your ability to talk to the President or any of your friends and colleagues in government on your own behalf or in your personal capacity on any topic.

You communicate or appear on behalf of another when you act as the other person/company's agent, or if you act with the express or implied consent of the person/company and subject to some degree of control or direction by the person/company in relation to the communication or appearance. 5 C.F.R.

§ 2641.201(g)(1)(i). An "appearance" extends to mere physical presence (i.e., non-speaking) at a meeting when the circumstances make it clear that attendance is intended to influence the United States. *Id.* at § 2641.201(e)(4).

You do not act on behalf of another merely because your communication or appearance is consistent with the interests of another person/company, is in support of another person/company, or may cause another person/company to derive some benefit as a consequence of your activity. *Id.* at § 2641.201(g)(1)(ii).

- Behind the Scenes Assistance. Section 207(d) does not restrict your "behind-the-scenes" assistance to your employer; it only prohibits your oral and written communications to or physical appearances before the designated government employees. *Id.* at § 2641.201(d)(1)-(3). Note, however, that "behind-the-scenes" assistance does not include communications conveyed by another that are intended to be attributed to you, even if you are not recognized as the source of the information. *See id.* at § 2641.201(d)(1).
- Matter. A "matter" includes not only those involving specific parties (as above), but also "the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons." 5 C.F.R. § 2641.205(i)(2)(ii). Further, the definition includes "new matters" (i.e., it is not limited to matters previously pending or of interest to the White House), as well as matters currently "pending at any other agency in the executive branch, an independent agency, the legislative branch, or the judicial branch." *Id.* at § 2641.204(i)(2)(iii - iv).
- Intent to influence official action. To commit a § 207(d) crime, a former employee must, in making his representational communication or appearance, "seek[] official action" with an "intent to influence." An employee "seeks official action" if his communication aims to induce a current employee to make a decision or otherwise act "in his official capacity." *See* 5 C.F.R. § 2641.204(i)(1).

A communication or appearance is made with an "intent to influence" when it is made for the purpose of "[s]eeking a Government ruling, benefit, approval, or other discretionary Government action," or "[a]ffecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy." 5 C.F.R. § 2641.201(e)(1).

If, over the next two years, a question arises about a particular circumstance, feel free to contact us for fact-specific guidance.

#### **Exceptions to 207(d)**

As noted, 18 U.S.C. § 207(d) does not restrict contacts made on your own behalf, contacts where you are not seeking official action, or contacts of a purely personal nature.

Additionally, there are several statutory exceptions to the prohibitions of § 207(d) that permit you to represent another person before covered employees on official matters during your two-year cooling off period. *See* 18 U.S.C. § 207(d); 5 C.F.R. § 2641.301. While these other exceptions do not appear immediately relevant to your new position, we note them briefly for your awareness.

First, none of the restrictions apply to representational activities that you may perform on behalf of the United States or the District of Columbia or as an elected official of a State or local government. 18 U.S.C. § 207(a)(1), 207(j)(1)(A). There is also an exception for certain acts that you may perform on behalf of tribal governments. *See id.* at § 207(j)(1)(B).

Second, additional exceptions apply for the provision of testimony, the provision of scientific or technological information under certain circumstances, and the provision of information about which the former employee has special knowledge when no compensation is received, *id.* at §§ 207(j)(4)-(6), but you should consult with Counsel's Office before attempting to rely on any of these exceptions.

Third, the restrictions on communications with White House or other senior administration officials will not apply to you if you become exclusively employed by certain purely political entities (i.e., a candidate in his capacity as a candidate for Federal or State office; an authorized committee; a national committee; a national Federal campaign committee; a State committee; or a political party) or a person or entity that exclusively represents, aids, or advises only such political entities. *See* 18 U.S.C. § 207(j)(7); 5 C.F.R. § 2641.301(g). This exception is not available to you if you are employed by a firm that represents both political entities and private industry clients. *This exception does not apply to political action committees (PACs) or super PACs or any other political entity (such as a social welfare organization engaged in political activity).*

#### **E. Criminal Restrictions Relating to Foreign Entities: 18 U.S.C. § 207(f)**

For one year from the date of your departure from the EOP as a "Very Senior Employee," you may not represent *or aid or advise* a government of a foreign country or a foreign political party with the intent to influence an agency or department of the United States, *including Members of Congress and the legislative branch*. A foreign commercial corporation is not generally covered under § 207(f) unless it exercises the functions of a sovereign. Please note that, unlike the other provisions we have discussed, Section 207(f) goes beyond representational activities and extends to providing any assistance to an instrumentality of a foreign government. This provision would thus bar a former "Very Senior Employee" for one year from providing a covered foreign entity with such "behind-the-scenes" assistance as, for example, drafting a proposed communication to

a U.S. agency, advising on an appearance before Congress, or consulting on other strategies designed to persuade departmental or agency decision-makers to take action.

**F. Restriction on Compensation for Representational Services Provided by Another:  
18 U.S.C. § 203**

It is a crime for you to receive compensation for representational services rendered by another on particular matters in which the United States was a party or had a direct and substantial interest during the time that you were a government employee. Section 203 does not apply to a fixed salary. Nor would Section 203 apply to payments that are fixed or based on your personal job performance, your seniority, or your position. *See* OGE Opinion 99x24 (Dec. 14, 1999), *Receipt for Compensation for Representational Services under 18 U.S.C. § 203* (summarizing prior opinions).

If, in the future, your compensation involves equity participation (i.e., profit-sharing, bonuses, or other compensation tied to the company's actual profits from its representational services before the government), you may not receive or accept compensation for any representational services rendered at any time by a future employer on particular matters that were pending before any United States department, agency, court, officer, or commission during your tenure at EOP.

If the Section 203 prohibition is implicated in the future and you need further guidance, please feel free to contact us.

**II. EXECUTIVE ORDER 13770, ETHICS PLEDGE PROHIBITIONS**

As a Trump Administration appointee you were required to sign the "Ethics Pledge" set forth in section 1 of Executive Order 13770. Under the Pledge, you have agreed to certain restrictions after you leave your appointee position. Violation of any of these provisions may result in your debarment from the EOP, or civil judicial proceedings for declaratory, injunctive, or monetary relief, including the establishment of a constructive trust and the requirement that you pay all money or things of value received by, or payable to, you as a result of your breach.

**A. 5-Year Ban on Lobbying Former Agency**

For five years from the date on which an appointee leaves an appointee position, he or she is precluded from engaging in lobbying activities, as that term is defined in the Lobbying Disclosure Act and Exec. Ord. 13770, with respect to any EOP component (WHO, OVP, EXR, NSC, OA, OMB, ONDCP, OSTP, PIAB, USTR, CEA, CEQ).

OGE has determined that for purposes of this provision, lobbying activities are deemed to be carried out "with respect to" an agency only to the extent that they involve the following:

1. Any oral or written communication to a covered executive branch official of that agency; or
2. Efforts that are intended, at the time of performance, to support a covered lobbying contact to a covered executive branch official of that agency.

**B. Administration-Long Ban on Lobbying Covered Non-Career Officials**

Upon terminating government service, you are precluded from engaging in lobbying activities with respect to any covered executive branch official or non-career Senior Executive Service appointee in any agency of the Executive Branch or any component of the EOP for the remainder of the Trump Administration. "Covered executive branch official" includes those positions listed in Attachment A.

OGE has determined that for purposes of this provision, lobbying activities are deemed to be carried out "with respect to" covered executive branch official or non-career Senior Executive Service appointee only to the extent that they involve the following:

1. Any oral or written communication to a covered executive branch official or non-career Senior Executive Service appointee; or
2. Efforts that are intended, at the time of performance, to support a covered lobbying contact to a covered executive branch official or non-career Senior Executive Service appointee of that agency.

**C. Permanent Ban on Acting as an Agent of a Foreign Entity**

Upon terminating government service, you are permanently prohibited from engaging in any activity on behalf of any foreign government or foreign political party which would require you to register under the Foreign Agents Registration Act of 1938, as amended.

**III. NONPUBLIC INFORMATION AND SPEAKING ENGAGEMENTS**

**A. Use of Nonpublic Information**

You are prohibited from disclosing any classified or confidential information. 18 U.S.C. § 1905; 18 U.S.C. § 798; Executive Order 13526.

You also may not use or disclose nonpublic information in any post-employment teaching, speaking or writing. Nonpublic information is information gained by reason of your federal employment and that you know or should know has not been made available to the general public. *See* 5 C.F.R. § 2635.703(b). Nonpublic information includes information that (1) is exempt from disclosure by statute, Executive Order or regulations; (2) is designated as confidential or classified; or (3) has not been disseminated to the general public and is not authorized to be made available to the public upon request. *Id.* This limitation does not restrict your ability to teach, speak or write on a subject within your area of expertise based on publicly available information, your educational background or your personal experiences, even if that teaching, speaking or writing deals generally with a subject related to your former area of responsibility.

**B. Public Speaking and Media Appearances**

None of the post-employment rules prohibits you from teaching, speaking publicly, or making media appearances, provided that your activity does not otherwise run afoul of the



**ATTACHMENT A**

**Executive Schedule Positions listed in 5 U.S.C. §§ 5312-5316 (as of March 30, 2017)**

**(No Contact List for 18 U.S.C. § 207(d))**

**Executive Schedule I (5 U.S.C. § 5312)**

Secretary of State.

Secretary of the Treasury.

Secretary of Defense.

Attorney General.

Secretary of the Interior.

Secretary of Agriculture.

Secretary of Commerce.

Secretary of Labor.

Secretary of Health and Human Services.

Secretary of Housing and Urban Development.

Secretary of Transportation.

United States Trade Representative.

Secretary of Energy.

Secretary of Education.

Secretary of Veterans Affairs.

Secretary of Homeland Security.

Director of the Office of Management and Budget.

Commissioner of Social Security, Social Security Administration.

Director of National Drug Control Policy.

Chairman, Board of Governors of the Federal Reserve System.

Director of National Intelligence.

**Executive Schedule II (5 U.S.C. § 5313)**

Deputy Secretary of Defense.

Deputy Secretary of State.

Deputy Secretary of State for Management and Resources.



Administrator, Agency for International Development.  
Administrator of the National Aeronautics and Space Administration.  
Deputy Secretary of Veterans Affairs.  
Deputy Secretary of Homeland Security.  
Under Secretary of Homeland Security for Management.  
Deputy Secretary of the Treasury.  
Deputy Secretary of Transportation.  
Chairman, Nuclear Regulatory Commission.  
Chairman, Council of Economic Advisers.  
Director of the Office of Science and Technology.  
Director of the Central Intelligence Agency.  
Secretary of the Air Force.  
Secretary of the Army.  
Secretary of the Navy.  
Administrator, Federal Aviation Administration.  
Director of the National Science Foundation.  
Deputy Attorney General.  
Deputy Secretary of Energy.  
Deputy Secretary of Agriculture.  
Director of the Office of Personnel Management.  
Administrator, Federal Highway Administration.  
Administrator of the Environmental Protection Agency.  
Under Secretary of Defense for Acquisition, Technology, and Logistics.  
Deputy Secretary of Labor.  
Deputy Director of the Office of Management and Budget.  
Independent Members, Thrift Depositor Protection Oversight Board.  
Deputy Secretary of Health and Human Services.  
Deputy Secretary of the Interior.  
Deputy Secretary of Education.  
Deputy Secretary of Housing and Urban Development.

Deputy Director for Management, Office of Management and Budget.  
Director of the Federal Housing Finance Agency.  
Deputy Commissioner of Social Security, Social Security Administration.  
Administrator of the Community Development Financial Institutions Fund.  
Deputy Director of National Drug Control Policy.  
Members, Board of Governors of the Federal Reserve System.  
Under Secretary of Transportation for Policy.  
Chief Executive Officer, Millennium Challenge Corporation.  
Principal Deputy Director of National Intelligence.  
Director of the National Counterterrorism Center.  
Director of the National Counter Proliferation Center.  
Administrator of the Federal Emergency Management Agency.  
Federal Transit Administrator.

**Executive Schedule III (5 U.S.C. § 5314)**

Solicitor General of the United States.  
Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, Under Secretary of Commerce for Export Administration, and Under Secretary of Commerce for Travel and Tourism.  
Under Secretaries of State (6).  
Under Secretaries of the Treasury (3).  
Administrator of General Services.  
Administrator of the Small Business Administration.  
Deputy Administrator, Agency for International Development.  
Chairman of the Merit Systems Protection Board.  
Chairman, Federal Communications Commission.  
Chairman, Board of Directors, Federal Deposit Insurance Corporation.  
Chairman, Federal Energy Regulatory Commission.  
Chairman, Federal Trade Commission.  
Chairman, Surface Transportation Board.  
Chairman, National Labor Relations Board.

Chairman, Securities and Exchange Commission.  
Chairman, National Mediation Board.  
Chairman, Railroad Retirement Board.  
Chairman, Federal Maritime Commission.  
Comptroller of the Currency.  
Commissioner of Internal Revenue.  
Under Secretary of Defense for Policy.  
Under Secretary of Defense (Comptroller).  
Under Secretary of Defense for Personnel and Readiness.  
Under Secretary of Defense for Intelligence.  
Deputy Chief Management Officer of the Department of Defense.  
Under Secretary of the Air Force.  
Under Secretary of the Army.  
Under Secretary of the Navy.  
Deputy Administrator of the National Aeronautics and Space Administration.  
Deputy Director of the Central Intelligence Agency.  
Director of the Office of Emergency Planning.  
Director of the Peace Corps.  
Deputy Director, National Science Foundation.  
President of the Export-Import Bank of Washington.  
Members, Nuclear Regulatory Commission.  
Members, Defense Nuclear Facilities Safety Board.  
Director of the Federal Bureau of Investigation, Department of Justice.  
Administrator of the National Highway Traffic Safety Administration.  
Administrator of the Federal Motor Carrier Safety Administration.  
Administrator, Federal Railroad Administration.  
Chairman, National Transportation Safety Board.  
Chairman of the National Endowment for the Arts the incumbent of which also serves as  
Chairman of the National Council on the Arts.  
Chairman of the National Endowment for the Humanities.  
Director of the Federal Mediation and Conciliation Service.

President, Overseas Private Investment Corporation.  
Chairman, Postal Regulatory Commission.  
Chairman, Occupational Safety and Health Review Commission.  
Governor of the Farm Credit Administration.  
Chairman, Equal Employment Opportunity Commission.  
Chairman, Consumer Product Safety Commission.  
Under Secretaries of Energy (3).  
Chairman, Commodity Futures Trading Commission.  
Deputy United States Trade Representatives (3).  
Chief Agricultural Negotiator, Office of the United States Trade Representative.  
Chief Innovation and Intellectual Property Negotiator, Office of the United States Trade Representative.  
Chairman, United States International Trade Commission.  
Under Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Administrator of the National Oceanic and Atmospheric Administration.  
Under Secretary of Commerce for Standards and Technology, who also serves as Director of the National Institute of Standards and Technology.  
Associate Attorney General.  
Chairman, Federal Mine Safety and Health Review Commission.  
Chairman, National Credit Union Administration Board.  
Deputy Director of the Office of Personnel Management.  
Under Secretary of Agriculture for Farm and Foreign Agricultural Services.  
Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.  
Under Secretary of Agriculture for Natural Resources and Environment.  
Under Secretary of Agriculture for Research, Education, and Economics.  
Under Secretary of Agriculture for Food Safety.  
Under Secretary of Agriculture for Marketing and Regulatory Programs.  
Director, Institute for Scientific and Technological Cooperation.  
Under Secretary of Agriculture for Rural Development.  
Administrator, Maritime Administration.  
Executive Director Property Review Board.

Deputy Administrator of the Environmental Protection Agency.  
Archivist of the United States.  
Executive Director, Federal Retirement Thrift Investment Board.  
Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics.  
Director, Trade and Development Agency.  
Under Secretary for Health, Department of Veterans Affairs.  
Under Secretary for Benefits, Department of Veterans Affairs.  
Under Secretary for Memorial Affairs, Department of Veterans Affairs.  
Under Secretaries, Department of Homeland Security.  
Director of the Bureau of Citizenship and Immigration Services.  
Director of the Office of Government Ethics.  
Administrator for Federal Procurement Policy.  
Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.  
Director of the Office of Thrift Supervision.  
Chairperson of the Federal Housing Finance Board.  
Executive Secretary, National Space Council.  
Controller, Office of Federal Financial Management, Office of Management and Budget.  
Administrator, Office of the Assistant Secretary for Research and Technology of the Department of Transportation.  
Deputy Director for Demand Reduction, Office of National Drug Control Policy.  
Deputy Director for Supply Reduction, Office of National Drug Control Policy.  
Deputy Director for State and Local Affairs, Office of National Drug Control Policy.  
Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.  
Register of Copyrights.  
Commissioner of U.S. Customs and Border Protection, Department of Homeland Security.  
Under Secretary of Education.  
Administrator of the Centers for Medicare & Medicaid Services.  
Administrator of the Office of Electronic Government.  
Administrator, Pipeline and Hazardous Materials Safety Administration.

Director, Pension Benefit Guaranty Corporation.  
Deputy Administrators, Federal Emergency Management Agency.  
Chief Executive Officer, International Clean Energy Foundation.  
Independent Member of the Financial Stability Oversight Council (1).  
Director of the Office of Financial Research.

**Executive Schedule IV (5 U.S.C. § 5315)**

Deputy Administrator of General Services.  
Associate Administrator of the National Aeronautics and Space Administration.  
Assistant Administrators, Agency for International Development (6).  
Regional Assistant Administrators, Agency for International Development (4).  
Assistant Secretaries of Agriculture (3).  
Assistant Secretaries of Commerce (11).  
Assistant Secretaries of Defense (14).  
Assistant Secretaries of the Air Force (4).  
Assistant Secretaries of the Army (5).  
Assistant Secretaries of the Navy (4).  
Assistant Secretaries of Health and Human Services (6).  
Assistant Secretaries of the Interior (6).  
Assistant Attorneys General (11).  
Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training.  
Administrator, Wage and Hour Division, Department of Labor.  
Assistant Secretaries of State (24) and 4 other State Department officials to be appointed by the President, by and with the advice and consent of the Senate.  
Assistant Secretaries of the Treasury (10).  
Members, United States International Trade Commission (5).  
Assistant Secretaries of Education (10).  
General Counsel, Department of Education.  
Director of Civil Defense, Department of the Army.  
Deputy Director of the Office of Emergency Planning.

Deputy Director of the Office of Science and Technology.  
Deputy Director of the Peace Corps.  
Assistant Directors of the Office of Management and Budget (3).  
General Counsel of the Department of Agriculture.  
General Counsel of the Department of Commerce.  
General Counsel of the Department of Defense.  
General Counsel of the Department of Health and Human Services.  
Solicitor of the Department of the Interior.  
Solicitor of the Department of Labor.  
General Counsel of the National Labor Relations Board.  
General Counsel of the Department of the Treasury.  
First Vice President of the Export-Import Bank of Washington.  
Members, Council of Economic Advisers.  
Members, Board of Directors of the Export-Import Bank of Washington.  
Members, Federal Communications Commission.  
Member, Board of Directors of the Federal Deposit Insurance Corporation.  
Directors, Federal Housing Finance Board.  
Members, Federal Energy Regulatory Commission.  
Members, Federal Trade Commission.  
Members, Surface Transportation Board.  
Members, National Labor Relations Board.  
Members, Securities and Exchange Commission.  
Members, Merit Systems Protection Board.  
Members, Federal Maritime Commission.  
Members, National Mediation Board.  
Members, Railroad Retirement Board.  
Director of Selective Service.  
Associate Director of the Federal Bureau of Investigation, Department of Justice.  
Members, Equal Employment Opportunity Commission (4).  
Director, Community Relations Service.

Members, National Transportation Safety Board.  
General Counsel, Department of Transportation.  
Deputy Administrator, Federal Aviation Administration.  
Assistant Secretaries of Transportation (5).  
Deputy Federal Highway Administrator.  
Administrator of the Saint Lawrence Seaway Development Corporation.  
Assistant Secretary for Science, Smithsonian Institution.  
Assistant Secretary for History and Art, Smithsonian Institution.  
Deputy Administrator of the Small Business Administration.  
Assistant Secretaries of Housing and Urban Development (8).  
General Counsel of the Department of Housing and Urban Development.  
Commissioner of Interama.  
Federal Insurance Administrator, Federal Emergency Management Agency.  
Executive Vice President, Overseas Private Investment Corporation.  
Members, National Credit Union Administration Board (2).  
Members, Postal Regulatory Commission (4).  
Members, Occupational Safety and Health Review Commission.  
Deputy Under Secretaries of the Treasury (or Assistant Secretaries of the Treasury) (2).  
Members, Consumer Product Safety Commission (4).  
Members, Commodity Futures Trading Commission.  
Director of Nuclear Reactor Regulation, Nuclear Regulatory Commission.  
Director of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission.  
Director of Nuclear Regulatory Research, Nuclear Regulatory Commission.  
Executive Director for Operations, Nuclear Regulatory Commission.  
President, Government National Mortgage Association, Department of Housing and Urban Development.  
Assistant Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the National Oceanic and Atmospheric Administration.  
Director, Bureau of Prisons, Department of Justice.  
Assistant Secretaries of Energy (8).  
General Counsel of the Department of Energy.



Administrator, Economic Regulatory Administration, Department of Energy.  
Administrator, Energy Information Administration, Department of Energy.  
Director, Office of Indian Energy Policy and Programs, Department of Energy.  
Director, Office of Science, Department of Energy.  
Assistant Secretary of Labor for Mine Safety and Health.  
Members, Federal Mine Safety and Health Review Commission.  
President, National Consumer Cooperative Bank.  
Special Counsel of the Merit Systems Protection Board.  
Chairman, Federal Labor Relations Authority.  
Assistant Secretaries, Department of Homeland Security.  
General Counsel, Department of Homeland Security.  
Officer for Civil Rights and Civil Liberties, Department of Homeland Security.  
Chief Financial Officer, Department of Homeland Security.  
Chief Information Officer, Department of Homeland Security.  
Deputy Director, Institute for Scientific and Technological Cooperation.  
Director of the National Institute of Justice.  
Director of the Bureau of Justice Statistics.  
Chief Counsel for Advocacy, Small Business Administration.  
Assistant Administrator for Toxic Substances, Environmental Protection Agency.  
Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.  
Assistant Administrators, Environmental Protection Agency (8).  
Director of Operational Test and Evaluation, Department of Defense.  
Director of Cost Assessment and Program Evaluation, Department of Defense.  
Special Representatives of the President for arms control, nonproliferation, and disarmament matters, Department of State.  
Ambassadors at Large.  
Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.  
Assistant Secretaries, Department of Veterans Affairs (7).  
General Counsel, Department of Veterans Affairs.  
Commissioner of Food and Drugs, Department of Health and Human Services [1]

Chairman, Board of Veterans' Appeals.  
Administrator, Office of Juvenile Justice and Delinquency Prevention.  
Director, United States Marshals Service.  
Chairman, United States Parole Commission.  
Director, Bureau of the Census, Department of Commerce.  
Director of the Institute of Museum and Library Services.  
Chief Financial Officer, Department of Agriculture.  
Chief Financial Officer, Department of Commerce.  
Chief Financial Officer, Department of Education.  
Chief Financial Officer, Department of Energy.  
Chief Financial Officer, Department of Health and Human Services.  
Chief Financial Officer, Department of Housing and Urban Development.  
Chief Financial Officer, Department of the Interior.  
Chief Financial Officer, Department of Justice.  
Chief Financial Officer, Department of Labor.  
Chief Financial Officer, Department of State.  
Chief Financial Officer, Department of Transportation.  
Chief Financial Officer, Department of the Treasury.  
Chief Financial Officer, Department of Veterans Affairs.  
Chief Financial Officer, Environmental Protection Agency.  
Chief Financial Officer, National Aeronautics and Space Administration.  
Commissioner, Office of Navajo and Hopi Indian Relocation.  
Principal Deputy Under Secretary of Defense for Policy.  
Principal Deputy Under Secretary of Defense for Personnel and Readiness.  
Principal Deputy Under Secretary of Defense (Comptroller).  
Principal Deputy Under Secretary of Defense for Intelligence.  
General Counsel of the Department of the Army.  
General Counsel of the Department of the Navy.  
General Counsel of the Department of the Air Force.  
Liaison for Community and Junior Colleges, Department of Education.

Director of the Office of Educational Technology.

Director of the International Broadcasting Bureau.

The [2] Commissioner of Labor Statistics, Department of Labor.

Administrator, Rural Utilities Service, Department of Agriculture.

Chief Information Officer, Department of Agriculture.

Chief Information Officer, Department of Commerce.

Chief Information Officer, Department of Defense (unless the official designated as the Chief Information Officer of the Department of Defense is an official listed under section 5312, 5313, or 5314 of this title).

Chief Information Officer, Department of Education.

Chief Information Officer, Department of Energy.

Chief Information Officer, Department of Health and Human Services.

Chief Information Officer, Department of Housing and Urban Development.

Chief Information Officer, Department of the Interior.

Chief Information Officer, Department of Justice.

Chief Information Officer, Department of Labor.

Chief Information Officer, Department of State.

Chief Information Officer, Department of Transportation.

Chief Information Officer, Department of the Treasury.

Chief Information Officer, Department of Veterans Affairs.

Chief Information Officer, Environmental Protection Agency.

Chief Information Officer, National Aeronautics and Space Administration.

Chief Information Officer, Agency for International Development.

Chief Information Officer, Federal Emergency Management Agency.

Chief Information Officer, General Services Administration.

Chief Information Officer, National Science Foundation.

Chief Information Officer, Nuclear Regulatory Agency.

Chief Information Officer, Office of Personnel Management.

Chief Information Officer, Small Business Administration.

Chief Information Officer of the Intelligence Community.

General Counsel of the Central Intelligence Agency.

Principal Deputy Administrator, National Nuclear Security Administration.

Additional Deputy Administrators of the National Nuclear Security Administration (3), but if the Deputy Administrator for Naval Reactors is an officer of the Navy on active duty, (2).

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

General Counsel of the Office of the Director of National Intelligence.

Chief Medical Officer, Department of Homeland Security.

**Executive Schedule V (5 U.S.C. § 5316)**

Administrator, Bonneville Power Administration, Department of the Interior.

Administrator of the National Capital Transportation Agency.

Associate Administrators of the Small Business Administration (4).

Associate Administrators, National Aeronautics and Space Administration (7).

Associate Deputy Administrator, National Aeronautics and Space Administration.

Deputy Associate Administrator, National Aeronautics and Space Administration.

Archivist of the United States.

Assistant Secretary of Health and Human Services for Administration.

Assistant Attorney General for Administration.

Assistant and Science Adviser to the Secretary of the Interior.

Chairman, Foreign Claims Settlement Commission of the United States, Department of Justice.

Chairman of the Renegotiation Board.

Chairman of the Subversive Activities Control Board.

Chief Counsel for the Internal Revenue Service, Department of the Treasury.

Commissioner, Federal Acquisition Service, General Services Administration.

Director, United States Fish and Wildlife Service, Department of the Interior.

Commissioner of Indian Affairs, Department of the Interior.

Commissioners, Indian Claims Commission (5).

Commissioner, Public Buildings Service, General Services Administration.

Commissioner of Reclamation, Department of the Interior.

Commissioner of Vocational Rehabilitation, Department of Health and Human Services.

Commissioner of Welfare, Department of Health and Human Services.

Director, Bureau of Mines, Department of the Interior.  
Director, Geological Survey, Department of the Interior.  
Deputy Commissioner of Internal Revenue, Department of the Treasury.  
Associate Director of the Federal Mediation and Conciliation Service.  
Associate Director for Volunteers, Peace Corps.  
Associate Director for Program Development and Operations, Peace Corps.  
Assistants to the Director of the Federal Bureau of Investigation, Department of Justice (2).  
Assistant Directors, Office of Emergency Planning (3).  
Fiscal Assistant Secretary of the Treasury.  
General Counsel of the Agency for International Development.  
General Counsel of the Nuclear Regulatory Commission.  
General Counsel of the National Aeronautics and Space Administration.  
Manpower Administrator, Department of Labor.  
Members, Renegotiation Board.  
Members, Subversive Activities Control Board.  
Assistant Administrator of General Services.  
Director, United States Travel Service, Department of Commerce.  
Assistant Director (Program Planning, Analysis and Research), Office of Economic Opportunity.  
Deputy Director, National Security Agency.  
Director, Bureau of Land Management, Department of the Interior.  
Director, National Park Service, Department of the Interior.  
National Export Expansion Coordinator, Department of Commerce.  
Staff Director, Commission on Civil Rights.  
Assistant Secretary for Administration, Department of Transportation.  
Director, United States National Museum, Smithsonian Institution.  
Director, Smithsonian Astrophysical Observatory, Smithsonian Institution.  
Administrator of the Environmental Science Services Administration.  
Associate Directors of the Office of Personnel Management (5).  
Assistant Federal Highway Administrator.  
Deputy Administrator of the National Highway Traffic Safety Administration.

Deputy Administrator of the Federal Motor Carrier Safety Administration.  
Assistant Federal Motor Carrier Safety Administrator.  
Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice.  
Vice Presidents, Overseas Private Investment Corporation (3).  
Deputy Administrator, Federal Transit Administration, Department of Transportation.  
General Counsel of the Equal Employment Opportunity Commission.  
Executive Director, Advisory Council on Historic Preservation.  
Additional Officers, Department of Energy (14).  
Additional officers, Nuclear Regulatory Commission (5).  
Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.  
Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.  
Assistant Administrators (3), National Oceanic and Atmospheric Administration.  
General Counsel, National Oceanic and Atmospheric Administration.  
Members, Federal Labor Relations Authority (2) and its General Counsel.  
Additional officers, Institute for Scientific and Technological Cooperation (2).  
Additional officers, Office of Management and Budget (6).  
Chief Scientist, National Oceanic and Atmospheric Administration.  
Director, Indian Health Service, Department of Health and Human Services.  
Commissioners, United States Parole Commission (8).  
Commissioner, Administration on Children, Youth, and Families.  
Chairman of the Advisory Council on Historic Preservation.

## ATTACHMENT B

### Intent to influence (5 C.F.R. § 2641.201(e)) and Examples

With the intent to influence- (1) Basic concept. The prohibition applies only to communications or appearances made by a former Government employee with the intent to influence the United States. A communication or appearance is made with the intent to influence when made for the purpose of:

- (i) Seeking a Government ruling, benefit, approval, or other discretionary Government action;

or

- (ii) Affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy.

Example 1 to paragraph (e)(1): A former employee of the Administration on Children and Families (ACF) signs a grant application and submits it to ACF on behalf of a nonprofit organization for which she now works. She has made a communication with the intent to influence an employee of the United States because her communication was made for the purpose of seeking a Government benefit.

Example 2 to paragraph (e)(1): A former Government employee calls an agency official to complain about the auditing methods being used by the agency in connection with an audit of a Government contractor for which the former employee serves as a consultant. The former employee has made a communication with the intent to influence because his call was made for the purpose of seeking Government action in connection with an issue involving an appreciable element of dispute.

(2) Intent to influence not present. Certain communications to and appearances before employees of the United States are not made with the intent to influence, within the meaning of paragraph (e)(1) of this section, including, but not limited to, communications and appearances made solely for the purpose of:

- (i) Making a routine request not involving a potential controversy, such as a request for publicly available documents or an inquiry as to the status of a matter;
- (ii) Making factual statements or asking factual questions in a context that involves neither an appreciable element of dispute nor an effort to seek discretionary Government action, such as conveying factual information regarding matters that are not potentially controversial during the regular course of performing a contract;
- (iii) Signing and filing the tax return of another person as preparer;
- (iv) Signing an assurance that one will be responsible as principal investigator for the direction and conduct of research under a Federal grant (see example 4 to paragraph (d) of this section);

- (v) Filing a Securities and Exchange Commission (SEC) Form 10-K or similar disclosure forms required by the SEC;
- (vi) Making a communication, at the initiation of the Government, concerning work performed or to be performed under a Government contract or grant, during a routine Government site visit to premises owned or occupied by a person other than the United States where the work is performed or would be performed, in the ordinary course of evaluation, administration, or performance of an actual or proposed contract or grant; or
- (vii) Purely social contacts (see example 4 to paragraph (t) of this section).

Example 1 to paragraph (e)(2): A former Government employee calls an agency to ask for the date of a scheduled public hearing on her client's license application. This is a routine request not involving a potential controversy and is not made with the intent to influence.

Example 2 to paragraph (e)(2): In the previous example, the agency's hearing calendar is quite full, as the agency has a significant backlog of license applications. The former employee calls a former colleague at the agency to ask if the hearing date for her client could be moved up on the schedule, so that her client can move forward with its business plans more quickly. This is a communication made with the intent to influence.

Example 3 to paragraph (e)(2): A former employee of the Department of Defense (DOD) now works for a firm that has a DOD contract to produce an operator's manual for a radar device used by DOD. In the course of developing a chapter about certain technical features of the device, the former employee asks a DOD official certain factual questions about the device and its properties. The discussion does not concern any matter that is known to involve a potential controversy between the agency and the contractor. The former employee has not made a communication with the intent to influence.

Example 4 to paragraph (e)(2): A former medical officer of the Food and Drug Administration (FDA) sends a letter to the agency in which he sets out certain data from safety and efficacy tests on a new drug for which his employer, ABC Drug Co., is seeking FDA approval. Even if the letter is confined to arguably "factual" matters, such as synopses of data from clinical trials, the communication is made for the purpose of obtaining a discretionary Government action, i. e., approval of a new drug. Therefore, this is a communication made with the intent to influence.

Example 5 to paragraph (e)(2): A former Government employee now works for a management consulting firm, which has a Government contract to produce a study on the efficiency of certain agency operations. Among other things, the contract calls for the contractor to develop a range of alternative options for potential restructuring of



certain internal Government procedures. The former employee would like to meet with agency representatives to present a tentative list of options developed by the contractor. She may not do so. There is a potential for controversy between the Government and the contractor concerning the extent and adequacy of any options presented, and, moreover, the contractor may have its own interest in emphasizing certain options as opposed to others because some options may be more difficult and expensive for the contractor to develop fully than others.

Example 6 to paragraph (e)(2): A former employee of the Internal Revenue Service (IRS) prepares his client's tax return, signs it as preparer, and mails it to the IRS. He has not made a communication with the intent to influence. In the event that any controversy should arise concerning the return, the former employee may not represent the client in the proceeding, although he may answer direct factual questions about the records he used to compile figures for the return, provided that he does not argue any theories or positions to justify the use of one figure rather than another.

Example 7 to paragraph (e)(2): An agency official visits the premises of a prospective contractor to evaluate the testing procedure being proposed by the contractor for a research contract on which it has bid. A former employee of the agency, now employed by the contractor, is the person most familiar with the technical aspects of the proposed testing procedure. The agency official asks the former employee about certain technical features of the equipment used in connection with the testing procedure. The former employee may provide factual information that is responsive to the questions posed by the agency official, as such information is requested by the Government under circumstances for its convenience in reviewing the bid. However, the former employee may not argue for the appropriateness of the proposed testing procedure or otherwise advocate any position on behalf of the contractor.

# Exhibit C

THE WHITE HOUSE  
WASHINGTON

September 10, 2019

The Hon. John R. Bolton  
9107 Fernwood Road  
Bethesda, MD 20817  
[REDACTED]

Dear Ambassador Bolton:

I write to continue the orderly process of your separation from service following your resignation as Assistant to the President for National Security Affairs. I know that you are committed to protecting confidential information you received while at the White House, but in an abundance of caution, I write to remind you of your continuing obligations and responsibilities to protect all confidential, privileged, and classified information and to provide for the safe return of all government property that you received in connection with your position at the Executive Office of the President ("EOP"). As the Assistant to the President for National Security Affairs, you were entrusted with information protected from disclosure, including classified information that related to some of the most sensitive matters of national security. You were previously advised that unauthorized disclosure, unauthorized retention, or negligent handling of certain classified information could cause irreparable injury to the United States or be used to advantage by a foreign nation. You agreed to consult with the EOP, even after your employment, regarding whether information in your possession might be classified. You also agreed to submit for security review to the EOP any writing or other material in any form that could contain classified information *before* submitting the writing or material to anyone without proper authorization to access such information. You also agreed to secure written authorization from the EOP before disclosing or showing such classified information to any unauthorized individual. All of these obligations extend beyond your period of employment at the EOP and the period in which you have access to classified information.

I understand that NSC security and information technology personnel visited your home today to begin the retrieval of both any classified information stored at your home and any government property provided for your use for secure communications or storage of classified material. Thank you for your cooperation in that process. Please ensure that all classified information or government property has been returned to NSC security and information technology personnel. In addition, given the nature of your former position advising the President on national security affairs, any documents that you created that have not yet been subject to classification review, including notes of meetings or telephone calls, must be submitted for a classification review before you retain them in an unsecured manner.

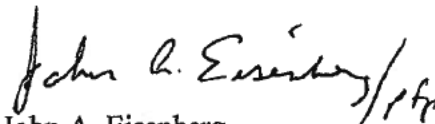
You also must return all U.S. government property in your possession, custody, or control, including handwritten notes, electronic notes, faxes, documents, memoranda, calendar entries, address book entries, voicemail, and other electronic data, regardless of the form in

which you have possession, custody, or control. Please contact my office to schedule a mutually convenient time for the return or affirm in writing that you have no U.S. government property in your possession, custody, or control.

Your obligations under the terms of your nondisclosure agreements concerning classified information and other obligations of confidentiality remain binding, and we will take all appropriate steps, which we are sure you will cooperate with, to ensure compliance. Any confidential, privileged, or classified information provided to you during your employment must be kept confidential, and under no circumstances are you authorized to reveal any such information.

My office will follow up with you separately to discuss other post-government employment matters, including your ethics and financial disclosure obligations. Please let me know if you would like to discuss any of the points above, and thank you for your continued cooperation in these matters.

Sincerely,

A handwritten signature in black ink that reads "John A. Eisenberg" with a stylized flourish at the end.

John A. Eisenberg  
*Assistant to the President, Deputy Counsel to the  
President and Legal Advisor to the NSC*

# Exhibit D

# Cooper & Kirk

Lawyers

A Professional Limited Liability Company

1523 New Hampshire Avenue, N.W.

Washington, D.C. 20036

Charles J. Cooper  
(202) 220-9660  
ccooper@cooperkirk.com

(202) 220-9600  
Fax (202) 220-9601

December 30, 2019

## **BY HAND**

Ellen J. Knight  
Senior Director, Records Management Directorate  
Executive Office of the President  
Washington, D.C. 20500

Re: Prepublication Security Review of Book Manuscript by Ambassador John Bolton

Dear Ms. Knight:

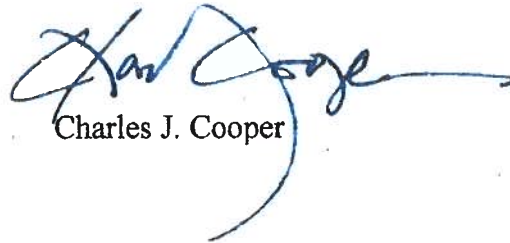
Thank you again for your helpful guidance in our telephone conversation earlier today concerning my submission, on behalf of Ambassador John Bolton, for prepublication security review of the enclosed manuscript of a book that he has prepared relating in large part to his service as National Security Advisor to the President. As I mentioned, Ambassador Bolton has carefully sought to avoid any discussion in the manuscript of sensitive compartmented information ("SCI") or other classified information, and we accordingly do not believe that prepublication review is required. We are nonetheless submitting this manuscript out of an abundance of caution, as contemplated by the nondisclosure agreements that he entered, commencing with those of April 5, 2018 immediately prior to his entry on duty.

I appreciate your assurance that the sole purpose of prepublication security review is to ensure that SCI or other classified information is not publicly disclosed. In keeping with that purpose, it is our understanding that the process of reviewing submitted materials is restricted to those career government officials and employees regularly charged with responsibility for such reviews. Accordingly, we understand that the contents of Ambassador Bolton's manuscript will not be reviewed by or otherwise disclosed to any persons not regularly involved in that process. *See* 28 CFR § 17.18(h) ("Material submitted for pre-publication review will be reviewed solely for the purpose of identifying and preventing the disclosure of sensitive compartmented information and other classified information. . . . Materials submitted for review will be disseminated to other persons or agencies only to the extent necessary to identify classified information.") (Justice Department prepublication review regulation). Ambassador Bolton is relying specifically on this understanding of the prepublication review process in submitting his manuscript for such review.

Ellen J. Knight  
December 30, 2019  
Page 2

Finally, I reiterate that the editorial and publication schedule for the manuscript is highly time sensitive, and so any efforts to complete the review before expiration of the 30-working-day deadline established in the April 5, 2018, agreement will be greatly appreciated. Please do not hesitate to contact me if you have any questions. We stand ready to be of assistance in any way possible in order to expedite your review.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles J. Cooper", with a long, sweeping flourish extending to the right.

Charles J. Cooper

# Exhibit

# E



NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

January 23, 2020

Charles J. Cooper  
Cooper & Kirk  
1523 New Hampshire Avenue NW  
Washington, DC 20036

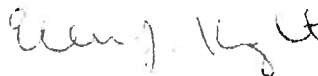
SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

Thank you for speaking yesterday by telephone. As we discussed, the National Security Council (NSC) Access Management directorate has been provided the manuscript submitted by your client, former Assistant to the President for National Security Affairs John Bolton, for prepublication review. Based on our preliminary review, the manuscript appears to contain significant amounts of classified information. It also appears that some of this classified information is at the TOP SECRET level, which is defined by Executive Order 13526 as information that "reasonably could be expected to cause exceptionally grave harm to the national security" of the United States if disclosed without authorization. Under federal law and the nondisclosure agreements your client signed as a condition for gaining access to classified information, the manuscript may not be published or otherwise disclosed without the deletion of this classified information.

The manuscript remains under review in order for us to do our best to assist your client by identifying the classified information within the manuscript, while at the same time ensuring that publication does not harm the national security of the United States. We will do our best to work with you to ensure your client's ability to tell his story in a manner that protects U.S. national security. We will be in touch with you shortly with additional, more detailed guidance regarding next steps that should enable you to revise the manuscript and move forward as expeditiously as possible.

Sincerely,



Ellen J. Knight  
Senior Director for Records, Access, and  
Information Security Management

# Exhibit F

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

February 7, 2020

Charles J. Cooper  
Cooper & Kirk  
1523 New Hampshire Avenue NW  
Washington, DC 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

As you are aware, Executive Order 13526 defines "classified information" as information, the unauthorized disclosure of which could reasonably be expected to cause at the very least "identifiable or describable damage to the national security" of the United States. In order to avoid such damage, as a condition for access to classified national security information, the Executive Branch has long required its employees to submit to a critically important prepublication review process with respect to any such information in advance of publication. These nondisclosure requirements, agreed to by your client as a condition of access to classified information, supplement the legal obligations that federal law imposes upon all persons who receive access to classified information. I would be happy to provide you copies of agreements signed by your client if that would be helpful.

As I noted in my letter of January 23, 2020, our preliminary review determined that the draft contains numerous instances of classified information. For example, the draft contains classified discussions between the President and foreign heads of state, classified foreign government information, details about classified military plans and operations, and classified details about intelligence sharing and activities. As the former Assistant to the President for National Security Affairs, your client understands the sensitivity of these categories of information and the potential harm that could be expected to result from its unauthorized disclosure.

Given the volume of classified information currently contained in the draft, your client should modify and revise the manuscript to remove all classified information and resubmit it to us for review. To further the iterative review process, it would be most efficient for me to meet with your client to review each instance of classified information in detail and, as necessary, assist in the prioritization of any particular portions. I am available any day next week. In the meantime, your client has a duty not to publish or otherwise disclose the manuscript or any of its underlying information until he has addressed our concerns and received authorization to do so from our office.

As written, the manuscript is very detailed, suggesting that it was likely produced from notes written by your client during his service at the White House. When your client received his employee debriefing, he stated that he did not have any notes or other records from his government service. Any notes that remain in your client's possession regarding the accounts in

the manuscript may fall under the requirements of the Presidential Records Act and be subject to litigation holds. Please confirm whether your client has retained any notes or other records from his government service.

Of more immediate concern, as my letter of January 23, 2020, informed you, is that the manuscript contains classified information. NSC staff will be in contact with your client to provide additional guidance on how to safeguard any classified information in your client's possession and in the possession of anyone with whom your client has shared the draft manuscript or any of the manuscript's underlying information. In that regard, please also provide us, as soon as possible, with the names and contact information of anyone with whom your client has shared the manuscript or its underlying information or confirm that he has not shared it.

Please note that this letter, along with my letter of January 23, 2020, constitute NSC's initial response for the purposes of the nondisclosure agreements signed by your client.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ellen J. Knight".

Ellen J. Knight  
Senior Director for Records, Access,  
and Information Security Management

# Exhibit G

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

February 24, 2020

Charles J. Cooper  
Cooper & Kirk  
1523 New Hampshire Avenue NW  
Washington, DC 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

Last Friday, I was pleased to meet with your client, Ambassador John Bolton, to discuss our preliminary review results concerning the draft manuscript submitted for prepublication review on December 30, 2019. As I noted in my letters dated January 23, 2020, and February 7, 2020, our preliminary review determined that the draft contains numerous instances of classified information. The meeting furthered the iterative review process by providing an opportunity to inform your client of many of the specific instances of classified information identified in the draft manuscript and offer guidance to prevent unauthorized disclosure of this information for the protection of national security.

During our meeting, which lasted four hours and was most productive, I discussed with your client our use of the classification standards and categories found in Executive Order 13526, "Classified National Security Information," to identify classified information found in the draft manuscript, and he appeared to acknowledge the need to revise the manuscript to address our concerns regarding classified information. I provided guidance as to when and how he should modify language that is classified in its current form so that it no longer meets the standards to be classified. In addition, we discussed with your client guidance as to when he should delete instances of classified information found in the draft manuscript, as even with revisions the information would remain classified and thus would not be publicly releasable. Finally, I advised him on the use of citations of authorized releases and publicly available information related to national security.

I reviewed the preliminary results of three chapters in the draft manuscript in detail with your client during our meeting. Additionally, I discussed the details of a sample of review findings throughout the draft manuscript to convey instances of identified classified information. We discussed how your client can potentially avoid including classified information when discussing matters related to national security. These examples should aid your client as he revises the draft manuscript.

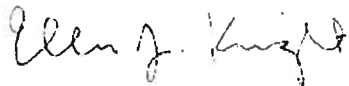
It became apparent during our meeting that it would be most helpful to the process if we hold one or more follow-on meetings. We agreed to meet again at my office to discuss the remaining portions of the draft manuscript. In order to ensure the safeguarding of identified classified

information, we discussed your proposal to locate a secure facility for your client to complete the edits of the draft manuscript. Once we complete our follow-on meetings, your client may then implement the required changes in a secure location. We can discuss the appropriate method for resubmitting the manuscript as the process moves forward.

The notes your client took at our meeting, as well as the draft manuscript he annotated, remain secured at my office. I have reviewed your client's notes to identify and redact any classified information and am enclosing a copy with this letter.

Please note the prepublication review remains in process, and your client may not publish or further disseminate the manuscript or any of its contents until authorized. Please feel free to contact me if you have any questions about next steps in the prepublication review process.

Sincerely,

A handwritten signature in black ink that reads "Ellen J. Knight". The signature is written in a cursive style with a large initial "E".

Ellen J. Knight  
Senior Director for Records Access,  
and Information Security Management

Enclosure: a/s

# Exhibit H



**Knight, Ellen J. EOP/NSC**

---

**From:** Knight, Ellen J. EOP/NSC  
**Sent:** Friday, March 27, 2020 3:52 PM  
**To:** John R. Bolton  
**Cc:** Christine Samuelian  
**Subject:** Prepublication Review Edits for Pick-Up

Good afternoon Ambassador Bolton,

Thank you for submitting your revised manuscript to the National Security Council (NSC) Access Management directorate for pre-publication review. I appreciate your efforts to address the classification concerns in the latest draft version you submitted. Many of the changes are satisfactory. However, additional edits are required to ensure the protection of national security information.

To assist in making the additional required changes, I will provide a list of required edits and language substitutions to guide you in this next stage of revising the draft. I have made this list available in printed copy for you or a courier to pick-up as it contains unclassified information. After receiving the list, I ask that you review the edits and make the changes to the draft. To expedite the review process, I ask that you use "track changes" or another type of formatting convention to identify all of the edits you make so that I may distinguish between the version just reviewed and the new version you plan to submit.

It would be helpful for you to note on the list provided those edits you did not make and/or those you wish to discuss with me. Please let me know when you have finished editing the draft manuscript and completed the annotations to the list and we can then discuss the best way to address any concerns you may have with the required changes. We can also discuss the most efficient method for resubmitting the revised manuscript.

Please note I will have to review the edited manuscript again to ensure the edits were completed, checking both your work and mine to ensure no classified information remains in the manuscript. As such, I must reiterate that the prepublication review remains in process. Even after making the edits, you are not authorized to publish or further disseminate the manuscript or its contents until expressly given clearance by me to do so.

Please feel free to contact me if you have any questions about next steps in the prepublication review process.

Thank you,  
Ellen

Ellen J. Knight | Senior Director  
Records Access and Information Security Management  
National Security Council  
Executive Office of the President  
202.456.██████ (desk)  
202.456.9201 (main office)  
██████@nsc.eop.gov

# Exhibit I

**Knight, Ellen J. EOP/NSC**

---

**From:** Knight, Ellen J. EOP/NSC  
**Sent:** Thursday, May 7, 2020 9:56 AM  
**To:** John R. Bolton  
**Subject:** Re: [EXTERNAL] Checking in

Hi Amb. Bolton,

I do not have any new information to provide at this time. The process remains ongoing. I will reach out as soon as there is an update to provide.

Thank you,  
Ellen

Ellen J. Knight  
Senior Director  
Records Access & Information Security Management  
National Security Council  
Executive Office of the President  
202-456-██████████  
██████████@nsc.eop.gov

On May 6, 2020, at 4:32 PM, John R. Bolton <██████████> wrote:

Ellen: Hope springs eternal - any news on the letter? Thanks, John Bolton

# Exhibit J

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

June 8, 2020

Charles J. Cooper  
Cooper & Kirk, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

Recently, we have become aware of press reports indicating that your client, John Bolton, intends to publish his manuscript imminently. This is inconsistent with the prepublication review process under the agreements signed by your client and under which we have been proceeding thus far. As we explained on January 23, February 7, February 24, and March 27, 2020, until the prepublication review process is complete and he receives the necessary authorization at the conclusion of that process, he may not publish or disseminate the manuscript.

The current draft manuscript still contains classified information. As we advised your client when he signed the nondisclosure agreements, and as he should be well aware as a former Assistant to the President for National Security Affairs in this Administration, the unauthorized disclosure of classified information could be exploited by a foreign power, thereby causing significant harm to the national security of the United States.

As we work to finish the iterative prepublication review process, we will provide you, no later than June 19, 2020, a copy of your client's draft manuscript with redactions for the information that has been identified as classified. Please confirm by June 10, 2020, that your client understands his legal obligations under the nondisclosure agreements and that he will not publish or disseminate any portion of the manuscript until after the prepublication review process has concluded and he has received the necessary authorization.

Please contact me if you have any questions.

Sincerely,



John A. Eisenberg  
Assistant to the President,  
Deputy Counsel to the President, and  
Legal Advisor to the National Security Council

# Exhibit K

# Cooper & Kirk

Lawyers

A Professional Limited Liability Company

Charles J. Cooper  
(202) 220-9660  
ccooper@cooperkirk.com

1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036

(202) 220-9600  
Fax (202) 220-9601

June 10, 2020

## Via Electronic Mail

John A. Eisenberg  
Assistant to the President,  
Deputy Counsel to the President, and  
Legal Advisor to the National Security Council  
1600 Pennsylvania Ave., NW,  
Washington, DC 20500

**Re: Prepublication review of Ambassador John Bolton's manuscript**

Dear Mr. Eisenberg:

I write in response to your letter of June 8, 2020. Ambassador Bolton has fully discharged all duties that the Federal Government may lawfully require of him under the nondisclosure agreements that he signed upon assuming the office of National Security Advisor. As described below, Ambassador Bolton undertook, in good faith, an exhaustive and lengthy prepublication review process of his book, *The Room Where It Happened: A White House Memoir*, and the senior career professional at the National Security Council (NSC) tasked with performing such a review, Ms. Ellen Knight, assured Ambassador Bolton that there were no remaining issues of classified information in his manuscript. His own independent judgment, based on decades of experience handling classified information, confirms that his manuscript contains no classified information. It is readily apparent that the White House seeks to block publication of Ambassador Bolton's book for purely political reasons, in violation of the First and Fifth Amendments to the United States Constitution, the covenant of good faith and fair dealing implicit in the nondisclosure agreements, and the executive order and regulations governing the classification of information.

Ambassador Bolton's long and distinguished service to the government of the United States, in senior positions both in national security and law enforcement, testifies to his close familiarity with classified information at the highest levels and his extensive experience in handling it properly. And his well-deserved reputation as a fierce defender of American interests in dealing with foreign powers, both allies and enemies, establish that he would never — *never* — take an action that would compromise the national security of the United States. In drafting the manuscript for his book, Ambassador Bolton was careful to avoid including any

John A. Eisenberg  
June 10, 2020  
Page 2 of 5

classified information. Nonetheless, to ensure that there could be no question of his good-faith compliance with the nondisclosure agreements he signed in April 2018, Ambassador Bolton instructed me, as his lawyer, to submit the draft of his manuscript to the National Security Council for a prepublication review. As you know, the purpose of this review, as stated in one of the agreements, is “to give the United States a reasonable opportunity to determine whether the [manuscript] . . . sets forth any” classified information, and it gives the NSC 30 business days to review the material and provide its response.

I submitted the manuscript on December 30, 2019, to Ms. Knight, Senior Director for Records, Access, and Information Security Management at the National Security Council, the office responsible for conducting the prepublication review process for the NSC. In doing so, I emphasized to Ms. Knight that Ambassador Bolton was relying on regulations restricting the scope of prepublication reviews to “identifying and preventing the disclosure of . . . classified information,” and limiting disclosure of the material under review to those government officials necessary for carrying out that responsibility. These regulations are in line with Executive Order 13526’s prohibition on classifying information “in order to prevent embarrassment to a person” or to “prevent or delay the release of information that does not require protection in the interest of national security.” Ms. Knight assured me that the sole purpose of the NSC’s review would be to ensure that Ambassador Bolton’s manuscript did not disclose classified information.

Over the course of four months, Ambassador Bolton and Ms. Knight, who personally conducted the review with the assistance of a senior member of Ms. Knight’s staff, painstakingly reviewed the nearly 500-page manuscript *four times*, page by page and often line by line. During that period, the book’s announced publication date had to be pushed back twice.

Round one of the process began on January 23, as the President’s impeachment trial was getting underway on the Senate floor. Ms. Knight wrote to say that Ambassador Bolton’s manuscript contained “significant amounts of classified information” and that she would provide “detailed guidance regarding next steps that should enable [Bolton] to revise the manuscript and move forward as expeditiously as possible.” A few days later, *Vanity Fair* reported that “the president is out for revenge against his adversaries.” The article stated that the President “has an enemies list,” that “Bolton is at the top of the list,” and that the “campaign against Bolton” included Ms. Knight’s January 23 letter asserting that the manuscript contained classified information. It also reported that the President “wants Bolton to be criminally investigated.” Six days later, the President tweeted that the Ambassador had written “a nasty & untrue book” — an assessment of the book’s content that he could only have made if the manuscript had been shared with those outside the normal prepublication-review process — and he described the book as “All Classified National Security.” Notwithstanding these alarming



John A. Eisenberg  
June 10, 2020  
Page 3 of 5

indications that the prepublication-review process had already been corrupted, Ambassador Bolton pressed onward and continued to cooperate in good faith with the review.

On February 7 (after the White House acknowledged that NSC staff had provided a briefing about the book to White House Counsel Pat Cipollone, then leading President Trump's impeachment defense), Ms. Knight advised that "to further the iterative process, it would be most efficient for me to meet with [Ambassador Bolton] to review each instance of classified information in detail." Their first meeting took place on February 21, the same day on which the *Washington Post* reported that "President Trump has directly weighed in on the White House [prepublication] review of a forthcoming book by his former national security adviser, telling his staff that he views John Bolton as 'a traitor,' that everything he uttered to the departed aide about national security is classified and that he will seek to block the book's publication." The story also reported that the President vowed to a group of television news anchors that "we're going to try and block publication of [his] book. After I leave office, he can do this."

In the February 21 meeting, which lasted four hours, Ms. Knight, as she described it, "reviewed the preliminary results of three chapters in the draft manuscript in detail with" Ambassador Bolton. The Ambassador took five pages of handwritten notes, as he and Ms. Knight discussed her specific concerns page by page, line by line, and sometimes word by word. Three days later, Ms. Knight wrote that the meeting had been "most productive," and she suggested that "it would be most helpful to the process if we hold one or more following meetings . . . to discuss the remaining portions of the draft manuscript." Ambassador Bolton and Ms. Knight met again three times, on March 2 (approximately four hours), March 3 (over four hours), and March 4 (approximately three hours). In these meetings, they reviewed in meticulous detail each of Ms. Knight's concerns in the remaining 11 chapters, producing 34 pages of handwritten notes. Following his notes and the guidance provided by Ms. Knight, Ambassador Bolton revised his manuscript, and by March 9 he had resubmitted all 14 chapters to begin the second round of the iterative review process.

Ambassador Bolton did not hear from Ms. Knight again until March 27, when she wrote: "I appreciate your efforts to address the classification concerns in the latest draft version you submitted. Many of the changes are satisfactory. However, additional edits are required to ensure the protection of national security information. To assist in making the additional required changes, I will provide a list of required edits and language substitutions to guide you in this next stage of revising the draft." Her list amounted to 17 typed, single-spaced pages of comments, questions, suggestions of specific alternative language, and citations to publicly available source material. Working through the weekend, Ambassador Bolton responded to all

John A. Eisenberg  
June 10, 2020  
Page 4 of 5

17 pages on Monday, March 30, accepting the vast majority of Ms. Knight's suggestions and proposing alternative solutions to others.

The third round in the iterative review process occurred on April 13, in a telephone conversation in which Ms. Knight provided her much shorter list of remaining concerns after reviewing Ambassador Bolton's March 30 revisions. Their conversation resulted in entirely agreed-upon language changes, which were delivered to Ms. Knight the next day, April 14.

During the April 13 call, Ms. Knight also said she would review the entire manuscript one more time, to recheck the issues previously resolved and ensure that she had not overlooked any. That final review resulted in two further telephone calls, on April 21 and 24, in which she conveyed her final round of edits and some additional citations to publicly available sources. Ambassador Bolton promptly responded with the requested revisions, and on April 27, Ms. Knight, after clarifying one previously discussed edit, confirmed "that's the last edit I really have to provide for you." Thus, the lengthy, laborious process finally came to an end.

When Ambassador Bolton asked when he could expect to receive the pro-forma closing letter confirming that the prepublication review process had been concluded, Ms. Knight cryptically replied that her "interaction" with unnamed others in the White House about the book had "been very delicate," and that there were "some internal process considerations to work through." She nonetheless thought the letter might be ready that afternoon but would "know more by the end of the day." They even discussed whether the letter should be transmitted by electronic transmission or by him physically picking up the hard copy. It has now been more than six weeks since the final revisions to the book, and Ambassador Bolton has not received the letter to which Ms. Knight thought he was entitled. His inquiries of Ms. Knight as to when he would receive the letter documenting her agreement that the book contains no classified information have been answered with stiff and formal replies that she had nothing new to report. He had not heard from her, or anyone else at the NSC, since May 7, until I received your letter two days ago.

In light of the foregoing, there can be no serious dispute that Ambassador Bolton discharged in good faith any duty, contractual or otherwise, he had to undertake the prepublication-review process. The process was exhaustive, involving innumerable, often picayune changes to his manuscript. It required multiple delays in the publication date for the book, which Ambassador Bolton accommodated to allow the prepublication-review process to continue. It ended with the career professional in charge of the prepublication-review process at NSC determining that the manuscript contained no classified information and that no further changes to the manuscript were required. And it continued for four months – with Ambassador

John A. Eisenberg  
June 10, 2020  
Page 5 of 5

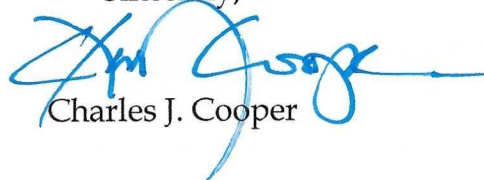
Bolton's full cooperation—even though the President repeatedly made clear throughout the review that he would seek to block the book's publication. Ambassador Bolton has fulfilled any lawful obligations he had under his nondisclosure agreements or otherwise.

Again, your June 8 letter was the first communication we have received from the White House (including from Ms. Knight) concerning the Ambassador's manuscript since May 7, and it is the first time anyone from the White House has suggested that any remaining information in the book is classified since Ms. Knight signed off on the manuscript on April 27. This last-minute allegation of classified information, coming as it does after weeks of silence from the NSC despite Ambassador Bolton's urgent inquiries, after the conclusion of an intensive four-months-long review, and—as you acknowledge—only after press reports alerted you that the Ambassador's book would be published on June 23, is a transparent attempt on the part of the White House to use national security concerns as a pretext to censor, or at least indefinitely delay, Ambassador Bolton's constitutional right to speak on matters of the utmost public import. The attempt to suppress Ambassador Bolton's book is a clear violation of the First and Fifth Amendments and the covenant of good faith and fair dealing governing the nondisclosure agreements.

It also, as a practical matter, comes too late. In reliance on Ms. Knight's assurances that his manuscript contained no classified information, that she had no further changes to his manuscript, and that she would attempt to deliver promptly the pro-forma closing letter, and after hearing *nothing* for weeks in response to his urgent requests for the closing letter, Ambassador Bolton and his publisher, Simon & Schuster, moved forward with publication of his book. The book has now been printed, bound, and shipped to distributors across the country. Ambassador Bolton has no authority to stop the book from being made available to the public on June 23.

I trust that this will conclude the matter.

Sincerely,



Charles J. Cooper

# Exhibit L

NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

June 11, 2020

Charles J. Cooper  
Cooper & Kirk, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036

SENT VIA ELECTRONIC MAIL TO CCOOPER@COOPERKIRK.COM

Dear Mr. Cooper:

I was shocked and dismayed to learn from your letter of June 10, 2020, that—in brazen disregard of his obligations under his nondisclosure agreements and applicable law—your client has already provided his manuscript to a publisher, which has now printed, bound, and shipped copies to distributors across the country. Your client is well aware that the manuscript still contains classified information, because, among other things, it includes information that he himself classified and designated for declassification only after the lapse of twenty-five years. He is also well aware that the prepublication review process was still ongoing and that he never received clearance to disseminate the manuscript in its current form to *anyone* who was not authorized to handle classified information. You expressly admit that you have received no written prepublication clearance from the National Security Council. To the contrary, your client was repeatedly warned, in writing, that he was not authorized to publish the manuscript and that the process remained ongoing. Any suggestion that your client believed he had completed the prepublication process is preposterous.

By authorizing the publisher to proceed, your client has plainly violated both the classified information nondisclosure agreements that he signed and applicable law, and has betrayed his obligations to the Nation in a manner that threatens to cause significant harm to the national security of the United States. Your client is well aware that publicizing information that he learned when he served as a principal national security official would aid our Nation's adversaries. Yet he was willing to sell the Nation's secrets for a book contract. At this point, your client must do everything in his power to prevent further dissemination of the manuscript until the classified information can be removed. Your client's refusal to do so would only prove further that he is acting in his own personal interest without concern for the harm that he is causing to our Nation.

I also write to correct some of the more serious mischaracterizations and falsehoods in your letter.

**First**, the NSC never represented that “there were no remaining issues of classified information in [your client's] manuscript” or that “no further changes to the manuscript were required.”<sup>1</sup> To the contrary, Ms. Knight repeatedly explained that the prepublication process remains ongoing

---

<sup>1</sup> Letter from Charles J. Cooper to John A. Eisenberg at 1, 4 (June 10, 2020) (June 10 Letter).

and that until that process is complete and your client receives the necessary authorization at its conclusion, he may not publish or disseminate the manuscript.<sup>2</sup>

**Second**, the NSC did not advise your client that it had provided its “last edit” for the prepublication process on April 27, 2020.<sup>3</sup> In fact, even after the April 27, 2020 exchange, your client repeatedly reached out to NSC to seek “news” regarding the progress of the prepublication process. Subsequently, on April 28 and again on May 7, your client was explicitly informed that the “process remains ongoing.”<sup>4</sup>

**Third**, you suggest that NSC needed to conclude the entire review process within 30 working days of your client’s first submission.<sup>5</sup> As you are well aware, that claim is absurd. The relevant nondisclosure agreement provides that NSC has 30 working days to *respond* to the submission. And we did.<sup>6</sup> But nothing in the nondisclosure agreement requires the prepublication process to *conclude* within 30 working days or any other set period of time.<sup>7</sup> The length of the process depends on a host of factors, including the volume and type of information contained in the draft. In this case, your client’s manuscript was roughly 500 pages, and your client knowingly included voluminous amounts of classified information in it. As a result, it has required substantial effort to assess the full extent of the classified information contained within it to ensure that it is removed.

**Fourth**, your self-serving insinuations that the NSC review process has been directed at anything other than a good faith effort to protect national security information is offensive. Your client has taken classified information, including some that he himself classified, and sold it to the highest bidder in an attempt to make a personal profit from information that he held in trust as a public servant—and has done so without regard for the harm it would do to the national security

---

<sup>2</sup> See, e.g., Letter from Ellen J. Knight to Charles J. Cooper at 2 (Feb. 24, 2020) (“Please note the prepublication review remains in process, and *your client may not publish or further disseminate the manuscript or any of its contents until authorized.*”) (Emphasis added); Email from Ellen J. Knight to Charles J. Cooper (March 27, 2020) (“I must reiterate that the prepublication review remains in process. Even after making the edits, you are not authorized to publish or further disseminate the manuscript or its contents *until expressly given clearance by me to do so.*”) (Emphasis added); Email from Ellen J. Knight to Charles J. Cooper (May 7, 2020) (“I do not have any new information to provide at this time. *The process remains ongoing.* I will reach out as soon as there is an update to provide.”) (Emphasis added.).

<sup>3</sup> June 10 Letter at 4.

<sup>4</sup> Email from Ellen J. Knight to John R. Bolton (April 28, 2020); Email from Ellen J. Knight to John R. Bolton (May 7, 2020).

<sup>5</sup> June 10 Letter at 2.

<sup>6</sup> See Letter from Ellen J. Knight to Charles J. Cooper (Jan. 23, 2020) (“Based on our preliminary review, the manuscript appears to contain significant amounts of classified information.”); Letter from Ellen J. Knight to Charles J. Cooper at 1 (Feb. 7, 2020) (“In the meantime, your client has a duty not to publish or otherwise disclose the manuscript or any of its underlying information until he has addressed our concerns and received authorization to do so from our office.”).

<sup>7</sup> See Sensitive Compartmented Information Nondisclosure Agreement Between John Robert Bolton and the United States § 5 (April 5, 2018) (“I further understand that the Department or Agency to which I have made a submission will . . . *make a response* to me within a reasonable time, not to exceed 30 working days from date of receipt.”) (Emphasis added.).

of the United States. The NSC's sole interest in this matter is to protect the national security of the United States.

Although your client has plainly placed personal profit ahead of duty to country at this point, he still has binding obligations under the nondisclosure agreements he signed and applicable law. He is under a continuing obligation to prevent the unauthorized disclosure of classified information.<sup>8</sup> In addition, as your client acknowledged, "all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law."<sup>9</sup>

Accordingly, and for the reasons discussed above, your client remains under an obligation to stop the dissemination of the manuscript, which still contains classified information that belongs to the United States Government, the unauthorized disclosure of which could reasonably be expected to cause serious damage to national security. Please be advised that we have also referred this matter to the Department of Justice for appropriate action.

Please confirm immediately that your client will take all actions necessary to halt dissemination of his manuscript.

Sincerely,



John A. Eisenberg  
Assistant to the President,  
Deputy Counsel to the President, and  
Legal Advisor to the National Security Council

---

<sup>8</sup> See, e.g., Classified Information Nondisclosure Agreement Between John Robert Bolton and the United States § 8 (April 5, 2018) ("Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.").

<sup>9</sup> *Id.* § 7.

# Exhibit

# M



NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20504

June 16, 2020

John R. Bolton  
9107 Fernwood Road  
Bethesda, Maryland 20817

SENT VIA HAND DELIVERY

Dear Mr. Bolton:

As you know, the pre-publication review process for your manuscript remains ongoing. To further that process, enclosed is a copy of the latest version of your manuscript with redactions identifying passages that, based on my initial review, appear to contain classified information.

As you and your counsel have been repeatedly informed, your manuscript in its current form is still not approved for public release and will not be approved until the pre-publication review process is complete. The manuscript still contains classified information. The review process required by the agreements you signed has not been completed. Dissemination of this manuscript in its current form would constitute a breach of your nondisclosure agreements and laws governing access to classified information and could have serious legal consequences.

I am available to meet with you to discuss the removal of classified information from the manuscript.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Ellis". The signature is fluid and cursive, with a small "EJ" monogram at the end.

Michael J. Ellis  
Deputy Assistant to the President and  
Senior Director for Intelligence Programs

cc: Charles J. Cooper, Esq. (by email, w/o enclosure)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 20-1580 (RCL)
	)	
JOHN R. BOLTON,	)	
	)	
Defendant.	)	
_____	)	

**[PROPOSED] ORDER**

It is hereby ORDERED that the United States’ Motion for a [Temporary Restraining Order] [Preliminary Injunction] is GRANTED. It is FURTHER ORDERED that:

Defendant is enjoined from proceeding with the publication of his book in any form or media without first obtaining written authorization from the United States through the prepublication review process;

Defendant is required to ensure that his publisher and resellers receive notice that the book contains classified information that he was not authorized to disclose;

Defendant is required to instruct his publisher to delay the release date of the book pending the completion of the prepublication review process and authorization from the United States that no classified information remains in the book;

Defendant is required to instruct his publisher to take any and all available steps to retrieve and destroy any copies of the book that may be in the possession of any third party;

Defendant is further enjoined from taking any additional steps toward public disclosing classified information without first obtaining authorization from the United States through the prepublication review process;

Defendant is required to ensure that his publisher and resellers receive notice of this Order;  
and

This injunction binds Defendant, along with his “officers, agents, servants, employees, and attorneys,” and “all other persons who are in active concert or participation with” him, if they receive actual notice of the order, Fed. R. Civ. P. 65(d)(2), including Defendant’s publisher, Simon & Schuster, and other such persons in the commercial distribution chain of Defendant’s book.

SO ORDERED:

DATE: \_\_\_\_\_

\_\_\_\_\_  
ROYCE C. LAMBERTH  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 20-1580 (RCL)
	)	
JOHN R. BOLTON,	)	
	)	
Defendant.	)	

---

**NOTICE OF LODGING CLASSIFIED DECLARATIONS**

Plaintiff, the United States of America, by and through its attorneys, respectfully provides notice that on this date counsel for the United States lodged for secure storage with the U.S. Department of Justice Litigation Security Group the classified declarations of Michael Ellis and William R. Evanina. The classified declarations, which can be made available to the Court by a Classified Information Security Officer for its *ex parte* review *in camera*, were submitted in support of the United States' Emergency Application for Temporary Restraining Order and Motion for Preliminary Injunction filed this same date.

\* \* \*

Dated: June 17, 2020

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

MICHAEL SHERWIN  
Acting United States Attorney

ETHAN P. DAVIS  
Principal Deputy Assistant Attorney General

DAVID M. MORRELL  
Deputy Assistant Attorney General

ALEXANDER K. HAAS  
Director  
Federal Programs Branch

*/s/ Daniel F. Van Horn*

---

Daniel F. Van Horn (D.C. Bar. No. 924092)  
Assistant United States Attorney  
555 Fourth Street N.W., Room E4226,  
Washington, D.C. 20530  
Tel: 202-252-2506  
Email: daniel.vanhorn@usdoj.gov

*/s/ Michael J. Gerardi*

---

Michael J. Gerardi (D.C. Bar No. 1017949)  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street NW, Room 11514  
Washington, D.C. 20005  
Tel: (202) 616-0680  
Fax: (202) 616-8460  
E-mail: michael.j.gerardi@usdoj.gov

*Counsel for Plaintiff*