

The Honorable Eliot Engel, Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

AFFIDAVIT OF MICHAEL F. MILLER

I, Michael F. Miller, hereby affirm the following:

My name is Michael F. Miller and I am the Deputy Assistant Secretary (“DAS”) for Defense Trade in the Bureau of Political-Military Affairs at the United States Department of State (“DOS”). I have at all times relevant to the matters described in this affidavit been an employee of the DOS.

I submit this affidavit in response to questions received from the House Committee on Foreign Affairs’ (“Committee” or “HFAC”) staff (“Staff”). To prepare this affidavit I have generally reviewed major records in my possession that seemed most pertinent to me. However, I have not reviewed every possible e-mail, document, or calendar entry that might be relevant or might conceivably have refreshed my recollection. I believe what I have done is sufficient to communicate to the Committee information that I am aware of that is likely to be most relevant to the Committee. It is nevertheless conceivable that, presented with specific documents I have not reviewed, my recollection would be further refreshed or that I would realize that I have made a mistake in some aspect of this affidavit.

In preparing this affidavit, my counsel has consulted with attorneys at the Department of State to determine whether the Department believes that certain specific information known to me may not be disclosable for reasons related to classification, privacy, or other confidentiality and privilege concerns. I have not shared specific information known to me where the Department has expressed such concerns. In particular, my understanding is that the Department has instructed that certain specific information not be shared for either of two reasons:

- The answer to the question calls for information that implicates CLASSIFIED material and can only be provided in a setting with the safeguards required for the receipt, handling and storage of such information once the level of classification is finally determined by the Executive Branch; or
- While the Department is not at this time formally invoking Presidential Executive Privilege, the Department believes the answer to the question calls for information likely to be subject to Executive Branch confidentiality interests and, in order to preserve any such privilege, I have been instructed not to provide the information.

I. General Professional Background

I have held a number of positions at the Department of State during my career. From September 1998 to July 2001, I served as a Foreign Affairs Officer in the Office of Regional Security and Arms Transfers (“RSAT”) and held responsibilities relating to the entire Middle East region. From July 2001 to July 2003, I served as the Desk Officer for Yemen and Oman in the Bureau of Near Eastern Affairs (“NEA”). From July 2003 to July 2006, I was a Policy Advisor and then Special Assistant in the Office of the Ambassador-at-Large for Counterterrorism (“S/CT”). I became the

The Honorable Eliot Engel, Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

Economic and Commercial Attaché for the U.S. embassy in Tripoli, Libya in 2006 where I focused on issues relating to the Libyan economy and the United States' trade relationship with Libya. By 2008, I had returned to the United States to briefly serve as the Anti-Terrorism Assistance ("ATA") Program Manager, which included working to provide policy oversight for a global training and assistance program.

Since 2009, I have held a variety of roles in the Bureau of Political-Military Affairs ("PM"), all of which have involved arms control functions. In 2015, I became the Director of RSAT and a member of the Senior Executive Service. In that role, I had a global portfolio that included annual security consultations with foreign governments and management of a wide range of arms transfer issues. In January 2018, I became the Acting DAS for Defense Trade and Regional Security while simultaneously continuing to serve as the Director of RSAT. In this role, I was responsible for State Department oversight of government-to-government arms transfers and the entirety of State's responsibilities for Direct Commercial Sales ("DCS"). While holding both roles, I actively worked to transition my duties as Director of RSAT to others. I officially transitioned out of my Director role in May 2019 to that of Managing Director for the Directorate of Defense Trade Controls ("PM/DDTC") after Joel Starr, who is now the DAS for Regional Security, assumed oversight of RSAT.

I became the permanent DAS for Defense Trade in February 2020. As the DAS for Defense Trade, I supervise the Offices of Defense Trade Controls Compliance, Defense Trade Controls Licensing, Defense Trade Controls Policy, and a Management staff. My responsibilities as DAS generally include monitoring and ensuring compliance with U.S. laws and regulations, particularly as to the Arms Export Control Act and International Traffic in Arms Regulations; leading the DOS's policy-development, review, and authorization of commercial arms sales abroad; and coordinating with other parts of the Bureau of Political-Military Affairs, DOS, Congress, and other stakeholders regarding commercial arms sales and related issues.

II. Congress

I have been asked to discuss my understanding of certain matters related to "Congressional holds" placed with respect to certain proposed arms sales.

A. Chairman Senator Robert Corker

On June 26, 2017, then-Secretary of State Rex Tillerson received a letter from Senator Robert Corker regarding weapons sales to Saudi Arabia and the Gulf states. In that letter, Senator Corker stated that

the GCC. . . instead chose to devolve into conflict. All countries in the region need to do more to combat terrorism, but recent disputes among the GCC countries only serve to hurt efforts to fight ISIS and counter Iran. For these reasons, before we provide any further clearances during the informal review period on sales of lethal military equipment to the GCC states, we need a better

The Honorable Eliot Engel, Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

understanding of the path to resolve the current dispute and reunify the GCC.

Senator Corker wrote a second letter to Secretary Tillerson on February 8, 2018 that stated

Given that weapons sales are a part of our security cooperation with these states, I am lifting my blanket hold on sales of lethal military equipment to the GCC and will resume informally clearing those sales if the administration can make the case that that [sic] the purchasing state is taking effective steps to combat support for terrorism.

Secretary Tillerson noted in a response to the February 2018 letter ongoing work with “GCC partners to resolve the dispute with Qatar.” He added that

We have seen some operational improvements over the past year, but regrettably, the parties themselves have yet to lay out a clear way forward. I assure you we maintain our determination to see the dispute resolved and GCC unity restored, as this impasse negatively affects our interests in the region. As we have often discussed, it is essential that the United States remain a reliable defense partner to the region. Each of the countries involved in the dispute is a strong counterterrorism partner of the United States. For this reason, I appreciate your decision to lift your blanket hold on lethal sales to GCC partners. As you know, our fight against terrorism continues in cooperation with our Gulf partners. We will ensure that proposed sales and transfers to GCC countries advance the security needs of our partners, promote interoperability with U.S. and allied forces, and enhance U.S. national security interests in the region.

This correspondence generally fairly describes my understanding of the concerns animating Senator Corker’s hold and the Department of State’s views and actions in response to the Senator’s concerns. My contributions to the Department of State’s steps to address Senator Corker’s concerns were a part of overall efforts made by senior leadership and the work of the Bureaus of Near Eastern Affairs, (“NEA”), PM, Legislative Affairs (“H”) and others to keep Senator Corker’s staff apprised of the foreign policy and national security elements attendant to this issue set. Specifically, my contributions included briefings and exchanges of information with Hill staff on a range of bilateral and regional developments involving the countries in question.

B. Ranking Member Senator Robert Menendez

In 2018, Senator Robert Menendez declined to allow Congressional staff clearances on a range of proposed arms sales that would later be notified to Congress as part of the Emergency Declaration. There were additional proposed sales that were part of the Emergency Declaration that were similarly not cleared when presented to Congressional staff in 2019 prior to the date of the

The Honorable Eliot Engel, Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

Emergency Declaration. My understanding during this period was that Senator Menendez had a range of concerns associated with these proposed arms sales, to include human rights, detention centers in Yemen, the conduct of the war in Yemen, counterterrorism, regional dynamics, and likely other matters. The Department remained engaged in Congressional staff and more senior-level consultations and briefings throughout this period on the full slate of arms transfers pending with Congress, including on those germane to the 2019 Emergency Declaration. Those discussions included more specific consultations on the steps being undertaken to address concerns that had been raised by Senator Menendez and other members of Congress, including reducing civilian harm from the conduct of Saudi and Emirati military operations in Yemen. The discussions included updates on a series of steps the Saudis, in their leadership role for the coalition engaged in military operations against Houthi forces in Yemen, had pledged to take to improve various aspects of the conduct of their air campaign. PM, NEA, H and senior officials at the Department provided information to Congress via a variety of means on related diplomatic and military engagements with Saudi counterparts, Saudi utilization of expanded U.S. training and offerings, and information available to U.S. officials on the conduct of the Saudi-led air campaign from a more tactical perspective.

I recall that some Department officials, to include officials in PM and the Bureau of Democracy, Human Rights and Labor (“DRL”) had concerns about the provision of military hardware to Saudi Arabia during this period (owing in particular to the civilian harm that was occurring from its air operations in Yemen, the continuation of U.S. military support to the Saudi-led coalition, and the October 2 murder of U.S. resident Jamal Khashoggi at the Saudi consulate in Istanbul, Turkey). There were also concerns held in particular by various members of PM staff who were responsible for reviewing and advancing U.S. arms sales, given information from a variety of sources, including reporting from various media outlets, NGOs, and international bodies that were raising human rights and international humanitarian law objections to the Saudi-led air campaign. Individually, I understood the points being raised and that they required consideration from various points within the Department and the broader Administration. From what I observed, the various points of potential concern were well discussed within the Department through a variety of formal and informal discussions and deliberations.

III. The May 2019 Emergency Declaration

A. Generally

The relevant provision of the Arms Export Control Act (“AECA”) that establishes authority to declare an emergency was discussed during an internal PM Bureau meeting chaired by PM Senior Bureau Official Marik String on April 3, 2019. I do not recall exactly when the Legal Advisor’s Office (“L”) was consulted on the potential relevance of this provision, but do recall that it was consulted as part of the drafting and review process for a memorandum to the Secretary as described in the OIG’s report on the use of the emergency authority under the AECA. In the April-May 2019 time period, I recall contributing to materials that I understood would be used internally to brief the Department’s senior leadership and present the leadership with options. Included in these options was the option to declare an emergency under the AECA and a rationale for doing

The Honorable Eliot Engel, Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

so—notably, Iran’s malign activities in the region and the threat it posed to U.S. interests and our regional partners. Ultimately, the nature of the emergency was described in a memorandum approved by Secretary Pompeo in May 2019 that outlined the issues at hand, including the relevant pending arms transfers and the options available for moving them forward with Congress. I recall being one of many reviewers of this document, which was informed by substantial inputs from a range of State Department experts in NEA, H, L, and other offices and staff. The Memorandum of Justification provided to the Congress on May 24 provided details on the nature of the emergency and its certification by the Secretary under the AECA. I do not recall observing a specific stand-alone memorandum or analysis provided only by L as part of this process, although it is possible that work from L was included in materials that reached the Secretary.

I recall that the initial review of the potential use of an Emergency Declaration in April 2019 by the PM Bureau was based on a plain reading of the AECA, open source research, and institutional knowledge within the Bureau of previous usage of this part of the statute by past administrations. The applicability, scope, and content of the legal justification for the use of the Emergency Declaration under the AECA was further developed in the days and weeks that followed, up to the approval of a decision memorandum by the Secretary of State in May 2019, and the preparation and finalization of accompanying materials to send to the Congress. My recollection was that L reviewed all relevant decision documents and documents provided to the Congress in this matter, and through those processes provided its input to the Secretary’s decision.

I do not recall the exact date when the decision was made to include 22 separate sales under the Emergency Declaration. I do recall that an ongoing data collection effort was undertaken in April and May 2019 to ascertain the full scope of Foreign Military Sales (“FMS”) and Direct Commercial Sales (“DCS”) notifications related to the UAE and Saudi Arabia that were then-pending with Congress. That full scope of cases was included in the Emergency Declaration with the Emergency Declaration certification that was sent to Congress on May 24, 2019. There were several considerations raised by various State Department offices during the finalization of this package to include: ensuring fair treatment across the range of U.S. companies with related sales pending with Congress through the notification process, the positive impact in terms of military capability provision, reassurance to receiving countries and other allies from moving forward with the full slate of pending sales, and the assessment of the PM and H Bureaus that it would be more difficult to move forward any sales to these countries with Congress in the wake of the use of an emergency declaration under the AECA.

B. Assistant Secretary Cooper Briefings

I joined PM Assistant Secretary R. Clarke Cooper for a telephonic briefing he provided to various Congressional committee staff on May 24, 2019. I do not recall any specific preparation in advance of that particular phone call, which was focused on relaying the facts of the emergency certification and related arms transfers that were provided to Congress that same day. I do not recall the provision of any specific inputs regarding how to articulate the timeline related to the Emergency Declaration.

The Honorable Eliot Engel, Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

I also was one of the multiple Department officials that assisted Assistant Secretary Cooper in his preparations for a briefing to congressional committee staff on May 28, 2019. This included a pre-briefing for that discussion on the morning of May 28 and the preparation of briefing materials. The presentation of a timeline for the decision on the Emergency Declaration was a part of the preparation I was involved in, given expressed Congressional concerns about that issue. I do not recall providing any specific inputs regarding how to articulate the timeline related to the Emergency Declaration. I participated in this in-person May 28 briefing in the role of subject-matter expert on the arms sales included in the Emergency Declaration.

I also joined Assistant Secretary Cooper for an in-person briefing with SFRC Minority Staff Director Jessica Lewis and other SFRC professional staff on June 27, 2019. I do not recall being involved in any specific in-person preparations for this meeting, though I may have reviewed briefing materials prepared for him.

To my recollection at the time of the briefings, I did not believe any of Assistant Secretary Cooper's presentations were intended to be misleading in providing information on this topic.

IV. June 12, 2019 Hearing Before HFAC

I recall participating in a number of preparatory sessions with Assistant Secretary Clarke Cooper and members of PM, H, and possibly other members of other Department offices. I also recall assisting in the preparation of briefing materials, particularly the details of the arms transfers that were subject to the Emergency Declaration. My recollection was that, because of substantial travel and other work commitments, I was less involved in preparing for this hearing than would have been typical for me given the topics and position of the Department of State official who was testifying.

Myself and a range of other Department officials involved in this matter were aware of the decision-making process in April and May of 2019 that led to the issuance of an Emergency Declaration on May 24, 2019. I recall that the timeline for this action and the composition of the arms sales related to it were discussed in the preparation for this hearing, although I do not recall this being a central focus of these preparations for Assistant Secretary Cooper. Congressional members had raised criticisms, based on their recall of events, that the Secretary had not mentioned the potential for a declaration of an emergency under Section 36 of the AECA at his Member-level briefing on May 21, 2019—days before the Secretary authorized the provision of such a declaration to Congress.

V. Interactions with Raytheon

In keeping with the PM Bureau's typical practice of regular engagements with regulated industry, at various points during the 2018 to 2019 time period (i.e., during the period these potential arms transfers were under review in the Department for adjudication and/or while notifications were pending before Congress), I had discussions with Raytheon officials on the status of proposed sales within the Department's processes and/or its Congressional oversight committees. Given the duration of the holds in place by Senator Menendez during the 2018-2019 period, I likely had

The Honorable Eliot Engel, Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

conversations with Raytheon officials during that time period about the disposition of related arms sales pending with the Congress. While I do not recall all specifics, such discussions would have been consistent with the sort of typical engagement PM has with industry representatives to give them a sense of Congressional concerns and questions surrounding arms sales under review by Congressional staff and Members.

I recall specifically having discussions with Raytheon employee Mr. Tom Kelly both on the phone and in person during this time period. I cannot recall how frequently I interacted with Mr. Kelly on weapons sales that were pending before Congress and were later included in the Emergency Declaration, but I would estimate we interacted on approximately a monthly basis on a range of Raytheon-related issues, including on sales that were not included in the Emergency Declaration, such as those unrelated to the Middle East.

VI. Interactions with the White House

During the duration of the Trump administration, I was a participant in numerous NSC-led meetings on regional and functional issues. During those interagency discussions, I would have interacted with NSC officials from the Defense, Weapons of Mass Destruction, Congressional, Trade, and other directorates within the NSC, including on proposed or pending arms sales to the UAE and Saudi Arabia. I recall attending at least one such meeting in the Spring of 2017. I do not recall all the details of these engagements or the exact language I may have used in raising points during interagency dialogue. However, I do recall discussing the full range of considerations attendant to moving ahead with arms sales for Saudi Arabia, per the criteria found in the Conventional Arms Transfer Policy, our guiding document for considering the provision of arms to foreign partners.

In addition, I recall attending a large interagency meeting in early May 2017. This interagency meeting appears to correspond to the meeting referenced in a recent New York Times article,¹ although I understand specific confirmation of that would have to come from the White House.

VII. Prior Legal Advice

Over a several year period beginning in 2016, my understanding is that the PM Bureau received legal advice from the Department and elsewhere in the Administration in connection with arms sales to Saudi Arabia and other participants in the Saudi-led air campaign in Yemen. This ranged from internal L reviews of memoranda going to Department principals and reviews of individual arms sales as they were prepared for notification to Congress, to what I understood to be at least one formal legal review conducted by an interagency group of attorneys from across the U.S. government.

I recall that there was an analysis produced by the Office of the Legal Advisor in the 2016 timeframe that served as a formal foundational document for considering the Law of Armed

¹ <https://www.nytimes.com/2020/05/16/us/arms-deals-raytheon-yemen.html>.

The Honorable Eliot Engel, Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

Conflict in connection with the continued sale of weapons to Saudi Arabia. I further recall that this formal legal guidance carried over into the Trump Administration. To my knowledge this guidance was never rescinded and remains the most authoritative legal assessment on this matter.

My understanding is that a decision was made in 2017 at the highest levels of the Administration, after a significant period of interagency review, to move forward with additional arms sales to Saudi Arabia. The policy and expanded programmatic work on assisting the Saudis in reducing incidences of civilian harm in the conduct of their operations in Yemen that flowed from the 2016 legal memorandum and the 2017 decision to resume deliveries of precision-guided munitions and other defense articles to Saudi Arabia were complemented by State Department Office of the Legal Advisor review of all major arms sales.

I recall that there were discussions between PM and the Office of Legal Advisor (and possibly others) about whether the formal 2016 legal memo should be updated in light of the passing of time and the continuation of the Saudi-led coalition's air campaign in Yemen. While I do not recall the precise timeline or occasions when this was discussed, my recollection is that this was most likely a topic of attention during the run-up to the decision to move forward with the Emergency Declaration under the AECA. I do not recall exactly how the decision was made, or by whom, but it was determined that an updated formal memo was not required.

I recall working with a number of State Department attorneys on issues such as those discussed in this affidavit, including Mr. Josh Dorosin, Mr. Steve Fabry, [REDACTED] and [REDACTED]. I understood at the time that Mr. Dorosin was the most senior attorney-advisor in the Office of the Legal Advisor regularly assigned to these matters.

VIII. DOS Inspector General

I recall first becoming aware of the relevant Office of Inspector General ("OIG") investigation on or about August 20, 2019 when my office received a request for information from the OIG's office to support its investigative efforts. I was interviewed by two members of the OIG team on November 11, 2019. I did not take notes at that meeting, and do not recall the details of specific questions asked or answers provided. My general recollection is that I was asked for my details on the responsibilities of my position, role in the PM Bureau, and role I may have served in the development of the Emergency Declaration and its implementation. The answers provided then are similar to what I am providing in this affidavit, although the exact words may be different.

I recall learning of Mr. Steve Linick's firing from press reports; I do not have any first-hand knowledge as to the rationale for this decision. I recall learning of the decision to replace Mr. Linick with Mr. Stephen Akard via either a Department Notice (i.e., a bulletin sent to all Department employees) or via press reports. I do not have any first-hand knowledge as to the rationale for this decision.

I did not have any discussions with senior officials in the Office of the Secretary or Under Secretary of Management regarding responding to the OIG inquiry. I recall participating in conversations with PM officials at various levels during the period from August 2019 to September 2020 on the

The Honorable Eliot Engel, Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

OIG inquiry. These commenced with the announcement that the OIG inquiry had begun in August 2019 and that interviews and documents would be required to be provided to the OIG team. I recall having conversations with senior PM officials, including Assistant Secretary Cooper, that were focused on ensuring that PM was fully responsive to the OIG's requests for documents and interviews. I recall that there was a meeting in March 2020 for the report's Exit Conference (I did not attend due to a scheduling conflict), which I believe was attended by Assistant Secretary Cooper and other PM officials. I also recall that during July 2020 the PM Bureau was given the opportunity to review and comment on the OIG's final report, but I did not participate in this process or the substantive discussion of any revisions that were requested or ultimately incorporated into the OIG's report, the redacted version of the report, or the classified annex to the report. I advised Assistant Secretary Cooper and PM Principal Deputy Assistant Secretary Timothy A. Betts that I would not participate in the Department review process.

IX. Redactions

I am aware that redactions were requested by the Department for a sensitive but unclassified version of the OIG report and its classified annex. However, I have no substantive knowledge of how that process was undertaken, as I was not a participant in it. I have no knowledge regarding precise changes made or what motivated them. I recall that I received a draft of the OIG report via Department email, but I did not review it prior to its issuance.

* * *

I certify under penalty of perjury that the foregoing is true and correct.

Executed on (date).

October 27, 2020

(Signature)

