

EXHIBIT C

Plaintiffs' Motion for a Temporary Restraining Order

~~TOP SECRET~~/ [REDACTED]



OFFICE OF THE INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
WASHINGTON, D.C. 20511

This Letter is ~~TOP SECRET~~/ [REDACTED] when detached from the Enclosures

August 26, 2019

VIA HAND DELIVERY

The Honorable Joseph Maguire
Director of National Intelligence (Acting)
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Acting Director Maguire:

(U) On Monday, August 12, 2019, the Office of the Inspector General of the Intelligence Community (ICIG) received information from an individual (hereinafter, the "Complainant") concerning an alleged "urgent concern," pursuant to 50 U.S.C. § 3033(k)(5)(A). The law requires that, "[n]ot later than the end of the 14-calendar-day period beginning on the date of receipt from an employee of a complaint or information under subparagraph A, the Inspector General shall determine whether the complaint or information appears credible."¹ For the reasons discussed below, among others, I have determined that the Complainant has reported an "urgent concern" that "appears credible."

(U) As you know, the ICIG is authorized to, among other things, "receive and investigate . . . complaints or information from any person concerning the existence of an activity within the authorities and responsibilities of the Director of National Intelligence constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety."² In connection with that authority, "[a]n employee of an element of the intelligence community, an employee assigned or detailed to an element of the intelligence community, or an employee of a contractor to the intelligence community who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information" to the ICIG.³

Classified By: [REDACTED]
Derived From: [REDACTED]
Declassify On: [REDACTED]

¹ (U) *Id.* at § 3033(k)(5)(B).

² (U) *Id.* at § 3033(g)(3).

³ (U) *Id.* at § 3033(k)(5)(A).

~~TOP SECRET~~/ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U) The term “urgent concern” is defined, in relevant part, as:

(U) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information, but does not include differences of opinions concerning public policy matters.⁴

(U//~~FOUO~~) The Complainant’s identity is known to me. As allowed by law, however, the Complainant has requested that the ICIG not disclose the Complainant’s identity at this time.⁵ For your information, the Complainant has retained an attorney, identified the attorney to the ICIG, and requested that the attorney be the Complainant’s point of contact in subsequent communications with the congressional intelligence committees on this matter.

(U//~~FOUO~~) As part of the Complainant’s report to the ICIG of information with respect to the urgent concern, the Complainant included a letter addressed to The Honorable Richard Burr, Chairman, U.S. Senate Select Committee on Intelligence, and The Honorable Adam Schiff, Chairman, U.S. House of Representatives Permanent Select Committee on Intelligence (hereinafter, the “Complainant’s Letter”). The Complainant’s Letter referenced a separate, Classified Appendix containing information pertaining to the urgent concern (hereinafter, the “Classified Appendix”), which the Complainant also provided to the ICIG and which the Complainant intends to provide to Chairmen Burr and Schiff. The ICIG attaches hereto the Complainant’s Letter, addressed to Chairmen Burr and Schiff, and the Classified Appendix. The ICIG has informed the Complainant that the transmittal of information by the Director of National Intelligence related to the Complainant’s report to the congressional intelligence committees, as required by 50 U.S.C. § 3033(k)(5)(C), may not be limited to Chairmen Burr and Schiff.

(U) The Complainant’s Letter and Classified Appendix delineate the Complainant’s information pertaining to the urgent concern. According to the Complainant’s Letter, “the actions described [in the Complainant’s Letter and Classified Appendix] constitute ‘a serious or flagrant problem, abuse, or violation of law or Executive Order,’” consistent with the definition of an “urgent concern” in 50 U.S.C. § 3033(k)(5)(G).

(U//~~FOUO~~) Upon receiving the information reported by the Complainant, the ICIG conducted a preliminary review to determine whether the report constituted “an urgent concern” under 50 U.S.C. § 3033(k)(5). As part of the preliminary review, the ICIG confirmed that the Complainant is “[a]n employee of an element of the intelligence community, an employee

⁴ (U) *Id.* at § 3033(k)(5)(G)(i).

⁵ (U) *Id.* at § 3033(g)(3)(A).

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

assigned or detailed to an element of the intelligence community, or an employee of a contractor to the intelligence community.”⁶ The ICIG also confirmed that the Complainant intends to report to Congress the Complainant’s information relating to the urgent concern.⁷

(TS, [REDACTED]) As stated above, to constitute an “urgent concern” under 50 U.S.C. § 3033(k)(5)(G)(i), the information reported by the Complainant must constitute “[a] serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information.”⁸ Here, the Complainant’s Letter alleged, among other things, that the President of the United States, in a telephone call with Ukrainian President Volodymyr Zelenskyy on July 25, 2019, “sought to pressure the Ukrainian leader to take actions to help the President’s 2020 reelection bid.” U.S. laws and regulations prohibit a foreign national, directly or indirectly, from making a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election.⁹ Similarly, U.S. laws and regulations prohibit a person from soliciting, accepting, or receiving such a contribution or donation from a foreign national, directly or indirectly, in connection with a Federal, State, or local election.¹⁰ Further, in the ICIG’s judgment, alleged conduct by a senior U.S. public official to seek foreign assistance to interfere in or influence a Federal election would constitute a “serious or flagrant problem [or] abuse” under 50 U.S.C. § 3033(k)(5)(G)(i), which would also potentially expose such a U.S. public official (or others acting in concert with the U.S. public official) to serious national security and counterintelligence risks with respect to foreign intelligence services aware of such alleged conduct.

(U) In addition, the Director of National Intelligence has responsibility and authority pursuant to federal law and Executive Orders to administer and operate programs and activities related to potential foreign interference in a United States election.¹¹ Among other

⁶ (U) *Id.* at § 3033(k)(5)(A).

⁷ (U) *Id.*

⁸ (U) The Complainant’s Classified Appendix appears to contain classified information involving an alleged “serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence,” as required by 50 U.S.C. § 3033(k)(5)(G)(i).

⁹ (U) *See, e.g.*, 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R. § 110.20(b).

¹⁰ (U) *See, e.g.*, 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

¹¹ (U) *See, e.g.*, National Security Act of 1947, as amended; Exec. Order No. 12333, as amended, *United States Intelligence Activities*; Exec. Order No. 13848, *Imposing Certain Sanctions in the Event of Foreign Influence in a United States Election* (Sept. 12, 2018).

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

responsibilities and authorities, subject to the authority, direction, and control of the President, the Director of National Intelligence “shall serve as the head of the Intelligence Community, act as the principal adviser to the President, to the [National Security Council], and to the Homeland Security Council for intelligence matters related to national security, and shall oversee and direct the implementation of the National Intelligence Program and execution of the National Intelligence Program budget.”¹² Further, the United States Intelligence Community, “under the leadership of the Director [of National Intelligence],” shall “collect information concerning, and conduct activities to protect against, . . . intelligence activities directed against the United States.”¹³

(U) More recently, in issuing Executive Order 13848, *Imposing Certain Sanctions in the Event of Foreign Influence in a United States Election* (Sept. 12, 2018), President Trump stated the following regarding foreign influence in United States elections:

I, DONALD J. TRUMP, President of the United States of America, find that the ability of persons located, in whole or in part, outside the United States to interfere in or undermine public confidence in United States elections, including through the unauthorized accessing of election and campaign infrastructure or the covert distribution of propaganda and disinformation, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.¹⁴

¹² (TS/ [REDACTED]) Exec. Order No. 12333 at § 1.3. In the Complainant’s Classified Appendix, the Complainant reported that officials from the Office of Management and Budget, in the days before and on the day after the President’s call on July 25, 2019, allegedly informed the “interagency” that the President had issued instructions to suspend all security assistance to Ukraine. The Complainant further alleges in the Classified Appendix that there might be a connection between the allegations concerning the substance of the President’s telephone call with the Ukrainian President on July 25, 2019, and the alleged action to suspend (or continue the suspension of) all security assistance to Ukraine. If the allegedly improper motives were substantiated as part of a future investigation, the alleged suspension (or continued suspension) of all security assistance to Ukraine might implicate the Director of National Intelligence’s responsibility and authority with regard to implementing the National Intelligence Program and/or executing the National Intelligence Program budget.

¹³ (U) Exec. Order No. 12333 at § 1.4.

¹⁴ (U) Among other directives, the Executive Order requires the Director of National Intelligence, in consultation with the heads of any other appropriate executive departments and agencies, not later than 45 days after the conclusion of a United States election, to “conduct an assessment of any information indicating that a foreign government, or any person acting as an agent of or on behalf of a foreign government, has acted with the intent or purpose of interfering in that election,” and the “assessment shall identify, to the maximum extent ascertainable, the nature of any foreign interference and any methods employed to execute it, the persons involved, and the foreign government or governments that authorized, directed, sponsored, or supported it.” Exec. Order No. 13848 at § 1.(a).

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U) Most recently, on July 19, 2019, as part of the Director of National Intelligence's responsibility and authority to administer and operate programs and activities related to potential foreign interference in a United States election, the Director of National Intelligence announced the establishment of the Intelligence Community Election Threats Executive. In the words of then-Director of National Intelligence Daniel R. Coats, who announced the establishment of the new position within the Office of the Director of National Intelligence (ODNI), "Election security is an enduring challenge and a top priority for the IC."¹⁵ A few days later, in an internal announcement for the ODNI, then-Director Coats stated, "I can think of no higher priority mission than working to counter adversary efforts to undermine the very core of our democratic process."¹⁶

(U) As a result, I have determined that the Complainant's information would constitute an urgent concern, as defined in 50 U.S.C. § 3033(k)(5)(G)(i), provided that I also determine that the information "appears credible," as required by 50 U.S.C. § 3033(k)(5)(B).

(TS/[REDACTED]) Based on the information reported by the Complainant to the ICIG and the ICIG's preliminary review, I have determined that there are reasonable grounds to believe that the complaint relating to the urgent concern "appears credible." The ICIG's preliminary review indicated that the Complainant has official and authorized access to the information and sources referenced in the Complainant's Letter and Classified Appendix, and that the Complainant has subject matter expertise related to much of the material information provided in the Complainant's Letter and Classified Appendix. The Complainant's Letter acknowledges that the Complainant was not a direct witness to the President's telephone call with the Ukrainian President on July 25, 2019. Other information obtained during the ICIG's preliminary review, however, supports the Complainant's allegation that, among other things, during the call the President "sought to pressure the Ukrainian leader to take actions to help the President's 2020 reelection bid." Further, although the ICIG's preliminary review identified some indicia of an arguable political bias on the part of the Complainant in favor of a rival political candidate, such evidence did not change my determination that the complaint relating to the urgent concern "appears credible," particularly given the other information the ICIG obtained during its preliminary review.

(TS/[REDACTED]) As part of its preliminary review, the ICIG did not request access to records of the President's July 25, 2019, call with the Ukrainian President. Based on the sensitivity of the alleged urgent concern, I directed ICIG personnel to conduct a preliminary review of the Complainant's information. Based on the information obtained from the ICIG's preliminary review, I decided that access to records of the telephone call was not necessary to make my

¹⁵ (U) ODNI News Release, *Director of National Intelligence Daniel R. Coats Establishes Intelligence Community Election Threats Executive* (July 19, 2019).

¹⁶ (U) Memorandum from Daniel R. Coats, Director of National Intelligence, entitled, *Designation of Intelligence Community Election Threats Executive and Assistant Deputy Director for Mission Integration* (July 23, 2019).

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

determination that the complaint relating to the urgent concern “appears credible.” In addition, given the time consumed by the preliminary review, together with lengthy negotiations that I anticipated over access to and use of records of the telephone call, particularly for purposes of communicating a disclosure to the congressional intelligence committees, I concluded that it would be highly unlikely for the ICIG to obtain those records within the limited remaining time allowed by the statute. I also understood from the ICIG’s preliminary review that the National Security Council had already implemented special handling procedures to preserve all records of the telephone call.

(TS/ [REDACTED]) Nevertheless, the ICIG understands that the records of the call will be relevant to any further investigation of this matter. For your information, the ICIG has sent concurrently with this transmittal a notice of a document access request and a document hold notice to the White House Counsel to request access to and the preservation of any and all records related to the President’s telephone call with the Ukrainian President on July 25, 2019, and alleged related efforts to solicit, obtain, or receive assistance from foreign nationals in Ukraine, directly or indirectly, in connection with a Federal election. The document access request and document hold notice were issued pursuant to the ICIG’s authority to conduct independent investigations and reviews on programs and activities within the responsibility and authority of the Director of National Intelligence, which includes the authority for the ICIG to have “direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials that relate to the programs and activities with respect to which the Inspector General has responsibilities under this section.”¹⁷

(U) Having determined that the complaint relating to the urgent concern appears credible, I am transmitting to you this notice of my determination, along with the Complainant’s Letter and Classified Appendix. Upon receipt of this transmittal, the Director of National Intelligence “shall, within 7 calendar days of such receipt, forward such transmittal to the congressional intelligence committees, together with any comments the Director considers appropriate.”¹⁸

¹⁷ (U) 50 U.S.C. § 3033(g)(2)(C). The ICIG’s statutory right of access to those records is consistent with the statutory right of access to such records provided to the Director of National Intelligence. *See* 50 U.S.C. § 3024(b) (“Unless otherwise directed by the President, the Director of National Intelligence shall have access to all national intelligence and intelligence related to the national security which is collected by any Federal department, agency, or other entity, except as otherwise provided by law or, as appropriate, under guidelines agreed upon by the Attorney General and the Director of National Intelligence.”).

¹⁸ (U) *See* 50 U.S.C. § 3033(k)(5)(C). The ICIG notes that if the ICIG had determined the complaint was not an “urgent concern” or did not “appear[] credible,” the statute would require the Director of National Intelligence to transmit the same information to the same congressional intelligence committees in the same time period, and provides the Complainant with the right “to submit the complaint or information to Congress by contacting either or both of the congressional intelligence committees directly,” *id.* at § 3033(k)(5)(D)(i), subject to direction from the Director of National Intelligence, through the ICIG, “on how to contact the congressional intelligence committees in accordance with appropriate security practices,” *id.* at § 3033(k)(5)(D)(ii).

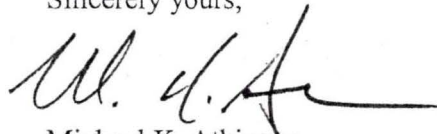
~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

Because the ICIG has the statutory responsibility to “notify an employee who reports a complaint or information” to the ICIG concerning an urgent concern “of each action taken” with respect to the complaint or information “not later than 3 days after any such action is taken,”¹⁹ I respectfully request that you provide the ICIG with notice of your transmittal to the congressional intelligence committees not later than 3 days after the transmittal is made to them. In addition, as required by the statute, the ICIG is required to notify the Complainant not later than 3 days after today’s date of my determination that the complaint relating to the urgent concern appears credible and that the ICIG transmitted on today’s date notice of that determination to the Director of National Intelligence, along with the Complainant’s Letter and Classified Appendix.

(U) If you have any questions or require additional information concerning this matter, please do not hesitate to contact me.

Sincerely yours,



Michael K. Atkinson
Inspector General
of the Intelligence Community

(U) Enclosures (Complainant’s Letter and Classified Appendix) (Documents are
~~TS~~ [REDACTED])

This Letter is ~~TOP SECRET~~ [REDACTED] when detached from the Enclosures

¹⁹ (U) 50 U.S.C. § 3033(k)(5)(E).

~~TOP SECRET~~ [REDACTED]

**NATIONAL
SECURITY
ARCHIVE**

This document is from the holdings of:

The National Security Archive

Suite 701, Gelman Library, The George Washington University

2130 H Street, NW, Washington, D.C., 20037

Phone: 202/994-7000, Fax: 202/994-7005, nsarchiv@gwu.edu