

DEPARTMENT OF DEFENSE  
OFFICE OF INSPECTOR GENERAL

In the Matter of

Lieutenant Colonel  
YEVGENY S. VINDMAN,  
Judge Advocate, U.S. Army,

*Complainant.*

Whistleblower Reprisal Complaint

August 18, 2020

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\* Signed original on file with DoD, SOCO.

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Responsible Management Official.....	RMO
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Standards of Conduct Office.....SOCO

Involved Federal Officials/Witnesses<sup>†</sup>

John R. Bolton ..... Assistant to the President & National Security Advisor  
**John A. Eisenberg** ..... Assistant to the President,  
Deputy White House Counsel & National Security Council (NSC) Legal Advisor  
**Michael J. Ellis** ..... Special Assistant to the President,  
Senior Associate White House Counsel & NSC Deputy Legal Advisor  
[REDACTED] ..... Special Assistant  
Scott Gast ..... Senior Associate Counsel to the President, Ethics Office  
**Alex Gray** ..... Deputy Assistant to the President/ NSC Chief of Staff  
Robert Greenway ..... Special Assistant to the President  
& Senior Director, Middle East and North Africa Directorate  
David Jones ..... Senior Associate Counsel to the President, Ethics Office  
Charles M. Kupperman ..... Assistant to the President & Deputy National Security Advisor  
[REDACTED] ..... Deputy NSC Legal Advisor  
**Robert C. O'Brien** ..... National Security Advisor  
Andrew L. Peek ..... Deputy Assistant to the President  
& Senior Director, Europe and Russia Directorate  
Matthew Pottinger ..... Assistant to the President & Deputy National Security Advisor  
Michael M. Purpura ..... Deputy White House Counsel  
Scott Thompson ..... Director, DoD Standards of Conduct Office  
**Donald J. Trump** ..... President of the United States  
Alexander S. Vindman ..... Complainant's brother, Lieutenant Colonel, U.S. Army (Ret)  
Yevgeny S. Vindman ..... Complainant, Lieutenant Colonel, JA, U.S. Army  
Volodymyr Zelensky ..... President of Ukraine

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<sup>†</sup> Names of Responsible Management Officials (RMOs) are in **bold** type. A number of these individuals no longer hold the positions indicated. Inclusion on this list does not imply wrongdoing. Most of those listed are merely witnesses.

## *Introduction*

This is one of the clearest and highest-profile cases of whistleblower reprisal in American history. The complainant, Lieutenant Colonel Yevgeny S. Vindman, is a senior active duty U.S. Army judge advocate. White House officials took adverse personnel actions against him in retaliation for reporting waste, fraud, and abuse, to his chain of command, as required by Executive Order, DoD regulations, and the Army values.<sup>3</sup> He made at least seven protected communications between July 2019 and February 2020. Those communications were either on his own behalf or in support of protected activity by another whistleblower, his brother. The protected activity that prompted the retaliatory personnel actions at issue included disclosures that directly involved the President of the United States.

As set forth below, the protected communications were made through complainant's chain of command, including to the Legal Advisor to the NSC. Notably, LTC Vindman and his brother, Lieutenant Colonel Alexander S. Vindman (LTC A. Vindman) first made protected communications to their management chain and LTC A. Vindman subsequently testified before a committee of the House of Representatives in connection with the President's impeachment. Additionally, senior White House officials became aware, and displayed their displeasure regarding, the House's expressed interest in specifically interviewing LTC Vindman as part of the impeachment inquiry. Subsequently, officials displaying displeasure with LTC Vindman included President Trump.

As a direct result of LTC Vindman's protected communications, Responsible Management Officials (RMOs) retaliated against him through, among other things, a significant change in his

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<sup>3</sup> DoD Directive 5106.01 (Apr. 20, 2012, incorporating changes effective Aug. 19, 2014) at 5(s); Exec. Order No. 12,731 (Oct. 17, 1990).

duties, responsibilities, and working conditions; a poor Officer Evaluation Report (OER); and ultimately, unwarranted and ignominious removal from his career-enhancing position of trust and responsibility at the White House.

A thorough investigation will establish that the actions taken against LTC Vindman were done in reprisal for his protected disclosures and violated 10 U.S.C. § 1034 and DoD Directive (DoDD) 7050.06. We therefore respectfully request that the Office of Inspector General promptly institute the required investigation. The relief requested is set forth below.

#### *Related Proceedings*

Complainant submitted comments, on July 10, 2020, pointing out with particularity the plethora of procedural and substantive flaws in the OER. The rating chain declined to revise it. At complainant's request, a Commander's Inquiry under AR 623-3 is in progress.

The rating chain's unexplained refusal to revise the OER, even as to the most fundamental procedural requirements, is irrefutable evidence of ill intent. One member of the rating chain, Michael J. Ellis, holds a commission in the U.S. Navy Reserve. Both he and the other rating chain member, John A. Eisenberg, have served before as raters for military personnel and are therefore familiar with the required process and governing standards. Each is an attorney.

#### *Jurisdiction and Timeliness*

As a member of the armed forces, LTC Vindman is protected by the Military Whistleblower Protection Act. 10 U.S.C. § 1034. Section 1034(b)(1) forbids retaliation by any person. There is no exception for the President or White House or NSC personnel. The DoD IG has jurisdiction.

This complaint is timely filed because the retaliatory actions complained of were taken less than one year ago. 10 U.S.C. § 1034(c)(5).

### *Elements and Standard of Proof*

The elements of reprisal are summarized in chapter 1 of the *Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints*. There must be (1) a protected communication; (2) knowledge of the protected communication on the part of the RMO; (3) a personnel action taken, threatened, or withheld; and (4) a causal connection between the protected communication and the personnel action. The elements must be established by a preponderance of the evidence for a complaint to be deemed substantiated. LTC Vindman's complaint satisfies all four elements. The burden is on White House officials to prove that the same adverse personnel actions would have been taken even if there had been no protected communications. *See, e.g., Whitmore v. Dep't of Labor*, 680 F.3d 1353, 1367 (Fed. Cir. 2012); *Figueroa v. Nielsen*, 423 F. Supp. 3d 21 (S.D.N.Y. 2019); *Miller v. Dep't of Justice*, 842 F.3d 1252 (Fed. Cir. 2016) (once the complainant establishes a *prima facie* case, the burden of proof shifts to the U.S. Government to establish that the personnel actions taken, threatened, or withheld would have occurred absent the protected communication).

### *The Complainant*

Complainant is an active duty Army judge advocate. He currently serves as Staff Judge Advocate, U.S. Army Combat Capabilities Development Command, Aberdeen Proving Ground, Maryland. He served on the NSC staff from July 23, 2018, until he was abruptly escorted out on February 7, 2020. At the time of his departure – which occurred only two days after President Trump's 2020 Senate impeachment trial concluded – he was Deputy Legal Advisor for the NSC staff and the appointed Alternate Designated Agency Ethics Official. In this capacity, he was the primary ethics official on the NSC staff, legal advisor to four NSC directorates, and the lead White House attorney on the President's Africa and Foreign Assistance Realignment strategies. He as-

sisted in the management of congressional oversight matters and NSC legal compliance and managed the conduct of sensitive internal investigations. He advised the National Security Advisor and Deputy National Security Advisor on legal matters relating to national security and foreign relations including foreign assistance, the nature and scope of presidential authorities, intelligence matters, and treaty interpretation.

LTC Vindman was detailed to the NSC based on merit. He is a senior Military Justice practitioner. He previously served as Chief of Justice and Senior Trial Counsel at Fort Hood, Texas, where he supervised the prosecution of serious cases, including rape, murder, conspiracy, and fraud, and personally prosecuted other serious cases. He was also involved in the commander's post-trial review of the high-profile case of MAJ (Dr.) Nidal M. Hasan. During his tenure at Fort Hood, LTC Vindman supervised 18 attorneys and eight paralegals in the country's busiest court-martial jurisdiction. The position is comparable to that of a District Attorney.

In 2012, while serving in Germany, LTC Vindman was the principal American representative in sensitive negotiations with German and Romanian authorities on questions of jurisdiction over American personnel charged with crimes under local law. His efforts ensured that, rather than being prosecuted in the host country, they were held accountable by the U.S. Army.

In 2011, LTC Vindman deployed to Iraq as a National Security Law attorney. There he served as the senior legal advisor on sensitive Special Operations targeting matters and lead attorney at the U.S. Forces – Iraq Joint Operations Center. Prior to that, he held various positions as an Infantry officer, including command and as a platoon leader in the 82nd Airborne Division.



## *Facts of the Case*

### A. Protected Disclosures

LTC Vindman made a number of disclosures involving violations of federal law and regulations by Robert O'Brien, Assistant to the President for National Security Affairs (APNSA), and his Chief of Staff, Alex Gray. The critical disclosures, which resulted in swift and unmistakable retaliatory actions, concerned conduct of the President of the United States.

On July 25, 2019, LTC Vindman and his twin brother, LTC A. Vindman, disclosed to Mr. Eisenberg (Deputy Legal Advisor to the NSC and Deputy White House Counsel) their reasonable and good faith concerns about a telephone call President Trump famously had with Ukrainian President Volodymyr Zelensky. The Vindmans pointed out that President Trump's actions during the phone call were potentially illegal. This disclosure concerned the issue that ultimately precipitated the House of Representatives' historic vote to impeach. President Trump is only the third Chief Executive in American history to have been impeached by the House.

### B. Chronology

- **July 23, 2018**, LTC Vindman began work as Deputy Legal Advisor for the NSC. He was subsequently appointed as Alternate Designated Agency Ethics Official (ADAEO) for the NSC in April 2019. Appointment as ADAEO includes representation of the NSC staff to the Office of Government Ethics.
- **Early July 2019**, LTC Vindman received his OER for 2018-19. The rating official was Mr. Ellis, Special Assistant to the President, Senior Associate Counsel to the President, and Deputy Legal Advisor to the NSC. The Senior Rater was Mr. Eisenberg, Assistant to the President, Legal Advisor to the NSC, and Deputy White House Counsel. The OER rated LTC Vindman as "Excels" and "Most Qualified," the highest possible ratings. The comments were laudatory. Mr. Eisenberg noted that LTC Vindman—

is a top 1% military attorney and officer and the best LTC with whom I have ever worked. Functioning at the executive level, he advises White House senior staff with skill, tact, and judgment on matters of geostrategic importance. Sought by White House staff regularly, he can do any job in the legal field under unusual and constant pressure and scrutiny. Select now for SSC and promote immediately to COL. Absolutely unlimited potential!

- **July 25, 2019**, LTC Vindman accompanied his brother to Mr. Eisenberg's office. Both officers stated their concerns regarding the President's phone call with President Zelensky. During this report, actions related to the transcript of the phone call and how that transcript would be managed took place. Mr. Ellis was also present at this meeting.
- **On or about August 1, 2019**, LTC Vindman discussed with Mr. Eisenberg their duty as attorneys and White House Counsel. The issue discussed was whether they are duty bound to the Office of the President of the United States or the individual, Donald J. Trump, personally.
- **On or about August 5, 2019**, LTC Vindman continued discussions with Mr. Eisenberg concerning their obligations as attorneys to the Office of the President of the United States versus to the individual. The issues involved discussion of potential violations of law and included researching statutes that President Trump may have violated.
- **On or about September 15, 2019**, LTC Vindman, along with Scott Gast and David M. Jones, both Special Assistants to the President and Senior Associate Counsel to the President, in the White House Counsel's Office, provided the incoming National Security Advisor, Robert C. O'Brien his initial ethics briefing. The briefing was being conducted to comply with onboarding requirements as set forth in the applicable *Code of Federal Regulations* provisions for agency heads. When the three were advising Mr. O'Brien about conflicts of interest and gifts from private entities, including the rules governing who, for example, could buy him lunch or dinner and that LTC Vindman would be reviewing such engagements as he previously did for former NSA John R. Bolton, Mr. O'Brien's demeanor shifted. He became agitated and angry. LTC Vindman attempted to explain the ethics rules by which all federal employees are bound. Upon hearing certain limitations to the gift acceptance rules, Mr. O'Brien yelled at LTC Vindman because he, Mr. O'Brien, did not agree with those constraints.
- **In September 2019**, LTC Vindman was prepared to attend the opening of the UN General Assembly's opening session during the week of September 23, 2019. As background, typically when the President or the National Security Advisor travels to such events, at least one attorney is present so that counsel is available and can be consulted at a moment's notice. Given LTC Vindman's portfolio and because this was contemporaneous with a transition from Mr. Bolton to Mr. O'Brien as National Security Advisor, LTC Vindman was expected to attend. Despite this, Mr. Eisenberg informed LTC Vindman that he would not be traveling to New York to attend the session. Mr. Eisenberg justified the decision on the basis that there was a chance of some "trouble" during the President's visit and that it was better not to have an attorney present. What the feared "trouble" constituted was not explained.
- **Between September and November 2019**, LTC Vindman made numerous requests to meet with Mr. O'Brien's Chief of Staff, Alex Gray, about ethics matters, to include issues involving the distribution of "Challenge Coins" purchased with appropriated federal funds and meetings with non-federal entities. Despite LTC Vindman's attempts to meet with Mr.

Gray, there was no response. During this time, it became apparent that, despite his role within the NSC, LTC Vindman was being denied access to both Mr. O'Brien and his Chief of Staff.<sup>4</sup>

- **September 24, 2019**, the House of Representatives initiated an impeachment inquiry against President Trump following a whistleblower's disclosure about his improper phone call with President Zelensky.
- **In mid-Fall 2019**, the House expressed an interest in interviewing LTC Vindman as part of the impeachment inquiry. He informed Mr. Eisenberg and Michael M. Purpura, Deputy White House Counsel, of Congress' expression of interest.
- **In mid-Fall 2019**, LTC Vindman reviewed a request for Mr. O'Brien's travel to Utah and California, which included interactions with non-federal entities. LTC Vindman expressed concerns to his rating chain that the travel, which included Mr. O'Brien's wife using government funded travel, to Brigham Young University (BYU) in Utah, and meetings with LDS leadership was unusual and not sufficiently official in nature. The appearance of impropriety and personal conflict of interest was present because the NSA planned to speak, unusually, to the BYU Air Force ROTC Unit, where his daughter is a member of the Corps of Cadets. The requested travel involved the expenditure of significant appropriated funds. LTC Vindman was subsequently informed that, in a departure from prior practice and NSC policy, he would no longer be reviewing the NSAs interactions with private entities.
- **October 29, 2019**, LTC A. Vindman testified before congressional investigators as part of the impeachment inquiry.
- **In November 2019**, LTC Vindman was directed not to attend a NSC Deputies Committee meeting on Libya, which is a Department and Agency Deputy Secretary-level meeting. Instead, Mr. Eisenberg attended the Deputies Committee meeting, for the first time in memory, in his place. Mr. Ellis informed LTC Vindman that there is still "plenty of ethics work to do" for the NSC staff. Concerned by the recent spate of actions, LTC Vindman asked whether his termination was imminent. Mr. Ellis denied that it was, but said that the decision was "up to others." From that point forward, LTC Vindman was not permitted to attend senior-level meetings pertaining to the Middle East and North Africa directorate as he had done previously.
- **On or about November 1, 2019**, LTC Vindman was informed that any actions for ethics clearance involving Mr. O'Brien's engagements with private entities would be vetted through the White House Counsel's Office. Previously, this subject fell within LTC Vindman's area of responsibility.
- **In or about November 2019**, LTC Vindman was providing an active duty colonel and speech writer for Mr. O'Brien his "Out Briefing" as he was preparing to depart the NSC and return to the Air Force. The colonel was departing after serving only four months at

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<sup>4</sup> Pursuant to 5 C.F.R. 2638.104, designated ethics official must have access to the agency head.

the White House and had voluntarily cut his tour of duty short. During the Out Briefing, the colonel informed LTC Vindman that both Messrs. O'Brien and Gray were mismanaging the NSC staff, including by failing to communicate with staff, politicizing external interactions, failing to prioritize actions and through basic lack of management ability. This, he said, was the reason for his early departure from the NSC staff.

- **November 19, 2019**, LTC A. Vindman publicly testified before the House of Representatives during the impeachment inquiry. After receiving clearance from the White House Counsel's office, LTC Vindman accompanied his brother to the hearing. This public display of support was widely reported by domestic and international media.
- **In December 2019**, LTC Vindman back-briefed Mr. Ellis on a meeting Mr. O'Brien had with SpaceX management. Mr. Ellis claimed he was not aware that LTC Vindman planned to attend even though LTC Vindman had notified him by e-mail days before. Mr. Ellis said that either he or Mr. Eisenberg should attend such meetings and for the first time mentioned that Legal personnel attendance should be substantive rather than based on ethics concerns. LTC Vindman reminded Mr. Ellis that this was a departure from prior procedure. Mr. Ellis asked for LTC Vindman's notes from the meeting, the first such request. Mr. O'Brien asked LTC Vindman during the meeting whether he was recording their conversation. Later that day, at approximately noon, LTC Vindman was cut from a Deputies Small Group (DSG), a restricted participant version of the Deputies Committee, on World Intellectual Property Organization. While e-mail traffic had originally approved LTC Vindman's attendance, Mr. Ellis claimed that LTC Vindman's attendance was not possible because of limited space. LTC Vindman subsequently spoke with [REDACTED], Director, Human Rights, Democracy and Conflict, International Organizations Directorate, NSC, who attended that meeting and confirmed that there was plenty of room at the DSG.
- **December 26, 2019**, Colonel Jacob Kramer, NSC Director, informed LTC Vindman that he (LTC Vindman) was being deliberately excluded from "sensitive" Libya planning at the direction of his leadership, Robert Greenway, who served as Special Assistant to the President and Senior Director for the Middle East and North Africa Directorate. Mr. Ellis told [REDACTED] and [REDACTED], both Deputy Legal Advisors, NSC, to staff these meetings. Mr. Ellis told LTC Vindman that North Africa had been shifted to the "Middle East and North Africa" directorate, underscoring to LTC Vindman that only ethics and administrative law remained his core functions and that any other duties were merely collateral. LTC Vindman made it clear to Mr. Ellis that the only conclusion he could draw from the recent spate of actions by NSC management was that he was being retaliated against.
- **Until December 2019**, LTC Vindman ran the work force vetting National Security Presidential Memoranda (NSPM) process, including repeated coordination with the Department of Justice's Office of Legal Counsel.
- **January 2, 2020**, LTC Vindman was stopped from managing the NSPM work force; the function was assigned to another Deputy Legal Advisor. NSC vetting, hiring, and firing

actions were also removed from his portfolio. Previously, he met with Charles M. Kupperman, Deputy NSA, nearly every week on such matters. This included conducting sensitive internal investigations, including those involving commissioned officers of the President.

- **January 3, 2020**, another Deputy Legal Advisor ethics cleared an engagement between Mr. O'Brien and representatives of Lufthansa Airlines. This action was not assigned to White House Counsel Ethics personnel despite the guidance he received on November 1, 2019 and underscored that ethics advice to the NSA could come from anyone other than LTC Vindman. He drafted a letter of resignation as ADAEO to be presented to his supervisory chain because it had become clear that he could no longer perform his ADAEO functions. He held off submitting the letter in order to monitor how events unfolded.
- **January 6, 2020**, LTC Vindman was informed that the White House Counsel's Office was assuming responsibility for the public financial disclosures of Andrew L. Peek, Deputy Assistant to the President and Senior Director for Europe and Russia. This should have been in LTC Vindman's purview as he was the Alternate Designated Ethics Official for the NSC, and this was within the ethics portfolio.
- **January 6, 2020**, LTC Vindman discussed his duties and responsibilities with Messrs. Eisenberg and Ellis and whether the North African countries remained a part of his portfolio. They were noncommittal. However, LTC Vindman was directed not to attend any further meetings – be it the Deputies Committee or the Principals Committee – for either Mr. O'Brien or Matthew Pottinger, the Deputy National Security Advisor. LTC Vindman was also informed that he was not to work on any matters related to financial disclosure management for any commissioned officer of the president. It was now unclear whether he would be permitted to conduct annual training for NSC staff as he had the previous year.
- **January 10, 2020**, LTC Vindman attended a reception for African ambassadors at the Eisenhower Executive Office Building. Mr. O'Brien arrived to deliver a speech, accompanied by Mr. Gray. Mr. Gray noticed LTC Vindman and immediately stepped out to make a phone call. The event was not on LTC Vindman's calendar and his leadership was unaware of his whereabouts at that moment. Suddenly, an NSC Legal Special Assistant came to retrieve LTC Vindman and directed him to attend a meeting regarding Freedom of Information Act (FOIA) matters. While FOIA was in LTC Vindman's portfolio, this meeting was not on his calendar.
- **January 10, 2020**, LTC Vindman met with Mr. Ellis regarding a NATO matter. Mr. Ellis directed that he not attend further meetings involving NATO even though it was part of his portfolio.
- **On or about January 17, 2020**, LTC Vindman met with Special Assistant [REDACTED] who was prepared to disclose and discuss misconduct by Messrs. O'Brien and Gray. The misconduct involved allegations of sexism, violations of standards of ethical conduct for employees, and mismanagement of items purchased with appropriate funds, in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341 (2018).

- **January 26, 2020**, *Breitbart* published an article reporting that LTC Vindman was “in charge of reviewing all publications by current and former NSC officials” and that he “could have seen former National Security Advisor John Bolton’s draft manuscript after it was submitted for prepublication review at the end of December.” LTC Vindman was not involved in the pre-publication review process of Mr. Bolton’s book. Even though LTC Vindman explicitly asked that the record be corrected, the NSC and White House failed to do so without caveats.
- **January 28, 2020**, LTC Vindman received an e-mail from [REDACTED] documenting her ethics concerns concerning Mr. O’Brien.
- **January 30, 2020**, LTC Vindman discussed ethics concerns, allegations of sexism and violations of fiscal law involving Mr. O’Brien with Messrs. Ellis and Eisenberg.
- **February 7, 2020**, LTC Vindman was abruptly and unceremoniously walked out of the White House by NSC Security. He subsequently learned that NSC staff had learned of this treatment and left their workspaces to applaud LTC Vindman and his brother. The President later claimed that this act by NSC staff was in support of the two officers’ removal from the White House, rather than in their support.
- **March 6, 2020**, LTC Vindman sent a memorandum to Scott Thompson, Director, Standards of Conduct Office, Department of Defense Office of General Counsel, in which he memorialized that between the Fall of 2019 and February 2020, he became aware of legal compliance and ethics violations involving Messrs. O’Brien and Gray. LTC Vindman noted that

there were allegations of sexism, violations of standards of ethical conduct for employees and violations of the Anti-Deficiency Act. These violations were within my purview as the senior ethics official on the NSC staff and NSC Deputy Legal Advisor. I notified my supervisors on the NSC staff and White House Counsel’s office about each of these concerns. To my knowledge no action was taken. Consequently, my professional obligations persist. While any of these infractions are serious, together they form a disturbing pattern of flagrant disregard for rules. I fear that if this situation persists, critical personnel will depart and national security will be harmed. I request you inquire into the facts and allegations herein and take appropriate action.

Memorandum from LTC Vindman to Scott Thompson, Director, Standards of Conduct Office, U.S. Department of Defense Office of General Counsel, *SUBJECT: National Security Advisor Legal Compliance and Ethics Violations* (March 6, 2020) included at Appendix “A”.

Mr. Thompson stated that he would share the memorandum with the NSC legal team, *i.e.*, Messrs. Eisenberg and Ellis, as DoD SOCO had no jurisdiction with respect to the White House.

- **In early June 2020**, LTC Vindman received his 2019-20 OER, dated April 2020. The rating official was Mr. Ellis and the Senior Rater was Mr. Eisenberg. The OER rated LTC Vindman as “Unsatisfactory” and “Unqualified.” The OER was delivered and timed to cause the greatest damage to LTC Vindman’s career and reputation, just weeks before his promotion selection board to Colonel was scheduled to convene.
- **On or about August 5, 2020**, LTC Vindman received a note from a former senior NSC colleague now employed by a different federal agency. This individual wrote: “Left the WH in May . . . Much happier and healthier environment. I think you could tell from our last call that it was starting to wear on me. . . I probably should have jumped ship much earlier. I think it’s safe to say that the NSC moved to a significantly less ethical place after your departure! Especially the Upper Suite. Disgraceful.” The last time LTC Vindman had communicated with this official was on February 6, 2020, to schedule an investigatory interview. The subject senior White House officials, Messrs. O’Brien and Gray, remain in their positions.

### *Reprisal Analysis*

#### **A. LTC Vindman made protected communications**

Section 1034 protects military personnel who make or prepare to make a protected communication. Examples of preparing to make a protected communication include drafting but not sending a complaint while expressing a known intention to make a protected communication. The statute also protects a member who is perceived as making or preparing to make a protected communication that is not actually made.

The complainant may have written a letter, sent an e-mail, or spoken to someone who can receive a protected communication. Determining whether the complainant’s communication or perceived communication was protected, therefore, relies on two basic factual questions: what was the communication, and to whom was it communicated?

#### **Communication to Members of Congress and Inspectors General (IGs)**

Any lawful communication to a Member of Congress or an IG is protected under § 1034. Communications to Congress or IGs need not disclose wrongdoing to be protected; the only re-

quirement is that the communication be lawful. Examples include routine constituent correspondence, complaints about chain of command, or testifying before Congress. Unlawful communications include disclosures of classified, Privacy Act-protected, and medical quality assurance information to an unauthorized recipient, or threats. 10 U.S.C. § 1034(a).

Officials authorized to receive protected communications include:

- a member of Congress;
- an IG;
- a member of a DoD audit, inspection, investigation, or law enforcement organization;
- any person or organization in the complainant's chain of command;
- a court martial proceeding; or,
- any other person designated pursuant to regulations or other established administrative procedures to receive such communications.

Communication made to an authorized recipient is protected if the member communicates (or is perceived as communicating) information reasonably believed to constitute evidence of:

- a violation of law or regulation to include a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violation of articles 120 through 120c of the Uniform Code of Military Justice, sexual harassment, or unlawful discrimination;
- gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or,
- a threat by another member of the Armed Forces or employee of the Federal Government that indicates a determination or intent to kill or cause serious bodily injury to members of the Armed Forces or civilians, or damage to military, Federal, or civilian property.

A belief is reasonable if a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the complainant could reasonably conclude that the disclosed information evidences one of the statutory categories of wrongdoing. As chapter 1 of the OIG Guide notes, as long as his or her belief is reasonable, the complainant need not be right about the underlying allegation. Here, the allegations were both reasonable and correct.



LTC Vindman engaged in at least seven protected communications. We emphasize “at least” because his abruptly-ended tenure at the White House resulted in multiple disclosures up through his chain of command. The following dates provide a roadmap for the investigation.

1. **On July 25, 2019**, LTC Vindman and his brother reported to Mr. Eisenberg’s office, where they reported concerns regarding the President’s phone call with President Zelensky.
2. **On or about August 1, 2019**, LTC Vindman discussed with Mr. Eisenberg their duty as attorneys and as White House Counsel. The issue discussed was whether they are the duty bound to the Office of the President of the United States or the individual, Donald J. Trump, personally.
3. **On or about August 5, 2019**, LTC Vindman continued discussions with Mr. Eisenberg concerning their obligations as attorneys to the Office of the President of the United States versus to the individual. The issues involved discussing potential violations of law and researching statutes that may address the concerns.
4. **In mid-Fall 2019**, the House of Representatives expressed interest in specifically interviewing LTC Vindman as part of the impeachment inquiry
5. **On or about January 17, 2020**, LTC Vindman met with ██████████ to discuss misconduct by Messrs. O’Brien and Gray. The misconduct involved allegations of sexism, violations of standards of ethical conduct for employees, and violations of the Anti-Deficiency Act.
6. **In January 2020**, LTC Vindman discussed ethics concerns involving Mr. O’Brien with Messrs. Ellis and Eisenberg. The misconduct involved allegations of sexism, violations of standards of ethical conduct for employees, and the Anti-Deficiency Act.
7. **On February 18, 2020**, LTC Vindman sent a memorandum to Mr. Thompson, Director, Standards of Conduct Office, DoD Office of General Counsel, in which he memorialized the fact that between the Fall of 2019 and February 2020, he became aware of legal compliance and ethics violations involving Messrs. O’Brien and Gray. LTC Vindman noted that

there were allegations of sexism, violations of standards of ethical conduct for employees and violations of the Anti-Deficiency Act. These violations were within my purview as the senior ethics official on the NSC staff and NSC Deputy Legal Advisor. I notified my supervisors on the NSC staff and White House Counsel’s office about each of these concerns. To my knowledge no action was taken. Consequently, my professional obligations persist. While any of these infractions are serious, together they form a disturbing pattern of

flagrant disregard for rules. I fear that if this situation persists, critical personnel will depart and national security will be harmed. I request you inquire into the facts and allegations herein and take appropriate action.

Memorandum from LTC Vindman to Scott Thompson, Director, Standards of Conduct Office, DoD Office of General Counsel, *SUBJECT: National Security Advisor Legal Compliance and Ethics Violations* (March 6, 2020) included at Appendix “A”.

Each of these disclosures, which LTC Vindman was duty bound to make, was protected for purposes of § 1034. First and foremost is his July 25, 2019, communication to Messrs. Eisenberg and Ellis. He accompanied his brother to Mr. Eisenberg’s office to discuss President Trump’s phone call with President Zelensky. This protected communication was made to a member of the White House Counsel’s Office, which is a covered disclosure channel under the statute. Moreover, the underlying disclosure is significant as it concerned the possible unlawful or inappropriate behavior of the President of the United States, behavior that ultimately resulted in his impeachment, the details of which are now known the world over.

On August 1 and 5, 2019, LTC Vindman had further conversations with Mr. Eisenberg to discuss a key issue related to the July 25, 2019 disclosure: whether they—LTC Vindman and Mr. Eisenberg—as attorneys, were there to serve the Office or the individual? In other words, who is the client and whose interests do they serve: the political interests of one man (the President of the United States) or the larger interests of the country itself? This conversation is neither academic nor idle; it goes to the core of LTC Vindman’s duty as an attorney at the White House and as a member of the bar, a judge advocate, and a commissioned officer.<sup>5</sup> The conversation is significant

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<sup>5</sup> See 5 U.S.C. 3331 (2018):

Oath of Office. An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: “I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all

because it establishes that Mr. Eisenberg, and presumably his superiors, fully understood the gravity of the moment and the credibility of the protected communication.

In addition to concerns about President Trump's phone call, LTC Vindman made a series of protected disclosures concerning what he reasonably believed to be violations by Messrs. O'Brien and Gray, including disclosures made by other members of the NSC staff. The disclosures were lawfully made, pursuant to his duty as a commissioned officer, through his chain of command and, ultimately, to the DoD Office of General Counsel. The disclosures not only involved inappropriate behavior by the two men but legal analysis as to why their behavior violated federal Equal Employment Opportunity laws, ethics regulations, and the Anti-Deficiency Act.

Finally, while LTC Vindman was ultimately not interviewed and did not testify before a committee of the House of Representatives as part of the impeachment inquiry, any presumption that he was personally involved in participating in the inquiry would constitute a belief that he participated with an official congressional inquiry, *i.e.*, a protected communication. This is underscored by Congress's expressed interest in interviewing him. Furthermore, the day his brother testified on Capitol Hill as part of the impeachment inquiry, LTC Vindman was there for public support that all the world could see, including the White House. This too was a protected activity.

LTC Vindman's communications concerning President Trump's telephone call with the Ukrainian President; involvement in the impeachment inquiry; and disclosure of illegal activity by Messrs. O'Brien and Gray were clearly protected communications.

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enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.

## **B. LTC Vindman was subjected to unfavorable personnel actions**

The statute prohibits persons from taking or threatening to take unfavorable personnel actions or withholding or threatening to withhold favorable personnel actions in reprisal for protected communications. DoDD 7050.06 defines a personnel action as “any action taken on a member of the Armed Forces that affects, or has the potential to affect, that military member’s current position or career.” Personnel actions include promotion, a disciplinary or corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for a mental health evaluation; or any other significant change in duties or responsibilities inconsistent with the military member’s grade.

### **Unfavorable Personnel Actions**

Unfavorable personnel actions may be administrative action that takes away a benefit or results in an entry or document added to the affected person’s personnel records that could be considered negative by boards or supervisors. The DoDIG Guide provides a comprehensive list of favorable and unfavorable personnel actions. Each alleged personnel action on a case-by-case basis to determine whether it had or may have an effect on the complainant’s current position or career.

LTC Vindman experienced four personnel actions that qualify as reprisals.

1. Beginning in the Fall of 2019 and continuing until his abrupt and demeaning expulsion from the NSC, LTC Vindman repeatedly had his assignments and duties removed in order to marginalize him and adversely affect his career. For example:
  - **Between September and November 2019**, LTC Vindman was told not to attend the opening of the UN General Assembly’s Opening Session. He made numerous requests to meet with Mr. O’Brien’s Chief of Staff, Mr. Gray, about ethics matters, to include issues involving “Challenge Coin” distribution and meetings with non-federal entities. Despite LTC Vindman’s attempts to meet with Mr. Gray, there was

no response. During this time, it became apparent, despite his ethics role within the NSC, that LTC Vindman had lost access to both Mr. O'Brien and his Chief of Staff.

- **In November 2019**, LTC Vindman was directed not to attend the NSC Deputies Committee on Libya, which is a Department and Agency Deputy Secretary-level meeting. Instead, Mr. Eisenberg for the first time in memory attended a Deputies Committee meeting in his place. Mr. Ellis informed LTC Vindman that there is still “plenty of ethics work to do” for the NSC staff. Concerned, LTC Vindman asked Mr. Ellis whether his termination was imminent. Mr. Ellis denied this, but said the decision was “up to others.” From that point forward, LTC Vindman was not permitted to attend senior-level meetings pertaining to the NSC’s Middle East and North Africa Directorate as he had previously done.
- **On December 26, 2019**, COL Jacob Kramer, NSC Director, informed LTC Vindman that he (LTC Vindman) was being deliberately excluded from “sensitive” Libya planning at the direction of his leadership, Robert Greenway. Mr. Greenway was Special Assistant to the President and Senior Director for the Middle East and North Africa Directorate. Mr. Ellis specifically told [REDACTED] and [REDACTED], both Deputy Legal Advisors, NSC, to staff the meetings. Mr. Ellis told LTC Vindman that North Africa had been shifted to “Middle East and North Africa Directorate,” away from the Africa directorate and potentially into another deputy legal advisors portfolio underscoring to LTC Vindman that only ethics and administrative law were now his core functions and that any other duties were merely collateral. LTC Vindman made it clear to Mr. Ellis that the only conclusion that he (LTC Vindman) could draw from the recent spate of actions by management was that he was being retaliated against.
- **Until December 2019**, LTC Vindman ran the NSPM work force vetting process, including repeated coordination with the Department of Justice Office of Legal Counsel.
- **On January 2, 2020**, LTC Vindman was stopped from managing the NSPM work force vetting process and the function was reassigned to another Deputy Legal Advisor. Additionally, NSC vetting, hiring, and firing actions were removed from his portfolio. Previously, LTC Vindman met with Mr. Kupperman, Deputy NSA, on these matters nearly every week. This included conducting sensitive internal investigations, including those involving commissioned officers of the President.
- **On January 3, 2020**, another Deputy Legal Advisor ethics official cleared an engagement between Mr. O'Brien and Lufthansa Airlines. This action item was not assigned to White House Counsel's Office ethics personnel despite the guidance he received on November 1, 2019 from Mr. Ellis. This action underscored that ethics advice to the NSA could come from *anyone other than* LTC Vindman.

- **On January 6, 2020**, LTC Vindman was informed that the White House Counsel's Office was taking over public financial disclosures for Andrew Peek, Senior Director of Europe and Russia. This should have been in LTC Vindman's purview, as LTC Vindman was the Alternate Designated Agency Ethics Official.
  - **On January 6, 2020**, LTC Vindman discussed with Messrs. Eisenberg and Ellis his duties and responsibilities and whether North African countries remained part of his portfolio. They were noncommittal. LTC Vindman was directed not to attend any meetings – be it the Deputies Committee or the Principals Committee – for either Mr. O'Brien or Mr. Kupperman. LTC Vindman was informed that he was not to work on financial disclosure management for any commissioned officer or personnel matters, and it remained unclear whether he would be permitted to conduct annual training for NSC staff as he had the previous year.
  - **On January 10, 2020**, LTC Vindman attended a reception for African ambassadors at the Eisenhower Executive Office Building. Mr. O'Brien arrived to deliver a speech, accompanied by Mr. Gray. Mr. Gray noticed LTC Vindman and immediately stepped out to make a phone call. The event was not on LTC Vindman's calendar and his leadership was unaware of his whereabouts at that moment. Suddenly, an NSC Legal Special Assistant came to retrieve him and directed him to attend a meeting regarding FOIA matters. While FOIA was in his portfolio, this meeting had not been on his calendar.
  - **On January 10, 2020**, LTC Vindman met with Mr. Ellis regarding a NATO matter. Mr. Ellis directed that he not attend meetings involving NATO even though NATO was part of his portfolio.
2. **On February 7, 2020**, LTC Vindman was abruptly and unceremoniously marched out of the White House by NSC Security. This plainly constituted a removal from position.
  3. LTC Vindman was never awarded the Defense Superior Service Medal (or any decoration for that matter), as is customary for the successful completion of a tour of duty on the NSC staff.
  4. **In early June 2020**, LTC Vindman received his OER for 2019-20. The rating official was Mr. Ellis and the Senior Rater was Mr. Eisenberg. The OER rated LTC Vindman as "Unsatisfactory" and "Unqualified". This constitutes an adverse evaluation report.

The significant change of duties and responsibilities LTC Vindman experienced is a reviewable personnel action. The cumulative effect of the actions was to adversely impact his career. They were designed to marginalize him within the White House. Furthermore, many of the assignments that fell within his assigned duties were stripped away from his portfolio. For example, he was removed from participating in matters involving Libya and providing ethics legal reviews, both of which fell within his areas of responsibility. As such, this is not an issue of a military officer having collateral duties removed so that he might better focus on the key tasks at hand. LTC Vindman was obviously intentionally marginalized and isolated in preparation for his removal on February 7, 2020, an action that occurred shortly after the disclosures. Indeed, ██████████ ██████████ made it clear that LTC Vindman was being intentionally excluded from working on Libya issues. The marginalization and removal of duties continued until February 7, 2020, when LTC Vindman was walked out of the White House and removed from his position. That was a reviewable personnel action.

Finally, the adverse OER LTC Vindman received in June 2020, dated April 2020, constitutes a reviewable personnel action.

All of these actions, jointly and severally, qualify as reviewable personnel actions within the meaning of § 1034.

### **C. Responsible management officials knew about the protected communications**

In order to establish knowledge, each Responsible Management Official involved in the personnel actions is to have his or her knowledge of the protected communication independently analyzed. Knowledge can be established through direct or circumstantial evidence.<sup>6</sup> That is to say, the acting official can have personal knowledge of the protected disclosures or have indirect

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<sup>6</sup> *Bonggat v. Dep't of the Navy*, 56 M.S.P.R. 402, 407 (1993); *McClellan v. Dep't of Defense*, 53 M.S.P.R. 139, 147 (1992).

knowledge through the influence of another individual. Moreover, knowledge can be established constructively by demonstrating that an individual with actual knowledge of the disclosure influenced the official accused of taking the action.<sup>7</sup> The Supreme Court has adopted the term “cat’s paw” to describe a case in which a management official, acting as a result of an improper animus, influences an agency official who is personally unaware of the animus when implementing the action.<sup>8</sup>

Investigation will confirm that every RMO who was involved in the personnel actions knew of LTC Vindman’s protected communications.

### **John Eisenberg**

Mr. Eisenberg was LTC Vindman’s Senior Rater in the April 2020 OER. He was involved in significantly changing LTC Vindman’s duties and had direct knowledge of LTC Vindman’s communications because LTC Vindman made the disclosures about the President’s phone call directly to him. Furthermore, LTC Vindman disclosed directly to Mr. Eisenberg concerns that Messrs. O’Brien and Gray were engaging in numerous legal and ethical violations. Finally, Mr. Eisenberg was personally aware that a committee of the House of Representatives was interested in directly interviewing LTC Vindman as part of the impeachment inquiry and that he accompanied his twin brother, LTC A. Vindman, when he lawfully participated in a public hearing.

### **Michael Ellis**

Mr. Ellis was LTC Vindman’s Rater for the April 2020 OER. Moreover, Mr. Ellis was involved in significantly changing LTC Vindman’s duties. He knew of LTC Vindman’s communications because he (Mr. Ellis) was physically present when LTC Vindman’s made his disclosure to Mr. Eisenberg. Furthermore, LTC Vindman disclosed directly to Mr. Ellis his concerns that Messrs. O’Brien and Gray were engaging in numerous legal and ethical violations. Finally, Mr. Ellis was personally aware that a committee of the House of Representatives was interested in directly interviewing LTC Vindman as part of the impeachment inquiry and that he accompanied his brother when he lawfully participated in a public hearing.

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<sup>7</sup> *Aquino v. Dep’t of Homeland Security*, 2014 MSPB 21, ¶ 19 (2014); *Dorney v. Dep’t of the Army*, 117 M.S.P.R. 480, ¶ 11 (2012). See also *McClellan*, *supra*.

<sup>8</sup> *Id.*, citing *Staub v. Proctor Hosp.*, 562 U.S. 411 (2011).



### **Robert O'Brien**

Mr. O'Brien was involved in marginalizing and removing LTC Vindman's duties within NSC. While we do not have direct evidence that he was aware of LTC Vindman's disclosures, it is clear that LTC Vindman's and his brother LTC A. Vindman's disclosures concerning the President's phone call with the Ukrainian President were well known within the White House and beyond. Further, Mr. O'Brien publicly took responsibility for removing LTC Vindman and his brother from the White House. The IG should determine what Mr. O'Brien knew and when he knew it.

### **Alex Gray**

Mr. Gray was involved in marginalizing and removing LTC Vindman's duties within the NSC. While we do not have direct evidence that he was aware of LTC Vindman's disclosures, it is clear that LTC Vindman's and his brother's disclosures concerning the President's phone call with the Ukrainian President were well known within the White House and beyond. The IG should determine what Mr. Gray knew and when he knew it.

### **Robert Greenway**

Mr. Greenway was the individual who excluded LTC Vindman from participating on Libya matters. While we do not have direct evidence that he was aware of LTC Vindman's disclosures, it is clear that LTC Vindman's and his brother's disclosures concerning the President's phone call with the Ukrainian President were well known within the White House and beyond. The IG should determine what Mr. Greenway knew and when he knew it.

### **President Trump**

LTC Vindman's activity and that of his brother were widely known within the West Wing as their participation in the impeachment inquiry was extensively publicized. The President knew of their involvement in an inquiry that ultimately led to his impeachment, and he commented about them repeatedly.

#### **D. The unfavorable personnel actions would not have been taken absent the protected communications**

To determine the answer to the "causation" question, the investigation must analyze what bearing, if any, the protected communications had on the decisions to take, threaten, or withhold the personnel actions. For each personnel action, the investigation must analyze the following

factors and then weigh them together to determine whether the personnel action would have been taken absent the protected communication:

- Reason stated by responsible management officials for taking, withholding, or threatening the personnel action;
- Timing between the protected communications and personnel actions;
- Motive on the part of the responsible management officials to reprise; and,
- Disparate treatment of the complainant as compared to other similarly situated individuals who did not make protected communications.

The burden of proof, during this phase of the investigation, shifts to the U.S. Government. See e.g. *Whitmore v. Dep't of Labor*, 680 F.3d 1353, 1367 (Fed. Cir. 2012); *Figueroa v. Nielsen*, 423 F. Supp. 3d 21 (S.D.N.Y. 2019); *Miller v. Dep't of Justice*, 842 F.3d 1252 (Fed. Cir. 2016) (once the complainant establishes a *prima facie* case, the burden of proof shifts to the U.S. Government to establish that the personnel actions taken, threatened, or withheld would have occurred absent the protected communication).

In analyzing the actions that have been taken against LTC Vindman, there is no independent basis for those actions other than his protected activity. In fact, had LTC Vindman and his brother not been involved in their disclosure of the President's phone call with the Ukrainian President, which resulted in interest from or participation with a congressional committee during the impeachment inquiry, no adverse personnel actions would have taken place at all.

To establish this, we respectfully submit that there was a powerful motive to retaliate against anyone named "Vindman" in the White House. While both Messrs. Eisenberg and Ellis possessed personal motives to do so, pressure from the President himself led to the identification and removal of anyone who was perceived to be personally disloyal to him. The President's own words, expressed publicly, vividly display the animus he harbored against the Vindman brothers:

In an attempt to intimidate an impeachment witness, Trump threatened to release information on war hero Lt. Col. Vindman.

Trump said, “Because they didn’t – many people listen to calls, I know that. For instance, the Secretary of State Pompeo was on the call. With all of those people, very few people came forward, and they only came forward when you asked, and some of them are Never Trump. But why did all of those people listening to this absolutely, totally appropriate phone call, why didn’t they come forward? So, you know, it’s a whole scam. It’s an impeachment scam, and you know what it is, it’s between the Democrats and the fake news media.”

Trump was asked what evidence he has that Colonel Vindman is a Never Trumper?

He replied, “We’ll be showing that to you real soon, OK?”

Jason Easley, *Trump Just Threatened War Hero and Impeachment Witness Vindman*, POLITICUSA (Nov. 3, 2019), <https://www.politicususa.com/2019/11/03/trump-threaten-vindman.html> (last accessed July 24, 2020).

I’m not happy with him; you think I’m supposed to be happy with him? I’m not.”  
Asked whether Vindman will leave, Trump responded, “Uh, they’ll make that decision. You’ll be hearing. They’ll make a decision.

Remarks by President Trump Before Marine One Departure, THE WHITE HOUSE (Feb. 7, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-82/> (last accessed July 24, 2020).

“We sent him on his way to a much different location and the military can handle him any way they want,” Trump said.

“I obviously wasn’t happy with the job he did,” Trump said of Vindman. “First of all he reported a false call ... what was said on the call was totally appropriate.”

Jeff Mason, *Trump says military may consider discipline for ousted aide Vindman*, REUTERS (Feb. 11, 2020), <https://www.reuters.com/article/us-usa-trump-impeachment-vindman/trump-says-military-may-consider-discipline-for-ousted-aide-vindman-idUSKBN2052P6> (last accessed July 24, 2020).

“Vindman was the guy that, when we took him out of the building, the building applauded,” Trump told “Geraldo in Cleveland” on Fox News Radio affiliate WTAM. “I don’t know if you heard that. The whole building, many people in the building started applauding.”

Trump added that he had never met Vindman but thought his actions were “very insubordinate.” “First of all, that’s very insubordinate, why wouldn’t he go to his immediate – he went to Congress or he went to Schiff or he went to somebody,” Trump said, referring to Vindman’s complaint about the president’s phone call with Ukraine. “I’m not a fan,” he added.

Sam Dorman, *Trump tells Geraldo that ‘many people’ in White House applauded after Vindman left*, FOXNEWS (Feb. 13, 2020), <https://www.foxnews.com/media/trump-vindman-applause-white-house> (last accessed July 24, 2020).

President Trump: Remember he said the statement, which is a mob statement: “Don’t call me. I’ll call you.” I didn’t say that. Fortunately, for all of us here today and for our country, we had transcripts. We had transcribers -- professional transcribers. Then they said, “Oh, well, maybe the transcription is not correct.” But Lieutenant Colonel Vindman and *his twin brother -- right?* -- we had some people that -- really amazing. But we did everything. We said, “What’s wrong with it?” “Well, they didn’t add this word or that one.” It didn’t matter. I said, “Add it. They’re probably wrong, but add it.” So now everyone agrees that they were perfectly accurate. When you read those transcripts, Tim Scott -- I don’t know if Tim is here, but he said, “Sir...” He was the first one to call me. “Sir, I read the transcript.

Remarks: Donald Trump Delivers Remarks on Impeachment at The White House (Feb. 6, 2020), <https://factba.se/transcript/donald-trump-remarks-impeachment-acquittal-february-6-2020> (last accessed Aug. 3, 2020).

Reporter Question: Then can you talk a little bit more about some of the recent departures from the White House, including the Vindman twins and --

President Trump: No, well --

Reporter Question: - and any pending departures?

President Trump: Yeah, I obviously wasn’t happy with the job he did. First of all, he reported a false call. That wasn’t what was said on the call. What was said on the call was totally appropriate. And I call it a “perfect call.” I always will call it a “perfect call.” And it wasn’t one call; it was two calls. There were two perfect calls.

There was no setup. There was no anything. And he reported it totally differently. And then they all went wild when I said that we have transcripts of the calls. And they turned out to be totally accurate transcripts. And if anybody felt there was any changes, we let them make it because it didn't matter. So we had accurate -- totally accurate transcripts. And it turned out that what he reported was very different. And also, when you look at Vindman's -- the person he reports to -- said horrible things: avoided the chain of command, leaked, did a lot of bad things. And so we sent him on his way to a much different location and the military can handle him any way they want. General Milley has him now. I congratulate General Milley. He can have him, but -- *and his brother also*. So we'll -- we'll find out what happened. I mean, we'll find out. But he reported very inaccurate things. You understand that, John. When you look at his report and then when you look at what, actually, the exact the words - fortunately, I had the words, because otherwise we would have had a lot of people lying.

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Reporter Question: Do you think he needs to face disciplinary action?

President Trump: That's going to be up to the military. We'll have to see. But if you look at what happened, I mean, they're going to certainly, I would imagine, take a look at that. But, no, I think what he did was just reported a false call. If you look at what he said, and then -- and I'll tell you, the one worse was -- you look at Shifty Schiff. Take a look at what he did. He made up my conversation. And then we dropped the transcript, and he almost had a heart attack. Didn't he say eight "quid pro quos"? Think of it. So eight times I said the same thing, according to Shifty Schiff. If I ever did that -- so you say it once. Now you say it again. We're talking about a man that I never even met before. Now you say it a third time, a fourth time, a fifth time, a sixth time, seven times, eight times. Eight times he said that I asked for the exact same thing in one call. After the third time, they'd have to take you away, okay? He's a sick person.

Remarks: President Trump Signs S. 153, Veterans in STEM Careers (Feb. 11, 2020), <https://factba.se/transcript/donald-trump-remarks-stem-education-bill-veterans-february-11-2020> (last accessed Aug. 3, 2020).

On February 7, 2020, the President's son, Donald Trump, Jr., posted a message on Twitter, tying firings at the White House to testimony during the Impeachment Inquiry:

Allow me a moment to thank – and this may be of a bit of a surprise – Adam Schiff. Were it not for his crack investigation skills, @realDonaldTrump might have had a tougher time unearthing all who needed to be fired. Thanks, Adam!

Donald Trump Jr., Twitter, Feb. 7, 2020; *See also* Sonam Sheth, *Donald Trump Jr. just shattered the White House's flimsy justification for firing the witnesses who testified against Trump*, BUS. INSIDER (Feb. 7, 2020), <https://www.businessinsider.com/donald-trump-jr-blows-up-justification-firing-vindman-sondland-2020-2> (last accessed Aug. 3, 2020). President Trump and his son are obviously in privity on political matters.

The contrast between LTC Vindman's OERs before and after his protected disclosures could not be starker.

In July 2019, just weeks before LTC Vindman and his brother lawfully disclosed the President's actions during his phone call with the Ukrainian President, LTC Vindman received his OER. The Rater was Mr. Ellis and the Senior Rater was Mr. Eisenberg. LTC Vindman was rated as "Excels" and "Most Qualified".

Mr. Ellis wrote:

Yev is an excellent attorney who is trusted to work on complex and sensitive issues. Yev stepped into a fast-paced and challenging environment and excelled. He quickly became an expert on ethics and administrative law, leading to his designation as NSC ADAEO. Yev expertly led several sensitive internal inquiries into allegations regarding certain senior officials and advised NSC leadership on appropriate dispositions. His acumen, perception, and judgment were critical in preventing pitfalls, negotiating MOUs with the interagency, crafting US strategy and advising senior White House staff. Yev is an expert at coordinating with interagency lawyers.

Peerless performance. Smart, motivated and versatile, Yev proved himself capable of executive-level performance. He expertly advised senior White House officials, including the APNSA and NSC staff, on myriad actions, performing numerous legal reviews flawlessly. A consummate teammate and advisor, senior USG officials sought him out for guidance and counsel. Lead attorney for the Africa Strategy, two NSPMS, a sanctions EO, a White House economic initiative, and ethics training for the NSC, Yev is the first pick lawyer for any team.

Mr. Eisenberg wrote:

Yev is a top 1% military attorney and officer and the best LTC with whom I have ever worked. Functioning at the executive level, he advises White House senior

staff with skill, tact, and judgment on matters of geostrategic importance. Sought by White House staff regularly, he can do any job in the legal field under unusual and constant pressure and scrutiny. Select now for SSC and promote immediately to COL. Absolutely unlimited potential!

Officer Evaluation Report, *Vindman, Yevgeny S.* (July 2019), included at Appendix “B”.

Just days later, a pattern of retaliation began following the July 25, 2019, phone call and report and culminating in the April 2020 derogatory OER, in which Messrs. Ellis and Eisenberg’s comments shifted dramatically and LTC Vindman was rated “Unsatisfactory” and “Unqualified.”

This time, Mr. Ellis wrote:

LTC Vindman is a hardworking officer, but he frequently lacks judgment and has difficulty understanding the appropriate role of a lawyer in an organization. He fully supports SHARP, EO, and EEO.

During the prior reporting period and early portions of the reporting period, LTC Vindman performed his duties satisfactorily. Over time, LTC Vindman displayed increasingly poor judgment and failed to learn from his mistakes. On multiple occasions, his unprofessional demeanor made NSC staff feel uncomfortable. Despite express guidance from his supervisor, he continued to add himself to meetings with senior NSC staff where he did not add value. LTC Vindman’s substandard performance – his lack of judgment, failure to communicate well with his superiors, and inability to differentiate between legal and policy decisions – cause him to lose the trust of NSC senior leadership.

LTC Vindman is an attorney of average ability, but he lacks judgment on critical issues. In a stressful and high-pressure work environment, his performance did not live up to the extremely high standards of the NSC Legal Affairs Directorate. Owing to the early termination of LTC Vindman’s detail to the NSC, it was not possible to prepare a DA Form 67-10-1A.

And this time, Mr. Eisenberg wrote:

In the prior reporting period, LTC Vindman demonstrated potential, but he did not grow professionally after the extension of his detail assignment to the NSC. With additional counseling and experience, LTC Vindman’s performance may improve. He would benefit from additional experience in a slower-paced work environment subject to less pressure and scrutiny. In time, he may become a better attorney.

Officer Evaluation Report, *Vindman, Yevgeny S.* (April 2020), included at Appendix “C”.

The phraseology of this OER is so vague and unverifiable, not referencing a single incident or specific defect, that it is exactly what would be expected in a retaliatory action. For any individual to turn from Dr. Jekyll to Mr. Hyde so abruptly, to fall so quickly and so far in a performance evaluation, something cataclysmic must have happened. In this case, it is the simple and obvious fact that LTC Vindman made lawful protected disclosures as he was duty bound to do against the President of the United States.

First, within weeks of the disclosure, LTC Vindman lost all access to both Mr. O'Brien and his Chief of Staff, Mr. Gray. This is significant because LTC Vindman was the Deputy Legal Advisor for the NSC and the senior ethics official. Subsequently in November 2019, in the midst of the House's impeachment inquiry, he was directed not to attend the NSC Deputies meetings on issues within his portfolio. In a meeting with Mr. Ellis, he (Mr. Ellis) informed LTC Vindman that his duties were being significantly being restructured, but that there was "still plenty of ethics work to do at the NSC." Concerned that he was being retaliated against, LTC Vindman asked Mr. Ellis directly whether his termination was imminent. Mr. Ellis made it clear that this was up to "others."

The reprisal was well known within the White House. A gifted colleague, COL Kramer, an NSC Director, told LTC Vindman that he (LTC Vindman) was being "deliberately excluded" from "sensitive" planning.

In a matter of weeks LTC Vindman went from being a lauded military lawyer and teammate with "unlimited potential" to losing the vast majority of his duties, publicly walked out of the White House, and receiving a terrible OER in which Mr. Ellis insisted that LTC Vindman had lost the "trust of NSC senior leadership." Officer Evaluation Report, *Vindman, Yevgeny S.* (April



2020), included at Appendix “C”. Mr. Ellis’ and Mr. Eisenberg’s positions are clearly not true as evidenced by letters of support included at Appendix “D”.<sup>9</sup>

Any loss of trust can be directly traced to the fact that LTC Vindman had made protected communications concerning matters related to the impeachment of the incumbent President of the United States. Consequently, after Congress sought to interview LTC Vindman as part of the impeachment inquiry and after his brother’s interview and public testimony, the President himself attacked both LTC Vindman and his brother. Given this pressure from the Commander in Chief, it was only a matter of time before he would be walked out from the NSC and maligned by the President in an effort to destroy his career.

To that end, and in an additional display of retaliatory animus against LTC Vindman, White House Officials deliberately blocked him from receiving the Defense Superior Service Medal, which is customarily awarded to military officers similarly situated following a successful completion of a tour of duty on the NSC staff.

We are aware of no evidence that any of the adverse actions LTC Vindman experienced would have occurred absent his protected disclosures. The burden is on the RMOs to come forward with that evidence. If they have any, we intend to refute it. If they fail or refuse to cooperate in the investigation, an adverse inference should be drawn.

The retaliatory actions taken against LTC Vindman are a textbook example of the vice § 1034 was intended to both remedy and deter. If public confidence in the integrity of government operations is to be restored, he must be made whole and the responsible officials unmasked and appropriately disciplined.

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<sup>9</sup> Public statement of support by Amb. John R. Bolton, MSNBC, aired on July 8, 2020: <https://www.msnbc.com/andrea-mitchell-reports/watch/bolton-claims-lt-col-vindman-retirement-is-a-loss-for-the-country-87204933933>

*Relief Requested*

For the foregoing reasons, the IG should recommend the following relief:

- (a) LTC Vindman should be reinstated to his former position at NSC or such higher position as may be warranted on or after 1:00 p.m., January 20, 2021;
- (b) LTC Vindman's adverse OER should be invalidated and expunged from his OMF and a continuity report substituted for it;
- (c) The DoD and Army should determine whether LTC Vindman should receive the Defense Superior Service Medal, a Legion of Merit, or some comparable personal decoration for his past performance of duty at the NSC;
- (d) Each officer or employee of the government who retaliated against LTC Vindman for his protected activities should be reprimanded in writing, such writing to be made a part of his or her permanent official personnel record, or otherwise subjected to appropriate corrective or disciplinary action; and
- (e) Such other and further relief as may in the circumstances be just and proper.

Respectfully submitted,

/s/ Mark S. Zaid

/s/ Andrew P. Bakaj

/s/ Bradley P. Moss

Mark S. Zaid

Andrew P. Bakaj

Bradley P. Moss

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*Attorneys for Complainant*

Verification

I declare under penalty of perjury that the facts stated in the foregoing Whistleblower Reprisal Complaint are true and correct. Executed on August 18, 2020.

A handwritten signature in black ink, appearing to read 'Yevgeny S. Vindman', written in a cursive style.

Yevgeny S. Vindman  
Lieutenant Colonel, Judge Advocate  
U.S. Army

# **APPENDIX “A”**

March 6, 2020

MEMORANDUM EXCLUSIVE FOR

Scott Thompson, Director, Standards of Conduct Office, U.S. Department of Defense, Office of General Counsel, 1600 Defense Pentagon, Suite 3E783, Wash, DC 20301-1600

SUBJECT: National Security Advisor Legal Compliance and Ethics Violations

1. **Summary.** During the fall of 2019 to February 2020, I became aware of legal compliance and ethics violations involving Robert O'Brien, Assistant to the President and National Security Advisor (NSA) and Alex Gray, Deputy Assistant to the President (DAP) and National Security Council (NSC) Chief of Staff (CoS). Specifically, there were allegations of sexism, violations of standards of ethical conduct for employees<sup>1</sup> and violations of the Anti-Deficiency Act<sup>2</sup>. These violations were within my purview as the senior ethics official on the NSC staff<sup>3</sup> and NSC Deputy Legal Advisor. I notified my supervisors on the NSC staff and White House Counsel's Office about each of these concerns<sup>4</sup>. To my knowledge no action was taken. Consequently, my professional obligations persist<sup>5</sup>. While any of these infractions are serious, together they form a disturbing pattern of flagrant disregard for rules. I fear that if this situation persists, personnel will depart and national security will be harmed. I request you inquire into the facts and allegations herein and take appropriate action.

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<sup>1</sup> 5 C.F.R. Part 2635 - Standards Of Ethical Conduct For Employees Of The Executive Branch

<sup>2</sup> 31 U.S.C. §1341

<sup>3</sup> I was appointed NSC Alternate Designated Agency Ethics Official (ADAEO) in April 2019 by Joan O'Hara, DAP and NSC Executive Secretary. Scott Gast, Special Assistant to the President and Senior Associate White House Counsel was appointed as Designated Agency Ethics Official (DAEO). The NSC is not an Agency as defined in title 5 of the U.S. Code, however, NSC officials must abide by the regulations and statutes cited in this memorandum and are subject to discipline in the event of a violation.

<sup>4</sup> On January 30, 2020, I memorialized the discussion I had with my supervisors about the concerns detail herein. John Eisenberg is the Assistant to the President, Deputy White House Counsel and NSC Legal Advisor. Michael Ellis was Special Assistant to the President, Senior Associate White House Counsel and NSC Deputy Legal Advisor. Eisenberg and Ellis were my supervisors at NSC.

<sup>5</sup> See generally, 5 C.F.R. §2638.104 - Government ethics responsibilities of agency ethics officials.

SUBJECT: National Security Council (NSC) Legal Compliance and Ethics Violations

2. **Sexism.** Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap<sup>6</sup>. 5 C.F.R. § 2635.101(b)(13).

a. [REDACTED], a Department of Defense employee detailed to the NSC and serving as a Special Assistant in the National Security Advisor's front office, communicated with me in mid-January expressing her desire to discuss activities that she felt were in violation of ethical and other normative practices. Over the course of a few telephone conversations to schedule the meeting I could tell that this was a pressing issue. I met [REDACTED] on or about January 24th, 2020 to discuss her concerns in person<sup>7</sup>. When [REDACTED] entered my office I could see that she was uneasy. [REDACTED] proceeded to report to me several occasions of apparent sexism. Her discomfort and disappointment were unmistakable. [REDACTED] alleged that APNSA Robert O'Brien and NSC CoS Alex Gray engaged in demeaning and demoralizing sexist behavior against her and multiple other female NSC professionals, including [REDACTED] (DAP and Deputy National Security Advisor (DNSA)), [REDACTED] (Senior Director and SAP for legislative affairs), [REDACTED] (Senior Director for Operations), [REDACTED] (Visits team), and [REDACTED] (Visits team). [REDACTED] subsequently sent an e-mail detailing some of these allegations.

1) Among the details that [REDACTED] provided were that the NSA O'Brien and the CoS Gray would inappropriately comment on women's looks, "talk down" to women and exclude women from meetings. Specifically, [REDACTED] stated that DNSA [REDACTED], Senior Director for the Middle East and North Africa Directorate would ask to participate in meetings with the NSA on topics related to her portfolio. NSA O'Brien and CoS Gray would exclude her from such meetings and say that DNSA [REDACTED] does not need to be there and that her requests to attend such meetings were "unreasonable". [REDACTED] did not perceive men being subjected to the same type of treatment.

<sup>6</sup> Title VII of the Civil Rights Act of 1964 and other federal government Equal Employment Opportunity rules and regulations are also implicated. Basic obligation of public service.

<sup>7</sup> [REDACTED] had observed concerning behavior from the APNSA and the CoS since their appointment but had only recently started keeping contemporaneous records.

SUBJECT: National Security Council (NSC) Legal Compliance and Ethics Violations

2) ██████████ was particularly upset about one recent incident during which NSA O'Brien said to her "you little life saver. This sandwich deserves a raise." ██████████ was offended by this comment and felt demeaned because she routinely works 12-hour days and felt that she ought to be rewarded for her work and not for bringing the NSA a sandwich.

b. I was prepared to have a follow on discussion with Senior Director ██████████ one of the other women allegedly subjected to sexist behavior, however, we did not have a chance to do so before I was fired. In a preliminary telephone discussion, ██████████ indicated an eagerness to speak with me about improper behavior she had witnessed.

3. **Misuse of Position.** 5 C.F.R. §§2635.701 *et. seq.*, Subpart G contains four provisions designed to ensure that employees do not misuse their official positions<sup>8</sup>. These are prohibitions against employees: (i) using public office for their own private gain, for the private gain of friends, relatives, or persons with whom they are affiliated in a non-Government capacity, or for the endorsement or any product, service, or enterprise; (ii) engaging in financial transactions using nonpublic information, or allowing the improper use of nonpublic information to further private interests; (iii) an affirmative duty to protect and conserve Government property and to use Government property only for authorized purposes; and (iv) using official time other than in an honest effort to perform official duties and a prohibition against encouraging or requesting a subordinate to use official time to perform unauthorized activities.

a. **5 C.F.R. §2635.705. Use of official time.** During the 24 January 2020 conversation, ██████████ reported to me that NSA O'Brien and CoS Gray were misusing NSC staff official time for personal errands including scheduling haircut appointments, retrieving personal luggage and to coordinate personal dinner arrangements. ██████████ related to me that on separate occasions she informed CoS Gray that she understood the use of NSC staff time to perform personal errands to be inappropriate. CoS Gray responded with, "Can't you just do it?" or words to that effect. ██████████ also reported to me that NSA O'Brien would regularly ask her to call his wife to coordinate his personal social

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<sup>8</sup> I briefed APNSA O'Brien about this specific provision of the CFR during his initial Ethics Training within a week of his appointment in the presence of Scott Gast.



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calendar, including personal dinner plans. Finally, NSA O'Brien and CoS Gray would contact ██████████ on her personal cell regarding official NSC business<sup>9</sup>. ██████████ stated that she was reaching her limit in tolerating such behavior from the NSA and CoS. Only days after ██████████ report, I learned on 4 February 2020 that ██████████ had reached her limit and quit working in the NSA front office.

**b. 5 C.F.R. §2635.702 and 5 C.F.R. 2635.703. Use of public office for private gain or endorsement and use of non-public information.**

1) On December 19<sup>th</sup>, 2019 NSA O'Brien and CoS Gray met with SpaceX, Inc. CEO Gwynne Shotwell. During the meeting, NSA O'Brien's shared with Ms. Shotwell that the United States Government was interested in certain specific SpaceX capabilities and that he would connect SpaceX with the Department of Defense and other departments and agencies. This offer to SpaceX was extraordinary in my experience at the NSC. I was concerned that NSA O'Brien's announced intention to connect SpaceX senior management with departments and agencies would be an improper endorsement or provide the appearance of government sanction from the White House. Additionally, this appeared to be preferential treatment for one company in this business sector in violations of relevant ethics rules<sup>10</sup>.

2) On January 30<sup>th</sup>, 2020 I received a message from the NSA front office to clear a meeting request for NSA O'Brien and United States Postal Service (USPS) Governor John Barger. In his request Mr. Barger described the purpose of the meeting as "5G and the USPS/ Autonomous vehicles,/ etc." Scott Gast wrote back that it was unusual for a single member of the board to reach

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<sup>9</sup> This last point raises concerns with records keeping under the The Presidential Records Act (PRA) of 1978, 44 U.S.C. §§ 2201–2207. This is an act of the United States Congress governing the official records of Presidents and Vice Presidents created or received after January 20, 1981, and mandating the preservation of all presidential records. Among other provisions, the act establishes preservation requirements for official business conducted using non-official electronic messaging accounts: any individual creating Presidential records must not use non-official electronic messaging accounts unless that individual copies an official account as the message is created or forwards a complete copy of the record to an official messaging account.

<sup>10</sup> I reported this to Michael Ellis and was instructed never to attend another meeting with the APNSA and a private entity again, despite being the NSC ADEAO. Up to this point, invariably, attendance at such meetings was part of my normal duties. Mr. Ellis also collected a copy of my notes from the meeting, which had never occurred before. I know of no remedial action or counseling stemming from this meeting to correct the apparent ethics violation.

SUBJECT: National Security Council (NSC) Legal Compliance and Ethics Violations

out directly and without working through USPS channels. Mr. Gast asked for clarification on whether Mr. Barger was reaching out on behalf of the board. NSA front office staff responded that Mr. Barger intended to meet with NSA O'Brien in a personal capacity and that they were personal friends. This response directly contradicted the stated purpose Mr. Barger announced in his initial request. I became concerned that the purpose of the meeting was in fact to discuss official business and not a social call. The NSA appeared to be granting preferential access to the White House to a friend in an apparent violation of relevant ethics rules.

4. **Anti-Deficiency Act Violations.** Except as specified in this subchapter or any other provision of law, an officer or employee of the United States Government... may not (A) make or authorize an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law. 31 U.S.C. § 1341(a)(1)(A).

a. Challenge coins are organizational emblems common among government organizations. Challenge coins may be purchased with appropriated funds, personal funds, or representational funds. The challenge coins at issue were purchased with appropriated funds. Coins purchased with appropriated funds may only be awarded to government employees for achievement or excellence, typically as part of an organizations awards program. Government contractors, private citizens and foreign officials may only receive challenge coins purchased through either personal funds or representational funds. Although individual coins are of modest value, the aggregate value of challenge coins purchased with appropriated funds annually can quickly rise into the thousands of dollars.

b. Between 3 October 2019 and 15 January 2020, the NSA issued coins<sup>11</sup> in violation of relevant fiscal rules. This Anti-deficiency Act violation is

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<sup>11</sup> I counseled NSA front office staff on challenge coins on several occasions, however, I was never permitted to counsel either the APNSA or CoS personally. CoS Gray inaccurately claimed to [REDACTED], National Security Advisor's front office Special Assistant, that he received instructions on how coins may be managed, however, coins continued to be issued improperly.

SUBJECT: National Security Council (NSC) Legal Compliance and Ethics Violations

particularly egregious because in addition to being reportable to congress<sup>12</sup> the Executive Office of the President, Office of Science and Technology Policy violated the same fiscal rule a few years earlier<sup>13</sup>.

5. **Conclusion.** I reported my concerns about ANSA O'Brien and CoS Gray to John Eisenberg and Michael Ellis on January 30, 2020. Neither committed to taking any action during the meeting. I expected to follow up on these concerns during the week of February 3<sup>rd</sup>, 2020, but did not have an opportunity to do so before being fired from the NSC. Consequently, my professional obligations persist. I remain gravely concerned that the climate in the NSC is toxic and that leadership does not have regard for rules and standards. If this situation persists, personnel will depart and national security will be harmed. I entreat you to inquire further in to the violations described herein and take appropriate action.

6. POC for this memorandum is the undersigned at

[REDACTED]



YEVGENY S. VINDMAN  
Lieutenant Colonel, Judge Advocate  
U.S. Army

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<sup>12</sup> Once it is determined that there has been a violation of 31 U.S.C. §§ 1341(a), 1342, or 1517(a), the agency head "shall report immediately to the President and Congress all relevant facts and a statement of actions taken." 31 U.S.C. §§ 1351, 1517(b). The reports are to be signed by the agency head. The report to the President is to be forwarded through the Director of OMB. In addition, the heads of executive branch agencies and the Mayor of the District of Columbia shall also transmit "[a] copy of each report . . . to the Comptroller General on the same date the report is transmitted to the President and Congress." 31 U.S.C. §§ 1351, 1517(b), as amended by the Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. G, title II, § 1401, 118 Stat. 2809, 3192 (Dec. 8, 2004).

<sup>13</sup> See <http://www.gao.gov/ada/GAO-ADA-11-03.pdf>

# **APPENDIX “B”**

FIELD GRADE PLATE (O4 - O5; CW3 - CW5) OFFICER EVALUATION REPORT

For use of this form, see AR 623-3; the proponent agency is DCS, G-1.

See Privacy Act Statement in AR 623-3.

PART I - ADMINISTRATIVE (Rated Officer)

Form section for administrative data including name (VINDMAN, YEVGENY S.), SSN, rank (LTC), date of rank (20160402), branch (JA), component, unit (NATIONAL SECURITY COUNCIL), UIC (W0Z7AA), reason for submission (02 | Annual), period covered (20180530 - 20190531), rated months (12), non-rated codes, no. of enclosures (0), and email address.

PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VI and the administrative data is correct)

Form section for authentication including rater (ELLIS, MICHAEL J.), intermediate rater, senior rater (EISENBERG, JOHN A.), and reviewer (MATTHEWS, EARL G.) signatures and dates.

PART III - DUTY DESCRIPTION

Form section for duty description including principal duty title (Deputy Legal Advisor, NSC and ADAEO, NSC), position (27A/JA), and significant duties and responsibilities.

PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM, COMPETENCIES, AND ATTRIBUTES (Rater)

Form section for performance evaluation including APFT results (PASS), broadening assignments (OCLL, Executive Officer, PPTO), operational assignments (Staff Judge Advocate, etc.), and character assessment (Yevgeny (Yev) is the epitome of an Army officer and lawyer...).

NAME VINDMAN, YEVGENY S.	SSN (or DOD ID No.) [REDACTED]	PERIOD COVERED: FROM (YYYYMMDD) 20180530	THRU (YYYYMMDD) 20190531
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d2. Provide narrative comments which demonstrate performance regarding field grade competencies and attributes in the Rated Officer's current duty position. (i.e. demonstrates excellent presence, confidence and resilience in expected duties and unexpected situation, adjusts to external influence on the mission or taskings and organization, prioritizes limited resources to accomplish mission, proactive in developing others through individual coaching counseling and mentoring, active learner to master organizational level knowledge, critical thinking and visioning skills, anticipates and provides for subordinates on-the-job needs for training and development, effective communicator across echelons and outside the Army chain of command, effective at engaging others, presenting information and recommendations and persuasion, highly proficient at critical thinking, judgment and innovation, proficient in utilizing Army design method and other to solve complex problems, uses all influence techniques to empower others; proactive in gaining trust in negotiations, remains respectful, firm and fair. Fully supports SHARP and creates a positive command/workplace environment.)

COMMENTS:  
Yev is an excellent attorney who is trusted to work on complex and sensitive issues. Yev stepped into a fast-paced and challenging environment and excelled. He quickly became an expert on ethics and administrative law, leading to his designation as NSC ADAEO. Yev expertly led several sensitive internal inquiries into allegations regarding certain senior officials and advised NSC leadership on appropriate dispositions. His acumen, perception, and judgment were critical in preventing pitfalls, negotiating MOUs with the interagency, crafting US strategy and advising senior White House staff. Yev is an expert at coordinating with interagency lawyers.

e. This Officer's overall Performance is Rated as: (Select one box representing Rated Officer's overall performance compared to others of the same grade whom you have rated in your career. Managed at less than 50% in EXCELS.)

I currently rate 1 Army Officers in this grade.

A completed DA Form 67-10-1A was received with this report and considered in my evaluation and review:  Yes  No (explain in comments below)

EXCELS (49%)

PROFICIENT

CAPABLE

UNSATISFACTORY

Comments:  
Peerless performance. Smart, motivated and versatile, Yev proved himself capable of executive-level performance. He expertly advised senior White House officials, including the APNSA and NSC staff, on myriad actions, performing numerous legal reviews flawlessly. A consummate teammate and advisor, senior USG officials sought him out for guidance and counsel. Lead attorney for the Africa Strategy, two NSPMs, a sanctions EO, a White House economic initiative, and ethics training for the NSC, Yev is the first pick lawyer for any team.

PART V - INTERMEDIATE RATER

PART VI - SENIOR RATER

a. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)

MOST QUALIFIED (limited to 49%)

HIGHLY QUALIFIED

QUALIFIED

NOT QUALIFIED

b. I currently senior rate 1 Army Officers in this grade.

c. COMMENTS ON POTENTIAL:

Yev is a top 1% military attorney and officer and the best LTC with whom I have ever worked. Functioning at the executive level, he advises White House senior staff with skill, tact, and judgment on matters of geostrategic importance. Sought by White House staff regularly, he can do any job in the legal field under unusual and constant pressure and scrutiny. Select now for SSC and promote immediately to COL. Absolutely unlimited potential!

d. List 3 future SUCCESSIVE assignments for which this Officer is best suited:

Staff Judge Advocate; Division Chief, OTJAG; OCJCS-LC

# **APPENDIX “C”**

FIELD GRADE PLATE (O4 - O5; CW3 - CW5) OFFICER EVALUATION REPORT					See Privacy Act Statement in AR 623-3.	
For use of this form, see AR 623-3; the proponent agency is DCS, G-1.						
<b>PART I - ADMINISTRATIVE (Rated Officer)</b>						
a. NAME (Last, First, Middle Initial)		b. SSN (or DOD ID No.)	c. RANK	d. DATE OF RANK (YYYYMMDD)	e. BRANCH	f. COMPONENT (Status Code)
VINDMAN, YEVGENY S.			LTC	20160402	JA	
g. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND				h. UIC	i. REASON FOR SUBMISSION	
NATIONAL SECURITY COUNCIL, THE WHITE HOUSE, WASH., DC				W0Z7AA	04   Change of Duty	
j. PERIOD COVERED		k. RATED MONTHS	l. NON RATED CODES	m. NO. OF ENCLOSURES		
FROM (YYYYMMDD)	THRU (YYYYMMDD)	8		n. RATED OFFICER'S EMAIL ADDRESS (.gov or .mil)		
20190601	20200207			[REDACTED]		
<b>PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VI and the administrative data is correct)</b>						
a1. NAME OF RATER (Last, First, Middle Initial)		a2. SSN (or DOD ID No.)	a3. RANK	a4. POSITION		
ELLIS, MICHAEL J.			EX - IV	Sr. Assoc. Counsel to the Pres.		
a5. EMAIL ADDRESS (.gov or .mil)		a6. RATER SIGNATURE			a7. DATE (YYYYMMDD)	
[REDACTED]		MICHAEL ELLIS <small>Digitally signed by MICHAEL ELLIS Date: 2020.04.06 14:38:02 -0400</small>			20200406	
b1. NAME OF INTERMEDIATE RATER (Last, First, Middle Initial)		b2. SSN (or DOD ID No.)	b3. RANK	b4. POSITION		
[REDACTED]						
b5. EMAIL ADDRESS (.gov or .mil)		b6. INTERMEDIATE RATER SIGNATURE			b7. DATE (YYYYMMDD)	
[REDACTED]		[REDACTED]			[REDACTED]	
c1. NAME OF SENIOR RATER (Last, First, Middle Initial)		c2. SSN (or DOD ID No.)	c3. RANK	c4. POSITION		
EISENBERG, JOHN A.			EX - I	Deputy Counsel to the Pres.		
c5. SENIOR RATER'S ORGANIZATION		c6. BRANCH	c7. COMPONENT	c9. EMAIL ADDRESS (.gov or .mil)		
National Security Council The White House Washington, DC 20504		CIV	NONE	[REDACTED]		
		c8. SENIOR RATER PHONE NUMBER		c10. SENIOR RATER SIGNATURE		c11. DATE (YYYYMMDD)
		[REDACTED]		[Signature]		2020/04/06
d. This is a referred report, do you wish to make comments? <input type="checkbox"/> Referred <input type="checkbox"/> Yes, comments are attached <input type="checkbox"/> No				e1. RATED OFFICER SIGNATURE		e2. DATE (YYYYMMDD)
				[Signature]		
f1. Supplementary Review Required?		<input type="checkbox"/> Yes <input type="checkbox"/> No		f2. NAME OF REVIEWER (Last, First, Middle Initial)		
f3. RANK		f4. POSITION		f5. Comments Enclosed		
f6. SUPPLEMENTARY REVIEWER SIGNATURE			f7. DATE (YYYYMMDD)			
[REDACTED]			[REDACTED]			
<b>PART III - DUTY DESCRIPTION</b>						
a. PRINCIPAL DUTY TITLE			b. POSITION AOC/BRANCH			
Deputy Legal Advisor and ADAEO, NSC			27A/JA			
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES Advises the National Security Council (NSC); the Assistant to the President for National Security Affairs (APNSA); the Assistant to the President, Deputy Counsel to the President for National Security Affairs, and NSC Legal Advisor; NSC committees; and NSC staff on ethics, administrative law, national security, and foreign relations, including Presidential authorities, constitutional law, treaty and statutory interpretation, fiscal law, and personnel matters. Drafts and reviews Presidential and APNSA correspondence, speeches, and policies. Facilitates legal review of Presidential documents. Coordinates legal advice for NSC Principals, Deputies, and Policy Coordination Committees and prepares papers on legal matters arising in senior interagency meetings. Primary legal advisor to the African Affairs, Records and Access Mg't, International Organizations, Situation Room, and Resource Mg't directorates of the NSC. Advises the NSC Executive Secretary regarding the operations of the NSC staff. Serves as the NSC Alternate Designated Agency Ethics Official (ADAEO).						
<b>PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM, COMPETENCIES, AND ATTRIBUTES (Rater)</b>						
a. APFT Pass/Fail/Profile: _____ Date: _____ Height: _____ Weight: _____ Within Standard? _____ Comments required for "Failed" APFT, or "Profile" when it precludes performance of duty, and "No" for Army Weight Standards?						
b. THIS OFFICER POSSESSES SKILLS AND QUALITIES FOR THE FOLLOWING BROADENING ASSIGNMENTS The Army Staff						
c. THIS OFFICER POSSESSES SKILLS AND QUALITIES FOR THE FOLLOWING OPERATIONAL ASSIGNMENTS The Army Staff						
d1. Character (Adherence to Army Values, Empathy, and Warrior Ethos/Service Ethos and Discipline. Fully supports SHARP, EO, and EEO.)		LTC Vindman is a hardworking officer, but he frequently lacks judgment and has difficulty understanding the appropriate role of a lawyer in an organization. He fully supports SHARP, EO, and EEO.				



NAME VINDMAN, YEVGENY S.	SSN (or DOD ID No.)	PERIOD COVERED: FROM (YYYYMMDD) 20190601	THRU (YYYYMMDD) 20200207
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d2. Provide narrative comments which demonstrate performance regarding field grade competencies and attributes in the Rated Officer's current duty position. (i.e. demonstrates excellent presence, confidence and resilience in expected duties and unexpected situation, adjusts to external influence on the mission or taskings and organization, prioritizes limited resources to accomplish mission, proactive in developing others through individual coaching counseling and mentoring, active learner to master organizational level knowledge, critical thinking and visioning skills, anticipates and provides for subordinates on-the-job needs for training and development, effective communicator across echelons and outside the Army chain of command, effective at engaging others, presenting information and recommendations and persuasion, highly proficient at critical thinking, judgment and innovation, proficient in utilizing Army design method and other to solve complex problems, uses all influence techniques to empower others; proactive in gaining trust in negotiations, remains respectful, firm and fair. Fully supports SHARP and creates a positive command/workplace environment.)

COMMENTS:

During the prior reporting period and early portions of the reporting period, LTC Vindman performed his duties satisfactorily. Over time, LTC Vindman displayed increasingly poor judgment and failed to learn from his mistakes. On multiple occasions, his unprofessional demeanor made NSC staff feel uncomfortable. Despite express guidance from his supervisor, he continued to add himself to meetings with senior NSC staff where he did not add value. LTC Vindman's substandard performance--his lack of judgment, failure to communicate well with his superiors, and inability to differentiate between legal and policy decisions--caused him to lose the trust of NSC senior leadership.

e. This Officer's overall Performance is Rated as: (Select one box representing Rated Officer's overall performance compared to others of the same grade whom you have rated in your career. Managed at less than 50% in EXCELS.)

I currently rate \_\_\_\_\_ Army Officers in this grade.

A completed DA Form 67-10-1A was received with this report and considered in my evaluation and review:  Yes  No (explain in comments below)

EXCELS (49%)

PROFICIENT

CAPABLE

UNSATISFACTORY

Comments:

LTC Vindman is an attorney of average ability, but he lacks judgment on critical issues. In a stressful and high-pressure work environment, his performance did not live up to the extremely high standards of the NSC Legal Affairs Directorate. Owing to the early termination of LTC Vindman's detail to the NSC, it was not possible to prepare a DA Form 67-10-1A.

PART V - INTERMEDIATE RATER

PART VI - SENIOR RATER

a. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)

MOST QUALIFIED  
(limited to 49%)

HIGHLY QUALIFIED

QUALIFIED

NOT QUALIFIED

b. I currently senior rate \_\_\_\_\_ Army Officers in this grade.

c. COMMENTS ON POTENTIAL:

In the prior reporting period, LTC Vindman demonstrated potential, but he did not grow professionally after the extension of his detail assignment to the NSC. With additional counseling and experience, LTC Vindman's performance may improve. He would benefit from additional experience in a slower-paced work environment subject to less pressure and scrutiny. In time, he may become a better attorney.

d. List 3 future SUCCESSIVE assignments for which this Officer is best suited:

The Army Staff