

# Congress of the United States

Washington, DC 20510

February 7, 2020

The Honorable Rae Oliver Davis  
Inspector General  
Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW  
Washington, DC 20410

Dear General Davis:

We write to request that the Office of Inspector General of the Department of Housing and Urban Development (HUD OIG) add an inquiry into whether the Trump administration's delay in releasing emergency relief funds appropriated by Congress for Puerto Rico violated the *Impoundment Control Act of 1974*. Since Hurricanes Maria and Irma struck Puerto Rico in September 2017, Congress has made three separate appropriations for Community Development Block Grants Disaster Recovery Program (CDBG-DR) funds totaling nearly \$19.9 billion for Puerto Rico, but only \$1.5 billion of that money has reached the island. According to reports, HUD OIG is reviewing whether the White House inappropriately interfered in decisions about providing aid to Puerto Rico.<sup>1</sup> We respectfully request that you open an additional inquiry into whether the long delay in disbursement of funds—which not only imposes significant barriers to providing critical aid to the people of Puerto Rico, but also appears to follow an emerging pattern of withholding Congressional appropriations by the Trump administration—violated the *Impoundment Control Act of 1974* (ICA).

As you know, the CDBG-DR program, which is administered by the Department of Housing and Urban Development (HUD), provides “flexible grants to help cities, counties, and States recover from Presidentially declared disasters, especially in low-income areas.”<sup>2</sup> Congress made three separate appropriations to the CDBG-DR grant program to help Puerto Rico recover from Hurricanes Maria and Irma, which devastated the island, wiping out roads, shutting down electricity, and destroying an unknown number of buildings on the island.<sup>3</sup> \$1.5 billion in CDBG-DR funds made available in the *Supplemental Appropriations for Disaster Relief Requirements Act, 2017* – P.L. 115-56 (“2017 appropriation”)<sup>4</sup> were allocated to Puerto Rican

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<sup>1</sup> Washington Post “HUD inspector general’s office says it’ll look into whether White House interfered with Puerto Rico disaster aid,” Jeff Stein, et al., March 26, 2019, <https://www.washingtonpost.com/us-policy/2019/03/26/hud-inspector-generals-office-says-itll-look-into-whether-white-house-interfered-with-puerto-rico-disaster-aid/>.

<sup>2</sup> Department of Housing and Urban Development, “Community Development Block Grant Disaster Recovery Program,” <https://www.hudexchange.info/programs/cdbg-dr/>.

<sup>3</sup> National Ocean and Atmospheric Administration, “Hurricane Maria’s devastation of Puerto Rico,” Michon Scott, August 1, 2018, <https://www.climate.gov/news-features/understanding-climate/hurricane-marias-devastation-puerto-rico>

<sup>4</sup> Supplemental Appropriations for Disaster Relief Requirements Acts, 2017, P.L. 115-56, Division B.

localities.<sup>5</sup> In February 2018, Congress passed the *Further Additional Supplemental Appropriation for Disaster Relief Requirements Act, 2018* – P.L.115-123 (“2018 appropriation”),<sup>6</sup> from which three allocations were made to Puerto Rico – \$8.2 billion through the traditional CDBG-DR program, \$8.3 billion for the Community Development Block Grant Mitigation (CDBG-MIT) program,<sup>7</sup> a subpart of CDBG-DR for use in “areas impacted by recent disasters to carry out long-term strategic and high-impact activities to mitigate disaster risks and reduce future losses,<sup>8</sup>” and \$1.9 billion “to provide enhanced or improved electrical power systems.<sup>10</sup>” Finally, the *Additional Supplemental Appropriations for Disaster Relief Act, 2019* (“2019 appropriation”)<sup>11</sup> provided about \$278 million in funding to CDBG-DR.<sup>12</sup>

Puerto Rico has experienced unusually long delays in getting access to these funds; 28 months after the hurricanes hit, the Trump administration has disbursed only \$1.5 billion of the nearly \$19.9 billion dollars that Congress directed for Puerto Rico through the CDBG-DR program. To be sure, disbursement is not typically immediate – there are several steps between an appropriation and disbursement of funds – but Puerto Rico’s delays are highly unusual. After a CDBG-DR appropriation, HUD typically allocates funds to impacted states and territories, then publishes a notice in the Federal Register laying out the rules for receiving grants.<sup>13</sup> The state or territory then formulates an action plan, allows time for public comment, and submits the plan to HUD for approval.<sup>14</sup> Once HUD approves the state action plan, a grant agreement is signed between the jurisdiction and HUD and money starts flowing.<sup>15</sup>

HUD has taken much longer to propose the rules for the Puerto Rico grants in the Federal Register and to disburse money once it approves Puerto Rico’s state action plans than for other

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<sup>5</sup> Federal Register, “Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Disaster Recovery Grantees,” February 9, 2018, <https://www.federalregister.gov/documents/2018/02/09/2018-02693/allocations-common-application-waivers-and-alternative-requirements-for-2017-disaster-community>.

<sup>6</sup> Supplemental Appropriations, Tax Relief, and Medicaid Changes Relating to Certain Disasters and Further Extension of Continuing Appropriations P.L. 115-123, Division B.

<sup>7</sup> Department of Housing and Urban Development, “HUD Published CDBG Mitigation Notice for the Commonwealth of Puerto Rico, January 16, 2020, <https://www.hudexchange.info/news/hud-publishes-cdbg-mitigation-notice-for-the-commonwealth-of-puerto-rico/>.

<sup>8</sup> Department of Housing and Urban Development, “HUD Releases Program Requirements for CDBG-Mitigation Program, August 23, 2019, [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_19\\_129](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_129).

<sup>9</sup> Federal Register, “Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees,” August 14, 2018, <https://www.federalregister.gov/documents/2018/08/14/2018-17365/allocations-common-application-waivers-and-alternative-requirements-for-community-development-block>.

<sup>10</sup> Federal Register, “Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees; Commonwealth of Puerto Rico Allocation,” January 27, 2020, <https://www.federalregister.gov/documents/2020/01/27/2020-01334/allocations-common-application-waivers-and-alternative-requirements-for-community-development-block>.

<sup>11</sup> Additional Supplemental Appropriations for Disaster Relief Act, 2019, P.L. 116-20.

<sup>12</sup> Federal Register, “Allocations, Common Application, Waivers, and Alternative Requirements for Disaster Community Development Block Grant Disaster Recovery Grantees,” January 27, 2020, <https://www.federalregister.gov/d/2020-01204>.

<sup>13</sup> National Housing Conference, Sonya Acosta, “July 2019 Restoring Neighborhoods Task Force Webinar: Housing and Natural Disasters” July 24, 2019, [https://www.youtube.com/watch?v=\\_RwvBbsCkLE&feature=emb\\_title](https://www.youtube.com/watch?v=_RwvBbsCkLE&feature=emb_title).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

comparable disasters. As a result, only the funds from the 2017 appropriation have made it to the island. For example, the 2018 appropriation was signed in February 2018, but HUD did not publish the Federal Register notice setting out the rules for applying for the \$8.2 billion in CDBG-MIT funds until January 27, 2020, nearly two years later.<sup>16</sup> Similarly, the Federal Register notice for the 2019 appropriations was also not issued until January 27, 2020,<sup>17</sup> nearly eight months after the appropriations bill was enacted.<sup>18</sup> In contrast, HUD issued Federal Register notices for the four CDBG-DR allocations to Texas and Florida in the aftermath of Hurricanes Harvey and Irma and within six months.<sup>19 20</sup> Similarly, HUD has delayed disbursing Puerto Rico's grants even after approving its state action plans. For example, while HUD approved Puerto Rico's action plan for the 2018 appropriations CDBG-DR grant on March 1, 2019,<sup>21</sup> the money still has not reached the island nearly a year later.<sup>22</sup> In contrast, Texas and Florida received all their disbursements within seven months of HUD approval, including in one case, on the same day.<sup>23</sup>

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<sup>16</sup> Federal Register, "Allocations, Common Application, Waivers, and Alternative Requirements for Disaster Community Development Block Grant Disaster Recovery Grantees," January 27, 2020, <https://www.federalregister.gov/d/2020-01204>.

<sup>17</sup> Additional Supplemental Appropriations for Disaster Relief Act, 2019, P.L. 116-20.

<sup>18</sup> Federal Register, "Allocations, Common Application, Waivers, and Alternative Requirements for Disaster Community Development Block Grant Disaster Recovery Grantees," January 27, 2020, <https://www.federalregister.gov/d/2020-01204>.

<sup>19</sup> Federal Register, "Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Disaster Recovery Grantees," February 4, 2018, <https://www.federalregister.gov/d/2018-02693> (the Federal Register notice for CDBG-DR funds appropriated on September 8, 2017 for aid to Texas and Florida, following hurricanes Harvey and Irma issued on February 4, 2018, less than five months later).

<sup>20</sup> Federal Register, "Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees," August 14, 2018, <https://www.federalregister.gov/documents/2018/08/14/2018-17365/allocations-common-application-waivers-and-alternative-requirements-for-community-development-block> (the Federal Register notice for the second tranche of CDBG-DR funds appropriated on February 9, 2018 for aid to Texas, Florida, and the U.S. Virgin Islands following hurricanes Harvey and Irma issued on August 14, 2018, six months later).

<sup>21</sup> Department of Housing and Urban Development, "HUD Approves Puerto Rico's Latest Disaster Recovery Action Plan; Approval Comes with Tight Fiscal Controls," March 1, 2019, [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_19\\_017](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_017).

<sup>22</sup> Department of Housing and Urban Development "Monthly CDBG-DR Grant Financial Report," December 31, 2019, <https://files.hudexchange.info/resources/documents/CDBG-DR-Financial-Report-2020-01-01.pdf>

<sup>23</sup> Texas's first action plan in the aftermath of Hurricane Harvey was approved on June 28, 2018 and it received its first disbursement by July 1, 2017. See ABC4 News, "HUD approves \$5 billion Harvey recovery plan for Texas," June 25, 2018, <https://abcnews4.com/news/nation-world/hud-approves-5-billion-harvey-recovery-plan-for-texas>; Department of Housing and Urban Development "Monthly CDBG-DR Grant Financial Report," May 31, 2018, <https://files.hudexchange.info/resources/documents/CDBG-DR-Financial-Report-2018-06-01.pdf>.

Texas's second action plan was approved by HUD on February 25, 2019 and it received its disbursement by September 30, 2019. See Department of Housing and Urban Development "HUD Approves Addition \$652 Million to Support Texas in its Recovery from Hurricane Harvey, February 25, 2019, [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_19\\_016](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_016); Department of Housing and Urban Development, "Monthly CDBG-DR Grant Financial Report," September 30, 2019, <https://files.hudexchange.info/resources/documents/CDBG-DR-Financial-Report-2019-10-01.pdf>.

Florida's first action plan was approved by HUD on June 28, 2018 and it received its disbursement that same day. See Housingwire, "HUD approves Florida's \$616M hurricane recovery action plan," June 28, 2018, <https://www.housingwire.com/articles/43826-hud-approves-floridas-616m-hurricane-recovery-action-plan/>;

Congress recognized that the Trump administration was unnecessarily delaying the aid to Puerto Rico and included a deadline in the 2019 appropriation for the administration to publish Federal Register notices and approve state action plans for the money made available in the 2018 appropriations. Pursuant to the statute, “the Secretary shall publish in the Federal Register the allocations to all eligible grantees, and the necessary administrative requirements applicable to such allocations within 90 days after enactment of this Act” and “the Secretary shall review pending amendments within 15 days of enactment of this Act and pending plans within 30 days of enactment of this Act”<sup>24</sup> The statute explicitly removes HUD’s timing flexibility, specifying that “the Secretary may not apply the statutory waiver or alternative requirement authority provided by Public Law 115-123 to extend or otherwise alter existing statutory and regulatory provisions governing the timeline for review of required grantee plans.”<sup>25</sup>

Nevertheless, the 90-day deadline of September 4, 2019, passed and HUD failed to issue Federal Register notices for the CDBG-MIT grants in the 2018 appropriation. Missing the deadline was not an accident. In an exchange with Chairman David Price during a hearing about the CDBG-DR program in the House Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, a senior HUD official explained that he made a deliberate choice to “come before you... and explain why we didn’t meet the deadline as opposed to coming to you later and explain to you why billions of dollars were lost,” even though, as he admitted, “there [was] no statutory authority” to delay publishing a Federal Register notice beyond the September 4, 2019 deadline for any reason.<sup>26</sup> As Chairman Price pointed out, HUD also retained other tools to ensure that the CDBG-DR money reached intended recipients.<sup>27</sup>

Rather than legitimate process delays or Congressionally imposed conditions, these delays, unique to Puerto Rico, seem to reflect President Trump’s personal policy preferences and biases against Puerto Rico. For example, in August 2019, President Trump tweeted, “Puerto Rico is one of the most corrupt places on earth. Their political system is broken and their politicians are either Incompetent [*sic*] or Corrupt [*sic*]. Congress approved Billions [*sic*] of Dollars [*sic*] last time, more than anyplace else has ever gotten, and it is sent to Crooked Pols [*sic*]. No good!”<sup>28</sup> According to reports, “[HUD Secretary] Carson and other HUD officials have echoed previous statements from President Donald Trump to justify ... stalling Puerto Rico’s [aid], citing ‘alleged corruption’ and ‘fiscal irregularities’ as well as ‘Puerto Rico’s capacity to manage

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Department of Housing and Urban Development, “Monthly CDBG-DR Grant Financial Report,” June 28, 2018 <https://files.hudexchange.info/resources/documents/CDBG-DR-Financial-Report-2018-07-01.pdf>.

Florida’s second action plan was approved by HUD on March 1, 2019 and it received its disbursement by September 30, 2019. Department of Housing and Urban Development, “HUD Approves Florida’s Latest Hurricane Irma Recovery Plan,” March 1, 2019, [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_19\\_018](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_018); Department of Housing and Urban Development, “Monthly CDBG-DR Grant Financial Report,” September 30, 2019 <https://files.hudexchange.info/resources/documents/CDBG-DR-Financial-Report-2019-10-01.pdf>.

<sup>24</sup> Additional Supplemental Appropriations for Disaster Relief Act, 2019, P.L. 116-20.

<sup>25</sup> *Id.*

<sup>26</sup> House Appropriations Committee, “HUD’s Community Development Block Grant-Disaster Recovery Program,” October 17, 2019, <https://www.youtube.com/watch?v=61-sKejRoVM&t=4836s>

<sup>27</sup> *Id.*

<sup>28</sup> Tweet by Donald J. Trump, August 28, 2019, <https://twitter.com/realdonaldtrump/status/1166723477879087104>.



these funds.”<sup>29</sup> Additionally, following a meeting between White House and HUD officials regarding federal support for Puerto Rico last year, a senior administration official described President Trump’s position as: “He doesn’t want another single dollar going to the island.”<sup>30</sup>

HUD does not have the authority to unilaterally delay aid in this manner. Under the Constitutional system of checks and balances, “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law,”<sup>31</sup> and the Executive Branch is required to “faithfully execute” laws passed by Congress.<sup>32</sup> Congress first passed the ICA in 1974 to clarify that if the President or his appointee wants to “withhold[] or delay[] the obligation or expenditure of budget authority . . . provided for projects or activities” or engage in “any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority,”<sup>33</sup> they must submit a special message to Congress,<sup>34</sup> providing a “sufficiently detailed explanation . . . for concluding that [the deferral] fall[s] within the limitation of the Act.”<sup>35</sup> A delay may be permissible “(1) to provide for contingencies; (2) to achieve savings . . . ; or (3) as specifically provided by law,” but “[n]o officer or employee of the United States may defer any budget authority for any other purpose.”<sup>36</sup> Such deferrals cannot extend beyond the fiscal year in which the message is submitted to Congress.<sup>37</sup>

A recent opinion by the Government Accountability Office (GAO) interpreted the ICA in light of similar facts. Congress appropriated \$250 million for the Ukraine Security Initiative Assistance Initiative for use in fiscal year 2019 “to provide assistance, including training; equipment; lethal assistance; logistics support, supplies and services; sustainment; and intelligence support to the military and national security forces of Ukraine.”<sup>38</sup> Congress set conditions on the obligation of the aid; according to the GAO opinion, the Department of Defense (DoD) was “required to certify to Congress that Ukraine had taken ‘substantial actions’ on ‘defense institutional reforms,’ before funds could go out the door, which DoD did on May 23, 2019.<sup>39</sup> Nonetheless, from July 25, 2019, until September 12, 2019, without notifying Congress, the Office of Management and Budget withheld \$214 million in funds the funds from

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<sup>29</sup> NBC News, “House Democrats slam Trump admin for ‘illegally withholding’ Puerto Rico hurricane aid,” Nicole Acevedo, December 5, 2019, <https://www.nbcnews.com/news/latino/house-democrats-slam-trump-admin-illegally-withholding-puerto-rico-hurricane-n1096421>.

<sup>30</sup> Washington Post, “Puerto Rico faces food-stamp crisis as Trump privately vents about federal aid to Hurricane Maria-battered island,” Jeff Stein and Josh Dawsey, March 25, 2019, [https://www.washingtonpost.com/business/economy/puerto-rico-faces-food-stamps-crisis-as-trump-privately-vents-about-federal-aid-to-hurricane-maria-battered-island/2019/03/25/ade500fe-4cb3-11e9-b79a-961983b7e0cd\\_story.html](https://www.washingtonpost.com/business/economy/puerto-rico-faces-food-stamps-crisis-as-trump-privately-vents-about-federal-aid-to-hurricane-maria-battered-island/2019/03/25/ade500fe-4cb3-11e9-b79a-961983b7e0cd_story.html).

<sup>31</sup> U.S. Const. art. I, § 9, cl. 7

<sup>32</sup> U.S. Const., art. II, § 3.

<sup>33</sup> 2 USC §682(1)

<sup>34</sup> 2 USC §684(a)

<sup>35</sup> Letter from Comptroller General of the United States to United States Senate Committee on Appropriations Chairman Robert C. Byrd, February 20, 1990, <https://www.gao.gov/assets/400/391635.pdf>

<sup>36</sup> 2 USC §684(b)

<sup>37</sup> Government Accountability Office, “Decision: Office of Management and Budget—Withholding of Ukraine Security Assistance,” January 16, 2020, <https://www.gao.gov/assets/710/703909.pdf>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

obligation in July.<sup>40</sup> OMB apparently withheld the aid at the request of President Trump in order to force Ukraine to investigate a potential political rival.<sup>41</sup>

In considering those facts, the GAO found that the Trump administration's withholding of security assistance to Ukraine "violated the ICA,"<sup>42</sup> by ignoring Congressional appropriations, reasoning that "[f]aithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law."<sup>43</sup> The GAO also stated that the Trump administration "withheld funds for a policy reason, which is not permitted under the Impoundment Control Act."<sup>44</sup>

We are deeply concerned that the Trump administration is similarly violating the ICA by withholding emergency assistance from Puerto Rico because of the President's "policy priorities," even after the Puerto Rican government has fulfilled all the requirements for obtaining aid and without notifying Congress, especially because some of the same personnel, including Office of Management and Budget General Counsel Mark Paeletta, are reportedly involved in making both decisions.<sup>45</sup> We therefore request that your office initiate an inquiry into the following issues:

1. The ICA requires administration officials who wish to "withhold[] or delay[] to obligation or expenditure of budget authority . . . provided for projects or activities" or engage in "any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority," to inform Congress. The Trump administration has not issued notice to Congress with respect to any aid to Puerto Rico.
  - a. Was the delay in issuing the Federal Register notices for the CDBG-MIT funds included in the 2018 appropriation beyond the September 4, 2019 deadline included in the 2019 appropriations bill "Executive action or inaction which effectively precludes the obligation or expenditure of budget authority?"
  - b. Is the 11-month delay in disbursing the CDBG-DR portion of the 2018 appropriation following the approval of Puerto Rico's state action plan "Executive action or inaction which effectively precludes the obligation or expenditure of budget authority?"

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<sup>40</sup>*Id.*

<sup>41</sup>Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors, H.Res.755 <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/articles%20of%20impeachment.pdf>

<sup>42</sup> Government Accountability Office, "Decision: Office of Management and Budget—Withholding of Ukraine Security Assistance," January 16, 2020, <https://www.gao.gov/assets/710/703909.pdf>.

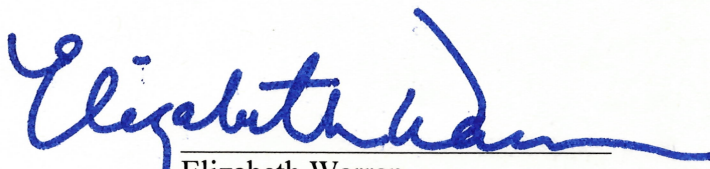
<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Washington Post, "Hard-charging White House budget lawyer in middle of Ukraine decision has pushed legal limits for Trump," Erica Werner, Jeff Stein, and Josh Dawsey, January 28, 2020, <https://www.washingtonpost.com/us-policy/2020/01/28/hard-charging-white-house-budget-lawyer-middle-ukraine-decision-has-pushed-legal-limits-trump/>.

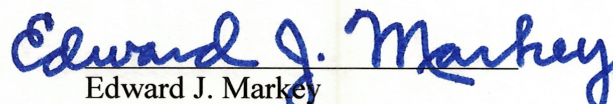
2. The legal opinion by the GAO regarding the Office of Management and Budget's withholding of Ukraine security assistance found that "Faithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law."<sup>46</sup>
- a. Did the Trump administration have any legal authorization to disregard the statutory deadline for publishing the Federal Register notices for the CDBG-MIT funds included in the 2018 appropriation, because President Trump believed "their politicians are either Incompetent [*sic*] or Corrupt [*sic*]," or for other reasons he has publicly expressed as quoted above, is that a similar substitution of policy priorities over those Congress has enacted into law?
  - b. Do the notations in the apportionment notices from the Office of Management and Budget that facilitated any of the delays in the process of publishing Federal Register notices, approving Puerto Rico's state action plan, negotiating grants agreement, obligating funds, or disbursing funds include evidence of a similar substitution by the Trump administration of its policy priorities over those Congress has enacted into law?

Sincerely,




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Elizabeth Warren  
United States Senator




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Edward J. Markey  
United States Senator



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Richard Blumenthal  
United States Senator



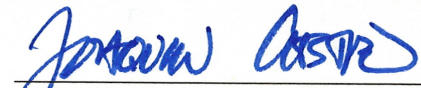
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Bernard Sanders  
United States Senator

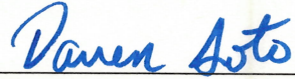
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<sup>46</sup> Government Accountability Office, "Decision: Office of Management and Budget—Withholding of Ukraine Security Assistance," January 16, 2020, <https://www.gao.gov/assets/710/703909.pdf>.

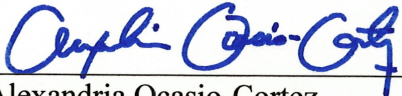




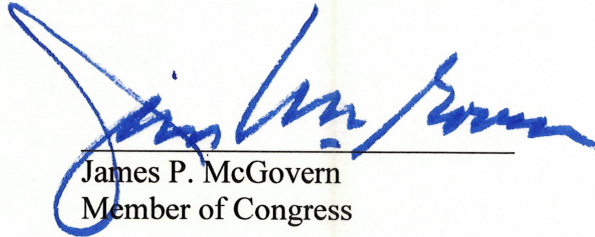
Joaquin Castro  
Member of Congress



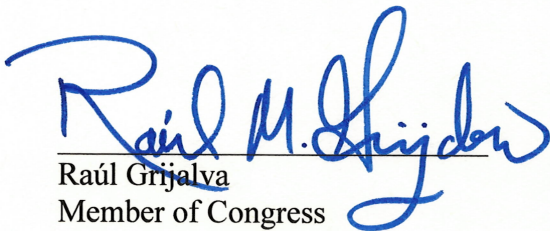
Darren Soto  
Member of Congress



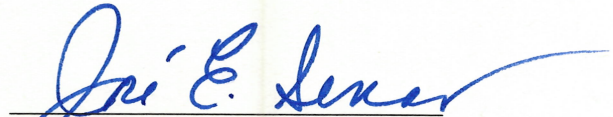
Alexandria Ocasio-Cortez  
Member of Congress



James P. McGovern  
Member of Congress



Raúl Grijalva  
Member of Congress



Jose E. Serrano  
Member of Congress



A handwritten signature in blue ink, appearing to read "Chris Van Hollen". The signature is fluid and cursive, with a large initial "C" and "H".

Chris Van Hollen  
United States Senator