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Bill Schmidt  
Suspension and Debarment Official  
General Services Administration  
1800 F Street NW  
Washington, DC 20405

Angela Billups  
Suspension and Debarment Official  
Department of Veterans Affairs  
810 Vermont Ave. NW  
Washington, DC 20420

Denise Roberson  
Suspension and Debarment Official  
Department of Homeland Security  
2707 Martin Luther King Jr. Ave. SE  
Washington, DC 20528

Lori Y. Vassar  
Chair, Interagency Suspension and  
Debarment Committee  
Department of the Interior  
1849 C Street NW, Room 4260-MIB  
Washington, DC 20240

Karen H. Carlisle  
Suspension and Debarment Official  
Department of the Army  
9275 Gunston Road, Suite 2100  
Fort Belvoir, VA 22060

**Re: Referral for Suspension of Trump Organization Entities and Senior Officers  
from Federal Contracts and Programs**

Dear Suspension and Debarment Officials:

Pursuant to the Federal Acquisition Regulation (“FAR”), 48 C.F.R. § 9.4, and the Nonprocurement Common Rule (“NCR”), 2 C.F.R. § 180, we respectfully request that the government immediately suspend the Trump Organization and affiliated parties from all federal contracts and programs. No federal agency could credibly find that the Trump Organization is a “presently responsible” contractor fit to do business with the government. Suspension is therefore necessary to protect the government’s interest and the integrity of the federal procurement process.

The legal basis for suspending the Trump Organization is clear cut—so clear that it is remarkable a suspension has not already been issued. In July, the Manhattan District Attorney’s Office (“Manhattan DA”) indicted two key Trump Organization entities and its Chief Financial Officer (“CFO”) Allen Weisselberg on several counts of criminal tax fraud and falsifying business records. An indictment for such crimes explicitly qualifies as “adequate evidence” for suspension under the governing FAR and NCR regulations.<sup>1</sup> Trump Organization entities have also recently executed two multi-million-dollar settlements with the State of New York in cases involving claims of fraud, breach of fiduciary duty, and other serious wrongdoing. And just last week, the House Committee on Oversight and Reform (“House Oversight”) issued findings that Donald Trump concealed hundreds of millions of dollars in debts from the General Services Administration (“GSA”) when bidding on the Old Post Office Building lease, and provided

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<sup>1</sup> See 48 C.F.R. §§ 9.407-2(b), (a)(3); 2 C.F.R. §§ 180.700(a), 180.800(a)(3).

misleading information about the financial situation of the Trump DC Hotel in his annual financial disclosures, among other things. Because each of these matters bear directly on the Trump Organization's business integrity and present responsibility, they provide compelling grounds for immediate suspension.<sup>2</sup>

As you know from experience, it is standard practice to suspend contractors under indictment. In fact, the government suspends and debarbs thousands of contractors each year, including small businesses with limited financial means, based on allegations far less serious than the criminal charges facing the Trump Organization. Not suspending an entity charged with such crimes would flatly disregard the purpose of the suspension and debarment power and set a troubling precedent for future proceedings.

We are submitting this referral to Suspension and Debarment Officials ("SDOs") at agencies that have done business with Trump Organization entities in the past decade. Any one of you may issue a governmentwide suspension,<sup>3</sup> and we implore you to do so immediately. In particular, the government should suspend all entities and senior officers affiliated with the Trump Organization pending completion of the ongoing criminal proceedings, including the following:

- The Trump Corporation, d/b/a The Trump Organization (DUNS # 877379347)
- The Trump Organization Inc. (DUNS # 072959232)
- Trump Organization LLC (DUNS # 047142950)
- Trump Old Post Office LLC
- Trump Old Post Office Member Corp.
- Trump Palace Condominium (DUNS # 783051154)
- Donald J. Trump
- Allen H. Weisselberg
- Donald J. Trump Jr.
- Eric F. Trump

## Background

### **I. The Trump Organization's Corporate Structure and History of Federal Business**

The Trump Organization is a trade name encompassing several privately-held corporate and partnership entities whose beneficial owners include Donald J. Trump and the Donald J. Trump Revocable Trust ("DJT Revocable Trust").<sup>4</sup> Most Trump Organization entities eventually flow up to the DJT Revocable Trust, which was created after Mr. Trump won the presidency to purportedly remove him from the Trump Organization structure.<sup>5</sup> According to the Certification of Trustee, the "purpose" of the DJT Revocable Trust "is to hold assets for the benefit of Donald

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<sup>2</sup> See 48 C.F.R. § 9.407-1(b)(1); 2 C.F.R. § 180.700(c).

<sup>3</sup> See 48 C.F.R. § 9.407-1(d).

<sup>4</sup> Indictment at 1-2, *New York v. Trump Corporation*, Crim. No. 01473-2021 (N.Y. Sup. Ct., filed July 1, 2021), <https://bit.ly/3knUaJK> ("Trump Org. Indictment").

<sup>5</sup> Philip Bump, [Trump's complex web of business interests, visualized](https://www.washingtonpost.com/news/energy-environment/wp/2019/05/21/trump-complex-web-of-business-interests-visualized/), *Washington Post*, May 21, 2019, <https://wapo.st/2UNkcLM>.

J. Trump.”<sup>6</sup> The trustees must “distribute net income or principal to Donald J. Trump at his request, as the Trustees deem necessary for his maintenance, support or uninsured medical expenses, or as the Trustees otherwise deem appropriate.”<sup>7</sup> Donald Trump Jr. and Allen Weisselberg previously served as trustees for the trust,<sup>8</sup> but papers filed by the Trump Organization in July name Donald Trump Jr. as the sole trustee.<sup>9</sup>

Despite purportedly stepping down from his namesake company, Donald Trump remains listed prominently as “Founder” on the Trump Organization’s website,<sup>10</sup> and no one has filled his position as Chairman and President.<sup>11</sup> The “leadership” page on the organization’s website lists only Donald Trump Jr. and Eric Trump as “Executive Vice Presidents”—no president is identified.<sup>12</sup> Donald Trump also retains power to control the Trump Organization through the DJT Revocable Trust.<sup>13</sup>

The Trump Corporation is a key Trump Organization entity owned by the DJT Revocable Trust.<sup>14</sup> Headquartered at “Trump Tower” in New York City, “the Trump Corporation serves as the employer of a group of senior managers of the Trump Organization, including Allen Weisselberg.”<sup>15</sup> “These senior managers oversee many of the operating entities doing business as the Trump Organization.”<sup>16</sup>

Over the past decade, Trump Organization entities have entered into a variety of contracts and business arrangements with federal agencies. The most significant is a 60-year lease, executed in August 2013 between GSA and Trump Old Post Office LLC, to operate the Trump International Hotel in the historic Old Post Office Building in Washington, D.C.<sup>17</sup> The DJT Revocable Trust holds a 77.5% interest in the Trump Old Post Office LLC through various holding companies.<sup>18</sup> The Federal Procurement Data System lists several other Trump Organization contracts and purchase orders with federal agencies, including the Secret Service, the Army, and the Department of Veterans Affairs.<sup>19</sup>

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<sup>6</sup> Certification of Trustee for DJT Revocable Trust ¶ 7, Feb. 10, 2017, <https://bit.ly/37aBXaQ>.

<sup>7</sup> *Id.* ¶ 9.

<sup>8</sup> *See id.* ¶¶ 3, 6; Letter from GSA to Trump Old Post Office LLC at 6-7, Mar. 23, 2017, <https://bit.ly/3z4AOND> (“GSA Letter”).

<sup>9</sup> David A. Fahrenthold, Josh Dawsey, and Jonathan O’Connell, Allen Weisselberg resigned from the top of the Trump Organization. So who’s running the company now?, *Washington Post*, July 21, 2021, <https://wapo.st/3zvz9RG>.

<sup>10</sup> The Trump Organization, Donald J. Trump, <https://bit.ly/3kwYlh3>.

<sup>11</sup> Jordan Libowitz, If Donald Trump isn’t running the Trump Organization, who is?, *CREW*, Aug. 28, 2019, <https://bit.ly/3xN3ydx>.

<sup>12</sup> The Trump Organization, Donald Trump Jr., <https://bit.ly/3hLGbvG>; The Trump Organization, Eric Trump, <https://bit.ly/3z0w7EC>.

<sup>13</sup> Fahrenthold, *Washington Post*, July 21, 2021.

<sup>14</sup> Trump Org. Indictment at 1-2; Bump, *Washington Post*, May 21, 2019.

<sup>15</sup> Trump Org. Indictment at 2.

<sup>16</sup> *Id.*

<sup>17</sup> GSA Letter at 1-2.

<sup>18</sup> Letter from CREW to Senators John Barrasso and Tom Carper at 2-3, Apr. 25, 2017, <https://bit.ly/3er1d0y>.

<sup>19</sup> *See* Federal Procurement Data System, Search Results for “Trump Organization,” <https://bit.ly/36GQdHY> (listing past federal contracts and purchase orders with Trump Palace Condominium, Trump Taj Mahal Associates LLC, and other Trump Organization entities).

## **II. The Trump Organization Indictment, Recent Legal Settlements, and History of Misconduct**

On July 1, 2021, the Manhattan DA brought criminal charges against the Trump Corporation and Trump Payroll Corp. (both doing business as the Trump Organization) and CFO Allen Weisselberg.<sup>20</sup> The 15-count indictment charges all defendants with the following:

- One count of Scheme to Defraud in the First Degree;
- One count of Conspiracy in the Fourth Degree;
- Three counts of Criminal Tax Fraud in the Third Degree;
- One count of Criminal Tax Fraud in the Fourth Degree; and
- Four counts of Falsifying Business Records in the First Degree (with one count only brought against the Trump Corporation and Mr. Weisselberg).<sup>21</sup>

The indictment charges Mr. Weisselberg alone with:

- One count of Grand Larceny in the Second Degree; and
- Four counts of Offering a False Instrument for Filing in the First Degree.<sup>22</sup>

The indictment alleges a long-running “scheme to defraud federal, New York State, and New York City tax authorities” from “at least 2005 to on or about June 30, 2021,” carried out at the highest levels of the Trump Organization.<sup>23</sup> According to the indictment:

The purpose of the scheme was to compensate Weisselberg and other Trump Organization executives in a manner that was “off the books”: the beneficiaries of the scheme received substantial portions of their income through indirect and disguised means, with compensation that was unreported or misreported by the Trump Corporation or Trump Payroll Corp. to the tax authorities. The scheme was intended to allow certain employees to substantially understate their compensation from the Trump Organization, so that they could and did pay federal, state, and local taxes in amounts that were significantly less than the amounts that should have been paid. The scheme also enabled Weisselberg to obtain tax refunds of amounts previously withheld and remitted to federal and state tax authorities. Further, the scheme involved the failure of the Trump Corporation and Trump Payroll Corp. to withhold income taxes on wages, salaries, bonuses and other forms of compensation paid to certain employees. The scheme also allowed the Trump Organization to evade the payment of payroll taxes that the Trump Organization was required to pay in connection with employee compensation.<sup>24</sup>

In the years preceding the indictment, Trump Organization entities paid two multi-million-dollar settlements in lawsuits involving claims of fraud, false statements, and other serious misconduct reflecting a lack of business honesty and integrity. First, in April 2018 a

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<sup>20</sup> See Trump Org. Indictment at 1-24.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.* at 3-4.

federal court approved a \$25 million settlement in a case brought by the New York Attorney General and others on behalf of attendees of the now-defunct real estate seminar called “Trump University.”<sup>25</sup> The attendees “alleged that Trump University, which was open from 2005 to 2010, used false advertising and high-pressure sales techniques to lure them to free investor workshops at which they were sold expensive seminars and told they would be mentored by real estate gurus, leading to the loss of thousands of dollars in tuition.”<sup>26</sup> According to the New York Attorney General, the Trump University settlement “marked a stunning reversal by [former] President Trump, who for years refused to compensate the victims of his sham university.”<sup>27</sup>

Second, in November 2019 a New York Supreme Court judge approved a final agreement requiring dissolution of The Donald J. Trump Foundation, a nonprofit entity, to settle claims that Mr. Trump’s presidential campaign illegally used the foundation’s funds for political purposes.<sup>28</sup> The court ordered Mr. Trump personally to pay \$2 million in damages after ruling that he “breached his fiduciary duty to the [Trump] Foundation” by allowing it to be used “to further Mr. Trump’s political campaign.”<sup>29</sup>

There are also pending civil suits calling into question the Trump Organization’s business integrity and honesty. In one case, the District of Columbia Attorney General has sued the Trump Organization LLC and Trump Old Post Office LLC, alleging that the president’s inaugural committee, a nonprofit entity, unlawfully “coordinated with the Trump family to grossly overpay for event space in the Trump International Hotel.”<sup>30</sup> In another suit, the plaintiffs and a putative class allege that the Trump Corporation, Donald J. Trump, Donald J. Trump Jr., Eric Trump, and Ivanka Trump induced them to enter into business relationships with a “multi-level marketing” company through “fraudulent, misleading, and deceptive statements.”<sup>31</sup>

Just last week, House Oversight released documents that “raise new and troubling questions about former President Trump’s lease with GSA.”<sup>32</sup> The Committee found that:

President Trump provided misleading information about the financial situation of the Trump Hotel in his annual financial disclosures; received undisclosed preferential treatment from a foreign bank on a \$170 million loan to the hotel that the President personally guaranteed; accepted millions of dollars in emoluments from foreign governments without providing an accounting of the money’s source

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<sup>25</sup> Press Release, A.G. Schneiderman *Statement On Final Trump University Settlement*, N.Y. Attorney General, Apr. 9, 2018, <https://on.ny.gov/3ikCBrg>.

<sup>26</sup> Tom Winter and Dartunorro Clark, *Federal court approves \$25 million Trump University settlement*, *NBC News*, Feb. 6, 2018, <https://nbcnews.to/3eBnsAG>.

<sup>27</sup> N.Y. Attorney General Press Release, Apr. 9, 2018.

<sup>28</sup> Decision and Order on Petition, *New York v. Trump*, Index No. 451130/2018, NYSCEF No. 138 (Nov. 7, 2019), <https://bit.ly/3iuhmU9>.

<sup>29</sup> *Id.*; Press Release, *AG James Secures Court Order Against Donald J. Trump, Trump Children, And Trump Foundation*, N.Y. Attorney General, Nov. 7, 2019, <https://on.ny.gov/3hOU7oB>.

<sup>30</sup> Press Release, *AG Racine Sues Presidential Inaugural Committee and Trump Entities for Abusing Nonprofit Funds to Enrich Trump Family*, D.C. Attorney General, Jan. 22, 2020, <https://bit.ly/2Uo9rPW>.

<sup>31</sup> *Doe v. Trump Corp.*, 6 F.4th 400, 403 (2d Cir. 2021).

<sup>32</sup> Letter from Chairwoman Carolyn B. Maloney and Chairman Gerald E. Connolly, House Committee on Oversight and Reform, at 1, Oct. 8, 2021, <https://bit.ly/3Fn4Ujs>.

or purpose; concealed hundreds of millions of dollars in debts from GSA when bidding on the Old Post Office Building lease; and made it impossible for GSA to properly enforce the lease's conflict-of-interest restrictions by engaging in opaque transactions with other affiliated entities.<sup>33</sup>

As President of the United States, Donald Trump was impeached twice on charges of serious misconduct, including “incitement of insurrection” against the United States government on January 6.<sup>34</sup> New York City subsequently moved to cancel three contracts with Trump Organization entities,<sup>35</sup> and the PGA cancelled its plans to host the 2022 PGA Championship at Trump National Golf Club Bedminster.<sup>36</sup>

There is also reason to question the Trump Organization's present financial integrity and stability. Its biggest lender, Deutsche Bank, reportedly decided earlier this year “not to do business with Mr. Trump or his company in the future.”<sup>37</sup> “Mr. Trump currently owes Deutsche Bank more than \$300 million, which is due in the next few years.”<sup>38</sup>

### **Legal Standards**

By law and regulation, “the Government may award contracts only to responsible contractors.”<sup>39</sup> “To qualify as a responsible contractor, a company or individual must have ‘a satisfactory record of integrity and business ethics.’”<sup>40</sup> A company or individual “who is not responsible may be barred or temporarily suspended from receipt of future Government business.”<sup>41</sup> “The purpose of suspension is not to punish a contractor or an individual, but to protect the government from contractors that do not have a satisfactory record of business ethics and integrity.”<sup>42</sup> Suspension is “appropriate where adequate evidence shows that a company or person has committed misconduct related to business ethics and integrity, or other irregularities relevant to their present responsibility, and where a pending investigation or legal proceeding is examining those questionable activities.”<sup>43</sup>

The FAR governs “procurement” transactions (*e.g.*, contracts where the government acquires goods or services for its own use), while the NCR governs “nonprocurement” transactions (*e.g.*, grants, loans, subsidies, leases, insurances, and other transactions not covered

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<sup>33</sup> *Id.*

<sup>34</sup> H. Res. 24, *Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors*, 117th Congress, Jan. 25, 2021, <https://bit.ly/3l1aMXV>.

<sup>35</sup> Press Release, *Mayor de Blasio Announces New York City Will Cancel Trump Organization Contracts*, City of New York, Jan. 13, 2021, <https://on.nyc.gov/2V8MlrF>.

<sup>36</sup> *Id.*

<sup>37</sup> Eric Lipton, Ben Protess, and Steve Eder, *An Urgent Reckoning for the Trump Brand*, *New York Times*, Jan. 11, 2021, <https://nyti.ms/3zvigXm>.

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

<sup>39</sup> Press Release, *GSA Suspends Enron and Arthur Andersen and Former Officials*, GSA, Mar. 15, 2002, <https://bit.ly/3irWDAb> (“GSA Mar. 2002 Enron Suspension”).

<sup>40</sup> *Id.*; see 48 C.F.R. § 9.104-1(d).

<sup>41</sup> GSA Mar. 2002 Enron Suspension.

<sup>42</sup> *Id.*; see 48 C.F.R. § 9.402(b).

<sup>43</sup> GSA Mar. 2002 Enron Suspension; see 48 C.F.R. § 9.407-2.



by the FAR).<sup>44</sup> Under both regulations,<sup>45</sup> an “indictment” for certain enumerated offenses constitutes “adequate evidence” for suspension.<sup>46</sup> Among those offenses are “embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property.”<sup>47</sup>

When a contractor has been indicted on such charges, the SDO must determine whether “immediate [suspension] is necessary to protect the Government’s interest.”<sup>48</sup> In making this determination, the SDO “should consider the seriousness of the contractor’s acts or omissions and may, but is not required to, consider remedial measures or mitigating factors.”<sup>49</sup> A suspension applies to “all divisions or other organizational elements of the contractor” unless otherwise specified,<sup>50</sup> and lasts until criminal proceedings have concluded.<sup>51</sup> Suspended contractors are publicly listed in the GSA’s System for Award Management (“SAM”), available online at [www.SAM.gov](http://www.SAM.gov).

### **The Government Should Immediately Suspend Trump Organization Entities and Senior Officers from Federal Contracts and Programs**

#### **I. The Trump Organization Indictment and Recent Legal Settlements Provide Compelling Grounds for Suspension**

The Trump Organization indictment and recent legal settlements provide compelling grounds for immediately suspending the Trump Organization from federal business under the FAR and the NCR.

There is no question that the Trump Organization indictment is “adequate evidence” for suspension under the governing regulations. Among the charges facing the Trump Corporation (doing business as the Trump Organization) and CFO Allen Weisselberg are four counts of criminal tax fraud and four counts of falsifying business records.<sup>52</sup> These charges are part of a broader alleged scheme spanning “from at least 2005 to on or about June 30, 2021” to “defraud federal, New York State, and New York City tax authorities” for the purpose of, among other things, “evad[ing] the payment of payroll taxes that the Trump Organization was required to pay in connection with employee compensation.”<sup>53</sup> Under both the FAR and the NCR, an “indictment” for “tax evasion” or “falsification . . . of records” is adequate evidence for suspension.<sup>54</sup> The Trump Organization indictment includes not just one, but eight such charges, as well as two related charges for the overarching scheme to defraud.

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<sup>44</sup> See 2 C.F.R. § 180.970.

<sup>45</sup> The FAR and the NCR provide for reciprocity with each other, meaning that suspension under one regulation is effective for suspension under the other. See 48 C.F.R. § 9.401.

<sup>46</sup> 48 C.F.R. §§ 9.407-2(b), (a)(3); 2 C.F.R. §§ 180.700(a), 180.800(a)(3).

<sup>47</sup> 48 C.F.R. § 9.407-2(a)(3); accord 2 C.F.R. § 180.800(a)(3).

<sup>48</sup> 48 C.F.R. § 9.402-1(a)-(b); accord 2 C.F.R. § 180.700(a)-(c).

<sup>49</sup> 48 C.F.R. § 9.407-1(b)(2); accord 2 C.F.R. § 180.705(c).

<sup>50</sup> 48 C.F.R. § 9.402-1(d).

<sup>51</sup> *Id.* § 9.407-4(a).

<sup>52</sup> See Trump Org. Indictment at 1-24.

<sup>53</sup> *Id.* ¶ 4.

<sup>54</sup> See 48 C.F.R. §§ 9.407-2(b), (a)(3); 2 C.F.R. §§ 180.700(a), 180.800(a)(3).

The seriousness and recency of the Trump Organization’s alleged criminal conduct, as well as the organization’s response to the indictment, reinforce that immediate suspension is necessary to protect the government’s interest. The indictment alleges an expansive 15-year scheme to defraud federal, state, and city agencies that continued as recently as *June 30, 2021*.<sup>55</sup> The scheme was allegedly carried out by a key Trump Organization entity—the Trump Corporation—that “serves as the employer of a group of senior managers of the Trump Organization” who “oversee many of the operating entities doing business as the Trump Organization,” as well as by Mr. Weisselberg.<sup>56</sup>

Although the indictment alleges recent criminal conduct at the highest levels of the Trump Organization, nothing suggests that the company has even begun “to focus on corrective measures . . . to address the misconduct” or taken steps “to improve internal controls, enhance compliance programs, [or] to promote a culture of ethics and accountability.”<sup>57</sup> To the contrary, the Trump Organization has decried the charges as baseless and politically motivated, claiming in a press statement that the “District Attorney is bringing a criminal prosecution involving employee benefits that neither the IRS nor any other District Attorney would ever think of bringing. . . . This is not justice; this is politics.”<sup>58</sup> The Trump Corporation, Trump Payroll Corp., and Mr. Weisselberg have all pleaded not guilty to the charges.<sup>59</sup> And while Mr. Weisselberg has been removed from his roles at some subsidiaries, he reportedly still works at the Trump Organization.<sup>60</sup> This lack of meaningful “remedial measures or mitigating factors”<sup>61</sup> reinforces that the Trump Organization “pose[s] a current risk to the Government,” because it has not only been indicted for “serious misconduct,” but has also “fail[ed] to demonstrate an appropriately altered attitude as to business honesty, integrity, and performance.”<sup>62</sup>

Making the case for suspension even more compelling are the Trump Organization’s recent legal settlements with the State of New York in cases involving claims of fraud, false statements, breach of fiduciary duty, and other wrongdoing. The settlements are further indications that deceptive and illegal behavior is the Trump Organization’s standard operating practice. This conclusion is reinforced by the pending civil suits against the Trump Organization, the recent damning congressional findings regarding the GSA lease, and Mr. Trump’s impeachment for inciting a deadly insurrection against the United States government—all of which are plainly relevant to the Trump Organization’s fitness to do federal business.

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<sup>55</sup> Trump Org. Indictment at 3.

<sup>56</sup> *Id.* at 1-2.

<sup>57</sup> Interagency Suspension and Debarment Committee, FY 2019 Report to Congress at 4, Jan. 15, 2021, <https://bit.ly/3inVWYM> (“ISDC FY 2019 Report”).

<sup>58</sup> Jenni Fink, [Trump Organization Responds to Indictment, Says It’s an Attempt to Harm a Former President](https://www.foxnews.com/politics/trump-organization-responds-to-indictment), *Newsweek*, July 1, 2021, <https://bit.ly/3eSG5Az>.

<sup>59</sup> Bernard Condon, [Trump’s finance chief loses titles, roles after indictment](https://www.foxnews.com/politics/trump-finance-chief-loses-titles-roles-after-indictment), *Associated Press*, July 13, 2021, <https://bit.ly/3BI30h9>.

<sup>60</sup> *Id.*; Fahrenthold, *Washington Post*, July 21, 2021.

<sup>61</sup> See 48 C.F.R. § 9.407-1(b)(2) (providing that an SDO considering suspension “may, but is not required to, consider remedial measures or mitigating factors, such as those set forth in 9.406-1(a)"); *id.* § 9.406-1(a) (listing factors).

<sup>62</sup> ISDC FY 2019 Report at 1-2.



In sum, there is compelling evidence of an ongoing lack of business integrity and honesty that directly and seriously affects the present responsibility of Trump Organization entities and senior officers. They should be suspended immediately from federal contracts and programs.<sup>63</sup>

## II. Agency Precedent Amply Supports Suspension

While the case for suspension is clear based on the regulatory text alone, it is also amply supported by agency precedent. Indeed, agencies routinely suspend contractors based on allegations of wrongdoing similar to (or less egregious than) those facing the Trump Organization, even when no criminal charges are pending.

In 2002, GSA suspended Enron Corp., Arthur Anderson LLP, affiliated corporate entities, and former employees of the companies.<sup>64</sup> GSA suspended Arthur Anderson based on an indictment charging the company with “knowingly, intentionally, and corruptly destroy[ing] documents and other information relating to Andersen’s work for Enron . . . to impair official proceedings.”<sup>65</sup> GSA explained that “an indictment for such a criminal offense is adequate evidence of misconduct to support suspension of a government contractor.”<sup>66</sup> Despite the lack of pending criminal charges against Enron, GSA suspended that company as well, finding “adequate evidence” that it “engaged in misconduct and committed internal control irregularities” based on press reports and other sources.<sup>67</sup>

In 2003, GSA suspended and proposed debarment of MCI WorldCom based on “allegations related to fraudulent conduct” and other information indicating the company “lack[ed] the necessary internal controls and business ethics.”<sup>68</sup> GSA suspended the company based on the SDO’s review of reports prepared by the company and outside auditors; there was no indictment or other governmental finding of wrongdoing.<sup>69</sup>

In 2009, the Defense Logistics Agency suspended Agility Defense and Agility International based on an indictment of the contractors’ parent company, Public Warehousing Company, for “a multibillion-dollar fraud perpetrated against the United States in connection with its government contract to supply food to American military personnel in the Middle East.”<sup>70</sup>

In 2012, the Environmental Protection Agency suspended BP after the company pleaded guilty to criminal charges relating to the Deepwater Horizon disaster.<sup>71</sup> As the agency explained,

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<sup>63</sup> The Trump Organization should also be proposed for debarment pending the outcome of the ongoing criminal proceedings.

<sup>64</sup> GSA Mar. 2002 Enron Suspension.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Press Release, *GSA Proposes Debarment of MCI WorldCom*, GSA, July 31, 2003, <https://bit.ly/3xW1lwq>.

<sup>69</sup> *Id.*

<sup>70</sup> *Agility Def. & Gov’t Servs. v. Dep’t of Defense*, 739 F.3d 586, 588 (11th Cir. 2013).

<sup>71</sup> Press Release, *BP Temporarily Suspended from New Contracts with the Federal Government*, EPA, Nov. 28, 2012, <https://bit.ly/36LUgTv> (“EPA Nov. 2012 BP Suspension”).

such “[s]uspensions are a standard practice when a responsibility question is raised by action in a criminal case.”<sup>72</sup>

The government has shown an even greater willingness to suspend small business contractors—a practice that has drawn critiques of uneven enforcement.<sup>73</sup> Declining to suspend the Trump Organization would not only lend credence to these longstanding criticisms, but would set a troubling precedent for future proceedings.

Recent data continues to show robust suspension and debarment activities across the government. In FY 2019, federal agencies issued 722 suspensions, 1,437 proposed debarments (an action that includes suspension), and 1,199 debarments.<sup>74</sup> Similarly, in FY 2018, there were 480 suspensions, 1,542 proposed debarments, and 1,334 debarments.<sup>75</sup> Given the frequency with which these powers are used, and the clear-cut case for suspending the Trump Organization, the government should not hesitate to invoke its suspension authority here.

### III. Scope of Suspension

“Suspension constitutes suspension of all divisions or other organizational elements of the contractor,” unless the SDO specifies otherwise.<sup>76</sup> The SDO “may extend the suspension decision to include any affiliates of the contractor if they are (1) [s]pecifically named; and (2) [g]iven written notice and an opportunity to respond.”<sup>77</sup> In determining the scope of the suspension, the “fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor’s conduct.”<sup>78</sup>

While the Trump Organization is “[o]n paper” a “web of interconnected entities, each with its own set of officers,” in reality “the subsidiaries have all been run by the same small group of executives at Trump Tower in New York, including [Donald J.] Trump, his adult sons and Weisselberg—with little regard to who holds formal offices in what subsidiary.”<sup>79</sup> The pending criminal charges against the Trump Corporation and Mr. Weisselberg implicate this small “group of senior managers of the Trump Organization” employed by the Trump Corporation, who “oversee many of the operating entities doing business as the Trump

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<sup>72</sup> *Id.*

<sup>73</sup> See, e.g., Angela B. Styles and Peter J. Eyre, *State of Suspension/Debarment: FY2016 Statistics and the Impact on Small Businesses*, *Crowell Moring*, Oct. 18, 2016, <https://bit.ly/2V0MfqU>; Alex Levine, *Increased Suspensions and Debarments Bring Challenges for Small Business Contractors*, *Piliro Mazza*, Apr. 4, 2016, <https://bit.ly/3xUt00x>; Steven L. Schooner, *The Paper Tiger Stirs: Rethinking Suspension and Debarment*, 5 *Pub. Procurement L. Rev.* 211, 215 (2004).

<sup>74</sup> ISDC FY 2019 Report at 3 & app. 3.

<sup>75</sup> Interagency Suspension and Debarment Committee, FY 2018 Report to Congress at 3 & app. 2, Oct. 30, 2019, <https://bit.ly/3l0Ipcm>.

<sup>76</sup> 48 C.F.R. § 9.407-1(c).

<sup>77</sup> *Id.*

<sup>78</sup> 48 C.F.R. § 9.406-5(b); see also *id.* § 9.407-5 (incorporating § 9.406-5 by reference).

<sup>79</sup> David A. Fahrenthold and Shayna Jacobs, *Trump Organization removes indicted top finance officer Allen Weisselberg from leadership roles at dozens of subsidiaries*, *Washington Post*, July 12, 2021, <https://wapo.st/3BtGUZU>.

Organization” and are “based in Trump Tower.”<sup>80</sup> For suspension purposes, the Trump Corporation’s alleged criminal conduct can be imputed to the small group of senior officers who run the Trump Organization, especially since one of those officers—Mr. Weisselberg—was separately indicted. In addition, Donald Trump can be deemed an implicated affiliate of the Trump Corporation for suspension purposes, since the company is owned by him and a revocable trust he controls.<sup>81</sup>

Given the Trump Organization’s corporate structure and the charges set forth in the indictment, the suspension should extend not only to the indicted Trump Corporation and Mr. Weisselberg, but also to all corporate entities affiliated with the Trump Organization (including but not limited to those that have done federal business), Mr. Trump, and his two adult sons. At a minimum, the following entities and individuals should be suspended:

- The Trump Corporation, d/b/a The Trump Organization (DUNS # 877379347)
- The Trump Organization Inc (DUNS # 072959232)
- Trump Organization LLC (DUNS # 047142950)
- Trump Old Post Office LLC
- Trump Old Post Office Member Corp.
- Trump Palace Condominium (DUNS # 783051154)
- Donald J. Trump
- Allen H. Weisselberg
- Donald J. Trump, Jr.
- Eric F. Trump

### **Conclusion**

This is neither a close case for suspension nor a complicated administrative action. As the government noted in 2012, “[s]uspensions are a standard practice when a responsibility question is raised by action in a criminal case.”<sup>82</sup> Here we have that, and much more. Because there are compelling grounds to suspend Trump Organization entities and senior officers from federal business, you should do so immediately.

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<sup>80</sup> Trump Org. Indictment at 2.

<sup>81</sup> See *id.* at 1-2; Fahrenthold, *Washington Post*, July 21, 2021.

<sup>82</sup> EPA Nov. 2012 BP Suspension.

Respectfully submitted,



Noah Bookbinder  
President  
Citizens for Responsibility and Ethics in  
Washington



Steven L. Schooner  
Nash & Cibinic Professor of Government  
Procurement Law  
The George Washington University Law School



Danielle Brian  
Executive Director  
Project on Government Oversight