

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

THE DISTRICT OF COLUMBIA AND THE  
STATE OF MARYLAND,

Plaintiffs,

-against-

DONALD J. TRUMP, in his official capacity as  
President of the United States of America,

Defendant.

Civil Action No. 8:17-cv-01596-PJM

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICA CURIAE* SARAH P. CHAYES IN  
SUPPORT OF THE PLAINTIFFS**

Emery Celli Brinckerhoff & Abady LLP  
600 Fifth Avenue, 10<sup>th</sup> Floor  
New York, New York 10020  
(212) 763-5000

*Amica* Sarah P. Chayes respectfully moves for leave to file the accompanying *amicus* brief (attached hereto as Exhibit A) in the above-captioned case in support of Plaintiffs' Opposition to Defendant's Motion to Dismiss (ECF No. 46). Plaintiffs consent to the filing of this brief. Defendant takes no position.

"District courts have broad discretion to permit or deny the appearance of amici curiae in a given case." *United States v. Ahmed*, 788 F. Supp. 196, 198 n.1 (S.D.N.Y. 1992), *aff'd* 980 F.2d 161 (2d Cir. 1992). "An *amicus* brief should normally be allowed when . . . the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Auto. Club of N.Y., Inc. v. Port Auth. of N.Y. & New Jersey*, No. 11 Civ. 6746 (RJH), 2011 WL 5865296, at \*2 (S.D.N.Y. Nov. 22, 2011) (internal quotation omitted). "The court is more likely to grant leave to appear as an *amicus curiae* in cases involving matters of public interest." *Andersen v. Leavitt*, No. 03 Civ. 6115 (DRH) (ARL), 2007 WL 2343672, at \*2 (E.D.N.Y. Aug. 13, 2007) (internal quotation omitted).

There is undoubtedly profound public interest in this case, which concerns alleged constitutional violations by Defendant Donald J. Trump, the President of the United States. *Amica*, a leading academic who has studied kleptocratic regimes for decades and developed substantial expertise around the connection between corrupt networks and violent extremism, brings a unique perspective to Plaintiffs' claims and to the concrete consequences of alleged violations of the Emoluments Clause. In her capacity as the special assistant to the chairman of the Joint Chiefs of Staff, *Amica* developed U.S. options for Afghanistan; she presently is working to map the structures of kleptocratic governance. This research and experience bears directly on the ramifications of the allegations in Plaintiffs' Complaint.

For all these reasons, and as set forth more fully in the proposed *amicus* brief, *amica* requests leave to file this brief.

Dated: November 14, 2017  
New York, New York

EMERY CELLI BRINCKERHOFF  
& ABADY LLP

\_\_\_\_\_  
/s/

Ilann M. Maazel\*  
Emma L. Freeman\*

600 Fifth Avenue, 10<sup>th</sup> Floor  
New York, New York 10020  
(212) 763-5000

*\*motions for pro hac vice admission  
pending*

*Attorneys for Amica Curiae*

David W. Sanford (13619)  
SANFORD HEISLER SHARP, LLP  
1666 Connecticut Avenue, Suite 300  
Washington, D.C. NW 20009  
Telephone: (202) 499-5200  
Facsimile: (202) 499-5199  
dsanford@sanfordheisler.com

*Attorney for Amica Curiae*

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

THE DISTRICT OF COLUMBIA AND THE  
STATE OF MARYLAND,

Plaintiffs,

-against-

DONALD J. TRUMP, in his official capacity as  
President of the United States of America,

Defendant.

Civil Action No. 8:17-cv-01596-PJM

**BRIEF OF *AMICA CURIAE* SARAH P. CHAYES IN SUPPORT OF PLAINTIFFS**

Emery Celli Brinckerhoff & Abady LLP  
600 Fifth Avenue, 10<sup>th</sup> Floor  
New York, New York 10020  
(212) 763-5000

**TABLE OF CONTENTS**

	<b>PAGE(S)</b>
INTEREST OF AMICA CURIAE AND SUMMARY OF ARGUMENT .....	1
ARGUMENT .....	2
I.    UNCHECKED EMOLUMENTS VIOLATIONS THREATEN THE AMERICAN SYSTEM OF GOVERNMENT.....	2
II.   THE KLEPTOCRATIC NATURE, NETWORKED STRUCTURE, AND OPERATING PRINCIPLES OF NUMEROUS FOREIGN GOVERNMENTS REQUIRE VIGILANCE IN EMOLUMENTS CLAUSE ENFORCEMENT. ....	5
III.  DEFENDANT’S FOREIGN BUSINESS ACTIVITIES INDEBT HIM TO NUMEROUS KLEPTOCRATIC NETWORKS, HARMING THE UNITED STATES.....	10
A.   TRUMP TOWER MANILA, PHILIPPINES .....	10
B.   LUXURY RESORTS IN BALI AND WEST JAVA, INDONESIA .....	12
C.   TRUMP OCEAN CLUB INTERNATIONAL HOTEL AND TOWER, PANAMA CITY.....	16
D.   TRUMP INTERNATIONAL GOLF CLUB, DUBAI, UNITED ARAB EMIRATES.....	19
E.   TRADEMARK PROTECTION, CHINA.....	22
IV.  WITHOUT JUDICIAL REMEDY, DEFENDANT’S FOREIGN EMOLUMENTS VIOLATIONS WILL GROW IN NUMBER AND CAUSE INCREASING DAMAGE TO THE UNITED STATES. ....	24
CONCLUSION.....	25

**TABLE OF AUTHORITIES**

**PAGE(S)**

**CASES**

*United States v. Lobo*,  
No. 15 Cr. 174, 2017 WL 1196881 (S.D.N.Y. Mar. 17, 2017) ..... 8

**OTHER AUTHORITIES**

Adrienne Pine, *Working Hard, Drinking Hard: On Violence and Survival in Honduras* (2008) 12

Alfredo Schulte-Bockholt, *Corruption as Power: Criminal Governance in Peru During the Fjimori Era* (Peter Lang, 2013) ..... 5

Balint Magyar, *Post-Communist Mafia State: The Case of Hungary* (Central European University, 2016) ..... 5

Fintan O’Toole, *Ship of Fools: How Stupidity and Corruption Sank the Celtic Tiger* (Public Affairs, 2010)..... 5

Karen Dawisha, *Putin’s Kleptocracy* (Simon and Schuster, 2015) ..... 5

Lawrence Lessig, *Republic Lost: How Money Corrupts Congress and a Plan to Stop It* (New York, 2012)..... 8

Leena Koni Hoffman & Raj Navanit Patel, *Collective Action on Corruption in Nigeria: A Social Norms Approach to Connecting Society and Institutions* (Nicolas Boutchet et al. eds., May 2017) ..... 11

Lukas Straumann, *Money Logging: On the Trail of the Asian Timber Mafia* (2014) ..... 14

Minxin Pei, *China’s Crony Capitalism* (Harvard, 2016)..... 5

Sarah Chayes, *The Structure of Corruption: A Systemic Analysis Using Eurasian Cases*, Carnegie Endowment for International Peace (June 30, 2016) ..... 5, 8, 9, 14, 15

Sarah Chayes, *Thieves of State*, (Norton, 2015) ..... 5, 7, 11, 12

Sarah Chayes, *When Corruption is the Operating System: The Case of Honduras*, Carnegie Endowment for International Peace (May 30, 2017)..... 5

Shana Marshall, *The Egyptian Armed Forces and the Remaking of an Economic Empire*, Carnegie Endowment for International Peace (April 2015) ..... 5, 7

Tom Burgis, *The Looting Machine* (Harper Collins, 2016)..... 5

Yukon Huang, *The Truth About Chinese Corruption*, Carnegie Endowment for International Peace (May 29, 2015) ..... 23

## **INTEREST OF AMICA CURIAE AND SUMMARY OF ARGUMENT**

*Amica* is a leading scholar of kleptocratic government. Beginning in Afghanistan, where she worked for seven years in Kandahar before joining the top U.S. military staff, she has conducted research on, and designed policy approaches to, some of the most notoriously corrupt countries in the world. As special assistant to the chairman of the Joint Chiefs of Staff, she helped develop U.S. options for Afghanistan. Then, at the nonpartisan, nonprofit research institute Carnegie Endowment for International Peace, she showed how systemic corruption helps cause violent extremism. Her argument contributed to then-U.K. Prime Minister David Cameron's decision to convene a summit on corruption in 2016, and new U.S. policies. Currently, *Amica* is mapping structures of kleptocratic governance.

By applying this broad experience to an examination of Defendant's practices, this brief aims to provide critical background for assessing them. While its argument applies equally to many of the domestic emoluments Defendant has received, it focuses on his overseas activities.

In countries where many of Defendant's business assets are located, several sectors—including luxury tourism—are captured by corrupt ruling networks. It is impossible to do business in these sectors and avoid entanglement with the networks. Such entanglement entails quid pro quo exchanges, or the type of ingratiation of public officials that the Emoluments Clause forbids. A pattern of foreign Emoluments violations would pose several threats to the American system of government. 1) The judgment and loyalty of Emoluments recipients might come under foreign influence. 2) Americans' faith in their government would be undermined. 3) The distinctiveness of the American system might erode altogether, leading to a growing resemblance between the U.S. government and the foreign kleptocracies where Defendant obtains prohibited Emoluments.



## ARGUMENT

### I. UNCHECKED EMOLUMENTS VIOLATIONS THREATEN THE AMERICAN SYSTEM OF GOVERNMENT.

Media coverage of the present complaint has dubbed the Emoluments Clause an “obscure provision” of the U.S. Constitution.<sup>1</sup> Nothing could be further from the truth. So essential was it to the Founders’ experiment in democracy that they wrote it into the Articles of Confederation and numerous state constitutions as they were hammering out the mechanics of America’s new form of government. It embodies their determination to keep the unique institutions they were forging free of split loyalties and the corrupt use of public office for personal gain.

The overseas business activities from which Defendant has refused to separate himself entail prohibited Emoluments on an almost daily basis. In the Philippines, for example, Defendant’s business partner is himself an officer of the Philippine government, and has stated his intent to leverage his business relationship to help carry out his duties on the government’s behalf. In Indonesia, Defendant’s operations are benefitting from a grant of public land and a government-built highway that will increase their monetary value, while violating the letter and the intent of environmental regulations meant to protect an irreplaceable ecosystem. Further examples are examined in Section III below.

Numerous violations of the Emoluments Clause by the President of the United States erode and sully the fundamental principles upon which our country is founded, and expose this nation to grave threats. *First*, they raise the specter that foreign gifts will influence Presidential policy; *second*, they undermine citizens’ faith in the integrity of their government; and *third*, they

---

<sup>1</sup> Compare Sui-Lee Wee, *Trump Adds More Trademarks in China*, N.Y. Times (June 13, 2017), [https://www.nytimes.com/2017/06/13/business/trump-china-trademarks.html?\\_r=0](https://www.nytimes.com/2017/06/13/business/trump-china-trademarks.html?_r=0), and Tom Hamburger and Karen Tumulty, *Congressional Democrats to file emoluments lawsuit against Trump*, Wash. Post (June 14, 2017), [https://www.washingtonpost.com/politics/congressional-democrats-to-file-emoluments-lawsuit-against-trump/2017/06/13/270e60e6-506d-11e7-be25-3a519335381c\\_story.html?utm\\_term=.352c9555dbd8](https://www.washingtonpost.com/politics/congressional-democrats-to-file-emoluments-lawsuit-against-trump/2017/06/13/270e60e6-506d-11e7-be25-3a519335381c_story.html?utm_term=.352c9555dbd8).

invite kleptocratic practices typical of places like Afghanistan to infect our democracy. Together, these dangers preclude dismissal of Plaintiffs' Complaint.

*Foreign influence over official decision-making.* As is discussed at length in other filings, the Emoluments Clause demonstrates the Founders' determination to protect the independence of U.S. official action. Accepting gifts from foreign powers undermines that independence. It fosters a sense of obligation, affording the gift-giver leverage over decision-making. Even Defendant concedes that the "[Emoluments] Clauses were intended to combat corruption and foreign influence and to ensure Presidential independence."<sup>2</sup> Were public policy to answer to foreign and not American interests, then government by and for the people would crumble. Defendant's violations of the Emoluments Clause invite precisely this outcome.

*The erosion of public trust in the U.S. government.* For a democracy to work, citizens must believe that elected officials are working in their interests. It is the people's right and duty to keep a watchful eye on the actions of their representatives, and to advocate for policy changes or vote incumbents out if dissatisfied. Confidence that each side is engaging with the other in good faith is crucial to the health of this system. But if the electorate suspects that its representatives are attentive to someone else's interests, located beyond these shores, then that precious trust is shattered. Not only the fact, but even the appearance of conflicting priorities, especially if persistent, would have this damaging effect.

In today's politically polarized environment, this danger is particularly great. Public faith in the institutions of the U.S. government is already weak, and has been eroded by allegations of corruption across the political spectrum. If uncorrected, Defendant's violations of the Emoluments Clause would feed the cynicism and apathy that are lethal to a democracy.

---

<sup>2</sup> Defendant's Memorandum of Law in Support of Defendant's Motion to Dismiss, Dkt. 35, ("Def's Br.") at 45.

*The proliferation of kleptocratic practices.* Defendant's international entanglements do not just provide leverage over his decision-making and corrode Americans' faith in their government. Most dangerously, they tempt U.S. officials to mirror the kleptocratic practices that prevail in other countries. When government representatives accept favors from corrupt counterparts, they get drawn into relationships of reciprocal exchange. The practices come to seem normal. They get shrugged off as part of politics—not just “over there,” but here at home too. This slippage would contaminate the American government, distorting its essential nature. Through the Emoluments Clause violations they entail, Defendant's business interests abroad are erasing U.S. distinctiveness and sowing the seeds of American kleptocracy.<sup>3</sup>

Given this country's global leadership, the ultimate effect will be to reinforce and expand these practices and their destructive consequences around the world.

These three dangers constitute an existential threat to the United States of America. We are, after all, the only nation on earth that came into being expressly to embody a set of principles. Those principles are the core of our identity. If the holder of the highest office in the land were to brazenly violate them with no repercussion, what would remain of the national interest?

---

<sup>3</sup> A recent body of research suggests that in some cases, provoking this resemblance is the express intent of some gift-giving kleptocracies. See, e.g., Ilya Zaslavskiy, *Making Life Hard for Russia's Robber Barons*, Foreign Policy (May 18, 2016), <http://foreignpolicy.com/2016/05/18/making-life-hard-for-russias-robber-barons-kleptocracy-archive/>; Ilya Zaslavskiy, *How Practices From Russia Penetrate And Undermine US and UK* (2013), [https://imrussia.org/media/pdf/Research/Ilya\\_Zaslavsky\\_\\_How\\_Corrosive\\_Practices\\_from\\_Russia\\_Penetrate\\_and\\_Undermine\\_US\\_and\\_UK.pdf](https://imrussia.org/media/pdf/Research/Ilya_Zaslavsky__How_Corrosive_Practices_from_Russia_Penetrate_and_Undermine_US_and_UK.pdf).

## II. THE KLEPTOCRATIC NATURE, NETWORKED STRUCTURE, AND OPERATING PRINCIPLES OF NUMEROUS FOREIGN GOVERNMENTS REQUIRE VIGILANCE IN EMOLUMENTS CLAUSE ENFORCEMENT.

Corruption has existed certainly as far back as humans have known how to write.

Religious texts berate it.<sup>4</sup> A thousand years of advice to monarchs warns against it—for reasons of self-preservation as well as moral virtue. Even the author in this literary tradition who is famous as an apologist for the sins of rulers, Niccolo Machiavelli, makes an exception for outright corruption. That vice he sharply condemns as likely to doom his Prince's reign.<sup>5</sup>

Though the practices are long-lived, however, a growing body of literature<sup>6</sup> suggests that since the mid- to late-1980s, corruption has entered a new era. Changes in attitudes and technologies have increased the *scale of the wrongdoing*, the *sophistication* of its perpetrators, and its *repercussions*.

---

<sup>4</sup> See, e.g., 1 *Samuel* 8:4-18.

<sup>5</sup> Sarah Chayes, *Thieves of State*, p. 9 (Norton, 2015).

<sup>6</sup> See, e.g., Haroon Borat et al., *Betrayal of the Promise: How South Africa Is Being Stolen* (2017), <http://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017.pdf>; Tom Burgis, *The Looting Machine* (Harper Collins, 2016); Chayes, *supra* note 5; Sarah Chayes, *The Structure of Corruption: A Systemic Analysis Using Eurasian Cases*, Carnegie Endowment for International Peace (June 30, 2016), <http://carnegieendowment.org/2016/06/30/structure-of-corruption-systemic-analysis-using-eurasian-cases-pub-63991>; Sarah Chayes, *When Corruption is the Operating System: The Case of Honduras*, Carnegie Endowment for International Peace (May 30, 2017), <http://carnegieendowment.org/2017/05/30/when-corruption-is-operating-system-case-of-honduras-pub-69999>; Karen Dawisha, *Putin's Kleptocracy* (Simon and Schuster, 2015); Balint Magyar, *Post-Communist Mafia State: The Case of Hungary* (Central European University, 2016); Shana Marshall, *The Egyptian Armed Forces and the Remaking of an Economic Empire*, Carnegie Endowment for International Peace (April 2015); *Organized Crime and Corruption Reporting Project, Corruptistan – Azerbaijan*, <https://www.occrp.org/en/corruptistan/azerbaijan/>; Fintan O'Toole, *Ship of Fools: How Stupidity and Corruption Sank the Celtic Tiger* (Public Affairs, 2010); Minxin Pei, *China's Crony Capitalism* (Harvard, 2016); Alfredo Schulte-Bockholt, *Corruption as Power: Criminal Governance in Peru During the Fjimori Era* (Peter Lang, 2013); Bob Rijkers, et al., *All in the Family: State Capture in Tunisia*, World Bank, (Mar. 1, 2014); *War Crimes Shouldn't Pay*, The Sentry (Sept. 2016), [https://thesentry.org/wp-content/uploads/2016/08/Sentry\\_WCSP\\_Final.pdf](https://thesentry.org/wp-content/uploads/2016/08/Sentry_WCSP_Final.pdf).

*Scale.* The sums in play in recent major international corruption scandals have frequently topped \$1 billion. In one case, money missing from public accounts totaled approximately \$1 billion per month over more than two years.<sup>7</sup>

*Sophistication.* These heists are carried out not by a host of unconnected venal individuals, but by sophisticated and effective networks. Such networks weave together three strands that many Westerners think of as distinct. Working hand in hand, public-sector officials, businessmen from the private sector, and out-and-out criminals collaborate to attain their shared objective: capturing juicy revenue streams for the exclusive benefit of network members. Because the strands of these webs weave across such apparently separate categories, it can be hard to visualize the integrated whole.

Public and private sectors. Americans may enjoy arguing over their relative merits, but private and public sectors are often indistinguishable within kleptocratic networks. Sometimes the same people or their close relatives hold formal positions in both sectors simultaneously. Or the sectors may be tightly interwoven through repeated exchanges of items of value (“emoluments”).

In Azerbaijan, for example, the president’s family owns no fewer than eleven banks, as well as massive consortia that sprawl across several economic domains, notably the big-ticket

---

<sup>7</sup> See, e.g., on Brazil, Jonathan Watts, *Operation Car Wash: Is this the biggest corruption scandal in history?*, The Guardian (June 1, 2017), <https://www.theguardian.com/world/2017/jun/01/brazil-operation-car-wash-is-this-the-biggest-corruption-scandal-in-history>; on Malaysia, Randeep Ramesh, *IMDB: The inside story of the world’s biggest financial scandal*, The Guardian (July 28, 2016), <https://www.theguardian.com/world/2016/jul/28/1mdb-inside-story-worlds-biggest-financial-scandal-malaysia>; on Moldova, where the heist represented some 10% of GDP, Idrees Ali, *Moldovan businessman jailed for role in \$1 billion bank fraud*, Reuters (April 20, 2017), <http://www.reuters.com/article/moldova-banking-platon-idUSL8N1HS3T0>; and on Nigeria, where approximately \$1 billion per month went missing from oil revenues for at least 19 months, Tim Cocks & Joe Brock, *Special Report: Anatomy of Nigeria’s \$20 billion “leak”*, Reuters (Feb. 6, 2015), <http://www.reuters.com/article/us-nigeria-election-banker-specialreport-idUSKBN0LA0X820150206>

infrastructure development and luxury real estate industries that absorb a substantial share of the national budget.<sup>8</sup>

Similarly, Afghan President Hamid Karzai's brother Mahmud was a major shareholder in the largest private bank—which won a monopoly contract to handle the salaries of all Afghan National Army personnel. Kabul Bank awarded Mahmud Karzai approximately \$23 million in fraudulent loans.<sup>9</sup> Another brother had a beneficial stake in a construction company that implemented projects costing millions of U.S. government dollars.<sup>10</sup>

If the names of an official's children or gardener or illiterate security guard appear on ownership documents of a company or bank account in these cases, those assets are in fact usually held on behalf of the official himself.

In Honduras, the private- and public-sector strands of the kleptocratic network are a bit more distinct. The handful of families that dominate such key industries as banking and energy share a unique cultural heritage that sets them apart from the bulk of public-sector network members.

What binds the network together in cases like this is a pattern of exchanges. Through their control of state power, network members who are government officials provide their

---

<sup>8</sup> See OCCRP *supra* note 6. In Abd El-Fattah El-Sisi's Egypt, enterprises owned by the military or by recently retired senior officers similarly capture not just the bulk of government infrastructure contracts, but a significant proportion of the nominally private sector economy as well. See Marshall, *supra* note 6.

<sup>9</sup> Chayes, *supra* note 5, at 135-55; Dexter Filkins, *The Afghan Bank Heist: A secret investigation may implicate dozens of high-ranking government officials*, *The New Yorker* (Feb. 14, 2011) <http://www.newyorker.com/magazine/2011/02/14/the-afghan-bank-heist>. The provision and receipt of loans openly understood to be unrecoverable was also an identifying feature of the kleptocratic network that controlled Tunisia during the last years of Zine el-Abidine Ben Ali's rule. See Beatrice Hibou, *The Force of Obedience: The Political Economy of Repression in Tunisia* (2011), at 27-52.

<sup>10</sup> See generally Technologists Inc., <https://www.technologistsinc.com/> (last visited August 10, 2017).

private-sector counterparts with items that help maximize gains. These gifts may not be cash money or costly physical objects, but they are nevertheless invaluable: a law guaranteeing government purchase of solar energy at absurdly high rates, for example, or reliably favorable legal rulings. In return, these public-sector network members gain shares in the companies whose profits they have helped inflate, or free rein to write self-dealing procurement contracts.<sup>11</sup>

In Honduras as elsewhere, the terms of such bargains are never spelled out. The fact of the obligation and the general value of favors due are implicitly understood.<sup>12</sup> Privacy laws and secrecy jurisdictions add extra layers of protection, shielding the identities of gift-givers and beneficiaries and the items that have been transferred.

In such contexts, receipt of prohibited Emoluments through business entanglements sets up precisely the type of ongoing indebtedness the Clause was designed to avert.

Criminals. Braided into these kleptocratic networks in many countries is a third strand: overtly criminal organizations. Far from simply buying silence with the occasional bribe, cartels that traffic in drugs, human beings, weapons, and other contraband are often full-fledged members of kleptocratic networks.<sup>13</sup> Business dealings with these networks rarely escape the taint of criminal association.

---

<sup>11</sup> Chayes, *supra* note 6.

<sup>12</sup> Lawrence Lessig, *Republic Lost: How Money Corrupts Congress and a Plan to Stop It* (New York, 2012), at 15-19; compare Ulrike Malmendier & Klaus Schmidt, *You Owe Me*, *American Economic Review* 107:2 pp. 493-526, 495 (2017): “Our evidence suggests that a gift triggers an obligation to repay, independently of the intentions of the gift giver and the distributional consequences” and extensive work on the influence of corporate funding on findings of scientific research, such as this study on anti-depressants: C. Bruce Baker et al., *Quantitative Analysis of Sponsorship Bias in Economic Studies of Antidepressants*, 183 *British Journal of Psychiatry* 498-506 (2003), <http://bjp.rcpsych.org/content/bjprcpsych/183/6/498.full.pdf>. Obviously in these cases, no explicit obligation is spelled out.

<sup>13</sup> With respect to Honduras, that fact has been on display for more than a year during a trial in this Court. See *United States v. Lobo*, No. 15 Cr. 174, 2017 WL 1196881 (S.D.N.Y. Mar. 17, 2017). The same pattern characterized the Afghan opium industry during the presidency of Hamid Karzai. His younger half-brother was a significant player in the opium industry

Revenue streams. Though they differ from country to country, the cash flows these networks pursue almost always include big-ticket construction, luxury real estate, and tourism. In this sector in particular, nominally private businesses are not in fact independent from the ruling kleptocratic network. Either they are controlled by network members or surrogates, or they are locked into pay-to-play relationships in which items of value are exchanged on an ongoing basis.

Defendant's foreign business interests are concentrated in precisely this industry.

*Repercussions.* As the scale and sophisticated functioning of corruption has changed in recent decades, so have the reactions of its victims. In just the past few years, mass anti-corruption protests have ripped through a dozen countries on four continents. In Brazil, Guatemala, and South Korea, they led to the impeachment and prosecution of chiefs of state. The earlier Arab Spring and Ukraine revolutions were largely fueled by indignation at corruption. In other cases, the same frustrations have drawn victims into extremist groups, including Al Qaeda, Islamic State, the Taliban and Boko Haram.<sup>14</sup> Recruits have launched attacks not just on their own governments, but also on countries perceived to support them.

It is in this environment that many of Defendant's Emoluments violations are taking place. The complex structure of today's corruption networks is a new twist on an age-old phenomenon. The ways they can obscure their nature and operations have evolved too. So has the

---

and also president of the Kandahar Provincial Council. In both countries, the entire banking sector is believed by industry professionals to be largely floated by the proceeds of the narcotics trade. See Chayes, *supra* note 6, and repeated conversations with then DEA Special Agent Kirk Meyer, director of the Afghan Threat Finance Cell. The business model of Moldova's banks has been predicated on laundering gains improperly realized by Russian criminal-corruption networks. See *The Russian Laundromat Exposed*, Organized Crime and Corruption Reporting Project, <https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/>.

<sup>14</sup> Sarah Chayes, *Corruption and Terrorism: The Causal Link*, in *Against Corruption: A Collection of Essays* (David Cameron ed., London, 2016); Transparency International Defence and Security, *The Big Spin: Corruption and the Growth of Violent Extremism*, (February 2017), [http://ti-defence.org/wp-content/uploads/2017/02/The\\_Big\\_Spin\\_Web.pdf](http://ti-defence.org/wp-content/uploads/2017/02/The_Big_Spin_Web.pdf).



threat of retaliation against U.S. interests by the sufferers. In light of these novel circumstances, heightened scrutiny regarding the receipt of Emoluments is warranted.

### **III. DEFENDANT'S FOREIGN BUSINESS ACTIVITIES INDEBT HIM TO NUMEROUS KLEPTOCRATIC NETWORKS, HARMING THE UNITED STATES.**

In a departure from unbroken precedent, defendant has insisted on retaining a personal interest in hundreds of businesses in more than a dozen countries.<sup>15</sup> Their operations entail countless Emoluments violations, illustrated in the examples below. The large number of cases and density of violations contribute to the severity of the threat to United States.

#### **A. Trump Tower Manila, Philippines**

In the Philippines, where a Trump-branded high-rise slices through the Manila skyline, Defendant's regular, ongoing receipt of prohibited Emoluments is especially blatant. In October 2016,<sup>16</sup> Philippine President Rodrigo Duterte appointed Defendant's local business partner and long-time associate,<sup>17</sup> Jose Antonio, special envoy to Washington for trade. Antonio had previously served in the analogous trade envoy post in Beijing.<sup>18</sup> Donald Trump's own business partner is thus an officer of the Philippine government.

---

<sup>15</sup> Donald J. Trump, *Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)*, U.S. Office of Government Ethics (Jun. 14, 2017), <https://www.documentcloud.org/documents/3867112-Trump-Financial-Disclosure-2017.html>.

<sup>16</sup> Iris Gonzales, *Trump business partner in Philippines named special envoy to US*, The Philippine Star (Nov. 8 2016, 12:00 a.m.), <http://www.philstar.com/headlines/2016/11/08/1641676/trump-business-partner-philippines-named-special-envoy-us>.

<sup>17</sup> Wilson Lee Flores, *Joey Antonio on Duterte, Trump, Wealth and Happiness*, The Philippine Star, (Nov. 27, 2016), <https://www.pressreader.com/philippines/the-philippine-star/20161127/281535110594627>.

<sup>18</sup> Stephanie Baker, Ben Brody, Caleb Melby & Ben Bartenstein, *Trump's Business Partner Will Be Manila's Man in Washington*, Bloomberg, (Nov. 22, 2016, 1:49 p.m.), <https://www.bloomberg.com/politics/articles/2016-11-22/trump-s-business-partner-will-be-manila-s-man-in-washington>.

Antonio has described his business relationship as an “asset” in fulfilling his assignment of “enlarg[ing] the relationship between the two countries.”<sup>19</sup> He has thus already confused his private and official roles. Given the longstanding personal relationship between the two men and their families, it will be impossible to tell when Antonio is acting in his official capacity and when he is speaking solely for himself. All royalty payments or other favors Defendant receives from him will therefore amount to prohibited foreign Emoluments.

Further violations attach to Defendant’s applications for trademark protection.<sup>20</sup> That class of violation is discussed further in Section E below.

Since the days when the Philippines’ ruling couple, Ferdinand and Imelda Marcos, put their kleptocratic practices on public display, the country has been a textbook case of systemic corruption. The extortion of street-level bribes is a feature even of the schoolroom, where eight- and ten-year-olds are shaken down for the price of their books.<sup>21</sup>

---

<sup>19</sup> *Id.*

<sup>20</sup> Oliver Holmes, *Trump conflict of interest concerns over links with law firm run by Philippine government official*, *The Guardian* (July 13, 2017), [https://www.theguardian.com/us-news/2017/jul/14/trump-conflict-of-interest-concerns-philippine-governmentofficial?CMP=share\\_btn\\_link](https://www.theguardian.com/us-news/2017/jul/14/trump-conflict-of-interest-concerns-philippine-governmentofficial?CMP=share_btn_link).

<sup>21</sup> Gan Business Anti-Corruption Portal, *The Philippines Report* (August 2015) <http://www.business-anti-corruption.com/country-profiles/the-philippines>; Global Security Philippines – Corruption, (Dec. 5, 2016), <http://www.globalsecurity.org/military/world/philippines/corruption.htm>; Panos Mourdoukoutas, *Duterte’s Philippines is Getting More Corrupt*, (January 26, 2017, 4:46 p.m.), <https://www.forbes.com/sites/panosmourdoukoutas/2017/01/26/dutertes-philippines-is-getting-more-corrupt/>. Such “petty” corruption rarely serves only to supplement ill-paid civil servants’ salaries. Rather, low-ranking officials are obligated to pay a portion of extorted proceeds to their superiors, and so on up the line. Thus are kleptocratic networks integrated vertically as well as horizontally. *See* Chayes *supra* note 5; *see also*, Leena Koni Hoffman & Raj Navanit Patel, *Collective Action on Corruption in Nigeria: A Social Norms Approach to Connecting Society and Institutions* (Nicolas Boutchet et al. eds., May 2017), <https://www.chathamhouse.org/publication/collective-action-corruption-nigeria-social-norms>).

But, like many other kleptocrats,<sup>22</sup> Duterte is using security fears to distract attention from this fact. The government to which Defendant is obliged is consumed by an extremely violent anti-drug campaign, “Operation Double Barrel.” In the view of some experts, its excesses may rise to the level of crimes against humanity.<sup>23</sup> Meanwhile, in May, a vicious crackdown was launched on Mindanao Island, which is under attack by religious militants—in yet another insurgency fueled in part by indignation at corruption.<sup>24</sup>

Defendant’s unconstitutional receipt of Emoluments from the Philippines demeans the United States and exposes it to physical harm. It is one thing for a government to refrain from interfering with another’s internal policies, reprehensible though they might be. But accepting payments and other gratifications from Manila goes beyond just diplomatic restraint. It implies official approval of Duterte’s policies. It actively associates the U.S. government and people with them. Our nation is sullied, and Americans are exposed to retaliation by aggrieved Filipinos.

#### **B. Luxury Resorts in Bali and West Java, Indonesia**

“Built atop a sheer cliff along a sweeping coastline,” as promotional literature describes it, the Trump International Hotel and Tower Bali “will offer breathtaking views of the

---

<sup>22</sup> In Algeria and Egypt, for example, religious extremism is the security crisis of choice. The governments confront their populations and international partners with an implicit choice: it is either us, venal as we are, or the terrorists. *See Chayes supra* note 5. In Honduras, drug trafficking and violent gangs play the same role. *See generally* Adrienne Pine, *Working Hard, Drinking Hard: On Violence and Survival in Honduras* (2008). *Compare id.* and Jonathan Kaiman, *In the Philippines, poverty and corruption fuel the drug trade*, L.A. Times, (Feb. 28, 2017, 4:00 a.m.), <http://www.latimes.com/world/asia/la-fg-philippines-corruption-2017-story.html>.

<sup>23</sup> *Compare* Human Rights Watch, *License to Kill: Philippine Police Killings in Duterte’s “War on Drugs”* (2016), <https://www.hrw.org/report/2017/03/01/license-kill/philippine-police-killings-dutertes-war-drugs>, and Arnaud Vaulerin, “Philippines, un an de dangers publics,” *Liberation*, July 3, 2017: “The sheriff-president in person has incited murder, promising impunity for law enforcement and ordinary citizens engaged in this hunt for drug abusers and the poor . . . . For the past year, the chief of state has concentrated his efforts on this anti-drug front and neglected other priorities.” (Translation from the French by *Amica*.)

<sup>24</sup> *See Amica’s* interview with a Filipino lieutenant colonel (name withheld for security reasons) who had commanded counterinsurgency forces (2015).

Indian Ocean[.]”<sup>25</sup> Construction on this “largest and most integrated lifestyle resort destination in Bali” has not yet commenced, nor has work on the “championship golf course, elite Lifestyle Country Club [and] high-end residential offering” in Lido. That complex will be “set within the lush tropical forests of the mountains of West Java.”<sup>26</sup>

Official authorization for building and operating properties of this nature represents a valuable Emolument—especially in light of Indonesia’s “literally thousands of regulations and legislation related to environmental management and protection.”<sup>27</sup> The multiple permitting, auditing and inspection requirements are notoriously subject to discretion, favoritism, and the receipt of bribes or other exchanges.

Northwestern University Professor Jeffrey Winters observes that public- and private-sector members of Indonesia’s ruling network are constantly interacting through such exchanges. They “engage in an obligatory process of wealth transfers among each other (babi-bagi)” as they

---

<sup>25</sup> Trump Hotels, Trump International Hotel & Tower Bali (2017), <https://www.trumphotels.com/bali>.

<sup>26</sup> Trump Hotels, Trump International Hotel & Tower Lido (2017), <https://www.trumphotels.com/lido>.

<sup>27</sup> USAID, *Environmental Compliance and Enforcement in Indonesia* 7 (Nov. 2008), [http://www.aecen.org/sites/default/files/ID\\_Assessment.pdf](http://www.aecen.org/sites/default/files/ID_Assessment.pdf). Among the provisions of the 2009 Environmental Protection and Management Act are the application of the notion of environmental damage to forests, mangroves, peat, lawn, karst and “other ecosystem damage” (Article 21); a requirement for an environmental impact assessment as a prerequisite for a business permit in cases of “substantial” potential impact (Articles 22 and 40); the requirement for such assessments to address changes “in formation of land and landscape,” activities that might “damage, degrad[e], [or] influence the natural environment...as well as the socio and cultural environment...introduction of plants, animals and micro-organism[s],” and so on (Article 23); and the requirement for public input on such assessments as well as on the activity itself (Articles 25-26). The minister of the environment or subnational government officials rule on the environmental feasibility of the project and can nullify permits previously awarded or order mandatory audits (Article 31, 38, 49). They are charged with monitoring compliance on an ongoing basis, including by way of intrusive on-site visits. (Articles 72-74). In cases of violation, applicable administrative sanctions include permit revocation and fines, but also disabling or confiscation of facilities, equipment, or goods (Article 80). *See* Legal Office Food and Agric. Org. of the UN, *Envtl. Prot. And Mgmt.* (Oct. 3, 2009), <http://extwprlegs1.fao.org/docs/pdf/ins97643.pdf>.

“compete over who gets to keep the riches from the archipelago’s natural . . . resources.”<sup>28</sup> Jamie Davidson, author of *Indonesia’s Changing Political Economy*, agrees. “Fancy resorts are being built in someone’s fiefdom,” he said in 2017, “and he will ask for something in return.”<sup>29</sup>

The two Trump-branded complexes have reportedly benefitted from at least the following specific Emoluments: 1) the gift of more than 1500 acres of public land; 2) construction of an access road by a state-owned company (and government pressure on private land-owners to sell the emerald-green rice-paddies in its path that they have cultivated for generations); 3) permits to build inside a national park, normally restricted to carefully defined, small-footprint regenerative eco-tourism; 4) waiving the legal requirement for an environmental impact assessment and of building codes for construction on ocean-front cliffs; 5) arbitrary rezoning of land from agriculture or water-catchment to tourism; and 6) deliberate non-enforcement of myriad environmental regulations enacted precisely to protect the type of fragile ecosystem the Trump complexes are using as a marketing asset.<sup>30</sup>

---

<sup>28</sup> Jeffrey A. Winters, *Oligarchy and Democracy in Indonesia*, in 96 *Indonesia* 16 (2013). See also Telephone interview with Jamie Davidson (Mar. 1, 2017) (noting that the exchanges can include shares in beneficiary businesses).

<sup>29</sup> Telephone interview with Jamie Davidson (Mar. 1, 2017).

<sup>30</sup> Written communication with Mardha Tillah of the Indonesian Institute for Forest and the Environment (July 2017). See also, Mardha Tillah & Fahmi Rahman, *Fighting for Existence*, Inside Indonesia (Feb. 2, 2017), <http://www.insideindonesia.org/fighting-for-existence>. Because the undue profits kleptocratic networks specialize in capturing are frequently linked to the exploitation of remarkable landscapes or natural resource extraction, selective environmental licensing and enforcement are typical of kleptocratic governance. Indonesia, wracked by industrial scale deforestation as well as particularly insalubrious tin and coal mining practices, fits this pattern. Sarah Chayes, *A Hidden Cost of Corruption: Environmental Devastation*, Wash. Post (June 16, 2017), [https://www.washingtonpost.com/outlook/a-hidden-cost-of-corruption-environmental-devastation/2017/06/16/03f93c1e-52b8-11e7-b064-828ba60fbb98\\_story.html?utm\\_term=.979095df1a09](https://www.washingtonpost.com/outlook/a-hidden-cost-of-corruption-environmental-devastation/2017/06/16/03f93c1e-52b8-11e7-b064-828ba60fbb98_story.html?utm_term=.979095df1a09); Chayes, *supra* note 6; Sarah Chayes, *Corruption is still Tunisia’s challenge*, L.A. Times (June 10, 2012), <http://articles.latimes.com/2012/jun/10/opinion/la-oe-chayes-tunisia-corruption-20120610>; Global Witness, *Cambodia’s Family Trees: Illegal Logging and the Stripping of Public Assets by Cambodia’s Elite*, (2007), [https://www.globalwitness.org/documents/14689/cambodias\\_family\\_trees\\_low\\_res.pdf](https://www.globalwitness.org/documents/14689/cambodias_family_trees_low_res.pdf); Lukas Straumann, *Money Logging: On the Trail of the Asian Timber Mafia* (2014); Cesar Padilla,

The impacts on irreplaceable landscapes and people will be devastating. “This would be the end of the lush forest and agricultural life,” write Mardha Tillah and Fahmi Rahman about the West Java development, in *Inside Indonesia*.<sup>31</sup>

Defendant’s Indonesian partner, Hary Tanoesoedibjo,<sup>32</sup> is a prominent member of Indonesia’s kleptocratic network. Since the 1998 fall of strongman Muhammad Suharto, that network has been dominated not by government officials but by its super-wealthy private-sector members.<sup>33</sup> Some have founded political parties and/or gained high office. Others finance the campaigns of politicians who then must answer to them. Tanoesoedibjo has done both.

Defendant’s participation as planned in this political economy will provoke more than a few discrete Emoluments Clause violations. An ongoing pattern of exchanges will result between Defendant and Tanoesoedibjo and between Tanoesoedibjo and Indonesian politicians and government bodies. Thus tied into Indonesia’s kleptocratic network, the United States will be

---

*Mining as a Threat to the Commons: The Case of South America*, Wealth of the Commons, <http://wealthofthecommons.org/essay/mining-threat-commons-case-south-america>; Anastasia Kirilenko, *The Khimki Forest: The History of Destruction as Consequence of the “Trading in Influence” between Russia and France*, in EU Civil Soc’y Forum, “Failed in Action: Why European Law Enforcers Are Unable to Tackle EU-Russian Transborder Corruption” 9-28, (2017); Milan Vaishnav, *When Crime Pays: Money and Muscle in Indian Politics* 59, (2017); *National scene: Law enforcement ‘weak’ against big business*, The Jakarta Post, (April 4, 2015, 10:21a.m.), <http://www.thejakartapost.com/news/2015/04/04/national-scene-law-enforcement-weak-against-big-business.html>; Bluegreen Alliance, *Illegal Logging in Indonesia: The Environmental, Economic and Social Costs* (2010), <https://www.bluegreenalliance.org/wp-content/uploads/2016/07/BGA-IndonesiaLogRpt.pdf>; Mike Ives, *Indonesian Coal Mining Boom Is Leaving Trail of Destruction*, Yale Environment 360, (December 17, 2015), [http://e360.yale.edu/features/indonesian\\_coal\\_mining\\_boom\\_is\\_leaving\\_trail\\_of\\_destruction](http://e360.yale.edu/features/indonesian_coal_mining_boom_is_leaving_trail_of_destruction); Mark Hibbs, *Fires Demonstrate Danger of Nuclear Power in Asia*, The Diplomat (July 4, 2013), <http://thediplomat.com/2013/07/fires-demonstrate-danger-of-nuclear-power-in-asia/>; Mark Davis & Peter Cronau, *The Company He keeps: Unearthing Trump’s business deals on our doorstep*, ABC Australia (July 13, 2017) <http://www.abc.net.au/4corners/stories/2017/07/03/4693993.htm>.

<sup>31</sup> Tillah & Rahman, *supra* note 30.

<sup>32</sup> Krithika Varagur, *Trump’s Indonesian Business Partner is Knee-Deep in Dirty Politics*, Foreign Policy (Dec. 22, 2016), <http://foreignpolicy.com/2016/12/22/trumps-indonesian-business-partner-is-knee-deep-in-dirty-politics/>.

<sup>33</sup> *Compare* Winters *supra* note 28, and Chayes *supra* note 6 (discussion on Moldova).

associated with its unchecked exploitation of environmental assets for personal gain and resulting damage to victim populations and global environmental health.<sup>34</sup>

### C. Trump Ocean Club International Hotel and Tower, Panama City

As Defendant was launching his first-ever international real estate deal, in Panama,<sup>35</sup> that country was coming to light as a major hub for money laundering. In the words of a 2007 U.S. Embassy cable, “Panama’s construction boom, prevalence of offshore corporations, and status as a regional financial center provide a conducive environment for money-laundering.”<sup>36</sup> The cable details numerous examples of intensive, ongoing criminal involvement on the part of developers and buyers of high-rise buildings and luxury apartments.

Inaugurated in 2011, the Ocean Club tower houses condominiums, a hotel and a casino on the artificial expansion of a water’s edge neighborhood. The property enjoyed the patronage of Ricardo Martinelli, who was elected president two years before it opened its doors.<sup>37</sup>

---

<sup>34</sup> A pattern of hostility to international environmental protections is already perceptible, and the active flaunting of existing laws through receipt of Indonesian Emoluments could encourage Indonesia and like countries to avoid implementing their own commitments. *See* United Nations, *Intended Nationally Determined Contribution Republic of Indonesia*, [http://www4.unfccc.int/submissions/INDC/Published%20Documents/Indonesia/1/INDC\\_REPUBLIC%20OF%20INDONESIA.pdf](http://www4.unfccc.int/submissions/INDC/Published%20Documents/Indonesia/1/INDC_REPUBLIC%20OF%20INDONESIA.pdf).

<sup>35</sup> Punta Pacifica Realty, Trump Ocean Club International Panama (2017) <http://www.puntapacificarealty.com/trump-tower/>.

<sup>36</sup> *Compare Wikileaks, Money Laundering & Panama’s Real Estate Industry* (2010), [https://wikileaks.org/plusd/cables/07PANAMA255\\_a.html](https://wikileaks.org/plusd/cables/07PANAMA255_a.html), and International Monetary Fund, *republic of Panama: Detailed Assessment of Anti-Money Laundering and Combating the Financing of Terrorism* 6 (2006) [https://info.publicintelligence.net/Panama\\_3rd\\_Round\\_MER\\_\(Final\)\\_English.pdf](https://info.publicintelligence.net/Panama_3rd_Round_MER_(Final)_English.pdf), and the Financial Action Task Force’s damning report published seven years later: International Monetary Fund, *Panama: Detailed Assessment Report – FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism* (2014), <https://www.imf.org/external/pubs/ft/scr/2014/cr1454.pdf>.

<sup>37</sup> Martinelli is currently detained in Florida fighting extradition to Panama, where he is under investigation for corruption. Anna Lenzer, *Trump’s Panama Problem*, Fast Co., (Mar. 3, 2017), <https://www.fastcompany.com/3067820/trumps-panama-problem>; *see also* Azam Ahmed, *U.S. Takes Ex-Leader of Panama Into Custody for Possible Extradition*, N.Y. Times (June 13, 2017),

In Panama, as in every kleptocratic country *Amica* has studied, high-end construction is a network-captured revenue stream. “A passel of ‘megaprojects’ that Martinelli pushed,” wrote Tracy Wilkinson in the Los Angeles Times in 2015, “routinely resulted in a cut of about 15% to the government, according to business groups, activists, and politicians.”<sup>38</sup>

Valuable items that Defendant’s project received during its planning, construction, and launch included a special casino license delivered by a notoriously corrupt gaming commission and lax environmental enforcement. “Any big tower has cut corners,” says a local lawyer who is familiar with this project. “It’s a few floors higher than allowed, or its residential density is too high, or the environmental impact study was weak.”<sup>39</sup>

Despite disputes leading to the ouster of Defendant’s company from some operations,<sup>40</sup> the Trump Organization continues to manage the hotel. Many of its rooms are privately owned, with their individual owners earning a portion of the room rate as a return on their investment.

Unable to run for a further term in office, Ocean Club’s political benefactor, ex-President Martinelli, fled to Florida in 2014.<sup>41</sup> But his rival and successor, Juan Carlos Varela, is part of the

---

<https://www.nytimes.com/2017/06/13/world/americas/panama-president-ricardo-martinelli-arrested-florida.html>; *Panama’s ex-president Martinelli arrested in Florida*, Aljazeera (June 13, 2017), <http://www.aljazeera.com/news/2017/06/panama-president-martinelli-arrested-florida-170613042922962.html>.

<sup>38</sup> Tracy Wilkinson, *In Panama, corruption inquiries grow after president’s tenure ends*, L.A. Times (May 23, 2015), <http://www.latimes.com/world/mexico-americas/la-fg-panama-corruption-20150523-story.html>.

<sup>39</sup> Telephone Interview with confidential individual (name withheld for security reasons) (July 5, 2017).

<sup>40</sup> Within two years of the building’s inauguration, its developer had declared bankruptcy (Central America Data, <http://webmail.centralamericadata.com/en/tsearch?q=Trump+Ocean+Club>) Then condominium owners voted to terminate Defendant’s management contract, accusing Trump Organization personnel of moving hotel expenses onto the condominium’s books and paying Organization executives exorbitant salaries, while exploiting technicalities in order to dominate condo board decision-making. Jeff Horwitz, *AP Exclusive: Panama condo owners to Trump: You’re Fired!*, AP (Oct. 11, 2015), <https://www.apnews.com/a0a52f4617cc4eb098ce99834683fb93>.



tightly integrated network that has ruled the country for years.<sup>42</sup> A bitter clash between the two men has more the allure of intra-network rivalry than political divergence. But it is a rivalry Defendant might be drawn into, due to his past and future receipt of prohibited Emoluments.

Current favors include (at least) government repair of private drainage and sewage systems around the building, use of the hotel for government functions, regular renewals of health permitting for the hotel restaurant, and property tax relief afforded to owners of individual hotel rooms under tourism promotion legislation.

Receipt of these prohibited Emoluments exposes the United States to all the harms listed in Section I above, including potential influence over an imminent U.S. government decision. Manila has requested Martinelli's extradition,<sup>43</sup> and Defendant might seek to ensure an outcome that suits his personal interests. Whichever way the U.S. Department of Justice rules in this matter, the public will mistrust the integrity of its decision.

Alongside these dangers mentioned in Section I above, a third threat stems from the specifics of this case. The dignity of our country and of the Office of the President will be besmirched. Given the infamy of Panama's luxury high-rise market, suspicion will persist that Defendant is collecting fees from people who purchased their investment properties in Trump Ocean Club Hotel with tainted cash. With the United States in the vanguard of the global fight against money laundering and financial crime, its power of example will be crippled by this embarrassing ambiguity.

---

<sup>41</sup> Cesar Cardenas and Tracy Wilkinson, *Panama vice president—and opposition candidate—is elected president*, L.A. Times (May 4, 2014, 10:40 a.m.), <http://www.latimes.com/world/mexico-americas/la-fg-panama-election-20140505-story.html>.

<sup>42</sup> He is the son of a liquor magnate and has held several high posts, including the vice presidency.

<sup>43</sup> Jay Weaver, *Ex-Panamanian president seeks release from U.S. custody to fight extradition to homeland*, Miami Herald (June 20, 2017 8:01 p.m.), <http://www.miamiherald.com/news/nation-world/article157261879.html>.

**D. Trump International Golf Club, Dubai, United Arab Emirates**

In a conservative region awash in oil wealth, Dubai contrasts. With less than 5% of UAE's oil reserves, Dubai began running out of oil in the 1990s.<sup>44</sup> So its emirs switched their bets to a different asset: their territory's prime location and longstanding tolerance for smuggling. Leveraging extraordinarily lax free port provisions and the region's reputation for opulence, they made financial secrecy protections, luxury commerce, and exclusive real estate the basis of their business model.<sup>45</sup>

Permission to profit from that business model is a source of patronage, jealously guarded by the ruling clan. Through his local business partner, Hussain Sajwani—the third wealthiest Emirati and a former Abu Dhabi oil official—Defendant is the recipient of such patronage.

Dubai and Abu Dhabi are two semi-autonomous emirates in the federation of seven that makes up the UAE. Once, nomadic tribes governed themselves via consensus among their elders, a relatively democratic process. Since the early 20th century, however, the system has grown more

---

<sup>44</sup> Abu Dhabi controls at least nine-tenths of the federation's proven reserves. UAE Interact, *Oil and Gas*, <http://www.uaeinteract.com/business/oilandgas.asp>; Embassy of the UAE, *The UAE and Global Oil Supply*, <http://www.uae-embassy.org/about-uae/energy/uae-and-global-oil-supply>; Elite Media & National Media Council, *United Arab Emirates Yearbook 2013* (2013), <https://www.mofa.gov.ae/EN/Documents/3556.pdf>; BP, *BP Statistical Review of World Energy June 2016* (2016), <https://www.bp.com/content/dam/bp/pdf/energy-economics/statistical-review-2016/bp-statistical-review-of-world-energy-2016-full-report.pdf>.

<sup>45</sup> Dubai promotes its image as a luxury haven by hawking extravagant goods, properties, and services. One real estate company, Damac, whose slogan is “Live the luxe life,” offers purchasers luxury items like Bugatti's, or jet skis along with their purchases. See, e.g., Kerry A. Dolan, *How The Donald of Dubai Used Outrageous Marketing to Score a \$3 Billion Real Estate Fortune*, *Forbes* (Mar. 21, 2016), <https://www.forbes.com/sites/kerryadolan/2016/03/01/the-donald-of-dubai-hussain-sajwani-interview/#6724952f33bc>; Talia Avakian, *This Insane Rotating Skyscraper Will Rise in Dubai in 2020*, *Travel & Leisure* (Feb. 15, 2017), [www.travelandleisure.com/culture-design/architecture-design/rotating-skyscraper-dynamic-tower-dubai](http://www.travelandleisure.com/culture-design/architecture-design/rotating-skyscraper-dynamic-tower-dubai); Architectural Digest, *Tour Kim Kardashian's \$30,000 Royal Bridge Suite at the Palm Dubai* (2017), [www.architecturaldigest.com/story/kim-kardashian-suite-the-palm-dubai](http://www.architecturaldigest.com/story/kim-kardashian-suite-the-palm-dubai). Dubai also advertises its economic diversification away from petroleum interests, with sectors infrastructure and real estate. See Radwa Radwan Said, *UAE Economic Diversification Record*, Trends Research & Advisory (June 14, 2016), [trendsinstitution.org/uae-economic-diversification-record/](http://trendsinstitution.org/uae-economic-diversification-record/); Expo 2020 Dubai, [www.expo2020dubai.ae/en/Themes/Sustainability](http://www.expo2020dubai.ae/en/Themes/Sustainability) (last visited Aug. 9, 2017).

autocratic. With British backing, some emirs were able to dominate their peers and capture the oil bonanza. Now, their descendants constitute the core of UAE's kleptocratic networks.

Public assets, such as lands or government ownership stakes in companies, are not understood to be the collective inheritance of the citizens of the country, as in the U.S. Rather, they are seen as the personal belongings of the ruling clan. Many of the top corporations, typically in the sectors of banking and property development, are government—i.e., clan—owned.<sup>46</sup> Even in the case of truly independent companies, the emir and his family control such critical inputs as land, water, and financial services.<sup>47</sup>

Every aspect of Defendant's projects in Dubai is therefore subject to the receipt of prohibited Emoluments. From the ground they are built on to their ability to keep money in local banks without it being arbitrarily frozen,<sup>48</sup> to Sajwani's access to the coveted real estate sector in the first place, these projects' existence is in the hands of the ruling clan.

---

<sup>46</sup> Forbes Middle East, *Top 50 Companies in UAE* (2017), <http://www.forbesmiddleeast.com/en/list/top-50-companies-in-uae/>; Tax Justice Network & Financial Secrecy Index, *Narrative Report on Dubai*, [www.financialsecrecyindex.com/PDF/UnitedArabEmirates\\_Dubai.pdf](http://www.financialsecrecyindex.com/PDF/UnitedArabEmirates_Dubai.pdf).

<sup>47</sup> Business Anti-Corruption Portal, *United Arab Emirates Corruption Report* (2016), <http://www.business-anti-corruption.com/country-profiles/united-arab-emirates>; Dubai Land Department, <http://www.dubailand.gov.ae/English/AboutUs/Pages/About-DLD.aspx> (last visited Aug. 9, 2017). The absolute nature of that control is on display in the frequent freezing of bank accounts of Western professionals whose employment contracts have concluded, or who have a gap between jobs. Internet message boards host numerous accounts of frantic round-trips to the bank, the abrupt inability to pay rent or even flight tickets home. Expat Woman Forum, *Frozen Bank Account/Starting a New Job* (2013), <http://www.expatswoman.com/forum/topic208489-frozen-bank-accountstarting-a-new-job.aspx>. Most local banks are state- (read clan-) owned: Central Bank of the UAE, *Local Commercial Banks Ownership Structure As At 31/12/2013* (2013), <https://www.centralbank.ae/en/pdf/ownership/Ownership-Structure-of-local-Banks-En-19102014.pdf>.

<sup>48</sup> See *supra* note 47.

Defendant's receipt of prohibited Emoluments in this case exposes the United States to two dangers beyond the familiar ones mentioned above. They are, *first*, apparent association with transnational organized crime, and *second*, involvement in a regional war.

*Organized crime.* In 1972, Abu Dhabi's ruling clan helped found the Bank of Credit and Commerce International, maintaining control of the sprawling entity for two decades. This was a bank that according to the U.S. Senate Foreign Relations Committee's Subcommittee on Terrorism, Narcotics, and International Operations "constituted international financial crime on a . . . global scale." Through a layered and fractured structure of holding companies, affiliates and proxy relationships, BCCI was able to perpetrate "fraud . . . involving billions of dollars, money laundering in Europe, Africa, Asia, and the Americas, . . . bribery of officials in most of those locations; support of terrorism, arms trafficking, and the sale of nuclear technologies, the management of prostitution . . . and a panoply of financial crimes limited only by the imagination of its officers and customers."<sup>49</sup>

Perhaps unsurprisingly, Dubai enjoys its own reputation for winking and nodding at criminality.<sup>50</sup> A Drug Enforcement Agency-led task force traced shipments of approximately \$10 million in cash per month from Kabul International Airport to Dubai in 2009 and 2010, when

---

<sup>49</sup> Subcommittee on Terrorism, Narcotics and International Operations, *Drugs, Law Enforcement and Foreign Policy* (Dec. 1988), <http://nsarchive.gwu.edu/NSAEBB/NSAEBB113/north06.pdf>. See also Jonathan Beaty & S.C. Gwynne, *The Outlaw Bank: A Wild Ride Into the Secret Heart of BCCI* (New York, 1993).

<sup>50</sup> Tax Justice Network, *supra* note 46; Nick Mathiason, *Dubai's dark side targeted by international finance police*, *The Guardian* (Jan. 23, 2010), <https://www.theguardian.com/business/2010/jan/24/dubai-crime-money-laundering-terrorism>; Angela Guiffrida, *Dubai labors under money laundering image*, *N.Y. Times* (Dec. 2, 2010), <http://www.nytimes.com/2010/12/02/business/global/02iht-m02blaunder.html>; Reuters, *Wealthy Afghans Snapping Up Properties in Dubai*, *N.Y. Times* (Sept. 12, 2012), <http://www.nytimes.com/2012/09/13/world/middleeast/wealthy-afghans-snapping-up-properties-in-dubai.html>.

Afghanistan was supplying some 83% of the world's heroin.<sup>51</sup> Much of the money was invested in luxury Dubai real estate.<sup>52</sup> As in the Panamanian case, the whiff of such criminal associations will inevitably cling to Defendant's showy additions to this market.

*War.* The geostrategic implications of Defendant's Emoluments Clause violations are very significant in this case. With tensions escalating between a block of Sunni countries that UAE is helping lead on one side, and Iran on the other, the outbreak of hostilities is a real possibility. This simmering crisis has implications that touch on many dimensions of US foreign and security policy. If Defendant's decision-making is influenced, wittingly or not, by his receipt of prohibited Emoluments from UAE, the repercussions could be particularly grave.

#### **E. Trademark Protection, China**

The Trump Organization or its affiliates hold more than 100 registered or provisionally approved trademarks in China, for activities ranging from catering to veterinary services. Dozens more applications are pending.<sup>53</sup>

Trump Organization or affiliated entities currently operate in China. Their operations include subcontracting the manufacture to brand specifications of merchandise to be sold elsewhere in the world, and marketing branded products in China.<sup>54</sup>

---

<sup>51</sup> United Nations Office on Drugs and Crime, *The Global Afghan Opium Trade* (2011), [https://www.unodc.org/documents/data-and-analysis/Studies/Global\\_Afghan\\_Opium\\_Trade\\_2011-web.pdf](https://www.unodc.org/documents/data-and-analysis/Studies/Global_Afghan_Opium_Trade_2011-web.pdf).

<sup>52</sup> From *Amica's* personal experience, reconfirmed with Kirk E. Meyer, former Director of the Afghan Threat Finance Cell, (June 28, 2017).

<sup>53</sup> Wee, *supra* note 1; CN Trademark Application No. 20373936 (filed June 21, 2016), CN Trademark Application No. 20373934 (filed June 21, 2016), CN Trademark Application No. 19643046 (filed April 15, 2016), <http://tmsearch.cn/trademark-owner-search-china/Donald%20Trump>.

<sup>54</sup> Matt Ribers, *Chinese shoe manufacturer: Ivanka Trump 'is a very good client'*, CNN Money (April 5, 2017), <http://money.cnn.com/2017/04/05/news/economy/ivanka-trump-china-shoes/?iid=EL>; Rob Wile, *Ivanka Trump's Brand Is Thriving, Especially in China* (April 18, 2017), TIME, <http://time.com/money/4744164/ivanka-trump-brand-company-retail-sales-china/>.

Trademark protection is not granted in China as a matter of course. It is subject to administrative discretion. It is also a frequent subject of litigation, a further testament to its value.<sup>55</sup> The Trump Organization itself has been embroiled in such litigation before Chinese courts.<sup>56</sup> China's judiciary is widely seen as corrupt and subject to direct political influence.<sup>57</sup>

Defendant's current and future acquisitions of trademark registrations in China thus constitute Emoluments Clause violations. Trading such official favors for a quid pro quo is commonplace in China. So is the gratification of government officials by way of their children, in return for some coveted official act.<sup>58</sup> Despite a highly publicized anticorruption campaign, the Chinese regime remains infamous for such practices.<sup>59</sup>

Receipt of prohibited Emoluments from China subjects Defendant's judgment on matters of foreign, security, and commercial policy to the influence of America's greatest economic rival. Just as real is the danger that practices habitual in kleptocratic China—as in the other countries discussed above—might contaminate the United States' system of government.

---

<sup>55</sup> Melanie Lee and Lee Chyen Yee, *China's trademark system baffles foreign firms*, Reuters (Feb. 17, 2012), <http://www.reuters.com/article/uk-china-trademark-idUSLNE81G02520120217>.

<sup>56</sup> Supreme Court People's Court Monitor, *First U.S. President (-Elect) to Litigate in Chinese Court* (Nov. 14, 2016), <https://supremepeoplescourtmonitor.com/tag/donald-trump-litigation-in-china/>.

<sup>57</sup> Minxin Pei, *Without An Independent Judiciary, China Cannot Win Its War on Corruption*, Huffington Post (Feb. 10, 2017), [http://www.huffingtonpost.com/entry/china-war-on-corruption-judiciary\\_us\\_589b5cf0e4b04061313adfeb](http://www.huffingtonpost.com/entry/china-war-on-corruption-judiciary_us_589b5cf0e4b04061313adfeb); Lauren Hilgers, *A Chinese Supreme Court Justice Falls from Grace*, Foreign Policy (July 28, 2015), <http://foreignpolicy.com/2015/07/28/china-supreme-court-corruption-crackdown/>; BBC, *China Media: Judicial Corruption* (2014), <http://www.bbc.com/news/world-asia-china-26333603>; Ling, Li, *The 'Production' of Corruption in China's Courts: Judicial Politics and Decision-Making in a One Party State*, Law and Societal Inquiry 37 No. 4, (2012), <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-4469.2012.01285.x/full>.

<sup>58</sup> JP Morgan Chase & Co., Exchange Act Release No. 79335 (Nov. 17, 2016), <https://www.sec.gov/litigation/admin/2016/34-79335.pdf>.

<sup>59</sup> Yukon Huang, *The Truth About Chinese Corruption*, Carnegie Endowment for International Peace (May 29, 2015), <http://carnegieendowment.org/2015/05/29/truth-about-chinese-corruption-pub-60265>.

**IV. WITHOUT JUDICIAL REMEDY, DEFENDANT’S FOREIGN EMOLUMENTS VIOLATIONS WILL GROW IN NUMBER AND CAUSE INCREASING DAMAGE TO THE UNITED STATES.**

Future violations along the lines of those reviewed above are inevitable. Though Defendant has claimed his Organization will refrain from new overseas business initiatives, current ones are expanding. A second Dubai golf club is planned, as is a Farallon Trump Condominium and Resort Complex in Cap Cana, Dominican Republic.<sup>60</sup> Several hotel/apartment complexes are currently under construction in India—for which Defendant’s partners include a political party official and public office holder.<sup>61</sup> And Defendant’s Indonesian partner has suggested he might run for president. If he wins, then he himself will be yet another “King, Prince or Foreign state” that the Emoluments Clause defends against.

Taken as a whole, Defendant’s unconstitutional receipt of Emoluments exposes the United States and its people to intolerable dangers.

So varied and numerous are his violations that attempting to list all the ways foreign governments might leverage them would far exceed the page limit allotted for this brief. Inevitably, Americans will be tempted by that exercise. If the U.S. takes sides with the UAE against Qatar (which has served as a reliable rear base for the wars in Afghanistan and Iraq), is that decision made for the benefit of America, or for Defendant’s ongoing business? If Chinese entities are allowed to

---

<sup>60</sup> World Class Condo Hotels, Farallon Trump at Cap Cana, <http://www.worldclasscondohotels.com/properties/farallon-trump.html>; Ezra Fieser, *A Graft machine’s Collapse Sows Chaos in the Caribbean*, Bloomberg (June 12, 2017); <https://www.bloomberg.com/news/features/2017-06-12/odebrecht-corruption-machine-s-collapse-sows-chaos-in-the-dominican-republic>.

<sup>61</sup> Compare Deborah Dsouza, *Who Are Donald Trump’s Business Partners in India?*, Investopedia (Nov. 21, 2016 7:10 a.m.), <http://www.investopedia.com/news/who-are-donald-trumps-business-partners-india/> and Vaishnav, *supra* note 30, 61 (“[P]oliticians (and the bureaucrats they control) exercise considerable discretion over the acquisition and allocation of land and what the land is ultimately used for. This provides politicians with a steady supply of favors they can dole out to prospective builders and developers, who must come with hat in hand to politicians for policy and regulatory favors.”).

invest in the U.S. banking system, prized for its solidity, is the national interest served, or is a favor being returned? What unseen bargains are being made every day? The public will never know. Cynicism and contempt of our government will grow. In the era of terrorism, these violations also expose Americans to the physical threat of attack by the victims of the practices with which the prohibited Emoluments associate the United States.

Of perhaps greatest concern, the kleptocratic networks to which Defendant is beholden engage in a style of rule that is antithetical to American democracy. Whether they are nominal democracies such as Indonesia, or outright autocracies such as the Philippines or UAE, these are criminalized kleptocracies, distorting essential government functions to grossly enrich a ruling clique. Dismissal of Plaintiffs' Complaint would help such practices gain acceptance at home. And the character of American democracy would be corrupted for decades to come.

The wisdom of the Emoluments Clause is that it does not wait until too late—until after the damage has been done—and then impose some retroactive penalty. Instead, it establishes an absolute prohibition: a protective shield which, raised in time, can spare our nation and its people irreparable harm.

### **CONCLUSION**

For all the foregoing reasons, *Amica* respectfully recommends that this Court deny Defendant's motion to dismiss Plaintiffs' Complaint.



Dated: November 14, 2017  
New York, New York

EMERY CELLI BRINCKERHOFF  
& ABADY LLP

\_\_\_\_\_  
/s/

Ilann M. Maazel\*  
Emma L. Freeman\*  
600 Fifth Avenue, 10<sup>th</sup> Floor  
New York, New York 10020  
(212) 763-5000

*\*motions for pro hac vice admission pending*

*Attorneys for Amica Curiae*

David W. Sanford (13619)  
SANFORD HEISLER SHARP, LLP  
1666 Connecticut Avenue, Suite 300  
Washington, D.C. NW 20009  
Telephone: (202) 499-5200  
Facsimile: (202) 499-5199  
dsanford@sanfordheisler.com

*Attorney for Amica Curiae*