

March 8, 2017

The Honorable Preet Bharara
United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, NY 10007

Dear Mr. Bharara:

Democracy 21, Citizens for Responsibility and Ethics in Washington (CREW) and the Campaign Legal Center request that you undertake an investigation to determine if the Trump Organization LLC, the Trump Organization, Inc., and any related Trump businesses based in the Southern District of New York are receiving payments and financial benefits from foreign governments that benefit President Donald Trump and that do not comply with Article I, Section 9, Clause 8 of the United States Constitution, the "Foreign Emoluments Clause."

We also urge you to take whatever steps may be necessary and appropriate to ensure that the Trump Organization and related Trump business enterprises do not receive payments and financial benefits from foreign governments that benefit President Trump and that do not comply with the Emoluments Clause.

The Trump Organization has its main offices in New York City, and resides in the Southern District of New York. Thus, your office has jurisdiction and is the appropriate arm of the Justice Department to conduct an investigation and take appropriate action in this matter.

We believe the Justice Department has a broad mandate to ensure compliance with provisions of the Constitution that relate to Federal officeholders. For example, in written answers provided to the Senate Judiciary Committee during his confirmation proceedings, Attorney General Jeff Sessions stated that while he was not aware of a federal law that directly charges the Justice Department with enforcing the Emoluments Clause, he recognized that the Justice Department has the responsibility "to ensure that officeholders comply with their constitutional obligations."¹

Published reports indicate that the Trump Organization and related Trump business entities have been receiving payments and other benefits from foreign government sources which

¹ Questions for the Record, Nomination of Jeff Sessions to be Attorney General of the United States (submitted Jan. 17, 2017) at 9-10.

benefit President Trump through his ownership of the Trump Organization and related Trump business entities.

A failure by your office to investigate these reports and to take appropriate action will leave the Nation exposed to foreign governments directly and indirectly providing payments and financial benefits to President Trump when those foreign governments may be seeking to influence Executive Branch policies and positions. This is precisely the kind of problem that the Founding Fathers acted to prevent by including the Foreign Emoluments Clause in the Constitution.

A. The Foreign Emoluments Clause

The Foreign Emoluments Clause of the Constitution provides that, “no Person holding any Office of Profit or Trust under [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.” U.S. Const. art. I, § 9, cl. 8.

The Foreign Emoluments Clause was added to the Constitution, without dissent, at the request of Charles Pinkney, who “urged the necessity of preserving foreign Ministers & other officers of the U.S. independent of external influence” by foreign governments.² Edmund Jennings Randolph echoed the anti-corruption purpose of the Clause, stating: “It was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign states.”³ The Framers recognized the dangers of foreign influence and corruption, even in situations subtler than quid pro quo bribery, and thus created a broad constitutional prophylactic applicable to anything of value given by any foreign government to any officer of the United States.

There is no question that the Foreign Emoluments Clause applies to the President as a “Person holding any Office of Profit or Trust.” The Justice Department Office of Legal Counsel reaffirmed this position in a 2009 ruling addressing whether President Obama could accept the Nobel Peace Prize.⁴ And even President Trump’s attorney has agreed that the President is bound by “obligations created by the . . . Foreign Emoluments Clause.”⁵

The term “Emolument” under the Clause is intended broadly to cover anything of value—an emolument “of any kind whatever.” There is no reason to believe that money received as part of a commercial transaction, such as a payment of rent, is excluded from the

² 2 The Records of the Federal Convention of 1787, at 389 (Max Farrand ed., rev. ed. 1966) (notes of James Madison).

³ *Id.* at 327.

⁴ David J. Barron, *Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the President’s Receipt of the Nobel Peace Prize*, 33 Op. O.L.C. 1, 4 (2009).

⁵ Morgan, Lewis & Bockius LLP, *White Paper: Conflicts of Interest and the President*, at 3-4, available at <https://assets.documentcloud.org/documents/3280261/MLB-White-Paper-1-10-Pm.pdf>.

broad scope of the constitutional term “Emolument.” Such commercial funds paid by a foreign government pose precisely the same risks of influence and corruption as a monetary gift given by a foreign government in the form of a non-commercial gratuity. The Emoluments Clause was written to cover any payments received from a foreign government in both cases.

The recipient of funds in a commercial transaction, even one conducted at arms-length, typically receives something of value from the transaction. Those funds serve to enrich the recipient and therefore pose the same risks of potentially influencing the recipient as does a gift. For purposes of the Foreign Emoluments Clause, such commercially derived funds thus cannot be functionally distinguished from non-commercial gifts.

The Emoluments Clause also is not limited to the receipt of cash payments. Again, an emolument “of any kind whatever” can include non-monetary benefits provided by a foreign government, such as permits, approvals, trademarks or other forms of regulatory dispensations or forbearances, particularly when the foreign government bestows a special accommodation on the U.S. officeholder on terms not available to others.

These kinds of non-monetary benefits granted by a foreign government can be enormously valuable to the recipient and thus can serve the same purpose as cash payments in influencing decision-making by an officer of the United States. For that reason, they are similarly within the scope of the Foreign Emoluments Clause.

B. Facts Relating to Receipt of Foreign Emoluments by the Trump Organization and Related Trump Businesses to Benefit President Trump

There are substantial facts on the public record that indicate the Trump Organization and other Trump business entities—and therefore President Trump through his continuing ownership of those entities⁶—have received payments or other financial benefits from foreign governments in the course of the business operations conducted by the Trump Organization, both in the United States and abroad.

For instance, published reports state that China recently granted a trademark for building construction services to Donald Trump.⁷ The report noted that this “could signal a shift in fortune for the U.S. president’s intellectual property in China” and that he has 49 other trademark applications pending. According to the report, Trump first applied for the construction services trademark in 2006 but his application was repeatedly denied by administrative bodies and courts in China, due to an earlier registration of the mark by another individual. But that competing mark was invalidated in September 2016, shortly before the presidential election, and Trump’s

⁶ Shortly before taking office, President Trump took action to place his business holdings in a revocable trust. However, as has been widely reported, the trust holds the assets for the “exclusive benefit” of the President and he remains the ultimate owner of the assets. S. Craig and E. Lipton, “Trust Records Show Trump Is Still Closely Tied to His Empire,” *The New York Times* (Feb. 3, 2017).

⁷ E. Kinetz, *With Trump’s win in China, will Trump toilets get flushed*, Associated Press (Feb. 14, 2017).

mark was published in China's Trademark Gazette on November 13, 2016, less than a week after he won the presidency. According to an expert quoted in the news article, "It would be hard to imagine that the judges, the Trademark Office and/or the Trademark Review and Adjudication Board were acting without some kind of guidance."

Extensive additional facts relating to foreign payments and financial benefits received by the Trump Organization and related businesses are set out in detail in the lawsuit complaint filed on January 23, 2017 in the case *Citizens for Responsibility and Ethics in Washington v. Donald J. Trump*, No. 17-00458 (S.D.N.Y.). A copy of this complaint is attached and is incorporated by reference into our request for an investigation and appropriate action by your office. We summarize below some of the key factual allegations in the complaint relating to the receipt of foreign emoluments.

1. New York Trump Tower. The Trump Tower in New York City is owned by various entities that are owned or controlled by President Trump. Tenants of Trump Tower include the Industrial and Commercial Bank of China (ICBC), which is owned by a foreign nation, China,⁸ and the Abu Dhabi Tourism & Culture Authority, which is funded by the government of Abu Dhabi, a part of the United Arab Emirates.⁹ The Abu Dhabi Tourism entity is, according to a published report, registered with the Justice Department as a foreign agent under the Foreign Agents Registration Act.¹⁰ Upon information and belief, the business entities that own Trump Tower and which, in turn, are owned by President Trump, regularly receive monies paid as rents from these foreign government entities.

2. Washington, D.C. Trump International Hotel. The Trump International Hotel in Washington, D.C. is owned by various entities that are owned or controlled by President Trump. According to published reports, the hotel has been courting business from foreign diplomats.¹¹ These reports also state that the Embassy of Kuwait, the nation of Bahrain and the nation of Azerbaijan have each held events, or are planning to hold events, at the hotel.¹² Upon information and belief, the business entities that own the Trump hotel, and which in turn are

⁸ Caleb Melby et al., *When Chinese Bank's Trump Lease Ends, Potential Conflict Begins*, Bloomberg (Nov. 28, 2016).

⁹ Paul Blumenthal, *Donald Trump's Company Is Receiving Direct Payments From Foreign Agents Right Now*, The Huffington Post (Jan. 23, 2017).

¹⁰ *Id.*

¹¹ Jonathan O'Connell & Mary Jordan, *For foreign diplomats, Trump hotel is place to be*, Wash. Post (Nov. 18, 2016).

¹² Jonathan O'Connell, *Kuwaiti Embassy is latest to book Trump D.C. hotel, but ambassador says he felt 'no pressure'*, Wash. Post (Dec. 20, 2015); Nolan D. McCaskill & Madeline Conway, *Bahrain to host event at Trump's D.C. hotel, raising ethical concerns*, Politico (Nov. 29, 2016); Judd Legum & Kira Lerner, *Under political pressure, Kuwait cancels major events at Four Seasons, switches to Trump's D.C. hotel*, ThinkProgress (Dec. 19, 2016); Brent Griffiths & Kenneth P. Vogel, *Embassy of Azerbaijan to co-host event at Trump's D.C. hotel*, Politico (Dec. 5, 2016).

owned by President Trump, have received and will receive monies paid for hotel room rentals from foreign governments.

3. Other Domestic and International Properties and Businesses. The Trump Organization and other entities owned by President Trump have multiple business interests throughout the United States and abroad, including other hotels and properties for sale or lease. Upon information and belief, the Trump Organization and other Trump-related business enterprises regularly receive income and benefits from these business operations, and it is almost certain that some of this income is paid by, and some of these benefits are provided by, foreign governments.

For instance, one of President Trump's business entities has plans to build 20 to 30 luxury hotels in China,¹³ which will require obtaining benefits, such as permits and approvals, from the Chinese government. President Trump is also part owner of an office building located at 1290 Avenue of the Americas in New York City, which carries a \$950 million loan, part of which is held by the Chinese government-owned Bank of China.¹⁴

President Trump's various business entities are also engaged in real estate and licensing projects in at least India,¹⁵ the United Arab Emirates,¹⁶ Indonesia,¹⁷ Turkey,¹⁸ Scotland,¹⁹ Taiwan,²⁰ Saudi Arabia,²¹ and the Philippines.²² In each case, the projects are likely to require

¹³ Simon Denyer & Jonathan O'Connell, *Trump Hotels has had its eye on China—but the door hasn't opened*, Wash. Post (Dec. 26, 2016).

¹⁴ Susanne Craig, *Trump's Empire: A Maze of Debts and Opaque Ties*, N.Y. Times (Aug. 20, 2016).

¹⁵ Richard C. Paddock et al., *Potential Conflicts Around the Globe for Trump, the Businessman President*, N.Y. Times (Nov. 26, 2016).

¹⁶ Jon Gambrell, *Trump's New Dubai Golf Club Shows Pitfalls of His Presidency*, Associated Press (Jan. 3, 2017).

¹⁷ Richard C. Paddock & Eric Lipton, *Trump's Indonesia Projects, Still Moving Ahead, Create Potential Conflicts*, N.Y. Times (Dec. 31, 2016).

¹⁸ Pema Levy, *Trump Admitted to a Conflict of Interest in Turkey*, Mother Jones (Nov. 15, 2016).

¹⁹ Severin Carrell, *Trump could use UK trade deal to boost golf resorts, say former ethics officials*, Guardian (Jan. 17, 2017); Lydia Wheeler, *Trump expanding Scottish golf course after vow of no new foreign deals: report*, The Hill (Jan. 16, 2017).

²⁰ Michael Forsythe, *Taiwan City Planning a Makeover Says a Trump Agent Showed Interest*, N.Y. Times (Dec. 4, 2016).

²¹ Drew Harwell & Anu Narayanswamy, *A scramble to assess the dangers of President-elect Donald Trump's global business empire*, Wash. Post (Nov. 20, 2016).

permits, approvals or other regulatory forbearances or benefits from the applicable foreign government, and are likely as well to generate income, some of which is likely to be paid by foreign governments.

C. Conclusion

The facts set forth in published reports and described above provide multiple examples of the world-wide business enterprises owned by President Trump that are receiving payments and financial benefits from foreign governmental interests that benefit President Trump in his continuing capacity as the owner of the Trump Organization and related Trump business enterprises.

We call on you as the United States Attorney for the jurisdiction where The Trump Organization is located to exercise your responsibility to investigate and take appropriate action to ensure that the Trump Organization and related Trump business enterprises do not receive payments and financial benefits from foreign governments that benefit President Trump and that do not comply with the Emoluments Clause.

Respectfully,

/s/ Fred Wertheimer

Fred Wertheimer
President
Democracy 21

/s/ Norman L. Eisen

Ambassador (ret.) Norman L. Eisen, Chair
Richard Painter, Vice Chair
Noah Bookbinder, Executive Director
Citizens for Responsibility and Ethics in
Washington

/s/ Paul M. Smith

Paul M. Smith
Vice President of Litigation and Strategy
Campaign Legal Center

²² Richard C. Paddock, *Trump Business Partner Is Philippines' New Trade Envoy to U.S.*, N.Y. Times (Nov. 9, 2016).

