

February 15, 2018

The Honorable John F. Kelly
Chief of Staff
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Revocation of Jared Kushner's Temporary Security Clearance

Dear General Kelly,

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the White House revoke the temporary security clearance given to Senior Advisor and Assistant to the President Jared Kushner until his application for permanent clearance can be adjudicated.

Mr. Kushner, President Trump's son-in-law, has served as a senior White House adviser since the President took office in January 2017. In that role, Mr. Kushner reportedly has access to the President's daily intelligence briefing and receives his own separate daily intelligence briefing.¹ He has worked on a variety of matters, including foreign policy issues, that would also seem to require eligibility for access to classified information.² Nonetheless, Mr. Kushner has yet to pass the comprehensive background investigation required to obtain a permanent security clearance. Instead, he has been “working under an interim security clearance” for more than a year.³ Mr. Kushner's access as a designated recipient to the President's daily intelligence briefing while lacking his full security clearance for this length of time appears to be “unprecedented.”⁴

Under the executive orders and administrative guidelines governing eligibility for access to classified information, Mr. Kushner's access to classified information, even on a temporary basis, appears to represent a security threat. Mr. Kushner failed to disclose multiple contacts with Russian officials and other foreign governments in his initial application for a security clearance, raising security concerns and questions about Mr. Kushner's candor. Mr. Kushner's role in President Trump's campaign and transition also is being examined as part of the criminal probes

¹ Adam Entous and Evan Osnos, Jared Kushner is China's Trump Card, *New Yorker*, Jan. 29, 2018, available at <https://www.newyorker.com/magazine/2018/01/29/jared-kushner-is-chinas-trump-card>; Philip Rucker and Ashley Parker, How President Trump consumes – or does not consume – top-secret intelligence, *Washington Post*, May 29, 2017, available at https://www.washingtonpost.com/politics/how-president-trump-consumes--or-does-not-consume--top-secret-intelligence/2017/05/29/1caaca3e-39ae-11e7-a058-ddbb23c75d82_story.html?utm_term=.230e6422ba25.

² Sharon LaFraniere, Maggie Haberman, and Peter Baker, Jared Kushner's Vast Duties, and Visibility in White House, Shrink, *New York Times*, Nov. 25, 2017, available at https://www.nytimes.com/2017/11/25/us/politics/jared-kushner-white-house-trump.html?_r=0.

³ Chris Riotta, Jared Kushner Can't Pass His Security Clearance Investigation, Officials Say, *Newsweek*, Dec. 1, 2017, available at <http://www.newsweek.com/jared-kushner-security-clearance-white-house-access-ivanka-donald-trump-723993>.

⁴ Entous and Osnos, *New Yorker*, Jan. 29, 2018.

being conducted by the FBI and Special Counsel Robert Mueller. Those investigations reportedly are reviewing Mr. Kushner's conduct in several areas, and the statement of facts accompanying the guilty plea of former Trump campaign adviser and White House National Security Advisor Michael Flynn suggests that Mr. Kushner may have violated the Logan Act⁵ by directing efforts by Mr. Flynn to undermine the Obama administration's effort to impose sanctions on Russia in retaliation for Russia's interference in the 2016 election. The extensive business interests Mr. Kushner has retained while serving in the White House have raised further concerns about his suitability for access to classified information. Mr. Kushner is entangled with foreign business interests, his family's businesses have sought substantial foreign investments, and Mr. Kushner reportedly is being targeted by China and possibly other countries, who may be using his business interests and foreign contacts as a means to influence him. Accordingly, Mr. Kushner's temporary clearance should be revoked immediately in light of the substantial national security risk that he presents until his application for a permanent clearance is adjudicated.⁶

The issue of officials serving for long periods in the current White House with only temporary clearance extends beyond Mr. Kushner. According to press reports, more than 130 White House and administration officials did not have permanent security clearance as of November 2017, and at least 30 to 40 White House and administration officials are still operating without full clearance.⁷ Failure to revoke Mr. Kushner's temporary clearance would set a dangerous precedent for these other cases by signaling a willingness to tolerate unacceptable national security risks.

Legal Background

To obtain access to specific classified materials, an individual must have the appropriate access eligibility as well as a demonstrated "need to know" the information contained in the specific classified materials.⁸ Eligibility for access to classified information requires a background investigation that "affirmatively indicates":

⁵ 18 U.S.C. § 953.

⁶ The term "permanent" is used herein as shorthand for a security clearance that has been issued pursuant to a completed background check. All clearances are subject to periodic reinvestigations that could result in revocation or suspension. See Michelle Christensen, *Security Clearance Process: Answers to Frequently Asked Questions*, Congressional Research Service (Oct. 7, 2016), available at <https://fas.org/sgp/crs/secrecy/R43216.pdf>.

⁷ Carol E. Lee, Mike Memoli, Kristen Welker, and Rich Gardella, Scores of top White House officials lack permanent security clearances, *NBC News*, Feb. 15, 2018, available at <https://www.nbcnews.com/politics/white-house/scores-top-white-house-officials-lack-permanent-security-clearances-n848191>; Jim Sciutto, Gloria Berger, and Zachary Cohen, Dozens of Trump officials still lack full security clearance, *CNN*, Feb. 9, 2017, available at <http://www.cnn.com/2018/02/09/politics/trump-officials-pending-security-clearances/index.html>. Some officials have reportedly continued to serve in senior positions despite the White House's knowledge that they would not qualify for a permanent clearance. Eliana Johnson, Kelly knew before abuse reports that Porter would be denied security clearance, *Politico*, Feb. 8, 2018, available at <https://www.politico.com/story/2018/02/08/john-kelly-rob-porter-security-clearance-400987>.

⁸ See generally Christensen, Oct. 7, 2016.

[L]oyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. . . . *Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.*⁹

The Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (“Adjudicative Guidelines”) set forth detailed standards for processing security clearance applications that are used by government departments and agencies to make all final clearance determinations.¹⁰ While the Adjudicative Guidelines allow that “[e]ach case must be judged on its own merits” and should be “evaluated in the context of the whole person,” they also caution that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in the favor of national security.”¹¹

Executive Order 13467 sets forth processes for determining suitability and eligibility for access to classified information for “covered individuals” who “perform work for or on behalf of the executive branch,” but exempts White House employees such as Mr. Kushner who are appointed by the President under 3 U.S.C. § 105 (which is the hiring authority used to appoint White House staff).¹² However, Executive Order 12968, which has not been superseded in relevant part, states that “[n]o employee shall be granted access to classified information unless that employee has been determined to be eligible . . . and to possess a need to know.”¹³ Executive Order 12968 exempts the President and the Vice President but applies to White House staff.¹⁴

⁹ E.O. 12968, Access to Classified Information, § 3.1(b), 60 F.R. 40245 (Aug. 7, 1995) (emphasis added).

¹⁰ Memorandum from Stephen J. Hadley, Assistant to the President for National Security Affairs, Adjudicative Guidelines, Attachment Tab A: *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, Dec. 29, 2005, available at <https://fas.org/sgp/isoo/guidelines.html>. Similar, though not identical, language appears at 32 C.F.R. § 147.1 *et seq.*; that portion of the code reflects an earlier version of the Adjudicative Guidelines. See Personnel Security Policies for Granting Access to Classified Information, 63 FR 4572-01, 1998 WL 31555 (Jan. 30, 1998).

¹¹ Adjudicative Guidelines, ¶ 2(b). The Guidelines discuss 13 different concerns that could present themselves in an application as well as specific criteria that could prove disqualifying or mitigating.

¹² E.O. 13467, Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information, 73 F.R. 38103 (July 2, 2008). See also Christensen, Oct. 7, 2016.

¹³ E.O. 12968, § 1.2(a)

¹⁴ E.O. 12968 defines “employee” to mean “a person, other than the President and Vice President, employed by, detailed or assigned to, an agency . . .” *Id.* § 1.1(e). The definition of “agency” includes “any other entity within the executive branch that comes into the possession of classified information, including the Defense Intelligence Agency, National Security Agency, and the National Reconnaissance Office.” *Id.* § 1.1(a). The White House Office is an “agency” for the purposes of E.O. 12968 because it is both an entity within the executive branch and it comes into the possession of classified information.

Accordingly, White House staff are expected to undergo background investigations and national security clearance processes similar to the process used for regular government employees,¹⁵ although background investigations for senior White House officials (and cabinet level appointees) are conducted by the FBI while background investigations for most other government employees are conducted by the National Background Investigations Bureau.¹⁶ These processes apparently have been used by the Trump administration,¹⁷ which reportedly has led to several White House employees being dismissed for failed background investigations and three senior White House officials resigning after failing to obtain a full security clearance.¹⁸

Based on a justified need, temporary eligibility for access to classified information may be granted in “exceptional circumstances” when “official functions must be performed prior to completion of the investigation and adjudication process” for permanent access eligibility.¹⁹ In such cases, the initial investigation is to be “expedited.”²⁰ The “minimum investigative standards” for obtaining temporary eligibility for access to top secret information require completion of a Questionnaire for National Security Position (“SF 86”) and supporting documentation, favorable review of that form, and favorable review of FBI criminal and investigative records and information in the Security/Suitability Investigations Index and the Defense Clearance and Investigations Index (databases that house security clearances for civilian agencies and Department of Defense, respectively).²¹ Temporary eligibility for access “may be granted only to particular, identified categories of classified information necessary to perform the lawful and authorized functions that are the basis for the granting of temporary access.”²² Moreover, temporary access eligibility may be revoked “at any time based on unfavorable information identified in the course of the investigation.”²³

¹⁵ Partnership for Public Service and Boston Consulting Group, *Presidential Transition Guide*, Jan. 2018, at 86, available at <http://presidentialtransition.org/publications/viewcontentdetails.php?id=845>.

¹⁶ Lindsay Maizland, *Jared Kushner’s security clearance and how it could be revoked, explained*, *Vox*, July 14, 2017, available at <https://www.vox.com/policy-and-politics/2017/7/14/15964338/jared-kushner-security-clearance-explained>.

¹⁷ Partnership for Public Service and Boston Consulting Group, *Presidential Transition Guide*, at 87.

¹⁸ Tara Palmeri, *White House dismisses 6 over failed background checks*, *Politico*, Feb. 16, 2017, available at <https://www.politico.com/blogs/donald-trump-administration/2017/02/white-house-failed-background-checks-dismissals-235112>; Andrew Restuccia and Eliana Johnson, *White House aide Rob Porter resigns after allegations from ex-wives*, *Politico*, Feb. 7, 2018, available at <https://www.politico.com/story/2018/02/07/white-house-aide-rob-porter-resigns-after-allegations-from-ex-wives-397407>; Andrew Restuccia, *Third White House official resigns after being told he wouldn’t qualify for full clearance*, *Politico*, Feb. 14, 2018, available at <https://www.politico.com/story/2018/02/14/third-white-house-official-resigns-after-being-told-he-wouldnt-qualify-for-full-clearance-409246>.

¹⁹ E.O. 12968, § 3.3(a); 32 C.F.R. §§ 147.28-147.33 (implementing E.O. 12968).

²⁰ E.O. 12968, § 3.3(a).

²¹ 32 C.F.R. §§ 147.29, 147.32. See also National Background Investigations Bureau, *Notice No. 01-06: Clearance verification System*, Mar. 5, 2001, available at <https://nbib.opm.gov/hr-security-personnel/federal-investigations-notice/2001/fin-01-06/>.

²² E.O. 12968, § 3.3(a)(3).

²³ 32 C.F.R. § 147.29.

Mr. Kushner's Temporary Security Clearance Should Be Revoked

Mr. Kushner reportedly has applied for top secret clearance,²⁴ which would grant him eligibility to access information, the unauthorized disclosure of which would “cause exceptionally grave damage to the national security.”²⁵ Publicly available facts, however, show that Mr. Kushner’s temporary clearance poses unacceptable security risks. These facts strongly suggest that Mr. Kushner’s application for clearance is subject to “unfavorable information” that raises security concerns under Adjudicative Guidelines E (Personal Conduct), J (Criminal Conduct), and B (Foreign Influence). For these reasons, laid out in detail below, the White House should revoke Mr. Kushner’s temporary security clearance until his application for permanent clearance is fully adjudicated.

Mr. Kushner Initially Failed to Disclose Multiple Contacts with Russian Officials and Other Foreign Governments on His Application for a Security Clearance

Mr. Kushner’s temporary security clearance should be revoked because Mr. Kushner may have deliberately omitted “relevant facts” from his SF 86.²⁶ This conduct raises a security concern under Adjudicative Guideline E because it “involve[es] questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations” and it “raises questions” about Mr. Kushner’s “reliability, trustworthiness and ability to protect classified information.”²⁷ Moreover, the failure to be completely forthcoming on a SF 86 is of particular “special interest” because it is a “failure to provide truthful and candid answers during the security clearance process.”²⁸

Mr. Kushner failed to disclose any contacts with foreign governments on the initial security clearance form he filed on January 18, 2017.²⁹ Subsequently, however, Mr. Kushner supplemented his “list of foreign contacts three times, adding more than 100 names.”³⁰ Mr. Kushner filed the first addendum to his SF 86 security questionnaire on January 19, disclosing

²⁴ Entous and Osnos, *New Yorker*, Jan. 29, 2018 (reporting that Mr. Kushner has applied for a security clearance, and that his interim clearance provides him access to the President’s daily intelligence briefing, for which top secret clearance is required); Lee, Memoli, Welker, and Gardella, *NBC News*, Feb. 15, 2018.

²⁵ E.O. 13526, Classified National Security Information, § 1.2(a)(1), 75 F.R. 707 (Dec. 29, 2009).

²⁶ Adjudicative Guideline E, ¶ 16(a). The SF 86 is used by the U.S. Government in conducting for persons seeking national security positions, for background investigations and for individuals requiring eligibility for access to classified information. Applicants are instructed to answer all questions on the form “completely and truthfully” so that the necessary determination is based on a complete record. See Questionnaire for National Security Positions, Standard Form 86, Revised December 2010, U.S. Office of Personnel Management, 5 CFR Parts 731, 732, and 736.

²⁷ Adjudicative Guideline E, ¶ 15.

²⁸ *Id.*

²⁹ Entous and Osnos, *New Yorker*, Jan. 29, 2018; Jo Becker and Matthew Rosenberg, Kushner Omitted Meeting With Russians on Security Clearance Forms, *New York Times*, Apr. 6, 2017, available at https://www.nytimes.com/2017/04/06/us/politics/jared-kushner-russians-security-clearance.html?_r=1.

³⁰ Mark Landler and Maggie Haberman, With Glare on Trump Children, Political Gets Personal for President, *New York Times*, July 12, 2017, available at <https://www.nytimes.com/2017/07/12/us/politics/trump-says-son-is-innocent-amid-reports-of-russia-meeting.html>.

that he had “foreign contacts” and would willingly detail them.³¹ In mid-May, Mr. Kushner’s representatives submitted a second addendum that “detailed more than 100 calls or meetings with representatives of more than 20 countries.”³² Nevertheless, in this addendum Mr. Kushner failed to report a June 9, 2016 meeting with a Russian lawyer, a contact he disclosed in a third addendum he filed on June 21, 2017.³³ The number of omissions on Mr. Kushner’s form caused the director of the National Background Investigations Bureau to say he has “never seen that level of mistakes” on a security application.³⁴

Of the many contacts omitted from Mr. Kushner’s initial SF 86 security form, several are particularly notable:

- Two meetings Mr. Kushner held in December 2016 with Russian officials: one with Russian Ambassador Sergey I. Kislyak and the other with the head of a Russian state-owned bank, Vnesheconombank (“VEB”).³⁵ According to the *Washington Post*, Mr. Kushner discussed with Ambassador Kislyak the “possibility of setting up a secret and secure communications channel between Trump’s transition team and the Kremlin, using Russian diplomatic facilities” in an apparent attempt to “shield their pre-inauguration discussions from monitoring.”³⁶ Ambassador Kislyak reportedly was “taken aback” since “allowing an American to use Russian communications gear at its embassy or consulate” would have “carried security risks for Moscow as well as the Trump team.”³⁷ Current and former U.S. intelligence officials said that Mr. Kushner’s apparent request was “extraordinary,” and one former senior intelligence official said the entire idea “seems extremely naïve or absolutely crazy.”³⁸

³¹ Matt Zapotosky, *Why Jared Kushner has had to update his disclosure of foreign contacts more than once*, *Washington Post*, July 17, 2017, available at https://www.washingtonpost.com/world/national-security/why-jared-kushner-has-had-to-update-his-disclosure-of-foreign-contacts-more-than-once/2017/07/17/b04e8158-6b05-11e7-96ab-5f38140b38cc_story.html?utm_term=.86faf595c371.

³² *Id.*

³³ *Id.*

³⁴ Kara Scannell, *Background check chief has ‘never seen’ mistakes and omissions at level of Jared Kushner forms*, *CNN*, Oct. 12, 2017, available at <http://www.cnn.com/2017/10/12/politics/jared-kushner-background-check-form/index.html>.

³⁵ Becker and Rosenberg, *New York Times*, Apr. 6, 2017.

³⁶ Ellen Nakashima, Adam Entous, and Greg Miller, *Russian ambassador told Moscow that Kushner wanted secret communications channel with Kremlin*, *Washington Post*, May 26, 2017, available at https://www.washingtonpost.com/world/national-security/russian-ambassador-told-moscow-that-kushner-wanted-secret-communications-channel-with-kremlin/2017/05/26/520a14b4-422d-11e7-9869-bac8b446820a_story.html?utm_term=.1f4b0c5a810a.

³⁷ *Id.*

³⁸ *Id.*

- Three additional contacts between Mr. Kushner and Ambassador Kislyak in 2016 during and after the presidential campaign.³⁹ *Reuters* reported FBI investigators were “examining” these communications to determine “whether Russians suggested to Kushner or other Trump aides that relaxing economic sanctions would allow Russian banks to offer financing to people with ties to Trump.”⁴⁰
- A June 9, 2016, meeting arranged by Donald J. Trump Jr. that Mr. Kushner attended at Trump Tower with then-campaign chairman Paul J. Manafort, Mr. Trump Jr., and a Russian lawyer who has connections to the Kremlin.⁴¹ Mr. Trump Jr. claimed he, Mr. Kushner, and Mr. Manafort participated in a “short introductory meeting” with Russian lawyer Natalia Veselnitskaya to “primarily discuss[] a program about the adoption of Russian children” but that it was “not a campaign issue at that time.”⁴² However, this meeting appears to have become an important focus of the Special Counsel investigation once it became known that Mr. Trump Jr. agreed to take the meeting after he was “promised damaging information about Hillary Clinton”.⁴³ Ms. Veselnitskaya reportedly told the Senate Judiciary Committee that “Trump Jr. asked for evidence of illegal donations to the Clinton Foundation, information she said she did not have.”⁴⁴ It was subsequently reported that Mr. Trump Jr.’s earlier statement, which could be viewed as an attempt to mislead, had been “personally dictated” by President Trump while he was aboard Air Force One flying home from Germany.⁴⁵

Mr. Kushner’s lawyers called the disclosure omissions “an error” resulting from his security questionnaire having been “submitted prematurely,” and said that Mr. Kushner’s office

³⁹ Ned Parker and Jonathan Landay, Exclusive: Trump son-in-law had undisclosed contacts with Russian envoy – sources, *Reuters*, May 26, 2017, available at <http://www.reuters.com/article/us-usa-trump-fbi-kushner-exclusive-idUSKBN18N018>.

⁴⁰ *Id.*

⁴¹ Jo Becker, Matt Apuzzo, and Adam Goldman, Trump Team Met With Lawyer Linked to Kremlin During Campaign, *New York Times*, July 8, 2017, available at <https://www.nytimes.com/2017/07/08/us/politics/trump-russia-kushner-manafort.html>.

⁴² Tom Hamburger and Rosiland S. Helderan, *Washington Post*, July 8, 2017, available at https://www.washingtonpost.com/politics/trump-jr-says-he-kushner-and-manafort-met-with-lawyer-tied-to-kremlin/2017/07/08/18b86d36-6439-11e7-a4f7-af34fc1d9d39_story.html?utm_term=.2a71ce4cf410.

⁴³ Jo Becker, Matt Apuzzo, and Adam Goldman, Trump’s Son Met With Russian Lawyer After Being Promised Damaging Information on Clinton, *New York Times*, July 9, 2017, available at <https://www.nytimes.com/2017/07/09/us/politics/trump-russia-kushner-manafort.html>; Jo Becker, Mark Mazetti, Matt Apuzzo, and Maggie Haberman, Mueller Zeros In on Story Put Together About Trump Tower Meeting, *New York Times*, Jan. 31, 2018, available at <https://www.nytimes.com/2018/01/31/us/politics/trump-russia-hope-hicks-mueller.html>.

⁴⁴ Mike Memoli, Donald Trump Jr. likely to face questions on Russian contacts from House panel, *NBC News*, Dec. 6, 2017, available at <https://www.nbcnews.com/politics/politics-news/donald-trump-jr-likely-face-questions-russian-contacts-house-panel-n826881>.

⁴⁵ Ashley Parker, Carol D. Leonnig, Philip Rucker, and Tom Hamburger, Trump dictated son’s misleading statement on meeting with Russian lawyer, *Washington Post*, July 31, 2017, available at https://www.washingtonpost.com/politics/trump-dictated-sons-misleading-statement-on-meeting-with-russian-lawyer/2017/07/31/04c94f96-73ac-11e7-8f39-ceb7d3a2d304_story.html?utm_term=.f2b69a069358.

had informed the FBI that it would provide “supplemental information.”⁴⁶ However, the supplemental information was not provided until almost four months after his initial SF 86 was filed, and some of these meetings were only disclosed after accounts about them appeared in news reports. Under these circumstances, the evidence does not support a finding that this security concern has been mitigated by a “prompt, good-faith” effort to “correct the omission...before being confronted with the facts”.⁴⁷

Mr. Kushner’s initial omission of his multiple contacts with Russian officials on his SF 86 raises a serious security concern, especially in light of the fact that the contacts are under scrutiny by the FBI and Special Counsel as part of an investigation into Russia’s attempt to influence the 2016 election. His failure to candidly and truthfully disclose on his initial questionnaire his contacts with representatives of foreign countries – particularly one that is accused of meddling in our election – warrants revocation of his temporary eligibility to access classified information until his application for permanent clearance is adjudicated.⁴⁸

Mr. Kushner’s Role in President Trump’s Campaign and Transition is Being Examined as Part of a Criminal Probe

Mr. Kushner’s role in President Trump’s campaign and transition and conduct in relation to investigations by the FBI and Special Counsel Robert Mueller raise additional security concerns under the Adjudicative Guidelines because of the criminal nature of the probes. “Criminal activity creates doubt about a person’s judgement, reliability and trustworthiness” and “calls into question a person’s ability or willingness to comply with laws, rules and regulations.”⁴⁹ Conditions that can raise a security concern under Adjudicative Guideline J and may be disqualifying include allegations of criminal conduct, regardless of whether the person was formally charged, prosecuted, and convicted, as well as the commission of a single serious crime or multiple lesser crimes.⁵⁰

According to the *Washington Post*, Mr. Kushner became a focus of an FBI investigation into Russia’s involvement in the 2016 election last year.⁵¹ The newspaper reported that the FBI had been “focusing on a series of meetings” held by Mr. Kushner “as part of their probe into Russian meddling in the 2016 election and related matters,” and that he was under scrutiny

⁴⁶ *Id*; Becker and Rosenberg, *New York Times*, April 6, 2017.

⁴⁷ Adjudicative Guideline E, ¶ 17.

⁴⁸ Mr. Kushner’s initial omission of meetings with Russian officials on his SF 86 also raises the possibility that Mr. Kushner may have deliberately concealed facts, which could constitute a violation of the criminal false statements statute, a crime that is punishable by up to five years under 18 U.S.C. § 1001.

⁴⁹ Adjudicative Guideline J, ¶ 30.

⁵⁰ Adjudicative Guideline J, ¶ 31.

⁵¹ Matt Zapotosky, Sari Horwitz, Devlin Barrett, and Adam Entous, *Jared Kushner now a focus in Russia investigation*, *Washington Post*, May 25, 2017, available at https://www.washingtonpost.com/world/national-security/jared-kushner-now-a-focus-in-russia-investigation/2017/05/25/f078db74-40c7-11e7-8c25-44d09ff5a4a8_story.html?utm_term=.dc63ea22aeb9.

“because of the extent and nature of his interactions with the Russians.”⁵² Investigators reportedly were “looking broadly into possible financial crimes” in addition to “possible coordination between the Kremlin and the Trump campaign to influence the 2016 presidential election.”⁵³

Special Counsel Mueller’s investigators similarly have reportedly “expressed interest” in Mr. Kushner “as part of its probe into Russian meddling, including potential obstruction of justice in [former FBI Director James] Comey’s firing.”⁵⁴ Before Mr. Mueller took over the FBI investigation, *CNN* reported, the “FBI had been looking at Kushner’s multiple roles on both the Trump campaign and the Trump transition team.”⁵⁵ The focus on Mr. Kushner includes the “2016 Trump Tower meeting, in addition to meetings with Russia’s ambassador and a Russian government banker.”⁵⁶ Other points of focus include the “Trump campaign’s 2016 data analytics operation, his relationship with Flynn and Kushner’s own contacts with Russians.”⁵⁷ Investigators also have reportedly asked witnesses about Mr. Kushner’s role in the firing of the FBI director.⁵⁸

Mr. Kushner also reportedly played a role in potentially undermining U.S. foreign policy supported by the Obama administration during the transition period, conduct that may have violated federal criminal law. Court documents related to the November 30, 2017 plea agreement entered into by Trump’s former National Security Advisor Michael Flynn reveal that an unnamed “very senior” transition official “directed” Mr. Flynn to contact foreign government officials, including Russian officials, to “influence” those governments to “delay” or “defeat” a United Nations resolution introduced by Egypt on the “issue of Israeli settlements.”⁵⁹ As directed, Mr. Flynn followed up with Ambassador Kislyak and requested that Russia “vote against or delay the resolution.”⁶⁰ The “very senior” transition official who directed Mr. Flynn to contact Russian and other foreign government officials has been reported to be Mr. Kushner.⁶¹ These efforts to undermine the Obama administration’s foreign policy might constitute a violation of the Logan Act, which makes it a crime for a citizen, “without authority of the United States,” to “directly or indirectly commence[] or carr[y] on any correspondence or intercourse

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Gloria Borger, Pamela Brown, Evan Perez, and Kara Scannell, *CNN Exclusive: Jared Kushner met with special counsel about Flynn*, *CNN*, Nov. 29, 2017, available at <http://www.cnn.com/2017/11/29/politics/jared-kushner-special-counsel/>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *United States v. Michael T. Flynn*, No. 1:17-cr-00232-RC, *Statement of the Offense*, filed Dec. 1, 2017 (D.D.C.), available at <https://www.justice.gov/file/1015126/download>.

⁶⁰ *Id.*

⁶¹ John Santucci, Tara Palmeri, and Adam Kelsey, *Jared Kushner is ‘very senior’ official who directed Flynn to contact Russia in court documents: Sources*, *ABC News*, Dec. 1, 2017, available at <http://abcnews.go.com/US/senior-trump-transition-official-directed-flynn-contact-russia/story?id=51515179>.

with any foreign government or any officer or agent thereof, with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States.”⁶²

A temporary clearance requires a favorable review of FBI criminal and investigative records. But, while the public record does not provide sufficient information to determine whether or not Mr. Kushner violated any criminal laws, if the reporting cited above is correct about ongoing investigations, no favorable review can be rendered for Mr. Kushner until Special Counsel Mueller completes his investigation and Mr. Kushner’s role in the campaign and transition can be fully assessed. The fact that Mr. Kushner continues to hold a temporary security clearance also raises the possibility that Mr. Kushner could gain access to classified intelligence that may relate to the ongoing investigation. Until Special Counsel Mueller closes his investigation and clears Mr. Kushner of any wrongdoing, Mr. Kushner’s security clearance should be revoked.

Mr. Kushner’s Application for a Security Clearance Raises Concerns that He May Be Subject to Foreign Influence

Mr. Kushner’s application for a security clearance also raises concerns that he may be subject to foreign influence. Adjudicative Guideline B describes several conditions relevant to Mr. Kushner’s application, namely:

- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation;
- (f) failure to report, when required, association with a foreign national; . . .
- (h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion.⁶³

Mr. Kushner’s financial entanglements may include substantial business, financial, or property interests in foreign countries or in businesses that receive significant investments from foreign business partners, which raises a security concern under Adjudicative Guideline ¶ 7(e). When his March 2017 public financial disclosure report (“OGE 278”) was released, Mr. Kushner indicated that he had divested or was in the process of divesting 82 assets but would keep 220 of

⁶² 18 U.S.C. § 953. See also Daniel Hemel and Eric Posner, Why the Trump Team Should Fear the Logan Act, *New York Times*, Dec. 4, 2017, available at <https://www.nytimes.com/2017/12/04/opinion/trump-team-flynn-logan-act.html>; Daniel Hemel and Eric Posner, The Logan Act and its Limits, *Lawfare*, Dec. 7, 2017, available at <https://www.lawfareblog.com/logan-act-and-its-limits>.

⁶³ Adjudicative Guideline B, ¶ 7.

the assets listed, which reportedly were worth between \$167.5 million and \$569.5 million.⁶⁴ Mr. Kushner subsequently amended his report at least 39 times to include more than 70 additional assets worth at least \$10.6 million.⁶⁵ Even with his divestment of some assets, Mr. Kushner reportedly “remain[s] a beneficiary of a vast majority of the business he ran for the past decade, through a series of trusts that already owned the various real estate companies.”⁶⁶ At least some of those business interests appear to involve substantial relationships with foreign entities.

While Mr. Kushner’s OGE 278 discloses his personal lenders, it “does not provide information on his business partners or lenders to his projects.”⁶⁷ Public information, however, shows some of Mr. Kushner’s family business and properties have received and may still receive foreign investments. For instance, the Kushner real estate company has received at least four loans from Israel’s Bank Hapoalim, which “is the subject of a United States Justice Department investigation into allegations that it helped wealthy Americans evade taxes using undeclared accounts.”⁶⁸ For a project that opened in New Jersey in November 2016, the company received “as much as \$50 million in financing from Chinese investors” who obtained two-year visas and a path to permanent residency under the EB-5 visa program in exchange for investing \$500,000.⁶⁹ Both the Securities and Exchange Commission and federal prosecutors in the Eastern District of New York issued subpoenas to the Kushner Companies in 2017 for details about its use of the EB-5 visa program.⁷⁰

Mr. Kushner’s family business also has extensive debt obligations that may raise national security risks. Most prominently, the Kushner company is responsible for half of a \$1.2 billion

⁶⁴ Darla Cameron, Amy Brittain, and Jonathan O’Connell, What Jared Kushner still owns, *Washington Post*, May 21, 2017, available at https://www.washingtonpost.com/graphics/politics/kushner-conflicts/?utm_term=.e87aa8384aa4. Mr. Kushner’s OGE 278 report also included the assets and sources of income for his spouse Ivanka Trump and their minor children. Jared Kushner, Public Financial Disclosure Report, Mar. 9, 2017, available at <https://assets.documentcloud.org/documents/3728206/Kushner-Jared.pdf>.

⁶⁵ Jonathan O’Connell, Matea Gold, Drew Harwell, and Steven Rich, In revised filing, Kushner reveals dozens of previously undisclosed assets, *Washington Post*, July 21, 2017, available at https://www.washingtonpost.com/politics/kushner-failed-to-disclose-dozens-of-financial-holdings-new-document-shows/2017/07/21/1a11a566-6e35-11e7-96ab-5f38140b38cc_story.html?utm_term=.ae0417d134ad; Garance Burke, Bernard Condon, and Chad Day, Kushner adds at least \$10 million in assets he ‘inadvertently omitted’ to disclose, *Associated Press*, July 21, 2017, available at <http://www.businessinsider.com/ap-kushner-adds-at-least-10m-in-assets-to-revised-disclosure-2017-7>.

⁶⁶ Jesse Drucker, Eric Lipton, and Maggie Haberman, Ivanka Trump and Jared Kushner Still Benefiting From Business Empire, Filings Show, *New York Times*, Mar. 31, 2017, available at https://www.nytimes.com/2017/03/31/us/politics/ivanka-trump-and-jared-kushner-still-benefiting-from-business-empire-filings-show.html?_r=0.

⁶⁷ *Id.*

⁶⁸ *Id.*; Jesse Drucker, Kushner’s Financial Ties to Israel Deepen Even With Mideast Diplomatic role, *New York Times*, Jan. 7, 2018, available at <https://www.nytimes.com/2018/01/07/business/jared-kushner-israel.html>.

⁶⁹ Linette Lopez, Just after Trump won, his son-in-law had a cozy meeting with a Chinese exec who’s buying US assets left and right, *Business Insider*, Jan. 9, 2017, available at <http://www.businessinsider.com/kushner-meeting-with-anbang-insurance-2017-1>.

⁷⁰ Matt Robinson and Greg Farrell, Kushner Cos. Get Subpoenas on Use of Visa Program, *Bloomberg*, Jan. 6, 2018, available at <https://www.bloomberg.com/news/articles/2018-01-06/kushner-cos-is-said-to-get-subpoenas-over-use-of-visa-program>; Entous and Osnos, *New Yorker*, Jan. 29, 2018.

mortgage due in February 2019 on a building located at 666 Fifth Avenue in Manhattan.⁷¹ The family has sought substantial investments for the building from a variety of overseas investors over the past two and a half years, including from “South Korea’s sovereign-wealth fund, France’s richest man, Israeli banks and insurance companies, and exploratory talks with a Saudi developer.”⁷² Before the election, Mr. Kushner also reportedly opened discussions with Anbang Insurance Group, a Chinese company that has ties to the Communist Party’s leading families, to obtain financing.⁷³ He also reportedly met in his capacity as “head of his family’s real estate business” during the transition with the “head of the Kremlin-controlled VEB bank,” which is also subject to U.S. sanctions.⁷⁴ Although Mr. Kushner initially failed to disclose his meeting with VEB bank on his SF 86, once the meetings became public, Mr. Kushner contended that the contacts with VEB were “made in his role as a Trump adviser” and “didn’t involve discussion of his family business.”⁷⁵

News reports further indicate that Mr. Kushner and the Chinese Ambassador to the United States discussed “Kushner’s business interests” along with policy matters when they met to prepare for the April 2017 summit at Mar-a-Lago.⁷⁶ This interaction caused some intelligence officials to become “concerned that the Chinese government was seeking to use business inducements to influence Kushner’s views,” although the intelligence was not “conclusive.”⁷⁷ The intelligence reports “triggered alarms that Chinese officials were attempting to exploit Kushner’s close relationship with the President, which could yield benefits over time.”⁷⁸ The financial interests of his spouse, Ivanka Trump, present similar concerns. On the day Mr. Kushner and Ms. Trump attended the summit dinner at Mar-a-Lago with the Chinese president and his wife, the Chinese government provisionally approved three new trademarks for the Ivanka Trump brand that would serve to protect her business interests in China, where some of her handbags, shoes, and clothes are manufactured.⁷⁹ Some of Mr. Kushner’s foreign contacts have reportedly raised national security concerns for the FBI. The FBI counter-intelligence chief reportedly briefed him on the “danger” of his being targeted by Chinese, Russian, and Israeli “foreign-influence operations.”⁸⁰ Despite the FBI’s warnings, Mr. Kushner had a private meeting

⁷¹ David Kocieniewski and Caleb Melby, Kushners’ China Deal Flop Was Part of Much Bigger Hunt for Cash, *Bloomberg*, Aug. 31, 2017, available at <https://www.bloomberg.com/graphics/2017-kushners-china-deal-flop-was-part-of-much-bigger-hunt-for-cash/>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Entous and Osnos, *New Yorker*, Jan. 29, 2018.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Erika Kinetz, Ivanka’s biz prospers as politics mixes with business, *Associated Press*, Apr. 19, 2017, available at <https://apnews.com/d9e34f23a64947d99e4a7d757012c509>; Matea Gold, Drew Harwell, Maher Sattar and Simon Denyer, Ivanka Inc., *Washington Post*, July 14, 2017, available at https://www.washingtonpost.com/graphics/2017/politics/ivanka-trump-overseas/?utm_term=.29d96367fffe.

⁸⁰ *Id.*; Entous and Osnos, *New Yorker*, Jan. 29, 2018.

while on a trip to Beijing in November 2017 with Wendi Murdoch, who some intelligence officers suspect of having “ties to the Chinese government.”⁸¹

Through their extensive business holdings and debt obligations, Mr. Kushner and his family have financial entanglements with foreign persons and entities that give rise to a heightened risk of foreign influence or exploitation under Adjudicative Guideline B, ¶ 7(e). Mr. Kushner’s failure to report meetings with the head of VEB raises an additional security concern under Adjudicative Guideline B, ¶ 7(f) to the extent that his contacts with potential foreign investors constitute “associations.” Representatives or nationals from China and possibly other foreign countries also may be acting to increase the vulnerability of Mr. Kushner to possible future exploitation, inducement, manipulation, pressure, or coercion, a concern under Adjudicative Guideline B, ¶ 7(h).

Conclusion

For the reasons stated above, Mr. Kushner’s eligibility to access classified information, even on a temporary basis, appears to represent a security threat. The executive orders and administrative guidelines governing eligibility for access for classified information clearly demonstrate that Mr. Kushner’s application raises serious national security concerns. Because those standards also counsel that any doubt should be resolved in favor of protecting national security, it is both appropriate and necessary that Mr. Kushner’s temporary clearance be revoked immediately until those considerable doubts can be resolved.

Sincerely,



Noah Bookbinder
Executive Director

⁸¹ *Id.*