IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. JOHN R. BOLTON, Defendant.	Civil Action No. 1:20-cv-01580-RCL

DECLARATION OF MICHAEL J. ELLIS

I, Michael J. Ellis, declare the following to be true and correct:

1. I serve as Senior Director for Intelligence Programs at the National Security Council (NSC). I have held this position since March 1, 2020. This declaration is based on my personal knowledge and information I received in my official capacity. I submit this declaration in support of the United States Government's motion for a preliminary injunction in the above captioned matter.

2. I have worked in a variety of national security positions for more than 12 years. In my current position, I am responsible for planning, directing, and coordinating the development of policies related to the intelligence activities of the United States Government. As part of my duties, I support the Assistant to the President for National Security Affairs in advising the President, representing the NSC in senior-level meetings with executive departments and agencies, and engaging in negotiations with representatives of foreign governments on sensitive national security issues. In my

current position, I am also responsible for, among other things, protecting classified information against unauthorized disclosure.

3. Before starting in my current position, I served from February 2017 to February 2020 as Special Assistant to the President, Senior Associate Counsel to the President, and Deputy Legal Advisor at the NSC. Previously, I served from August 2013 to February 2017 in a number of positions on the staff of the U.S. House Permanent Select Committee on Intelligence, including as General Counsel of the Committee.

4. Since September 2007, I have served as an intelligence officer in the U.S. Navy Reserve. I currently hold the rank of Lieutenant Commander, and my assignments have included the Defense Intelligence Agency, the Joint Staff Directorate for Intelligence (J-2), the Office of Naval Intelligence, and the U.S. Africa Command Intelligence Directorate (J-2), where I received security and foreign disclosure training.

5. The National Security Act of 1947, as amended, established the NSC to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security. Under National Security Presidential Memorandum (NSPM)-4, the Assistant to the President for National Security Affairs and the staff of the NSC advise the President, convene meetings to develop and implement national security policies by executive departments and agencies, and help coordinate the national-security-related policies of the United States.

6. My current position and duties, including policy responsibilities related to the intelligence activities of the United States Government, necessarily require me to have extensive knowledge about the full range of United States Government intelligence activities, as well as related confidential deliberations on matters of national security and

foreign policy, that is more comprehensive than the knowledge of most other NSC officials. Additionally, I routinely attend senior-level meetings related to national security and foreign policy decisions, including meetings of the Principals Committee and Deputies Committee convened under NSPM-4; convene Policy Coordination Committee meetings on intelligence activities related to national security and foreign policy decisions; and provide advice to the Assistant to the President for National Security Affairs and other senior White House officials on national security and foreign policy decisions. As such, I am aware of intelligence information and internal foreign policy deliberations and developments that others of the NSC staff are not and have a broader base of knowledge than others to identify and determine information that is classified.

7. Most others of the NSC staff do not have access to the same quantity of classified intelligence reporting that I do. Neither do most NSC staff routinely attend senior-level meetings related to national security and foreign policy decisions, as I do.

8. The President's Order of December 29, 2009 delegated TOP SECRET Original Classification Authority to the Assistant to the President for National Security Affairs. Under a delegation of authority from the Assistant to the President for National Security Affairs dated March 29, 2017, I am a TOP SECRET Original Classification Authority. This means that I am authorized to classify information up to the TOP SECRET level. I have held Original Classification Authority since March 1, 2020. I can also assess the current and proper classification of information at the TOP SECRET/Sensitive Compartmented Information (SCI) level.

9. My understanding is that another Original Classification Authority within the NSC staff, Ms. Ellen Knight, had reviewed the draft manuscript submitted by John Bolton (Author) and had been engaged in an ongoing process with the Author regarding the need to remove classified information from the draft manuscript. I understand that Ms. Knight believed that the manuscript as revised had removed all classified information.

10. After Ms. Knight completed her review of the draft manuscript, the Assistant to the President for National Security Affairs reviewed the manuscript and concluded that it still appeared to contain classified information. For this reason, the Assistant to the President for National Security Affairs asked me, as the Senior Director for Intelligence Programs, to review the manuscript.

11. On Saturday, May 2, 2020, I began my review of the draft manuscript that reflected Ms. Knight's latest guidance to the Author.

12. I completed my initial review of the draft manuscript on Tuesday, June 9, 2020.

13. I understand that neither Ms. Knight nor her staff has provided the Author or his counsel written authorization to publish the manuscript, and that the prepublication review process remains ongoing.

14. Based on my professional training and experience, I have determined that the manuscript in its present form contains certain passages—some up to several paragraphs in length—that contain classified national security information.

15. Based on my professional training and experience, it is my opinion that certain passages of the manuscript, if made public, reasonably could be expected to cause

damage, serious damage, or exceptionally grave damage to the national security of the United States. In this Declaration, I describe the regulatory basis for classifying national security information. In a classified declaration submitted with this declaration, solely for *ex parte*, *in camera* review, I describe six examples of passages in the manuscript that require protection under the national security information classification system, and the reasons for classifying each example. Because the prepublication review of the manuscript remains ongoing, these examples are not an exhaustive list of the passages in the manuscript that contain classified information. These descriptions of the examples, as well as my reasons for determining that they are classified, are being provided in a classified declaration because to disclose them on the public record would expose classified information, and, as a result, damage national security.

16. Section 1.1(a) of Executive Order 13526, "Classified National Security Information," provides that information may be originally classified if: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the United States Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of the Executive Order; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, and the original classification authority is able to identify or describe the damage.

17. Section 1.4 of the Executive Order provides that information shall not be considered for classification unless it pertains to one or more of eight specifically

enumerated categories of information. The examples described in my classified declaration fall within the following categories of section 1.4:

(a) military plans, weapons systems, or operations;

(b) foreign government information;

(c) intelligence activities (including covert action), intelligence sources or methods, or cryptology; and

(d) foreign relations or foreign activities of the United States, including confidential sources.

18. Section 1.1(d) of the Executive Order provides that the unauthorized disclosure of foreign government information is presumed to cause damage to the national security.

19. The examples from the manuscript described in my classified declaration are all classified at the SECRET, TOP SECRET, or TOP SECRET/SCI level. The manuscript also contains information classified at the CONFIDENTIAL level. Section 1.2 of Executive Order 13526 describes classification at the CONFIDENTIAL level as information that "the unauthorized disclosure of which reasonably could be expected to cause damage to the national security," classification at the SECRET level as information that "the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security," and classification at the TOP SECRET level as information that "the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security." Intelligence Community Directive 703 defines SCI as "a subset of CNI [classified national intelligence] concerning or derived from intelligence sources, methods or analytical processes that is

required to be protected within formal access control systems established by the DNI [Director of National Intelligence]."

20. The information identified in the examples from the manuscript is owned by the United States Government. Moreover, it is information specifically covered by the nondisclosure agreements signed by the Author, which I have reviewed. The Standard Form 312, Classified Information Nondisclosure Agreement states, in relevant part, that "I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law." The Form 4414, Sensitive Compartmented Information Nondisclosure Agreement states, in relevant part, that "In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation with, or show it to, anyone who is not

authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted." Based on my review, the draft manuscript contains information subject to both the Standard Form 312 and the Form 4414 signed by the Author.

21. All of the examples described in my classified declaration remain classified.

22. In summary, it is my judgment that certain passages in the draft manuscript in its present form are properly classified in accordance with E.O. 13526 and, if disclosed, will damage the national security of the United States.

23. Attached as Exhibit M is a true and correct copy of a letter I sent to the Author, dated June 16, 2020. The letter states that "your manuscript in its current form is still not approved for public release and will not be approved until the pre-publication review process is complete. The manuscript still contains classified information. The review process required by the agreements you signed has not been completed." I refer the Court to Exhibit M for a complete and accurate statement of its contents.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 17th day of June, 2020 in the City of Washington, District of Columbia.

Michael J. Ellis