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WRITING SAMPLE

In June 2017, I wrote and filed a Freedom of Information (FOIA) Request concerning President Trump's family, financial, and other ethical conflicts of interest.



June 21, 2017

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FOIA/PA Request
FOIA and Transparency
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Re: Request Under Freedom of Information Act
(Expedited Processing & Fee Waiver/Limitation Requested)

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”)¹ submit this Freedom of Information

¹ The American Civil Liberties Union Foundation is a 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, directly lobbies legislators, and mobilizes the American Civil Liberties Union’s members to lobby their legislators. The American Civil Liberties Union is a separate non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

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Act (“FOIA”) request (the “Request”) for records pertaining to the President’s financial and other ethical conflicts of interest.

I. Background

The election of Donald J. Trump to be the 45th President of the United States has raised unprecedented questions of enormous public concern surrounding the President’s various business entanglements and the risks that his potential financial, family, and other ethical conflicts of interest present to the longstanding American value of the impartiality of government decision-making. After the November 8, 2016 election, a crescendo of public concern surrounding the vast number of potential ethical issues facing the President built across the political spectrum and even inside the government itself.² Even prior to the election, ethics lawyers from the past two presidential administrations voiced alarm at the wide-ranging conflicts presented by the President’s business interests,³ which span the globe from Pennsylvania Avenue⁴ to Indonesia.⁵ Since the President’s inauguration, that alarm has only grown.

In the days surrounding President Trump’s inauguration, the ACLU filed three separate FOIA request seeking records related to the President’s numerous conflicts of interest.⁶ Although five months have elapsed since the

² See, e.g., Joel B. Pollak, *Donald Trump Should Appoint a Special Auditor for Conflicts-of-Interest*, Breitbart, Nov. 22, 2016, <http://www.breitbart.com/big-government/2016/11/22/conflicts-of-interest-special-auditor-donald-trump-appoint-business>; Russ Choma, *Donald Trump’s Conflicts of Interest Could Pose a Constitutional Problem*, Mother Jones, Nov. 11, 2016, <http://www.motherjones.com/politics/2016/11/trumps-conflicts-interest-could-be-constitutional-problem>; see also, e.g., Michael D. Shear & Eric Lipton, *Ethics Office Praises Donald Trump for a Move He Hasn’t Committed To*, N.Y. Times, Nov. 30, 2016, <http://nyti.ms/2gK988R>; Drew Harwell, *Trump’s Conflicts of Interest Are Without Precedent in American Presidential History*, Wash. Post, Nov. 9, 2016, <http://wapo.st/2jmPwsG>.

³ See Richard Painter & Norman Eisen, *A Trump Presidency Would Be Ethically Compromised*, Wash. Post, Sept. 20, 2016, <http://wpo.st/DScQ2>.

⁴ See Byron Tau, *Donald Trump’s Washington Hotel Lease Back in Spotlight*, Wall St. J., Dec. 14, 2016, <http://on.wsj.com/2jmGb3Z>.

⁵ See, e.g., Jeremy Venook, *Trump’s Interests vs. America’s, Vornado Edition*, Atlantic, Jan. 17, 2017, <http://theatltn.tc/2jmFZSj>.

⁶ On January 19, 2017, the ACLU filed a request with the Office of Government Ethics, Office of Legal Counsel, General Services Administration, and Office of Personnel Management, seeking records “pertaining to financial and other ethical conflicts of interest in connection with the presidential transition of President-Elect Donald J. Trump.” Request Under Freedom of Information Act by Brett Max Kaufman, ACLU, Jan. 19, 2017, https://www.aclu.org/sites/default/files/field_document/trump_conflicts_foia_request.pdf.

commencement of his term, the President has failed to address the public's concerns regarding these wide-ranging conflicts, despite several controversial issues that have surfaced since.

For example, earlier last month, President Trump—as part of his first major piece of legislation—renewed the EB-5 Immigrant Investor Visa Program, which allows foreign nationals to obtain U.S. visas by investing at least \$500,000 into an American business.⁷ Days later, at an event in Shanghai, Kushner Companies—which until recently was owned by President Trump's Senior Adviser and son-in-law, Jared Kushner⁸—used the EB-5 program to entice affluent foreigners to invest in the family's Jersey City luxury apartment building.⁹ The Kushner Companies' participation in the program has raised conflicts-of-interest concerns among the public, including the possibility that the family is using its political visibility to persuade investors to finance its private business holdings. Marketing materials produced by the event organizer touted Nicole Meyer's relationship to President Trump and her expected appearance at the event,¹⁰ and during a slideshow presentation about who will decide the

On January 24, 2017, the ACLU filed a request with the Department of the Treasury seeking records “pertaining to financial and other ethical conflicts of interest in connection with the presidential transition of President-Elect Donald J. Trump.” Request Under Freedom of Information Act by Brett Max Kaufman, ACLU, Jan. 24, 2017, https://www.aclu.org/sites/default/files/field_document/2017-01-24_trump-foia-treasury_final.pdf.

On February 3, 2017, the ACLU filed a request with the Council of the Inspectors General on Integrity and Efficiency seeking “email in the mailbox of Mark D. Jones, Executive Director of the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”), pertaining to financial and other ethical conflicts of interest in connection with the presidential transition of President-Elect Donald J. Trump.” Request Under Freedom of Information Act by Brett Max Kaufman, ACLU, Feb. 3, 2017, https://www.aclu.org/sites/default/files/field_document/2017-02-03_trump-foia-cigie_final.pdf.

⁷ See Eric Lipton & Jesse Drucker, *Kushner Family Stands to Gain From Visa Rules in Trump's First Major Law*, N.Y. Times, May 8, 2017, <https://nyti.ms/2poZ6Os>.

⁸ Although Kushner resigned as CEO of the company, he continues to be a main beneficiary of trusts that own the business. Financial disclosure forms released by the White House on March 31, 2017 reveal that “[Jared Kushner's] stake, along with some other investments, is worth as much as \$600 million.” *Id.* Kushner also “retain[s] a stake in a limited liability corporation that owns [the] Jersey City [apartment].” Jesse Drucker, Eric Lipton, & Maggie Haberman, *Ivanka Trump and Jared Kushner Still Benefiting From Business Empire, Filings Show*, N.Y. Times, Mar. 31, 2017, <https://nyti.ms/2nJqwl>.

⁹ See Javier Hernández & Jesse Drucker, *How to Woo Chinese Investors: With Visa Offers and the Trump Name*, N.Y. Times, May 19, 2017, <https://nyti.ms/2ryHqBl>.

¹⁰ See Samuel Osborne, *Trump and Kushner Exploitation of Presidency “Unlike Anything We Have Ever Seen Before,” Obama's Ethics Lawyer Says*, Independent, May 7, 2017, <https://www.independent.co.uk/news/world/americas/us-politics/donald-trump-and-jared-kushners-exploitation-of-presidency-unlike-anything-we-have-ever-seen-before-a7722996.html>;

future of the visa program, investors were shown a photograph of the president.¹¹

In early June, 2017, the Trump Organization announced their plans to establish a new three-star hotel chain, American Idea Hotels, “echoing President Trump’s campaign slogan about putting America first and . . . featuring artifacts of American culture.”¹² The first of these hotels will launch in small towns in Mississippi “in the heart of Trump country” that favored him over Hillary Clinton.¹³ Although the Trump Organization asserts that the hotel chain “will have no overt connection to Trump,”¹⁴ government ethics experts¹⁵ and members of the public¹⁶ have remarked that President Trump’s presidency and his personal financial gains are inextricably linked. And while ownership of the Trump Organization has been handed from the president to his two eldest sons, ethics experts maintain that the president “remains financially invested in the family business.”¹⁷

During the entirety of his five months in office, President Trump, through his sprawling global business empire, has profited from business

John Ruwitch, *Reporters Barred From Kushner Companies’ Event in China*, Reuters, May 8, 2017, <http://reut.rs/2pn1cPy>.

¹¹ See Keith Bradsher, Alin Tang, & Jesse Drucker, *Trump Looms as Kushner Companies Courts Investors in China*, N.Y. Times, May 7, 2017, <https://nyti.ms/2pTmKGD>.

¹² Steve Eder & Ben Protess, *Trump Organization to Go Budget Friendly With ‘American Idea’ Hotel Chain*, N.Y. Times, June 5, 2017, <https://nyti.ms/2rN2nMj>.

¹³ *Id.*

¹⁴ Mark Hensch, *Trump Organization to Debut ‘American Idea’ Hotel Chain*, Hill, June 5, 2017, <http://thehill.com/homenews/administration/336443-trump-organization-to-debut-american-idea-hotel-chain>.

¹⁵ Kathleen Clark, a government ethics expert and law professor, told the Associated Press, “They’re cashing in on the red states. I’m not surprised that the Trump family would look to opportunities to commercially exploit his political success.” Bernard Condon & Beth Harpaz, *Trump Organization to Launch ‘American Idea’ Hotel Chain*, Chi. Trib., June 6, 2017, <http://trib.in/2sU2CGM>.

¹⁶ Jan A. deRoos, a professor of hotel finance and real estate at Cornell University, noted, “The [American Idea Hotels] brand evolution is great. But as a president, he needs to separate himself from this.” Steve Eder & Ben Protess, *Trump Organization to Go Budget Friendly With ‘American Idea’ Hotel Chain*, N.Y. Times, June 5, 2017, <https://nyti.ms/2rN2nMj>; see also Andrew Rice, *Is Trump Inc. The President’s Greatest Vulnerability?*, N.Y. Mag., June 12, 2017, <http://nym.ag/2sQIEws>.

¹⁷ Steve Eder & Ben Protess, *Trump Organization to Go Budget Friendly With ‘American Idea’ Hotel Chain*, N.Y. Times, June 5, 2017, <https://nyti.ms/2rN2nMj>.

conducted with foreign governments, which have engaged in transactions with the president's businesses that at least appear aimed at currying favor with the president.¹⁸ Citizens for Responsibility and Ethics in Washington,¹⁹ Attorney Generals Brian Frosh and Karl Racine,²⁰ and nearly 200 Democrats in both the House and Senate—the largest number of legislators to ever sue a U.S. President²¹—have filed separate lawsuits against President Trump, claiming he violated the Emoluments Clause of the U.S. Constitution. Despite ongoing and widespread concern among the public and within the government over apparent conflicts of interest, the president has dismissed the allegations²² and refused to disclose details related to his business dealings and foreign emoluments.²³ A recent report by the Office of Government Ethics reveals that President Trump's financial assets may be worth as much as \$1.4 billion, with nearly \$600 million in gross revenue since January 2016.²⁴ But because President Trump continues to refuse to release his tax returns and divest his business holdings, breaking

¹⁸ See Joe Difazio, *Donald Trump's DC Hotel Makes Money From Foreign Governments, Suit Alleges*, Int'l Bus. Times, June 15, 2017, <http://www.ibtimes.com/donald-trumps-dc-hotel-makes-money-foreign-governments-suit-alleges-2552623>; Jonathan O'Connell and Mary Jordan, *For Foreign Diplomats, Trump Hotel Is Place To Be*, Nov. 18, 2016, https://www.washingtonpost.com/business/capitalbusiness/2016/11/18/9da9c572-ad18-11e6-977a-1030f822fc35_story.html?utm_term=.c142eca5ff56.

¹⁹ See Allan Smith, *Ethics Watchdog Group Files First Major Lawsuit Against Trump in His Presidency*, Bus. Insider, Jan. 23, 2017, <http://www.businessinsider.com/crew-files-first-major-lawsuit-against-president-trump-2017-1>.

²⁰ See Aaron Davis, *D.C. and Maryland's Lawsuit: Trump 'Flagrantly Violating' Emoluments Clause*, Wash. Post, June 12, 2017, <http://www.chicagotribune.com/news/nation/world/politics/ct-maryland-dc-trump-lawsuit-20170612-story.html>.

²¹ See Julia Harte, *Democratic Lawmakers Sue Trump Over Foreign State Payments to Businesses*, Reuters, June 14, 2017, <http://reut.rs/2tktfk6>; Heather Caygle, *Democrats to Sue Trump Over Conflicts of Interest*, Politico, June 7, 2017, <http://politi.co/2r6Qtsu>; Sharon LaFraniere, *Democrats in Congress Sue Trump Over Foreign Business Dealings*, N.Y. Times, June 14, 2017, <https://nyti.ms/2tkc3LN>.

²² See Jonathan Stempel, *Trump Rejects New Lawsuit Over Foreign Payments to His Firms*, Reuters, Jan. 23, 2017, <http://www.reuters.com/article/us-usa-trump-lawsuit-idUSKBN157211>.

²³ See Stephen Dinan, *Congressional Democrats Sue Trump to Force Emoluments Disclosure*, Wash. Times, June 14, 2017, <http://go.shr.lc/2toydwk>.

²⁴ See Matea Gold, Drew Harwell, & Rosalind S. Helderman, *Trump Retains Assets Worth At Least \$1.4 Billion, New Disclosure Shows*, June 16, 2017, http://wapo.st/2saY3Gn?tid=ss_tw-amp.

with the tradition of past presidents,²⁵ the public's knowledge of his actual financial interests (and the potential conflicts they raise) remains limited.

The myriad conflict-of-interest issues presented by Donald J. Trump's assumption of the presidency threaten to undermine the public's confidence in government, the global community's trust in our nation's chief executive, and potentially our national security. The FOIA entitles the American public to information that will enable democratic oversight and public accountability over the President's conduct and conflicts. In an effort to facilitate the public's indispensable role in checking the power of our public officials, to supplement the public record with information about the President's efforts to address these various concerns, and to evaluate the government's legal and policy assessments of the President's unprecedented number and nature of potential ethical conflicts, the ACLU seeks such information through this FOIA Request.

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II. Requested Records

The ACLU seeks the release of the following records created on or after January 21, 2017:

- (1) **Legal opinions, memoranda, or advisories addressing actual or potential financial or other ethical conflicts of interest, including interpretations of the U.S. Constitution, federal criminal laws, or government regulations.** Such laws and regulations include, but are not limited to:
 - the Foreign Emoluments Clause of the U.S. Constitution, Art. I, § 9, cl. 8;
 - the Domestic Emoluments Clause of the U.S. Constitution, Art. II, § 1, cl. 7;
 - the criminal conflicts-of-interest statutes, 18 U.S.C. §§ 202–03, 205, 207–09;
 - the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635;
 - executive branch–wide regulations on public and confidential financial disclosure, outside employment limitations, ethics training, certain financial interests, and

²⁵ *See Id.*