

CONTEMPORARY PRACTICE OF THE UNITED STATES RELATING TO INTERNATIONAL LAW

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GENERAL INTERNATIONAL AND U.S. FOREIGN RELATIONS LAW

President Trump Impeached and Acquitted of Charges Relating to His Conduct of Foreign Affairs
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On December 18, 2019, by a majority vote, the House of Representatives impeached President Trump for abusing power by soliciting Ukrainian interference in the 2020 presidential election and then obstructing the House's impeachment investigation. The allegations against Trump rested substantially on a phone conversation between Trump and Ukrainian president Volodymyr Zelensky on July 25, 2019. During this conversation, Trump asked Zelensky to investigate the prior conduct of Joe Biden—Trump's likely political opponent for the 2020 presidential election. While the House was conducting its impeachment investigation, the White House directed executive branch officials not to testify or to turn over documents. Less than two months after the impeachment, on February 5, 2020, the Senate voted to acquit Trump of the charges, with a majority of Senators voting in favor of acquittal.

The U.S. Constitution provides that the president “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”¹ If the House of Representatives approves articles of impeachment against the president by a majority vote, then the matter moves to the Senate for trial.² A two-thirds vote in the Senate is required for conviction.³ Trump is the third president to be impeached, after Andrew Johnson in 1868⁴ and Bill Clinton in 1998,⁵ and the first president to be impeached for conduct related to foreign affairs.⁶

According to the House Intelligence Committee's impeachment report (the “Impeachment Report”), Trump and his agents solicited the Ukrainian government to announce investigations that would benefit Trump politically.⁷ The Impeachment Report determined that, over the spring and summer of 2019, Trump and his agents sought an investigation into unsubstantiated allegations that, as President Obama's vice president, Biden had interfered with Ukraine's investigation into corruption at Burisma, a Ukrainian energy company, because his son served on

¹ U.S. CONST. Art. II, § 4. For a discussion of conduct that has been deemed impeachable in past proceedings, see generally MICHAEL J. GERHARDT, *THE FEDERAL IMPEACHMENT PROCESS: A CONSTITUTIONAL AND HISTORICAL ANALYSIS* (3d ed. 2019).

² See U.S. CONST. Art. I, § 2, cl. 5; Art. I, § 3, cl. 6.

³ *Id.* Art. I, § 3, cl. 6.

⁴ *The Impeachment of Andrew Johnson (1868) President of the United States*, U.S. SENATE, at https://www.senate.gov/artandhistory/history/common/briefing/Impeachment_Johnson.htm [<https://perma.cc/5ZT3-795M>].

⁵ H.R. Res. 611, 116th Cong. (1998).

⁶ President Richard Nixon resigned in 1974, after the House Judiciary Committee voted to approve articles of impeachment against him but before the House of Representatives voted on impeachment. Joshua Eilberg, *The Investigation by the Committee on the Judiciary of the House of Representatives into the Charges of Impeachable Conduct Against Richard M. Nixon*, 48 *TEMPLE L. Q.* 209, 209 (1975). The Judiciary Committee had approved certain articles of impeachment related to domestic actions undertaken by Nixon, but it had voted against charging him for a matter relating to foreign affairs. See *id.* at 240 (noting that the Judiciary Committee voted down a charge that Nixon concealed the 1969 U.S. bombing of Cambodia from Congress).

⁷ H. PERMANENT SELECT COMM. ON INTELLIGENCE, 116TH CONG., *THE TRUMP-UKRAINE IMPEACHMENT INQUIRY* REP. 12 (2019) [hereinafter *INTELLIGENCE COMM. REP.*].

Burisma's board of directors.⁸ The announcement of such an investigation could damage Biden's 2020 election campaign.⁹ Trump also sought an investigation into the discredited theory that Ukraine—not Russia—hacked the Democratic National Committee's server in 2016.¹⁰ Shifting the blame from Russia to Ukraine would detract from allegations that Trump worked with Russia to interfere in the 2016 U.S. election.¹¹

Drawing on witness testimony, the Impeachment Report described a series of events, most of which came after Zelensky's election as president of Ukraine in April of 2019. Following this election, Trump's personal attorney, Rudy Giuliani, sought to secure an announcement of the sought-after investigations from the new Ukrainian administration.¹² The U.S. Ambassador to Ukraine, Marie Yovanovitch, was perceived as an obstacle to these efforts, and Trump recalled her shortly after Zelensky's election.¹³ Her successor, William Taylor, later testified that Giuliani and Trump political appointees conducted a channel of communication with Ukraine that operated outside of the U.S. State Department and that "the irregular policy channel was running contrary to the goals of longstanding U.S. policy."¹⁴

The Impeachment Report determined that, before the July 25 phone call between Trump and Zelensky, Trump's representatives communicated to Ukrainian officials that a meeting between the two leaders was conditioned on Zelensky announcing the investigations.¹⁵ Such a meeting was particularly important for Ukraine because "Russia was watching closely to gauge the level of American support for the Ukrainian government."¹⁶ At one meeting between U.S. and Ukrainian officials, the U.S. Ambassador to the European Union, Gordon Sondland, explained that Trump would meet with Zelensky only after Ukraine announced investigations into "the energy sector" and specified in a follow-up conversation that he was referring to Burisma.¹⁷ Also in the weeks before the phone call, Trump ordered a

⁸ *Id.* at 102–03. According to U.S. State Department officials, there was no credible evidence that Biden acted inappropriately and his actions made an investigation into corruption at Ukrainian companies more—rather than less—likely. *Id.* at 103.

⁹ *Id.* at 42.

¹⁰ *Id.* at 101; see also Kristina Daugirdas & Julian Davis Mortenson, Contemporary Practice of the United States, 111 AJIL 483 (2017) (describing U.S. investigations establishing that Russia interfered in the 2016 presidential election).

¹¹ INTELLIGENCE COMM. REP., *supra* note 7, at 10, 42.

¹² *Id.* at 51–58, 63–65; Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries that Could Help Trump*, N.Y. TIMES (May 9, 2019), at <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html>.

¹³ INTELLIGENCE COMM. REP., *supra* note 7, at 38–49; Rebecca Ballhaus, Michael C. Bender & Vivian Salama, *Trump Ordered Ukraine Ambassador Removed After Complaints from Giuliani, Others*, WALL ST. J. (Oct. 3, 2019), at <https://www.wsj.com/articles/trump-ordered-ukraine-ambassador-removed-after-complaints-from-giuliani-others-11570137147>.

¹⁴ Amb. William Taylor, Opening Statement Before the H. Permanent Select Comm. on Intelligence, at 8 (Nov. 13, 2019), available at <https://www.nytimes.com/2019/11/13/us/politics/william-taylor-opening-statement-impeachment.html> [hereinafter Taylor Opening Statement]. Similarly, Fiona Hill, a National Security Council official during the relevant time period, testified that she was concerned that "Ukraine was going to be played by Giuliani in some way as part of the campaign." Fiona Hill, Deposition by the H. Permanent Select Comm. on Intelligence, H. Comm. on Oversight and Reform, and the H. Comm. on Foreign Aff., at 130 (Oct. 14, 2019), available at <https://assets.documentcloud.org/documents/6543462/Fiona-Hill-Full-Deposition.pdf>.

¹⁵ INTELLIGENCE COMM. REP., *supra* note 7, at 83–90.

¹⁶ Taylor Opening Statement, *supra* note 14, at 12.

¹⁷ INTELLIGENCE COMM. REP., *supra* note 7, at 88–89. According to Hill, National Security Advisor John Bolton abruptly ended the initial meeting and later stated to her that he wanted no part in Sondland's "drug deal." *Id.* at

hold on \$391 million that Congress had appropriated to Ukraine for security assistance.¹⁸ The aid was withheld until September 11, 2019.¹⁹ Taylor testified to his “astonishment” in learning that the aid was being withheld, as “one of the key pillars of our strong support for Ukraine was threatened.”²⁰

On July 25, Trump and Zelensky spoke by phone. The White House eventually released a rough transcript of the call.²¹ After initial greetings, the two leaders discussed U.S. support for Ukraine:

Trump: [T]he United States has been very very good to Ukraine. I wouldn't say that it's reciprocal necessarily because things are happening that are not good but the United States has been very very good to Ukraine.

Zelensky: . . . I would also like to thank you for your great support in the area of defense. We are ready to continue to cooperate for the next steps specifically we are almost ready to buy more Javelins from the United States for defense purposes.²²

Immediately afterward, Trump asked Zelensky for a “favor”—that Zelensky investigate Trump's theory that Ukraine was responsible for interfering in the 2016 election:

I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it. I would like you to find out what happened with this whole situation with Ukraine, they say CrowdStrike . . . I guess you have one of your wealthy people . . . The server, they say Ukraine has it . . . I would like to have the Attorney General call you or your people and I would like you to get to the bottom of it.²³

After Zelensky agreed, Trump asked Zelensky to work with the U.S. attorney general to investigate the Bidens:

The other thing, [t]here's a lot of talk about Biden's son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it . . . It sounds horrible to me.²⁴

88, 90. Hill testified that Sondland explicitly referred to Burisma in the follow-up conversation with the Ukrainians, and another witness to this follow-up conversation recalled Sondland referring to both Burisma and the Bidens. *Id.* at 89.

¹⁸ *Id.* at 67. State Department official Catherine Croft testified that Ukrainian Embassy officials had begun signaling concern about the delay in the security assistance by the day of the Trump-Zelensky phone call. *Id.* at 81.

¹⁹ *Id.* at 140.

²⁰ Taylor Opening Statement, *supra* note 14, at 8.

²¹ Memorandum of Telephone Conversation with President Zelenskyy of Ukraine (July 25, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf> [<https://perma.cc/T5EH-MMHT>] [hereinafter Trump-Zelensky Phone Call].

²² *Id.* at 2.

²³ *Id.* at 3. Trump was referring to the theory that cybersecurity company CrowdStrike framed Russia for the hack of the Democratic National Committee's emails and hid the server that would prove Ukraine was responsible. INTELLIGENCE COMM. REP., *supra* note 7, at 101.

²⁴ Trump-Zelensky Phone Call, *supra* note 21, at 4. Zelensky responded that, once his administration had a new prosecutor-general in place, “[h]e or she will look into the situation, specifically to the company that you mentioned in this issue.” *Id.*

In the weeks and months that followed, U.S. and Ukrainian officials followed up about the investigations discussed during the phone call.²⁵ The Impeachment Report concluded that Sondland told Ukrainian officials that both the White House meeting and U.S. security assistance were conditioned on Ukraine publicly announcing that it would pursue the investigations.²⁶ Taylor expressed concern multiple times, at one point texting Sondland that “it’s crazy to withhold security assistance for help with a political campaign.”²⁷

On August 12, 2019, a CIA officer filed a whistleblower complaint with the inspector general of the intelligence community about the July 25 phone call.²⁸ On September 24, after the allegations in the whistleblower complaint had come to light, House Speaker Nancy Pelosi initiated an impeachment inquiry.²⁹ House leaders maintained that Trump’s request to Ukraine to conduct the investigations was a “shocking abuse of the Office of the Presidency,” whether or not there was a direct “quid pro quo”:

Let’s be clear: no quid pro quo is required to betray our country. Trump asked a foreign government to interfere in our elections—that is betrayal enough. The corruption exists whether or not Trump threatened—explicitly or implicitly—that a lack of cooperation could result in withholding military aid.³⁰

The House Intelligence, Oversight, and Foreign Affairs Committees immediately began scheduling depositions of officials from the White House, State Department, Defense Department, National Security Council, and Office of Management and Budget.³¹ The Trump administration, however, refused to cooperate with the House investigation, generally declining to produce documents and instructing executive branch employees not to provide testimony.³² The Impeachment Report later described this noncooperation as

²⁵ INTELLIGENCE COMM. REP., *supra* note 7, at 114–39.

²⁶ *Id.* at 132; Taylor Opening Statement, *supra* note 14, at 14.

²⁷ INTELLIGENCE COMM. REP., *supra* note 7, at 135–36.

²⁸ Whistle Blower Complaint (Aug. 12, 2019), available at https://intelligence.house.gov/uploadedfiles/20190812_-_whistleblower_complaint_unclass.pdf; Julian E. Barnes, Michael S. Schmidt, Adam Goldman & Katie Benner, *White House Knew of Whistle-Blower’s Allegations Soon After Trump’s Call with Ukraine Leader*, N.Y. TIMES (Sept. 26, 2019), at <https://www.nytimes.com/2019/09/26/us/politics/who-is-whistleblower.html>.

²⁹ U.S. House of Representatives Speaker of the House Press Release, Pelosi Remarks Announcing Impeachment Inquiry (Sept. 24, 2019), at <https://www.speaker.gov/newsroom/92419-0> [<https://perma.cc/A5R4-P8YZ>].

³⁰ U.S. House of Representatives Committee on Foreign Affairs Press Release, Joint Statement from Committee Chairs on Release of Ukraine Call Record (Sept. 25, 2019), at <https://foreignaffairs.house.gov/2019/9/joint-statement-from-committee-chairs-on-release-of-ukraine-call-record> [<https://perma.cc/6EVV-9N8V>].

³¹ Harry Stevens, Dan Keating, Kevin Uhrmacher & Chris Alcantara, *How President Trump’s Impeachment Unfolded in the House and Senate*, WASH. POST (updated Feb. 6, 2020).

³² See, e.g., Letter from Michael Pompeo, Sec. of State, to Rep. Eliot Engel, Chairman of H. Comm. on Foreign Affairs, at 1–2 (Oct. 1, 2019), available at <https://games-cdn.washingtonpost.com/notes/prod/default/documents/a516c696-4d03-47f5-a8db-af11fa23ac02/note/c3f9c706-4e67-4a33-bc97-fd5687546349.pdf> (referring to, among other things, “the Executive Branch’s unquestionably legitimate constitutional interest in protecting potentially privileged information related to the conduct of diplomatic relations”); Letter from Pat Cipollone, White House Counsel, to Leaders of House Impeachment Inquiry, at 2 (Oct. 8, 2019), available at <https://www.washingtonpost.com/context/letter-from-white-house-counsel-pat-cipollone-to-house-leaders/0e1845e5-5c19-4e7a-ab4b-9d591a5fda7b> (stating that “President Trump and his Administration cannot participate in your partisan and unconstitutional inquiry” in light of how the House was conducting its impeachment inquiry); INTELLIGENCE COMM. REP., *supra* note 7, at 28–33 (describing the Trump administration’s noncooperation).

“unprecedented,” observing that “past Presidents who were the subject of impeachment inquiries—including Presidents Andrew Johnson, Richard Nixon, and Bill Clinton—recognized and, to varying degrees, complied with information requests and subpoenas.”³³ The House committees ultimately issued subpoenas to compel certain administration officials to give depositions. Faced with conflicting demands from the legislative and executive branch, some witnesses—many of them civil servants—gave depositions, while other officials did not appear.³⁴ Pelosi stated that “[t]he White House should be warned that continued efforts to hide the truth of the President’s abuse of power from the American people will be regarded as further evidence of obstruction.”³⁵

After conducting closed-door depositions, the House passed a resolution on October 31, 2019, directing the continuation of the impeachment proceedings and outlining the rest of the impeachment process.³⁶ The resolution provided that Democrats and Republicans on the House Intelligence Committee would question witnesses in open hearings, the Intelligence Committee would write a report summarizing its findings, and the Judiciary Committee would decide whether to report forward any articles of impeachment.³⁷ The chair of the Intelligence Committee, Adam Schiff, announced on the first day of the open hearings that many of the witnesses were appearing under subpoenas to protect them from retribution from the Trump administration.³⁸ He said that directing witnesses not to appear could itself be grounds for impeachment:

The president has instructed the State Department and other agencies to ignore congressional subpoenas for documents. He has instructed witnesses to defy subpoenas and refuse to appear. And he has suggested that those who do expose wrongdoing should be treated like traitors and spies. These actions will force Congress to consider, as it did with President Nixon, whether Trump’s obstruction of the constitutional duties of Congress constitute additional grounds for impeachment.³⁹

Multiple witnesses who previously gave closed-door depositions testified publicly, including Yovanovitch, Taylor, and Sondland.⁴⁰ As during the earlier depositions, various witnesses testified that Trump asked Zelensky to announce investigations into Joe Biden and into whether Ukraine engaged in U.S. election interference in 2016; that Trump conditioned

³³ INTELLIGENCE COMM. REP., *supra* note 7, at 28–29.

³⁴ *See id.* at 30–32. The former deputy national security adviser filed a lawsuit in federal court to determine whether he should comply with the congressional subpoena or the White House directive not to testify. The lawsuit did not get resolved on the merits, as it was dismissed as moot after the House voted to impeach Trump. Bryon Tau, *Judge Dismisses Case Over Testimony of Trump Administration Official*, WALL ST. J. (Dec. 30, 2019), at <https://www.wsj.com/articles/judge-dismisses-case-over-testimony-of-trump-administration-official-11577748048>.

³⁵ Karoun Demirjian, Josh Dawsey, Shane Harris & John Wagner, *White House Escalates Standoff with Congress, Says It Will Not Cooperate with Impeachment Inquiry of Trump*, WASH. POST (Oct. 8, 2019), at https://www.washingtonpost.com/national-security/gordon-sondland-key-us-official-in-political-storm-over-ukraine-to-be-deposed-in-impeachment-inquiry/2019/10/07/c3c1703e-e942-11e9-9306-47cb0324fd44_story.html.

³⁶ H.R. Res. 660, 116th Cong. (2019).

³⁷ *Id.*

³⁸ Washington Post Staff, *Transcript: Kent and Taylor Public Testimony in Front of the House Intelligence Committee*, WASH. POST (Nov. 14, 2019) (Adam Schiff opening statement), at <https://www.washingtonpost.com/politics/2019/11/14/transcript-kent-taylor-public-testimony-front-house-intelligence-committee>.

³⁹ *Id.*

⁴⁰ Stevens, Keating, Uhrmacher & Alcantara, *supra* note 31.

official acts on this announcement; and that these actions were improper and dangerous to U.S. national security.⁴¹ While most witnesses were called by the Democrats on the Intelligence Committee, the Republican minority called several witnesses. These included a former official who testified that he had “made no judgment about any illegal conduct occurring” as he had listened to the July 25 call⁴² and a former U.S. special envoy to Ukraine who testified that he “drew a sharp distinction” between seeking an investigation of Burisma and seeking an investigation of the Bidens.⁴³

Following the public testimony, the Intelligence Committee published the Impeachment Report, which contained its findings. The Report stated:

The impeachment inquiry into Donald J. Trump, the 45th President of the United States, uncovered a months-long effort by President Trump to use the powers of his office to solicit foreign interference on his behalf in the 2020 election. . . . President Trump’s scheme subverted U.S. foreign policy toward Ukraine and undermined our national security in favor of two politically motivated investigations that would help his presidential reelection campaign. The President demanded that the newly-elected Ukrainian president, Volodymyr Zelensky, publicly announce investigations into a political rival that he apparently feared the most, former Vice President Joe Biden, and into a discredited theory that it was Ukraine, not Russia, that interfered in the 2016 presidential election. To compel the Ukrainian President to do his political bidding, President Trump conditioned two official acts on the public announcement of the investigations: a coveted White House visit and critical U.S. military assistance Ukraine needed to fight its Russian adversary.⁴⁴

The Intelligence Committee approved the Impeachment Report on December 3, 2019, in a party-line vote, with thirteen Democrats endorsing the report and nine Republicans dissenting.⁴⁵

⁴¹ See Aaron Blake, Philip Bump & Irfan Uraizee, *The Full Trump-Ukraine Impeachment Timeline*, WASH. POST (updated Jan. 27, 2020), at <https://www.washingtonpost.com/graphics/2019/politics/trump-impeachment-timeline>. Sondland amended his testimony between the private and public hearings. Declaration of Ambassador Gordon D. Sondland (Nov. 4, 2019), available at <https://www.justsecurity.org/wp-content/uploads/2019/11/Ambassador-Gordon-Sondland-Supplemental-Declaration-Nov-4-2019.pdf> [hereinafter Sondland Declaration]. He originally denied that U.S. officials told Ukrainian officials that security assistance was conditioned on the announcement of investigations. Amb. Gordon Sondland, Opening Statement Before the H. Permanent Select Comm. on Intelligence, at 16–17 (Oct. 17, 2019), available at <https://www.politico.com/news/2019/10/17/full-text-gordon-sondland-opening-statement-impeachment-049982>. In his updated testimony, he said that he himself told Ukrainian officials that it was. Sondland Declaration, *supra*, at 2.

⁴² Washington Post Staff, *Transcript: Volker and Morrison Public Testimony on Nov. 19*, WASH. POST (Nov. 19, 2019) (testimony of Tim Morrison), at <https://www.washingtonpost.com/politics/2019/11/19/transcript-volker-morrison-public-testimony-nov>.

⁴³ Amb. Kurt Volker, Opening Statement Before the H. Permanent Select Comm. on Intelligence, at 7 (Nov. 19, 2019), available at <https://d3i6fh83elv35t.cloudfront.net/static/2019/11/Final-Volker-Testimony-11.19.19.pdf>. He observed that “[i]n hindsight, I now understand that others saw the idea of investigating possible corruption involving the Ukrainian company, ‘Burisma,’ as equivalent to investigating former Vice President Biden In retrospect, I should have seen that connection differently.” *Id.* at 8.

⁴⁴ INTELLIGENCE COMM. REP., *supra* note 7, at 12.

⁴⁵ Felicia Sonmez, Colby Itkowitz & John Wanger, *House Intelligence Committee Sends Report on Trump and Ukraine to Judiciary Panel, Paving the Way for Possible Articles of Impeachment*, WASH. POST (Dec. 3, 2019), at https://www.washingtonpost.com/politics/impeachment-hearings-live-updates/2019/12/03/50fec098-15ba-11ea-8406-df3c54b3253e_story.html.

The report was sent to the Judiciary Committee, which had been charged with deciding whether to draw up articles of impeachment.⁴⁶

House Republicans prepared their own report on the impeachment proceedings, reaching very different conclusions than those outlined in the Impeachment Report:

At the heart of the matter, the impeachment inquiry involves the actions of only two people: President Trump and President Zelensky. The summary of their July 25, 2019, telephone conversation shows no *quid pro quo* or indication of conditionality, threats, or pressure—much less evidence of bribery or extortion. . . .

Even examining evidence beyond the presidential phone call shows no *quid pro quo*, bribery, extortion, or abuse of power. The evidence shows that President Trump holds a deep-seated, genuine, and reasonable skepticism of Ukraine due to its history of pervasive corruption. The President has also been vocal about his skepticism of U.S. foreign aid and the need for European allies to shoulder more of the financial burden for regional defense. . . .

Understood in this proper context, the President's initial hesitation to meet with President Zelensky or to provide U.S. taxpayer-funded security assistance to Ukraine without thoughtful review is entirely prudent. . . .

There is also nothing wrong with asking serious questions about the presence of Vice President Biden's son, Hunter Biden, on the board of directors of Burisma, a corrupt Ukrainian company, or about Ukraine's attempts to influence the 2016 presidential election. . . .⁴⁷

On December 13, 2019, the Judiciary Committee voted 23 to 17 along party lines to adopt two articles of impeachment against Trump: the first for abuse of power, and the second for obstruction of justice.⁴⁸ The abuse of power charge stated in part that:

Using the powers of his high office, President Trump solicited the interference of a foreign government, Ukraine, in the 2020 United States Presidential election. He did so through a scheme or course of conduct that included soliciting the Government of Ukraine to publicly announce investigations that would benefit his reelection, harm the election prospects of a political opponent, and influence the 2020 United States Presidential election to his advantage. President Trump also sought to pressure the Government of Ukraine to take these steps by conditioning official United States Government acts of significant value to Ukraine on its public announcement of these investigations. . . .

⁴⁶ *Id.*

⁴⁷ Report of Evidence in the Democrats' Impeachment Inquiry in the House of Representatives (Dec. 2, 2019), available at <https://republicans-oversight.house.gov/wp-content/uploads/2019/12/2019-12-02-Report-of-Evidence-in-the-Democrats-Impeachment-Inquiry-in-the-House-of-Representatives.pdf>.

⁴⁸ H.R. Res. 755, 116th Cong. (2019); Nicholas Fandos, *Panel Approves Impeachment Articles and Sends Charges for a House Vote*, N.Y. TIMES (Dec. 13, 2019), at <https://www.nytimes.com/2019/12/13/us/politics/impeachment-vote.html>. Earlier that month, the Judiciary Committee heard testimony from constitutional law scholars about what constitutes an impeachable offense and whether Trump's conduct rose to that level. Michael D. Shear, *Key Moments from the First Impeachment Hearing in the Judiciary Committee*, N.Y. TIMES (Dec. 4, 2019), at <https://www.nytimes.com/2019/12/04/us/politics/impeachment-hearings.html>.

...

In all of this, President Trump abused the powers of the Presidency by ignoring and injuring national security and other vital national interests to obtain an improper personal political benefit. He has also betrayed the Nation by abusing his high office to enlist a foreign power in corrupting democratic elections.⁴⁹

The obstruction of justice charge stated in part:

[W]ithout lawful cause or excuse, President Trump directed Executive Branch agencies, offices, and officials not to comply with [congressional] subpoenas.

...

In the history of the Republic, no President has ever ordered the complete defiance of an impeachment inquiry or sought to obstruct and impede so comprehensively the ability of the House of Representatives to investigate “high Crimes and Misdemeanors.” This abuse of office served to cover up the President’s own repeated misconduct. . . .⁵⁰

On December 18, the House impeached Trump, voting in favor of both articles of impeachment almost entirely along party lines.⁵¹ 229 Democrats and one Independent voted to impeach Trump for abuse of power, while two Democrats and 195 Republicans voted against this first article of impeachment.⁵² 228 Democrats and one Independent voted to impeach Trump for obstruction of justice, while three Democrats and 195 Republicans voted against this second article of impeachment.⁵³

On January 15, 2020, the seven representatives appointed as House impeachment managers delivered the articles of impeachment to the Senate, where the impeachment trial was to be presided over by Chief Justice John Roberts of the U.S. Supreme Court.⁵⁴ The Senate impeachment proceedings began with a debate over the trial rules.⁵⁵ The final rules provided, in essence, that (1) the entire House impeachment record would be admitted into evidence; (2) the House managers and the president’s representatives would each have three days to make opening arguments; (3) senators would have sixteen hours to question the two sides, after which each side would receive two further hours for argument; (4) the Senate would then vote on whether to subpoena witnesses and documents and, if it voted in favor, would hear this additional evidence; and (5) finally, the Senate would vote on the

⁴⁹ H.R. Res. 755, 116th Cong. (2019).

⁵⁰ *Id.*

⁵¹ *All Actions H.Res.755 — 116th Congress (2019–2020)*, CONGRESS.GOV, at <https://www.congress.gov/bill/116th-congress/house-resolution/755/all-actions>.

⁵² Final Vote Results for Roll Call 695, at <http://clerk.house.gov/evs/2019/roll695.xml>.

⁵³ Final Vote Results for Roll Call 696, at <http://clerk.house.gov/evs/2019/roll696.xml>.

⁵⁴ Nicholas Fandos & Sheryl Gay Stoleberg, *House Delivers Impeachment Charges to Senate, Paving the Way for a Trial*, N.Y. TIMES (Jan. 15, 2020), at <https://www.nytimes.com/2020/01/15/us/politics/impeachment-managers.html>. Pelosi delayed sending the articles of impeachment to the Senate for nearly a month in an effort to pressure the Senate to allow additional witnesses and documents to be presented at the trial. *Id.*

⁵⁵ Michael D. Shear, *Senate Adopts Trial Rules*, N.Y. TIMES (Jan. 22, 2020), at <https://www.nytimes.com/live/2020/impeachment-trial-01-21>.

articles of impeachment.⁵⁶ The Senate voted 53 to 47 along party lines to reject multiple amendments to the rules which would have allowed documents to be subpoenaed and witnesses to be called.⁵⁷

The House impeachment managers laid out the case for conviction over three days, drawing on the fact-finding previously conducted in the House proceedings. The lawyers for Trump advanced various arguments against impeachment.⁵⁸ With respect to the abuse of power charge, they argued, among other things, that:

First, the transcript [of the July 25 call] shows that the President did not condition either security assistance or a meeting on anything. The paused security assistance funds aren't even mentioned on the call.

Second, President Zelensky and other Ukrainian officials have repeatedly said that there was no quid pro quo and no pressure on them to review anything.

Third, President Zelensky and high-ranking Ukrainian officials did not even know—that the security assistance was paused until the end of August, over a month after the July 25 call.

Fourth, not a single witness testified that the President himself said that there was any connection between any investigations and security assistance, a Presidential meeting, or anything else.⁵⁹

On the obstruction charge, Trump's lawyers argued that "[i]n every instance, when there was resistance to a subpoena . . . for a witness or for documents, there is a legal explanation and justification for it."⁶⁰

After six days of opening arguments, two days of senators posing questions to the legal teams, and one day of closing arguments,⁶¹ the Senate debated whether to hear testimony from witnesses.⁶² Contemporaneous with the parties' opening arguments, the *New York Times* had reported that an unpublished manuscript of a book by John Bolton, the national security advisor during the summer of 2019, included claims that Trump directed him to help pressure Ukraine to investigate the Bidens.⁶³ The House impeachment managers believed

⁵⁶ S. Res. 483, 116th Cong. (2020).

⁵⁷ John Wagner, Colby Itkowitz & Felicia Sonmez, *Senate Rejects Democratic Effort to Subpoena Acting White House Chief of Staff Mulvaney for Testimony in Trump's Impeachment Trial*, WASH. POST (Jan. 21, 2020), at https://www.washingtonpost.com/politics/impeachment-trial-live-updates/2020/01/21/a52d9a74-3c3c-11ea-b90d-5652806c3b3a_story.html.

⁵⁸ See John Wagner & Colby Itkowitz, *In First Day of Defense, Trump's Team Argues that He Did Nothing Wrong, and that Democrats Presented Selective Case*, WASH. POST (Jan. 25, 2020), at https://www.washingtonpost.com/politics/impeachment-trial-live-updates/2020/01/25/db73d4e6-3f60-11ea-b90d-5652806c3b3a_story.html.

⁵⁹ 166 Cong. Rec. S567, S568-69 (Jan. 25, 2020) (argument of Michael Purpura).

⁶⁰ *Id.* at S575 (argument of Pat Philbin).

⁶¹ See Stevens, Keating, Uhrmacher & Alcantara, *supra* note 31.

⁶² Michael D. Shear & Nicholas Fandos, *Republicans Block Impeachment Witnesses, Clearing Path for Trump Acquittal*, N.Y. TIMES (Jan. 31, 2020), at <https://www.nytimes.com/2020/01/31/us/politics/trump-impeachment-trial.html>.

⁶³ Maggie Haberman & Michael S. Schmidt, *Trump Tied Ukraine Aid to Inquiries He Sought, Bolton Book Says*, N.Y. TIMES (Jan. 26, 2020), at <https://www.nytimes.com/2020/01/26/us/politics/trump-bolton-book-ukraine.html>.

that Bolton's testimony would supply the firsthand evidence against Trump that Republicans claimed was lacking.⁶⁴ On January 31, the Senate voted 51–49 not to hear from additional witnesses, with two Republican Senators joining the forty-seven Democrats who favored hearing from these witnesses.⁶⁵

On February 5, the Senate voted to acquit Trump on both charges.⁶⁶ Fifty-two Republicans voted “not guilty” on the abuse of power charge, while Republican Senator Mitt Romney and all forty-seven Democrats voted “guilty.”⁶⁷ All fifty-three Republicans voted “not guilty” on the obstruction of justice charge, while all forty-seven Democrats voted “guilty.”⁶⁸ Trump thus became the third president in U.S. history to be impeached but not convicted.⁶⁹

Trump Administration Further Restricts Asylum Seekers at the Southern Border Through the Migrant Protection Protocols, Asylum Cooperative Agreements, and COVID-19 Procedures
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During the spring of 2020, the Trump administration continued efforts to reduce the ability of individuals to seek asylum in the United States, particularly at its southern border. The administration received temporary authorization from the U.S. Supreme Court to put into effect the Migrant Protection Protocols (MPP)—an arrangement that requires non-Mexican asylum seekers to wait in Mexico for the duration of their immigration proceedings—while the administration petitions the Court to reverse a lower court decision enjoining the MPP's implementation. The administration has also sought to implement its asylum cooperative agreement with Guatemala, whereby the United States sends certain non-Guatemalan migrants to Guatemala to apply for asylum there. The legality of this agreement is presently being challenged, and, in March of 2020, the COVID-19 pandemic caused Guatemala to stop

⁶⁴ John Wagner, *Democrats Make Final Case for Why Senate Needs to Hear from Bolton, Mulvaney*, WASH. POST (Jan. 31, 2020), at https://www.washingtonpost.com/politics/impeachment-trial-live-updates/2020/01/31/9a853bbe-4415-11ea-b5fc-eefa848cde99_story.html.

⁶⁵ Michael Brice-Saddler, *Senate Votes to Formally Reject Additional Witnesses, Evidence*, WASH. POST (Jan. 31, 2020), at https://www.washingtonpost.com/politics/impeachment-trial-live-updates/2020/01/31/9a853bbe-4415-11ea-b5fc-eefa848cde99_story.html.

⁶⁶ *All Actions H.Res.755 – 116th Congress (2019–2020)*, CONGRESS.GOV, at <https://www.congress.gov/bill/116th-congress/house-resolution/755/all-actions?overview=closed&KWICView=false>.

⁶⁷ Roll Call Vote 116th Congress – 2d Session (Vote 33), at https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=116&session=2&vote=00033.

⁶⁸ Roll Call Vote 116th Congress – 2d Session (Vote 34), at https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=116&session=2&vote=00034.

⁶⁹ Two days after the conclusion of the trial, Trump took action against some of the witnesses who participated in the congressional inquiry, removing one from the National Security Council staff and recalling Sondland from his position as Ambassador to the European Union. See Scott R. Anderson, *The Legal Limits on Trump's Reprisals Against Impeachment Witnesses*, LAWFARE (Feb. 11, 2020), at <https://www.lawfareblog.com/legal-limits-trumps-reprisals-against-impeachment-witnesses> (noting that “[b]y the end of the day, no one who participated in the House’s impeachment proceedings still held a White House position or ambassadorship”).