

TRUMP ADMINISTRATION ACCOUNTABILITY PROJECT



Report on Possible State Department Misconduct relating to the 2018 Arms Agreement with Saudi Arabia

Background: Secretary Pompeo Gets Questionable Emergency Authorization

When Secretary of State Mike Pompeo sought to finalize a weapons deal with Saudi Arabia on behalf of the Trump Administration, Congress signaled bipartisan resistance to the agreement. Both chambers threatened to withhold an authorization that was required by law for the deal to move forward. However, the statute requiring the authorization had limited exceptions to the Congressional approval requirement, one of which permitted a deal to go forward if there exists an emergency declaration by the Department of State. Secretary Pompeo then declared that threats from Iran to Saudi Arabia constituted an emergency and used the exception to get around required Congressional approval.

In May 2020, the Inspector General of the State Department was suddenly fired by President Trump at Pompeo's request. It was revealed that, prior to his dismissal, he had been investigating whether the emergency declaration was made unlawfully. He was prohibited from returning to his office at the State Department to retrieve any documents or complete his report. Ultimately, a new Inspector General reported that—despite a series of inconsistencies in Pompeo's statements to Congress and an inadequate consideration of the risk of deaths of civilians in Yemen—there was insufficient evidence to show Pompeo broke the law. The question here is whether Pompeo or President Trump obstructed Congress or otherwise violated the law in firing the Inspector General before his investigation was complete, or whether the new Inspector General report was improperly influenced by Pompeo or the President.

What Happened

The first international trip undertaken by President Donald Trump was to Saudi Arabia.¹ Trump took the trip despite serious questions about a plan to transfer nuclear data to the Saudis crafted by President Trump's son-in-law, Jared Kushner, and former National Security Advisor, Michael Flynn, during the 2016 campaign. President Trump's son, Donald Trump Jr., also had a meeting with an envoy representing the Saudi government who offered help to the Trump campaign, which would be illegal under U.S. law.² The President's unique relationship to Saudi Arabia was further exacerbated by the fact he had purchased a Saudi-owned yacht for \$20 million in 1991 from the

uncle of Jamal Khashoggi, that Saudi Arabia was part of the group that financed Trump's troubled Plaza Hotel in 1995, and that the Saudi government purchased the entire 45th floor of Trump World Tower in 2001.³

During the trip, President Trump signed a "\$350 billion arms deal" with the Kingdom of Saudi Arabia, purported to be the largest in history.⁴ The action was largely seen as a means of punishing Iran and diminishing its influence in the region. However, the agreement was merely a letter of intent—it was not an actual contract, and any real contract would require a Congressional stamp of approval.

Congress began signaling its hesitation on the deal upon Trump's return. Saudi Arabia's historic involvement in the 9/11 attacks, as well as ongoing human rights abuses in Yemen and later the murder of Western journalist Jamal Khashoggi, all contributed to resistance by both parties to the Saudi arms agreement. Realizing Congress was unlikely to authorize the deal, a senior official at the State Department, Marik String, helped Secretary Pompeo "come up with a means of circumventing Congress on a sale of 22 batches of munitions worth \$8.1 billion, much of it made by [the defense contractor] Raytheon."⁵ On May 24, 2019, the Friday before Memorial Day and two years after the deal was agreed to, Mr. Pompeo declared an emergency over Iran to push through the sale.⁶

Congressional leaders questioned the declaration and raised questions about its veracity. Privately, House Committees requested that State Department Inspector General Steve Linick open an investigation into the decision.⁷ Linick began pursuing it one month later; however, Secretary Pompeo did not agree to be interviewed for the investigation.⁸ Eventually, after Khashoggi's murder, Congress passed a series of measures on a bipartisan basis aimed at curbing U.S. support for Saudi Arabia's involvement in Yemen's civil conflict.⁹ President Trump vetoed the measures.

Before Linick could conclude his investigation, he was called before several House Committees for testimony. Linick told Congress that Pompeo's Deputy, Marik String, pressured him to drop the investigation into whether the decision to declare an emergency was illegal.¹⁰ Linick recounted a meeting in winter 2019 where String and Brian Bulatao, another top State Department official and close friend of Secretary Pompeo, tried to persuade Inspector General Linick to end the inquiry.¹¹ They informed Linick that it was a "policy matter" not within his jurisdiction. They also told Linick there may be a "privilege issue" even though no party involved was acting as a lawyer.¹² This suggests President Trump may have been involved in the decision since the only other relevant privilege claim would be Executive privilege. Congress requested testimony from Bulatao and String. Both declined to appear before Congress, citing no legal argument. Pompeo has similarly refused Congressional subpoenas throughout his tenure.

On Friday, May 15, President Trump announced Linick was fired at Pompeo's request.¹³ Chairman of the House Foreign Affairs Committee Eliot Engel announced the following Monday that Linick had been investigating the Saudi arms deal and the emergency declaration.¹⁴

Possible Violations of Law

Criminal charges may be applicable to those involved in the emergency declaration. The most relevant statute would be 18 U.S.C. § 1505, which criminalizes obstruction of Congress. Under that statute, whoever corruptly influences, obstructs or impedes or tries to influence, obstruct or impede the “due and proper” administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry or investigation by Congress, is guilty of obstruction.¹⁵

There are two theories of liability under the statute. The first could apply to String and Bulatao for endeavoring to obstruct the investigation by Linick by pressuring him to drop it prematurely. Communications between the two men and Secretary Pompeo about this matter would be essential to show that they had a corrupt motive when they spoke with Linick during the winter 2019 meeting. The second theory applies to the refusal of Pompeo, String and Bulatao for completely refusing Congressional subpoenas on the matter without citing any legal reason for doing so. The Supreme Court has recognized that the Executive Branch enjoys some kinds of immunities—namely Executive Privilege—but no party has even suggested that President Trump was involved in the decision-making about the emergency declaration or the firing of Linick. Refusal to give any testimony impedes the due and proper exercise of the House Foreign Affairs Committee to oversee the State Department.

All of this is made worse by the shadow of the President’s own financial ties to Saudi Arabia. Millions have flowed to the President’s businesses—currently controlled by his children—from the Saudis during his Presidency, in possible violation of the Emoluments Clause.¹⁶ His son-in-law praises the young king of Saudi Arabia regularly, and the President and the rest of the Trump family refuse to condemn Saudi officials for ordering the murder of a journalist who worked at the Washington Post.

Pompeo’s involvement in the emergency declaration, and the subsequent firing of the one person tasked with investigating it, would likely be enough to warrant a resignation of at least the senior staffers refusing to speak with Congress on this matter. Instead, defiance of subpoenas and investigations has become the rule in the Trump Administration, not the exception. Since the resignation of Michael Flynn and his subsequent charges, Trump Administration officials have been reluctant to depart the Administration when they are implicated in schemes of wrongdoing. The Administration has become a shield to investigative authorities like DOJ and Congress because there is no precedent for a Secretary of State or his staff completely refusing to speak with either entity. A thorough investigation of the conduct of State Department officials, including Secretary Pompeo, is essential to restoring accountability to the State Department going forward.

¹ Joe Gould, *Fired State Department IG probed Trump’s Saudi arms deals*, DefenseNews (May 18, 2020) available at <https://www.defensenews.com/congress/2020/05/18/fired-state-department-ig-probed-trumps-saudi-arms-deals/>.

² Mark Mazzetti et al, *Trump Jr. and Other Aides Met With Gulf Emissary Offering Help to Win Election*, N.Y. TIMES (Jul. 9, 2020) available at

https://en.wikipedia.org/wiki/Saudi_Arabia%E2%80%93United_States_relations#cite_note-nytimes-103.

³ Bob Bryan, Trump said he has ‘no financial interests in Saudi Arabia,’ Business Insider (Nov. 21, 2018) available at <https://www.businessinsider.com/trump-saudi-arabia-financial-interests-ties-hotel-bookings-sales-2018-10>.

⁴ Anita Kumar, Trump hails huge Saudi arms deal as a jobs producer, McClatchy DC (May 20, 2017) available at <https://www.mcclatchydc.com/news/politics-government/white-house/article151717257.html>.

⁵ Edward Wong, Michael LaForgia and Lara Jakes, Pompeo Aide Who Pushed Saudi Arms Sale Said to Have Pressured Inspector General, N.Y. Times (Jun. 10, 2020) available at

<https://www.nytimes.com/2020/06/10/us/politics/pompeo-inspector-general-saudi-arms.html>.

⁶ Edward Wong, Michael LaForgia and Lara Jakes, Pompeo Aide Who Pushed Saudi Arms Sale Said to Have Pressured Inspector General, N.Y. Times (Jun. 10, 2020) available at

<https://www.nytimes.com/2020/06/10/us/politics/pompeo-inspector-general-saudi-arms.html>.

⁷ Id.

⁸ Id.

⁹ Gould *supra* at 1.

¹⁰ Wong *supra* at 6.

¹¹ Id.

¹² Id.

¹³ Gould *supra* at 1.

¹⁴ Id.

¹⁵ 18 U.S.C. § 1505 (2004).

¹⁶ See Max King, Emoluments Clause Report, TAAP (Sept. 15, 2020).