

Questions to help with your reading:

What are the four most important parts of this story? Why do you think this is so?

Do you see evidence of “abuse of power” by the president in this article? How would you define the instance(s) of abuse of power? What evidence would you use to support your interpretations?

Do you see evidence the president could use in his defense? What is this evidence and in what context could it be used to defend the president?

### ***Behind the Ukraine Aid Freeze: 84 Days of Conflict and Confusion***

**The inside story of President Trump’s demand to halt military assistance to an ally shows the price he was willing to pay to carry out his agenda**

By Eric Lipton, Maggie Haberman and Mark Mazzetti, *The New York Times*, 12/29/19



Mick Mulvaney, the acting White House chief of staff, played a key role in carrying out President Trump’s demands to halt military aid to Ukraine.

WASHINGTON — Deep into a long flight to Japan aboard Air Force One with President Trump, Mick Mulvaney, the acting White House chief of staff, dashed off an email to an aide back in Washington.

“I’m just trying to tie up some loose ends,” Mr. Mulvaney wrote. “Did we ever find out about the money for Ukraine and whether we can hold it back?”

It was June 27, more than a week after Mr. Trump had first asked about putting a hold on security aid to Ukraine, an embattled American ally, and Mr. Mulvaney needed an answer.

The aide, Robert B. Blair, replied that it would be possible, but not pretty. “Expect Congress to become unhinged” if the White House tried to countermand spending passed by the House and Senate, he wrote in a previously undisclosed email. And, he wrote, it might further fuel the narrative that Mr. Trump was pro-Russia.

Mr. Blair was right...Mr. Trump’s order to hold \$391 million worth of...equipment the Ukrainian military needed to fight a grinding war against Russian-backed separatists would help pave a path to the president’s impeachment.

The Democratic-led inquiry into Mr. Trump’s dealings with Ukraine this spring and summer established that the president was actively involved in parallel efforts — both secretive and highly unusual — to bring pressure on a country he viewed with suspicion, if not disdain.

One campaign, spearheaded by Rudolph W. Giuliani, the president’s personal lawyer, aimed to force Ukraine to conduct investigations that could help Mr. Trump politically, including one focused on a potential Democratic 2020 rival, former Vice President Joseph R. Biden Jr.

The other, which unfolded nearly simultaneously but has gotten less attention, was the president’s demand to withhold the security assistance. By late summer, the two efforts merged as American diplomats used the withheld aid as leverage in the effort to win a public commitment from the new

Ukrainian president, Volodymyr Zelensky, to carry out the investigations Mr. Trump sought into Mr. Biden and unfounded or overblown theories about Ukraine interfering in the 2016 election.



President Volodymyr Zelensky of Ukraine desperately needed American support as he confronted Russia. Petras Malukas/Agence France-Presse — Getty Images

Interviews with dozens of current and former administration officials, congressional aides and others, previously undisclosed emails and documents, and a close reading of thousands of pages of impeachment testimony provide the most complete account yet of the 84 days from when Mr. Trump first inquired about the money to his decision in September to relent.

...Opposition to the order from his top national security advisers was more intense than previously known. In late August, Defense Secretary Mark T. Esper joined Secretary of State Mike Pompeo and John R. Bolton, the national security adviser at the time, for a previously undisclosed Oval Office meeting with the president where they tried but failed to convince him that releasing the aid was in the interests of the United States.

...top lawyers at the Office of Management and Budget who had spoken to lawyers at the White House and the Justice Department...were developing an argument — not previously divulged publicly — that Mr. Trump’s role as commander in chief would simply allow him to override Congress on the issue...

...Those carrying out Mr. Trump’s orders on the aid were for the most part operating in different lanes from those seeking the investigations...Mr. Mulvaney is said by associates to have stepped out of the room whenever Mr. Trump would talk with Mr. Giuliani to preserve Mr. Trump’s attorney-client privilege, leaving him with limited knowledge about their efforts regarding Ukraine. Mr. Mulvaney has told associates he learned of the substance of Mr. Trump’s July 25 call weeks after the fact.

Yet testimony before the House suggests a different picture. Fiona Hill, a top deputy to Mr. Bolton at the time, told the impeachment inquiry about a July 10 White House meeting at which Mr. Sondland said Mr. Mulvaney had guaranteed that Mr. Zelensky would be invited to the White House if the Ukrainians agreed to the investigations — an arrangement that Mr. Bolton described as a “drug deal,” according to Ms. Hill.

Along with Mr. Bolton and others, Mr. Mulvaney and Mr. Blair have declined to cooperate with impeachment investigators and provide information to Congress under oath, an intensifying point of friction between the two parties as the Senate prepares for Mr. Trump’s impeachment trial.

At the center of the maelstrom was the Office of Management and Budget, a seldom-scrutinized arm of the White House that during the Trump administration has often had to find creative legal reasoning to justify the president’s unorthodox policy proposals, like his demand to divert Pentagon funding to his proposed wall along the border with Mexico.

In the Ukraine case, however, shock about the president’s decision spread across America’s national security apparatus — from the National Security Council to the State Department and the Pentagon. By September, after the freeze had become public and scrutiny was increasing, the blame game inside the administration was in full swing.

On Sept. 10, the day before Mr. Trump changed his mind, a political appointee at the budget office, Michael P. Duffey, wrote a lengthy email to the Pentagon's top budget official, with whom he had been at odds throughout the summer about how long the agency could withhold the aid.

He asserted that the Defense Department had the authority to do more to ensure that the aid could be released to Ukraine by the congressionally mandated deadline of the end of that month, suggesting that responsibility for any failure should not rest with the White House.

Forty-three minutes later, the Pentagon official, Elaine McCusker, hit send on a brief but stinging reply. "You can't be serious," she wrote. "I am speechless."

### **For top officials inside the budget office, the first warning came on June 19.**

Informed that the president had a problem with the aid, Mr. Blair called Russell T. Vought, the acting head of the Office of Management and Budget. "We need to hold it up," he said, according to officials briefed about the conversation...

...Mr. Vought and his team took to Google, and came upon a piece in the conservative Washington Examiner saying that the Pentagon would pay for weapons and other military equipment for Ukraine, bringing American security aid to the country to \$1.5 billion since 2014.

The money, the article noted, was coming at a critical moment: Mr. Zelensky...had called ending the armed conflict with Russia in eastern Ukraine his top priority — a move that would likely only happen if he could negotiate from a position of strength.

The budget office officials had little idea of why Mr. Trump was interested in the topic, but many of the president's more senior aides were well aware of his feelings about Ukraine. Weeks earlier, in an Oval Office meeting on May 23, with Mr. Sondland, Mr. Mulvaney and Mr. Blair in attendance, Mr. Trump batted away assurances that Mr. Zelensky was committed to confronting corruption. "They are all corrupt, they are all terrible people," Mr. Trump said, according to testimony in the impeachment inquiry.

The United States had been planning to provide \$391 million in military assistance to Ukraine in two chunks: \$250 million allocated by the Pentagon for war-fighting equipment — from sniper rifles to rocket-propelled grenade launchers — and \$141 million controlled by the State Department to buy night-vision devices, radar systems and yet more rocket-grenade launchers.

With the money having been appropriated by Congress, it would be hard for the administration to keep it from being spent by the end of the fiscal year on Sept. 30.

...There was no public announcement that Mr. Trump wanted the assistance withheld. Neither Congress nor the Ukrainian government was formally notified ...Their efforts would cause tension and at times conflict between officials at the budget office and the Pentagon, some of whom watched with growing alarm.

### **A Question of Legality**

The single largest chunk of the federal government's annual discretionary budget, some \$800 billion a year, goes to the Pentagon, spy agencies and the Department of Veterans Affairs. The career official in charge of managing the flow of all that money for the budget office is an Afghanistan war veteran named Mark Sandy.

After learning about the president's June 19 request, Mr. Sandy contacted the Pentagon to learn more about the aid package. He also repeatedly pressed Mr. Duffey about why Mr. Trump had imposed the hold in the first place.

"He didn't provide an explicit response on the reason," Mr. Sandy testified in the impeachment inquiry. "He simply said we need to let the hold take place — and I'm paraphrasing here — and then revisit this issue with the president."

From the start, budget office officials took the position that the money did not have to go out the door until the end of September, giving them time to address the president's questions.

It was easy enough for the White House to hold up the State Department portion of the funding. Since the State Department had not yet notified Congress of its plans to release the money, all it took was making sure that the notification did not happen.

Freezing the Pentagon's \$250 million portion was more difficult, since the Pentagon had already certified that Ukraine had met requirements set by Congress to show that it was addressing its endemic corruption and notified lawmakers of its intent to spend the money.

So on July 19, Mr. Duffey proposed an unusual solution: Mr. Sandy should attach a footnote to a routine budget document saying the money was being temporarily withheld.

Approving such requests is routine; Mr. Sandy processed hundreds each year. But attaching a footnote to block spending that the administration had already notified Congress was ready to go was not. Mr. Sandy said in testimony that he had never done it before in his 12 years at the agency.

And there was a problem with this maneuver: Mr. Sandy was concerned it might violate a law called the Impoundment Control Act that protects Congress's spending power and prohibits the administration from blocking disbursement of the aid unless it notifies Congress.

"I asked about the duration of the hold and was told there was not clear guidance on that," Mr. Sandy testified. "So that is what prompted my concern." Mr. Sandy sought advice from the top lawyers at the budget office.

For a full month, the fact that Mr. Trump wanted to halt the aid remained confined primarily to a small group of officials.

That ended on July 18, when a group of top administration officials meeting on Ukraine policy — including some calling in from Kyiv — learned from a mid level budget office official that the president had ordered the aid frozen.

"I and the others on the call sat in astonishment," William B. Taylor Jr., the top United States diplomat in Ukraine, testified to House investigators. "In an instant, I realized that one of the key pillars of our strong support for Ukraine was threatened."

That same day, aides on the House Foreign Affairs Committee received four calls from administration sources warning them about the hold and urging them to look into it.

A week later came Mr. Trump's fateful July 25 call with Mr. Zelensky...Some of Mr. Trump's aides had thought the call might lead Mr. Trump to lift the freeze. But Mr. Trump did not specifically mention the

hold, and instead asked Mr. Zelensky to look into Mr. Biden and his son and into supposed Ukrainian involvement in the 2016 election.

Among those listening on the call was Mr. Blair (who) told associates he did not make much of Mr. Trump's requests during the call for the investigations. He saw the aid freeze not as a political tool, but as an extension of Mr. Trump's general aversion to foreign aid and his belief that Ukraine is rife with corruption.

Just 90 minutes after the call ended, and following days of email traffic on the topic, Mr. Duffey, Mr. Sandy's boss, sent out a new email to the Pentagon, where officials were impatient about getting the money out the door. His message was clear: Do not spend it.

"Given the sensitive nature of the request, I appreciate your keeping that information closely held to those who need to know to execute the direction," Mr. Duffey wrote in his note, which was released this month to the Center for Public Integrity.

This caused immediate discomfort at the Pentagon, with a top official there noting that this hold on military assistance was coming on the same day Ukraine announced it had seized a Russian tanker — a potential escalation in the conflict between the two nations.

On that same day, Mr. Sandy, having received the go-ahead from the budget office's lawyers, took the first official step to legally impose what they called a "brief pause," inserting a footnote into the budget document that prohibited the Pentagon from spending any of the aid until Aug. 5.

By that point, officials in Ukraine were getting word that something was up. At the same time, the effort to win a commitment from the Ukrainians for the investigations sought by Mr. Trump was intensifying, with Mr. Giuliani and a Zelensky aide, Andriy Yermak, meeting in Madrid on Aug. 2 and the diplomats Mr. Sondland and Mr. Volker also working the issue.

And inside the intelligence community, a C.I.A. officer was hearing talk about the two strands of pressure on Ukraine, including the aid freeze. Seeing how they fit together, he was alarmed enough that by Aug. 12 he would take the extraordinary step of laying them out in detail in a confidential whistle-blower complaint.

### **A 'POTUS-level Decision'**

Keeping a hold on the assistance was now a top priority, so officials moved to tighten control over the money.

In a very unusual step, the White House removed Mr. Sandy's authority to oversee the aid freeze. The job was handed in late July to Mr. Sandy's boss, Mr. Duffey, the political appointee, the official ultimately responsible for apportionments but one who had little experience in the nuts and bolts of the budget office process.

As the debate over the aid continued, disagreements flared. Two budget office staff members left the agency after the summer. Mr. Sandy testified that their departures were related to the aid freeze, a statement disputed by budget office officials.

Pentagon officials, in the dark about the reason for the holdup, grew increasingly frustrated. Ms. McCusker, the powerful Pentagon budget official, notified the budget office that either \$61 million of the

money would have to be spent by Monday, Aug. 12 or it would be lost. The budget office saw her threat as a ploy to force release of the aid.

At the White House, which had been looped into the dispute by the budget office, there was a growing consensus that officials could find a legal rationale for continuing the hold, but with the Monday deadline looming, it was a “POTUS-level decision,” one official said.



A Ukrainian soldier firing at Russian-backed separatists in the Donetsk region last month. Anatolii Stepanov/Agence France-Presse — Getty Images

Complicating matters, another budget battle was escalating. Mr. Vought was attempting to impose cuts of as much as \$4 billion on the nation’s overall foreign aid budget. It was an entirely separate initiative from the Ukraine freeze, and was quickly abandoned, but helped the White House establish that its concern about aid was not limited to Ukraine.

By the second week of August, Mr. Duffey had taken to issuing footnotes every few days to block the Pentagon spending. Office of Management and Budget lawyers approved each one...

...In a previously unreported sequence of events, Mr. Mulvaney worked to schedule a call for that day with Mr. Trump and top aides involved in the freeze...Late that morning, Ms. McCusker checked in with the budget office. “Hey, any update for us?” she asked in an email obtained by the Center for Public Integrity. Mr. Duffey was still waiting for an answer as of late that afternoon. “Elaine — I don’t have an update,” he wrote back. “I am attempting to get one.”..

...In Bedminster with Mr. Trump, Mr. Mulvaney finally reached the president and the answer was clear: Mr. Trump wanted the freeze kept in place. In Washington, the whistle-blower submitted his report that same day.

### **The National Security Team Intervenes**

Inside the administration, pressure was mounting on Mr. Trump to reverse himself.

Backed by a memo saying the National Security Council, the Pentagon and the State Department all wanted the aid released, Mr. Bolton made a personal appeal to Mr. Trump on Aug. 16, but was rebuffed.

On Aug. 28, Politico published a story reporting that the assistance to Ukraine had been frozen. After more than two months, the issue, the topic of fiery internal debate, was finally public...

...On a sunny, late-August day, Mr. Bolton, Mr. Esper and Mr. Pompeo arrayed themselves around the Resolute desk in the Oval Office to present a united front, the leaders of the president’s national security team seeking to convince him face to face that freeing up the money for Ukraine was the right thing to do. One by one they made their case.



“This is in America’s interest,” John R. Bolton, then the national security adviser, said in an Oval Office meeting intended to persuade Mr. Trump to release the aid.

“This defense relationship, we have gotten some really good benefits from it,” Mr. Esper added, noting that most of the money was being spent on military equipment made in the United States.

Mr. Trump responded that he did not believe Mr. Zelensky's promises of reform. He emphasized his view that corruption remained endemic and repeated his position that European nations needed to do more for European defense.

"Ukraine is a corrupt country," the president said. "We are pissing away our money."

The aid remained blocked. On Aug. 31, Senator Ron Johnson, Republican of Wisconsin, arranged a call with Mr. Trump. Mr. Johnson had been told days earlier by Mr. Sondland that the aid would be unblocked only if the Ukrainians gave Mr. Trump the investigations he wanted.

When Mr. Johnson asked Mr. Trump directly if the aid was contingent on getting a commitment to pursue the investigations, Mr. Johnson later said, Mr. Trump replied...that there was no such demand and he would never do such a thing.

Around the same time, White House lawyers informed Mr. Trump about the whistle-blower's complaint regarding his pressure campaign. It is not clear how much detail the lawyers provided the president about the details of the complaint, which noted the aid freeze.

Mr. Trump was scheduled to travel to Poland on Sept. 1 ...and had planned to get together with Mr. Zelensky. Some administration officials hoped meeting the new Ukrainian president in person would change Mr. Trump's mind. But a hurricane was bearing down on the United States, and Mr. Trump sent Vice President Mike Pence in his place. When Mr. Zelensky raised the issue with the vice president, Mr. Pence said he should speak with Mr. Trump.

Behind the scenes in Warsaw, Mr. Sondland, the American envoy who was Mr. Trump's point person on getting the Ukrainians to agree to the investigations, had a blunter message. Until the Ukrainians publicly announced the investigations, he told Mr. Yermak, the Zelensky adviser, they should not expect to get the military aid. (Mr. Yermak has questioned Mr. Sondland's account.)

### **An Abrupt Reversal**

By late summer, top lawyers at the budget office were developing a proposed legal justification for the hold, based in part on conversations with White House lawyers as well as the Justice Department. Their argument was that lifting the hold would undermine Mr. Trump's negotiating position in his efforts to fight corruption in Ukraine.

The president, the lawyers believed, could ignore the requirements of the Impoundment Control Act and continue to hold the aid by asserting constitutional commander-in-chief powers that give him authority over diplomacy. He could do so, they believed, if he determined that, based on existing circumstances, releasing the money would undermine military or diplomatic efforts.

But divisions within the administration continued to widen; Mr. Bolton was opposed to using an argument proffered by administration lawyers to block the funding. And pressure from Congress was intensifying. Mr. Johnson and another influential Republican, Senator Rob Portman of Ohio, were both pushing for the aid to be released.

On a call with Mr. Portman on Sept. 11, Mr. Trump repeated his familiar refrain about other nations not doing enough to support Ukraine. "Sure, I agree with you," Mr. Portman responded, according to an aide

who described the exchange. “But we should not hold that against Ukraine. We need to release these funds.”

Democrats in the House were gearing up to limit Mr. Trump’s power to hold up the money to Ukraine, and the chairmen of three House committees had also announced on Sept. 9 that they were opening an investigation.

Still, White House officials did not expect anything to change, especially since Mr. Trump had repeatedly rejected the advice of his national security team.

But then, just as suddenly as the hold was imposed, it was lifted. Mr. Trump, apparently unwilling to wage a public battle, told Mr. Portman he would let the money go. White House aides rushed to notify their counterparts at the Pentagon and elsewhere. The freeze had been lifted. The money could be spent...

The debate would now begin as to why the hold was lifted, with Democrats confident they knew the answer. “I have no doubt about why the president allowed the assistance to go forward,” said Representative Eliot L. Engel, Democrat of New York and the chairman of the House Foreign Affairs Committee. “He got caught.”

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