

April 30, 2020

Hon. Emory A. Rounds
Director
U.S. Office of Government Ethics
1201 New York Ave., NW, Suite 500
Washington, DC 20005

Re: Jared Kushner's Potential Conflict of Interest From Cadre

Dear Director Rounds:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Government Ethics (“OGE”) review White House Senior Advisor and Assistant to the President Jared Kushner’s sale of his ownership interest in an online real estate investment company called Cadre to determine whether he violated the Standards of Ethical Conduct for Employees of the Executive Branch by improperly using nonpublic information relating to the coronavirus pandemic to further his own private interests.

Mr. Kushner appears to have made millions of dollars in profit from the sale of his Cadre shares while he was in possession of nonpublic information related to the coronavirus pandemic. Mr. Kushner likely sold his Cadre shares, which were last reported to be worth between \$25 million and \$50 million, sometime between February 26 and February 28, 2020.¹ At that time, when President Trump was publicly presenting a positive picture of the threat presented by the virus, government officials internally were expressing significant concerns about the severity of the dangers.² As one top White House official warned in late January and February, “the risk of a worst-case pandemic scenario should not be overlooked” and the crisis “could inflict trillions of dollars in economic damage and take millions of lives.”³

The timing of Mr. Kushner’s Cadre sale also raises questions since Mr. Kushner had resisted selling his Cadre shares for years despite numerous warnings, including through prior complaints filed by CREW, that his Cadre shares presented significant conflicts of interest for him and his spouse, Ivanka Trump, who, like her husband, serves as a senior advisor to President Trump.⁴ By seeking a certificate of divestiture from OGE prior to the sale of his Cadre shares, Mr. Kushner also sought to take advantage of a special tax benefit that allows him as a

¹ Jennifer Jacobs and Caleb Melby, Jared Kushner Divests From Startup Cadre Over Future Conflict Concerns, *Bloomberg*, Feb. 28, 2020, <https://bloom.bg/2yVgrJa>.

² Eric Lipton, David E. Sanger, Maggie Haberman, Michael D. Shear, Mark Mazzetti, and Julian E. Barnes, He Could Have Seen What Was Coming: Behind Trump’s Failure on the Virus, *New York Times*, Apr. 11, 2020, <https://nyti.ms/3ejLYt2>.

³ Jonathan Swan and Margaret Talev, Navarro memos warning of mass coronavirus death circulated in January, *Axios*, Apr. 6, 2020, <https://bit.ly/3a4jhsa>; Maggie Haberman, Trade Adviser Warned White House in January of Risks of a Pandemic, *New York Times*, Apr. 6, 2020, <https://nyti.ms/3ciVkyZ>.

⁴ Letter from Noah Bookbinder to OGE Director Walter M. Shaub, Jr., July 6, 2017, <https://go.aws/2VIsTtm>; Letter from Noah Bookbinder to Deputy Attorney General Rod J. Rosenstein, Jan. 4, 2019, <https://go.aws/2Xx4KCG>.

government official to indefinitely defer capital gains taxes on the proceeds derived from the sale of those assets.⁵

Factual Background

Mr. Kushner's Sale of His Ownership Interest in Cadre

When he joined the White House as a senior advisor in 2017, Mr. Kushner declined to divest his interest in Cadre, an online private real estate investment platform which he had co-founded.⁶ At that time, he reported his Cadre shares to be worth between \$5,000,001 and \$25,000,000 on his initial public financial disclosure report.⁷ Over the next year, Mr. Kushner's ownership interest in Cadre increased significantly in value. On both his 2018 and 2019 annual financial disclosure reports, Mr. Kushner reported Cadre's value to be between \$25,000,001 and \$50,000,000.⁸

On February 26, 2020, OGE issued Mr. Kushner a certificate of divestiture for 2,498,496 shares of Quadro Partners Inc.,⁹ which Mr. Kushner previously reported does business as Cadre.¹⁰ A certificate of divestiture allows government officials like Mr. Kushner to indefinitely defer capital gains tax treatment resulting from the sale proceeds if they follow certain protocols.¹¹ Mr. Kushner may only take advantage of the special tax treatment if he obtained the certificate of divestiture in advance of the sale.¹²

On February 28, *Bloomberg* reported that Mr. Kushner sold his shares in Cadre using a "blind divestment process" after Cadre "attracted investment offers that could pose conflicts of interest."¹³ The particulars of the divestment process are not fully known. According to news reports, Mr. Kushner either decided to or did move the Cadre shares into a trust in December 2019 after consulting with White House counsel and OGE.¹⁴ There is, however, no indication that Mr. Kushner committed at that time to divest his Cadre holdings by any particular date.¹⁵ Thus, Mr. Kushner may not have relinquished control over his Cadre shares until he divested

⁵ CREW Obtains Jared Kushner's Certificate of Divestiture From Cadre, <https://www.citizensforethics.org/jared-kushner-cadre-certificate-divestiture/>.

⁶ Cadre website, "About" page, <https://cadre.com/about>; Jacobs and Melby, *Bloomberg*, Feb. 28, 2020.

⁷ See Jared Kushner, New Entrant Financial Disclosure Report, Mar. 9, 2017 (as amended 39 times through July 20, 2017) ("Kushner New Entrant Report"), at Part 6, Line 260, <https://bit.ly/2KArfPz>.

⁸ Jared Kushner, 2019 Annual Financial Disclosure Report, May 15, 2019 ("Kushner 2019 Report"), Part 6, Line 26, <https://bit.ly/35a16lf>; Jared Kushner, 2018 Annual Financial Disclosure Report, May 15, 2018 ("Kushner 2018 Report"), Part 6, Line 213, <https://bit.ly/2yO2RY5>.

⁹ OGE Certificate of Divestiture for Jared C. Kushner, Feb. 26, 2020, <https://go.aws/2xf1Vvt>.

¹⁰ Kushner 2019 Report, Part 6, Line 213; Kushner 2018 Report, Part 6, Line 26.

¹¹ 5 C.F.R. part 2634, subpart J; OGE Certificate of Divestiture for Jared C. Kushner, Feb. 26, 2020.

¹² 5 C.F.R. § 2634.1001(a); § 5 C.F.R. 2634.1004(b).

¹³ Jacobs and Melby, *Bloomberg*, Feb. 28, 2020.

¹⁴ *Id.*; Caleb Melby, Jared Kushner Rode Cadre to Bigger Valuation, Bigger Tax Break, *Bloomberg*, Mar. 7, 2020, <https://bit.ly/2wSwGG8>.

¹⁵ Mr. Kushner could have used several types of instruments to commit to the divestiture of those assets within a specified timeframe, including through an ethics agreement or by agreeing to the independent management of his assets through a qualified blind trust or similar arrangement. 5 C.F.R. § 2634.401; 5 C.F.R. § 2634.802. Nor is there any indication establishing the independence of the trust into which he reportedly moved the Cadre assets.

them in late February. The exact date of the sale has not been released by the White House or OGE even though Mr. Kushner is required by the STOCK Act to file a periodic transaction report with them for the Cadre sale within 30 days of notice of the transaction or 45 days after the transaction.¹⁶ However, based on the February 26 date on which OGE signed Mr. Kushner's certificate of divestiture for the Cadre shares, Mr. Kushner likely sold his shares in Cadre sometime between February 26 and February 28, when the sale was first reported by *Bloomberg*.

The timing of the Cadre sale likely worked in Mr. Kushner's favor. The Dow dropped 7.79% on March 9, days after Mr. Kushner sold his Cadre shares, experiencing what was then its worst single-day point drop in U.S. market history, and then continued to drop throughout March on fears related to the coronavirus pandemic.¹⁷ Like other parts of the economy, Cadre's real estate e-commerce platform, which connects investors with real estate investments, was likely adversely affected by the coronavirus. One commentator has indicated that the real estate industry is being "clobbered by the coronavirus, and it's going to get worse before it gets better."¹⁸ To help offset some of that expected impact, several provisions of the recently-passed CARES Act focus on the real estate sector.¹⁹

Mr. Kushner's Access to Nonpublic Information about the Health and Economic Risks Related to the Coronavirus

Given his official position, familial relationship, high-level security clearance,²⁰ and role coordinating President Trump's 2020 presidential campaign from the White House,²¹ Mr. Kushner most likely had access to nonpublic information about the health and economic risks presented by the disease before the end of February. U.S. intelligence agencies began issuing classified warnings to President Trump in his daily intelligence briefing as early as January 3, 2020,²² and then increased the volume of warnings toward the end of January and into early

¹⁶ OGE Legal Advisory, LA-12-04, June 12, 2012, at Q6, <https://bit.ly/34XL78q>. On March 20, 2020, CREW submitted a request to the White House for all periodic transaction reports ("PTR") filed by Mr. Kushner since August 21, 2018. On April 16, the White House disclosed only a PTR Mr. Kushner filed in August 2018 unrelated to Cadre, and not any for Cadre transactions. CREW made a similar request to OGE on April 2, 2020. That day, OGE provided only PTRs filed by Mr. Kushner in 2018, none related to Cadre.

¹⁷ Kimberly Amadeo, *How Does the 2020 Stock Market Crash Compare With Others?*, *The Balance*, Mar. 17, 2020, <https://bit.ly/3a4jJ9Q>.

¹⁸ Brad Hunter, *Coronavirus' Impacts On Real Estate: Why You Need To Think Short-Term and Longer-Term*, *Forbes*, Mar. 24, 2020, <https://bit.ly/2JWnELn>.

¹⁹ Greenberg Traurig, LLP Tax Practice, *Real Estate Provisions of the Coronavirus Aid, Relief and Economic Security Act (CARES Act)*, *National Law Review*, Mar. 31, 2020, <https://bit.ly/2XqsWqm>.

²⁰ Letter to Inspector General of the Intelligence Community Michael K. Atkinson from Noah Bookbinder, Mar. 7, 2019, <https://go.aws/3a5env4>.

²¹ Annie Karni and Maggie Haberman, *Kushner's Global Role Shrinks as He Tackles Another: The 2020 Election*, *New York Times*, Jan. 8, 2020, <https://nyti.ms/2xrSZmr>. In this role, Mr. Kushner almost certainly reviews information related to economic risks – such as the impact of coronavirus pandemic – that could harm President Trump's chances of reelection. See Tony Newmyer, *The Finance 202: The coronavirus economy is already hurting Trump's reelection chances, economists say*, *Washington Post*, Apr. 9, 2020, <https://wapo.st/2KmJ9Fo>.

²² Zachary Cohen, Jim Sciutto, Alex Marquardt, and Evan Perez, *US Intelligence agencies started tracking coronavirus outbreak in China as early as November*, *CNN*, Apr. 9, 2020, <https://cnn.it/2RSukP3>; Josh Margolin

February.²³ Mr. Kushner appears to have access to that briefing.²⁴ In January and February, White House officials were also expressing serious concerns internally. For example, President Trump was briefed by U.S. health officials about the coronavirus outbreak on January 18.²⁵ On January 29, Assistant to the President and Director of the Office of Trade and Manufacturing Policy Peter Navarro circulated a memorandum within the White House warning of a pandemic that could cost \$3.8 trillion in lost economic activity and loss of life.²⁶ Mr. Navarro further warned in that memorandum that “the risk of a worst-case scenario should not be overlooked in light of the information provided by the Chinese government that is specific to the coronavirus.”²⁷ On January 31, President Trump ordered travel from China be suspended.²⁸ In a later memorandum, dated February 23, Mr. Navarro issued a specific warning that the crisis “could inflict trillions of dollars in economic damage and take millions of lives.”²⁹ Mr. Kushner likely was aware of Mr. Navarro’s memoranda as they reportedly were being circulated around the White House and shared with multiple agencies.³⁰

Since then, Mr. Kushner has become a “central player” in the White House’s handling of the coronavirus response.³¹ While his role was not publicly announced until April 2,³² he reportedly “was initially tapped” to join the coronavirus response by President Trump in early March.³³

Notwithstanding the nonpublic warnings, in public statements, President Trump continued to play down the impact of the coronavirus throughout February. For example, on February 10, President Trump said, “I think the virus is going to be — it’s going to be fine.”³⁴ On February 24, President Trump said “The Coronavirus is very much under control in the

and James Gordon Meek, Intelligence report warned of coronavirus crisis as early as November: Sources, *ABC News*, Apr. 8, 2020, <https://abcn.ws/3eenPzr>.

²³ Shane Harris, Greg Miller, Josh Dawsey, and Ellen Nakashima, U.S. intelligence reports from January and February warned about a likely pandemic, *Washington Post*, Mar. 20, 2020, <https://wapo.st/3a5dMJR>; Greg Miller and Ellen Nakashima, President’s intelligence briefing book repeatedly cited virus threat, *Washington Post*, Apr. 27, 2020, <https://wapo.st/3cXlurk>.

²⁴ Matt Apuzzo, Jared Kushner Gets Security Clearance, Ending Swirl of Questions Over Delay, *New York Times*, May 23, 2018 (“The permanent clearances make Mr. Kushner . . . eligible to view some of the United States’ most closely guarded secrets, including the daily intelligence briefing that Mr. Trump receives.”), <https://nyti.ms/3ei3fOR>.

²⁵ Harris, Miller, Dawsey, and Nakashima, *Washington Post*, Mar. 20, 2020.

²⁶ Swan and Talev, *Axios*, Apr. 6, 2020; Haberman, *New York Times*, Apr. 6, 2020.

²⁷ Swan and Talev, *Axios*, Apr. 6, 2020.

²⁸ Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus, Jan. 31, 2020, <https://bit.ly/3b4YNAU>.

²⁹ Haberman, *New York Times*, Apr. 6, 2020.

³⁰ Swan and Talev, *Axios*, Apr. 6, 2020

³¹ Peter Baker, Maggie Haberman, Zolan Kanno-Youngs, and Noah Weiland, Kushner Puts Himself in Middle of White House’s Chaotic Coronavirus Response, *New York Times*, Apr. 2, 2020, <https://nyti.ms/2V3XtJ2>.

³² Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing, Apr. 2, 2020, <https://bit.ly/34u9qLb>.

³³ Adam Cancryn and Dan Diamond, Behind the scenes, Kushner takes charge of coronavirus response, *Politico*, Apr. 1, 2020, <https://politi.co/2Vu2k6m>.

³⁴ Aaron Blake, The increasingly damning timeline of Trump’s coronavirus response, *Washington Post*, Apr. 8, 2020, <https://wapo.st/2xdjVX3>.

USA. ... Stock Market starting to look very good to me!”³⁵ On February 26, President Trump said, “Because of all we’ve done, the risk to the American people remains very low. ... When you have 15 people, and the 15 within a couple of days is going to be down to close to zero. That’s a pretty good job we’ve done.”³⁶

By March 11, the matter had sufficiently escalated that President Trump felt compelled to give an Oval Office address (only the second one he has given while in office) acknowledging the threat of the virus and pledging to marshal the “full power of the federal government and the private sector to protect the American people” against the global pandemic, including by cutting off travel from Europe.³⁷ But the true severity of the health risks were not made public by U.S. government officials until March 31, when top U.S. health officials Dr. Anthony S. Fauci and Dr. Deborah L. Birx publicly disclosed for the first time that the coronavirus could kill 100,000 to 240,000 Americans even when social distancing and other preventative measures were abided by.³⁸

Given his senior advisor position within the White House, high-level security clearance, familial relationship with President Trump, and 2020 campaign responsibilities, Mr. Kushner likely was made aware of the significant health and economic risks posed by the coronavirus in January and February, when the severity of those threats had not yet been publicly acknowledged by President Trump or others in his administration.

Potential Violations

Prohibitions on engaging in financial transactions using nonpublic information

Executive branch employees are barred by ethics regulations that set out the basic obligations of public service from “engag[ing] in financial transactions using nonpublic Government information or allow[ing] the improper use of such information to further any private interest.”³⁹ Ethics regulations similarly provide that “[a]n employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another.”⁴⁰

“Nonpublic information” is defined as “information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available

³⁵ *Id.*

³⁶ Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Conference, Feb. 26, 2020, <https://bit.ly/3bE1lke>.

³⁷ Remarks by President Trump in Address to the Nation, Mar. 11, 2020, <https://bit.ly/39X8f84>.

³⁸ Michael D. Shear, Michael Crowley, and James Glanz, Coronavirus May Kill 100,000 to 240,000 in U.S. Despite Actions, Officials Say, *Washington Post*, Mar. 31, 2020, <https://nyti.ms/2wvNmD8>.

³⁹ 5 C.F.R. § 2635.101(b)(3).

⁴⁰ 5 C.F.R. § 2635.703(a). In this context, the regulations indicate “using” includes making any financial transaction while in possession of nonpublic information. *See, e.g.*, 5 C.F.R. § 2635.703, Example 1 (an employee who “learns in the course of her duties that a small corporation will be awarded a Navy contract for electrical test equipment . . . may not take any action to purchase stock in the corporation or its suppliers . . . until after public announcement of the award”).

to the general public.”⁴¹ It includes information that the employee knows or reasonably should know is: (1) routinely exempt from disclosure under the Freedom of Information Act (“FOIA”) or otherwise protected from disclosure by law, regulation, or Executive Order; (2) is designated as confidential; or (3) has not actually been disseminated to the general public and is not authorized to be made public on request.⁴²

By late February, at the time of the Cadre sale, nonpublic information about the significant health and economic risks associated with the coronavirus was being circulated within the White House, including through Mr. Navarro’s memoranda, U.S. health officials’ briefings, and the President’s daily intelligence briefings. This information would be viewed as nonpublic since none of it had been made available to the general public: some of it was classified, and much, if not all, would be exempt from public disclosure requirements under the FOIA.⁴³ Given his position as senior advisor, son-in-law, and his role as campaign coordinator within the White House, Mr. Kushner likely was aware of the significant health and economic risks posed by the coronavirus before he sold his Cadre shares in late February.⁴⁴

Because the Cadre shares increased significantly in value from the time he initially reported them in 2017 to when he last reported them in 2019,⁴⁵ Mr. Kushner likely derived a profit from the sale, possibly worth millions of dollars. At the very least, he likely avoided a financial loss when the market crashed a few days later. Accordingly, Mr. Kushner may have violated ethics regulations by selling his Cadre shares in late February in furtherance of his own private interests when he was likely in possession of nonpublic information about the severity of health and economic risks caused by the disease. As part of its review, OGE should review the Cadre sale and decline to certify Mr. Kushner’s periodic transaction report if it cannot conclude that this transaction is in compliance with federal ethics laws and regulations.⁴⁶

Conclusion

As a public servant, Mr. Kushner is held to the highest standards of ethical conduct. By selling his Cadre shares while in possession of nonpublic information related to the coronavirus

⁴¹ 5 C.F.R. § 2635.703(b).

⁴² *Id.*

⁴³ FOIA exempts classified and pre-decisional materials from public disclosure. 5 U.S.C. § 552(b)(1), (5). Furthermore, most components of the White House are not treated as an “agency” for purposes of FOIA. *See Judicial Watch, Inc. v. U.S. Secret Service*, 726 F.3d 208 (D.C. Cir. 2013).

⁴⁴ Even if Mr. Kushner began the process of selling his Cadre assets in December, he seemingly did not commit at that time to divesting on a particular date. Rather, he likely acquired nonpublic information about the health and economic risks of the coronavirus pandemic in the months that followed, then moved forward with the sale of the Cadre assets while in possession of that nonpublic information in late February.

⁴⁵ Jacobs and Melby, *Bloomberg*, Feb. 28, 2020.

⁴⁶ Within 30 days after receiving notice of a transaction, but not less than 45 days after it, a covered employee is required to file a periodic transaction report for the purchase, sale or exchange of stock, bonds, commodities futures or other forms of securities owned by the covered employee when the amount of the transaction exceeds \$1,000. 5 U.S.C. app. § 103(l). The primary purpose of the information is for review by government officials to determine compliance with federal conflicts of interest and financial disclosure laws and regulations. *See* Attachment to OGE Legal Advisory LA-12-04, June 20, 2012.

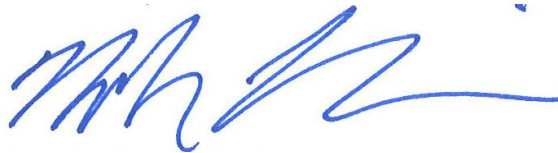
The Honorable Emory A. Rounds

April 30, 2020

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he may have furthered his personal financial interests in violation of the public trust and his ethical obligations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Noah Bookbinder". The signature is fluid and cursive, with a long horizontal stroke at the end.

Noah Bookbinder
Executive Director

A handwritten signature in blue ink, appearing to read "Virginia Canter". The signature is fluid and cursive, with a long horizontal stroke at the end.

Virginia Canter
Chief Ethics Counsel