

United States Senate

WASHINGTON, DC 20510

October 10, 2019

The Honorable Brian Benczkowski
Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Assistant Attorney General Benczkowski:

We request an explanation of the Department's decision that "no further action was warranted" in connection with President Trump's July 25 call with Ukraine President Volodymyr Zelensky.

As you know, an August 12 whistleblower complaint alleged that President Trump was "using the power of his office to solicit interference from a foreign country in the 2020 election." The Intelligence Community Inspector General confirmed that the complaint was "credible" and of "urgent concern."

The Justice Department instructed the Director of National Intelligence not to provide Congress with the whistleblower complaint, as is required by law. [50 U.S.C. § 3033(k)(5)(C)]. Instead, the Office of Legal Counsel (OLC) advised the DNI that the "appropriate action" was to refer the matter to the Department's Criminal Division. We understand that the CIA General Counsel had also referred the whistleblower's allegations to the Criminal Division for investigation.

After the White House released a memorandum of President Trump's July 25 call with Ukraine President Zelensky, the Department of Justice issued a brief press statement that the Criminal Division had concluded that "there was no campaign finance violation" and "no further action was warranted."

It is not clear to what extent, in reaching this decision, the Criminal Division consulted with the Department's Public Integrity Section, as is required in all matters involving the "corruption of the election process." [Justice Manual § 9-85.210].

It is also unclear whether the Criminal Division referred the matter to the Federal Election Commission (FEC), in accordance with a memorandum of understanding that requires the Department to do so “as promptly as possible,” even if the Justice Department determined not to pursue the matter. [43 Fed. Reg. 5441].

On its face, the White House memorandum of the July 25 call raises significant questions, including what was done following the call to follow through on the President’s requests. Since this matter involves allegations about the President’s conduct, and given this President’s stated belief that he has the “absolute right to do what I want to do with the Justice Department,” it is important to ensure that the Department has acted in an objective, independent manner in declining even to investigate this matter.

We therefore ask that you provide the following information no later than October 24:

1. What Department components and individuals were consulted prior to the Department’s concluding that “no further action was warranted”?
2. What evidence did the Department consider beyond the summary of the July 25 call, if any?
3. Did the Department refer the matter to the FEC as required?
4. Did the Department consider whether President Trump or any other individuals, including but not limited to other Executive Branch officials and Rudy Giuliani, violated any statutes other than 52 U.S.C. § 30121 in connection with the conduct described in the whistleblower complaint?
5. What role did OLC play in the Department’s decision that “there was no campaign finance violation” and “no further action was warranted”?
6. Did OLC evaluate whether the whistleblower complaint implicated potential criminal violations before OLC concluded that the complaint should be referred to the Criminal Division rather than forwarded to Congress?

Thank you for your prompt attention to this request.

Sincerely,



DIANNE FEINSTEIN
Ranking Member



PATRICK LEAHY
United States Senator



RICHARD J. DURBIN
United States Senator



SHELDON WHITEHOUSE
United States Senator



AMY KLOBUCHAR
United States Senator



CHRISTOPHER A. COONS
United States Senator



RICHARD BLUMENTHAL
United States Senator



MAZIE K. HIRONO
United States Senator



CORY A. BOOKER
United States Senator



KAMALA D. HARRIS
United States Senator

cc: The Honorable Lindsey O. Graham
Chairman, Senate Committee on the Judiciary