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[FOIAstar](#)

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U.S. Department of Justice

Justice Management Division

Washington, D.C. 20530

October 8, 2024

VIA EMAIL

RE: JMD FOIA # 110000 – Final Response

This is the third and final response to your Freedom of Information Act (FOIA) request dated May 22, 2017, for ethics waivers issued by the Department of Justice (DOJ) since March 1, 2017. We interpreted your request as a request for ethics waivers issued by DOJ or by the White House (at the request of DOJ) pursuant to 18 U.S.C. § 208, Executive Order 13770, or Executive Order 13989.

We conducted a search within the Departmental Ethics Office, which is located in the Justice Management Division (JMD), and completed the consultation process with the DOJ divisions that have equities in the records. Enclosed are records responsive to your request with exempt information withheld. We withheld certain information, including information compiled for law enforcement purposes, pursuant to FOIA Exemptions 6 and 7(C) (5 U.S.C. § 552(b)(6) and 5 U.S.C. § 552(b)(7)(C), respectively), the disclosure of which would constitute an unwarranted invasion of personal privacy. We determined that the privacy interests in the information outweigh the public interest in its disclosure. In addition, we withheld certain deliberative process information and information that qualifies as attorney work product pursuant to Exemption 5 (5 U.S.C. § 552(b)(5)). We also withheld information pursuant to Exemption 7(A) (5 U.S.C. § 552(b)(7)(A)), which concerns information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings. Finally, we withheld certain information compiled for law enforcement purposes under FOIA Exemption 7(E) (5 U.S.C. § 552(b)(7)(E)), but only to the extent that the production of such information would disclose techniques and procedures for law enforcement investigations or prosecutions and such disclosure could reasonably be expected to risk circumvention of the law. Please be advised that we considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

The records also contain redactions applied by the Criminal Division under FOIA Exemptions 3, 5, 6, and 7(D). The Criminal Division asserted Exemption 3 (5 U.S.C. § 552(b)(3)) to withhold

information that is prohibited from disclosure by another federal statute. In the enclosed records, the withheld information is prohibited from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure. In addition, the Criminal Division asserted Exemption 7(D) (5 U.S.C. § 552(b)(7)(D)) to withhold law enforcement information the production of which would disclose the identity or identities of confidential cooperating witnesses and/or information furnished by such witnesses. The bases for the Criminal Division's assertion of FOIA Exemptions 5 and 6 are the same as JMD's bases cited above.

You may contact JMD's public FOIA liaison, Daniel Wagner, at (202) 616-0253 or JMDFOIA@usdoj.gov, for further assistance or to discuss your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about FOIA mediation services. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email ogis@nara.gov; telephone (202) 741-5770 and toll-free (877) 684-6448; facsimile (202) 741-5769.

If you are not satisfied with JMD's determination in response to your request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website (<https://www.justice.gov/oip/submit-and-track-request-or-appeal>). Your appeal must be postmarked or electronically transmitted within 90 days of the date of this letter. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

JOHN THOMPSON

Digitally signed by JOHN
THOMPSON
Date: 2024.10.08 09:04:00 -04'00'

John E. Thompson
Deputy General Counsel



November 2, 2018

Washington, D.C. 20530

MEMORANDUM FOR THE WHITE HOUSE COUNSEL

FROM: Lee Lofthus
Assistant Attorney General for Administration, and
DOJ Designated Agency Ethics Official

SUBJECT: Ethics Pledge Waiver for Brian Benzckowski, Assistant Attorney General,
Criminal Division, Department of Justice

You have requested additional information in support of my October 23, 2018, request for a waiver for Brian Benzckowski, Assistant Attorney General (“AAG”), Criminal Division, pursuant to Executive Order 13770 (E.O. or Ethics Pledge), in connection with the Criminal Division’s investigation into the multi-billion dollar fraud involving 1 Malaysia Development Berhad (1MDB), Malaysia’s investment development fund, and prosecution of those involved in the fraud and laundering the proceeds. This memorandum sets forth in greater detail the reasons why the Department of Justice believes that AAG Benzckowski’s participation in this matter is in the overwhelming interest of the government and the requested waiver should be granted.

By way of background, on November 1, 2018, the Department announced charges against three individuals in the Eastern District of New York in connection with conspiracies to launder billions of dollars embezzled from 1MDB and to violate the Foreign Corrupt Practices Act (FCPA). Low Taek Jho (Low) was charged in two counts with conspiracies to engage in money laundering and to violate the FCPA by paying bribes to various Malaysian and Abu Dhabi officials. Ng Chong Hwa (Ng) is charged in those two counts as well, in addition to a third count of conspiring to violate the FCPA by circumventing the internal accounting controls of a major New York financial institution (Financial Institution), where he formerly worked as a managing director and which underwrote more than \$6 billion in bonds issued by 1MDB. The third defendant, Tim Leissner, who was the former Southeast Asia Chairman and participating managing director of the Financial Institution, has pleaded guilty to money laundering and conspiring to violate the FCPA by both paying bribes to foreign officials and circumventing the internal controls of the Financial Institution.

AAG Benzckowski participated in this matter until October 9, 2018. On that date, AAG Benzckowski’s former law firm, Kirkland & Ellis LLP (“K&E”), undertook representation of the Financial Institution. For the purposes of the Standards of Conduct and the Ethics Pledge, the Department considers the Financial Institution a “party” in this matter. When his former firm began representing a party in the 1MDB matter, AAG Benzckowski recused himself. However, for reasons cited below and in my memorandum of October 23, 2018, the Department seeks his participation. To that end, on October 15, 2018, AAG Benzckowski obtained an authorization

under 5 CFR § 2635.502 to participate in the matter despite the fact that his firm, with whom he has a "covered relationship," represents a party in the matter. The Department authorized AAG Benczkowski to participate in the matter upon a finding that the government's interest in his participation outweighed the concern that a reasonable person may question the integrity of the Department's programs and operations.

However, obtaining an authorization is not sufficient to allow AAG Benczkowski to work on the matter because, absent a waiver, he is prohibited from working on the matter under the terms of the Ethics Pledge, which prohibits political appointees for a period of 2 years from the date of their appointment to participate in any particular matter involving specific parties that is directly and substantially related to a former employer. E.O., Sec. 1.6. Because his former firm now represents a party, AAG Benczkowski now requires a waiver pursuant to Executive Order 13770, Section 3, before he may participate in the IMDB matter. As you are aware, the Department has requested that waiver.

The reasons the Department granted AAG Benczkowski an authorization under 5 CFR § 2635.502 are the same reasons that the Department believes a waiver under the Ethics Pledge is appropriate. Those reasons include the following.

First, this case is among the most significant cases – in terms of the size of the loss, the harm caused by the conduct, and the prominence of the defendants and subjects – that the Criminal Division has ever brought. It is, quite literally, a world-changing case with far-reaching consequences, as demonstrated by the fact that the corruption uncovered in the investigation has already led to the unexpected ouster of the Malaysian Prime Minister in elections last year in which the corruption was the number one issue. The significance and sensitivity of the case – which has involved high-level discussions with other U.S. government agencies like the State Department, as well as senior leaders of foreign governments – warrants the close attention and involvement of the AAG. In such rare cases, ideally senior leadership of the Department is involved. As the Presidentially-appointed and Senate-confirmed AAG of the Criminal Division, AAG Benczkowski is one of the most senior leaders of the Department and the head of the Criminal Division.

Second, in addition to being the head of the component, AAG Benczkowski has been closely involved in the matter. He supervised the investigation for three months prior to his recusal upon learning that the Financial Institution retained K&E. Among other things, AAG Benczkowski oversaw and participated in meetings CRM (b) (6); (7)(C); (7)(D)

CRM (b) (6); (7)(C); (7)(D)

CRM (b) (6); (7)(C); (7)(D)

Additionally, AAG Benczkowski has participated in high level discussions with the Malaysian Government concerning cooperation and the return of seized assets derived from the IMDB fraud.

Third, AAG Benczkowski's participation, when he previously provided it, was invaluable to the attorneys handling the investigation. AAG Benczkowski has a depth of knowledge and prior experience in similar cases, both from his time in leadership positions at the Department and in private practice. AAG Benczkowski is an experienced and highly-regarded white collar practitioner, particularly in money laundering, Bank Secrecy Act, and FCPA investigations.

That experience is directly relevant to the conduct being investigated in this matter. Moreover, due to his prior Department of Justice experience in both the Office of the Attorney General and the Office of the Deputy Attorney General, AAG Benczkowski is intimately familiar with the Department's handling of high profile cases involving large financial institutions, including the appeals and review process within the Department. Because these processes likely would be utilized by K&E should the Criminal Division determine that criminal charges against the Financial Institution are appropriate, AAG Benczkowski's prior experience in the Department would make him extremely valuable during such dealings with defense counsel.

Fourth, it bears emphasis that the Financial Institution retained K&E on or around October 9, 2018, *almost three months after* AAG Benczkowski left the firm and began serving as the head of the Criminal Division. Relatedly, AAG Benczkowski himself never represented the Financial Institution. Prior to October 9, 2018, we are unaware of K&E representing any entity involved in this matter.

Fifth, this case originated in the Criminal Division and has been led by Criminal Division prosecutors – initially from the Money Laundering and Asset Recovery Section, and later joined by prosecutors from the Fraud Section – throughout. In other words, this was not a situation where the U.S. Attorney's Office was conducting an investigation and then invited the Criminal Division to join at a late stage. Rather, prosecutors and supervisors in the Criminal Division – and in particular the Money Laundering and Asset Recovery Section – are the case experts in this investigation, with immense historic knowledge of the investigation and the relevant facts.

CRM (b)(5)

In short, AAG Benczkowski's position in the Department, his past work on this matter, and his professional experience all are of great value to the government and to this particular investigation. In addition, the appearance of loss of impartiality on his part is greatly mitigated by the fact that the K&E's representation of the Financial Institution occurred well after AAG Benczkowski left the firm.

I therefore request that, pursuant to the authority delegated under Section 3 of Executive Order 13770, you grant a waiver to the restrictions of Section 1, paragraph 6, of the Ethics Pledge to Brian Benczkowski, Assistant Attorney General of the Criminal Division, to work on an investigation and potential litigation involving an entity or entities represented by his former firm. This waiver does not otherwise affect AAG Benczkowski's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.



Washington, DC 20530

MEMORANDUM FOR WHITE HOUSE COUNSEL

FROM: Lee J. Lofthus
Assistant Attorney General
for Administration, and
DOJ Designated Agency Ethics Official

SUBJECT: Ethics Pledge Waiver for AAG Brian Benczkowski

Brian Benczkowski, Assistant Attorney General (AAG) for the Criminal Division, requires a waiver from the Ethics Pledge pursuant to Executive Order 13770 (Ethics Pledge or E.O.) before he may work on a matter of high importance to the Department of Justice in which a subject of the investigation is represented by AAG Benczkowski's former employer.

Prior to his confirmation as AAG on July 11, 2018, Mr. Benczkowski was a partner at Kirkland & Ellis LLP (K&E). The Ethics Pledge provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to his or her former employer or former clients. E.O., Sec. 1.6. This matter falls within the time period of the Pledge's prohibition.

The Criminal Division's Fraud Section is investigating suspected price manipulation and deceptive trading practices in the precious metals futures markets by executives and traders at a large financial institution (Financial Institution). The investigation focuses on disruptive trading practices that were prevalent on Financial Institution's precious metals trading desk. The investigation has revealed criminal conduct by 10 or more traders and salespeople in New York, London, and Singapore over a ten-year period. It appears there were nearly 50,000 separate criminal acts (i.e., illegal trading sequences) that were undertaken in furtherance of the charged racketeering conspiracy. To perpetuate the conspiracy, Financial Institution traders lied to, among others, their regulator (the Commodity Futures Trading Commission) and the market exchange (the Chicago Mercantile Exchange).

The covert investigation began in approximately April 2018. On November 5, 2018, the investigation became overt. CRM (b)(3)(A) Two former Financial Institution traders have been convicted and are cooperating with the ongoing investigation. In August 2019, three Financial Institution traders were indicted. The indictment was unsealed on September 16, 2019. Charges being considered against Financial Institution include the same crimes that the Financial Institution traders were charged with, namely,

racketeering, conspiracy, attempted price manipulation, wire fraud, commodities fraud, and spoofing.

Since the investigation became overt on November 2018, Financial Institution has been represented by Sullivan & Cromwell LLP. In a letter dated October 16, 2019, from Sullivan & Cromwell to the Criminal Division Fraud Section, Mark Filip, a K&E partner, was copied. Financial Institution in-house counsel confirmed on October 31, 2019, that K&E and Sullivan & Cromwell were both representing Financial Institution in the matter. Due to K&E's involvement in the matter, AAG Benczkowski requires a waiver pursuant to Executive Order 13770, Section 3, before he may participate in the Financial Institution matter.

We believe that the government's interest in AAG Benczkowski's continued participation in the Financial Institution matter is in the overwhelming interest of the government and the requested waiver should be granted. The most noteworthy considerations are:

- (1) This case is the centerpiece of the Fraud Section's commodities enforcement and market integrity program. As described above, it involves tens of thousands of crimes over a decade by high-level executives and traders. It is the first case since the 1980s where RICO charges have been brought against Wall Street executives. This investigation is widely viewed by other market participants as a bellwether and, the Criminal Division believes, will emphasize the Department's commitment to protecting the integrity of core U.S. commodities markets. The significance and sensitivity of the case warrants the close attention and involvement of the AAG. Financial Institution is one of the largest banks in the United States. As the Presidentially appointed and Senate-confirmed AAG of the Criminal Division, AAG Benczkowski is head of the Criminal Division and among the most senior leaders of the Department. It is important that the AAG of the Criminal Division oversee and direct this matter.
- (2) In addition to being the titular head of the component, AAG Benczkowski has been closely involved in the matter. He supervised the investigation and has had substantive involvement in it for seven months prior to his recusal upon learning that Financial Institution retained K&E. He has been significantly involved in precharge decisionmaking both as to the Financial Institution traders and the Bank. Before his recusal, AAG Benczkowski supervised the investigation, had been regularly briefed by Fraud Section attorneys involved in the investigation and had discussed with them theories of potential criminal liability and investigative steps, approved the indictment of the Financial Institution traders, and participated in the press release announcing the indictment. He has also briefed the Attorney General and Deputy Attorney General on the matter.
- (3) AAG Benczkowski's involvement is a particularly valuable resource to the attorneys handling the investigation. He has a depth of knowledge and experience dealing with large corporations in cases of this magnitude from his time in private practice and in prior leadership positions at the Department. He has an extensive background as a white collar practitioner where he specialized in litigation and white collar criminal defense including

government and internal investigations. Due to his prior DOJ experience with both the Office of the Attorney General and the Office of the Deputy Attorney General, he is intimately familiar with DOJ's handling of high profile cases against large companies, including the appeals and review process within the Department. CRM (b)(5)

CRM (b)(5)

- (4) AAG Benczkowski's participation is particularly significant because this investigation is being handled exclusively by the Criminal Division. There is no United States Attorney Office involvement. AAG Benczkowski's involvement is needed all the more because CRM (b)(6) and has not been involved since it was opened.

- (5) Financial Institution retained K&E over 15 months after AAG Benczkowski left the firm and began serving as the head of the Criminal Division. Because he left the firm more than one year ago, AAG Benczkowski no longer has a covered relationship with the firm, which absent an authorization would have required recusal under 5 C.F.R. § 2635.502. The only limitation on his participation at this point in time is the Ethics Pledge.

Neither does he have a covered relationship with Financial Institution or any Financial Institution employees. Approximately six years ago, while a partner at K&E, AAG Benczkowski spent fewer than thirty hours representing a Financial Institution trader who testified as a witness at a congressional hearing concerning manipulation of the physical commodities markets where the focus was on another financial institution. This prior representation is unrelated to the current matter that the Criminal Division is handling. AAG Benczkowski confirms that he has no confidential information as a result of his prior representation of the Financial Institution trader that would harm Financial Institution or would limit his ability to represent the Department in the current matter.

In short, AAG Benczkowski's position in the Department, his past work in this matter, and his professional experience all are of great value to the Government. In addition, the appearance of loss of impartiality on his part is greatly mitigated by the fact that the K&E's representation of Financial Institution occurred 15 months after AAG Benczkowski left the firm.

I therefore request that, pursuant to the authority delegated under Section 3 of Executive Order 13770, you grant a limited waiver to the restrictions of paragraph 6 of the Ethics Pledge, to AAG Benczkowski, to work on this matter involving a former employer. This waiver does not otherwise affect AAG Benczkowski's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.



U.S. Department of Justice

Criminal Division

Office of Administration

Washington, D.C. 20530

November 12, 2019

MEMORANDUM

TO: Cynthia K. Shaw, Director
Departmental Ethics Office

FROM: Robin K. Gold
Deputy Designated Agency Ethics Official
Criminal Division

SUBJECT: Request for Ethics Pledge Waiver for Criminal Division Assistant
Attorney General Brian Benczkowski

TIMETABLE: Immediate

DISCUSSION: I hereby request that Assistant Attorney General Lee Lofthus request a waiver from the Ethics Pledge pursuant to Executive Order 13770 (Ethics Pledge or E.O.) so that Brian Benczkowski, Assistant Attorney General (“AAG”), Criminal Division, can work on a matter of high importance to the Department of Justice in which a subject of the investigation is represented by AAG Benczkowski’s former employer, Kirkland & Ellis LLP (“K&E”).

The Criminal Division’s Fraud Section is investigating suspected price manipulation and deceptive trading practices in the precious metals futures markets by executives and traders at JPMorgan Chase Bank N.A. (“JPMorgan” or “Bank”). The investigation focuses on disruptive trading practices that were prevalent on JPMorgan’s precious metals trading desk. The investigation has revealed criminal conduct by 10 or more traders and salespeople in New York, London, and Singapore over a ten-year period. It appears there were nearly 50,000 separate criminal acts (i.e., illegal trading sequences) that were undertaken in furtherance of the charged racketeering conspiracy. To perpetuate the conspiracy, JPMorgan traders lied to, among others, their regulator (the Commodity Futures Trading Commission) and the market exchange (the Chicago Mercantile Exchange).

The covert investigation began in approximately April 2018. On November 5, 2018, the investigation became overt. **CRM (b)(3)(A)** Two former JPMorgan traders have been convicted and are cooperating with the ongoing investigation. In

August 2019, three JPMorgan traders were indicted. The indictment was unsealed on September 16, 2019. Charges being considered against JPMorgan include the same crimes that the JPMorgan traders were charged with, namely, racketeering, conspiracy, attempted price manipulation, wire fraud, commodities fraud, and spoofing.

Since the investigation became overt on November 2018, JPMorgan has been represented by Sullivan & Cromwell LLP. In a letter dated October 16, 2019, from Sullivan & Cromwell to the Criminal Division Fraud Section, Mark Filip, a K&E partner, was copied. JPMorgan in-house counsel confirmed on October 31, 2019, that K&E and Sullivan & Cromwell were both representing JPMorgan in the matter. Due to K&E's involvement in the matter, AAG Benczkowski requires a waiver pursuant to Executive Order 13770, Section 3, before he may participate in the JPMorgan matter.

We believe that the government's interest in AAG Benczkowski's continued participation in the JPMorgan matter is in the overwhelming interest of the government and the requested waiver should be granted. The most noteworthy considerations are:

- (1) This case is the centerpiece of the Fraud Section's commodities enforcement and market integrity program. As described above, it involves tens of thousands of crimes over a decade by high-level executives and traders at the country's largest bank. It is the first case since the 1980's where RICO charges have been brought against Wall Street executives. This investigation is widely viewed by other market participants as a bellwether and, the Criminal Division believes, will emphasize the Department's commitment to protecting the integrity of core U.S. commodities markets. The significance and sensitivity of the case warrants the close attention and involvement of the AAG. As the Presidentially-appointed and Senate confirmed AAG of the Criminal Division, AAG Benczkowski is one of the most senior leaders of the Department and the head of the Criminal Division. Given that JPMorgan is the largest bank in the United States, it is important to have the Presidentially-appointed, Senate confirmed head of the Criminal Division overseeing and directing this matter.
- (2) In addition to being the titular head of the component, AAG Benczkowski has been closely involved in the matter. He supervised the investigation and has had substantive involvement in it for seven months prior to his recusal upon learning that JPMorgan retained K&E. He has been significantly involved in precharge decisionmaking both as to the JPMorgan traders and the Bank. Before his recusal, AAG Benczkowski supervised the investigation, had been regularly briefed by Fraud Section attorneys involved in the investigation and had discussed with them theories of potential criminal liability and investigative steps, approved the indictment of the JPMorgan traders, and participated in the press release announcing the indictment. He has also briefed the Attorney General and Deputy Attorney General on the matter.
- (3) AAG Benczkowski's involvement has been a particularly valuable resource to the attorneys handling the investigation because of his depth of experience dealing with large corporations in cases of this magnitude, having represented both subjects/defendants and the Department. AAG Benczkowski has a depth of knowledge and prior experience in

fraud cases both from his time in leadership positions at the Department and in private practice. He has an extensive background as a white collar practitioner where he specialized in litigation and white collar criminal defense including government and internal investigations. Due to his prior DOJ experience with both the Office of the Attorney General and the Office of the Deputy Attorney General, he is intimately familiar with DOJ's handling of high profile cases against large companies, including the appeals and review process within the Department. These processes will almost certainly be utilized by JPMorgan if the trial team determines that JPMorgan should be charged.

- (4) It bears emphasis that JPMorgan retained K&E over 15 months after AAG Benczkowski left the firm and began serving as the head of the Criminal Division.¹
- (5) AAG Benczkowski's participation has been particularly significant because this investigation is being handled exclusively by the Criminal Division. There is no United States Attorney Office involvement. Additionally, AAG Benczkowski's involvement is needed all the more because the CRM (b)(6) and has not been involved since it was opened.

In short, AAG Benczkowski's position in the Department, his past work in this matter, and his professional experience all are of great value to the Government. In addition, the appearance of loss of impartiality on his part is greatly mitigated by the fact that the K&E's representation of JPMorgan occurred 15 months after AAG Benczkowski left the firm.

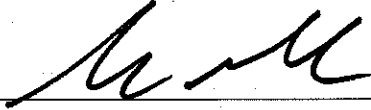
¹ In the interest of full disclosure, approximately six years ago, while a partner at K&E, AAG Benczkowski represented a JPMorgan trader who testified as a witness at a congressional hearing concerning manipulation of the physical commodities markets where the focus was on another financial institution. This prior representation is unrelated to the current matter that the Criminal Division is handling. AAG Benczkowski estimates that he spent fewer than thirty hours on the representation which was limited to two witness preparation sessions prior to the hearing, attending the congressional hearing, and submitting written responses to questions. AAG Benczkowski confirms that he has no confidential information as a result of his prior representation of the JPMorgan trader that would harm JPMorgan or would limit his ability to represent the Department in the current matter.

EXECUTIVE ORDER 13770 WAIVER FOR BRIAN BENCZKOWSKI

Pursuant to the authority delegated under Section 3 of Executive Order 13770, I grant a limited waiver for Assistant Attorney General Brian Benczkowski to participate in a confidential criminal matter involving his former employer as outlined in the attached memorandum.

This waiver does not otherwise affect AAG Benczkowski's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

Signed

A handwritten signature in black ink, appearing to be 'M. M.', written over a horizontal line.

Date

12/16/19



U.S. Department of Justice

Criminal Division

Office of Administration

Washington, D.C. 20530

June 21, 2019

MEMORANDUM

TO: Bradley Weinsheimer
Associate Deputy Attorney General

THROUGH: Cynthia K. Shaw, Director
Department of Justice Ethics Office
CRM (b)(6)

FROM: Robin K. Gyzic, CRM (b)(6)
Deputy Designated Agency Ethics Official
Criminal Division

SUBJECT: Request for Authorization Under 5 C.F.R. § 2635.502(d) for Criminal
Division Assistant Attorney General Brian Benczkowski to Participate in
Matters Relating to the Boeing Investigation

TIMETABLE: Immediate

DISCUSSION: Pursuant to 5 C.F.R. § 2635.502(d), I hereby request that you authorize Brian Benczkowski, Assistant Attorney General ("AAG"), Criminal Division, to participate in supervising matters relating to the Boeing investigation pending in the Criminal Division Fraud Section. The AAG's former law firm, Kirkland & Ellis LLP ("K&E") represents the Boeing Company,¹ the subject of the investigation. The possible perception or appearance of conflict causes us to request a determination that AAG Benczkowski's participation in the Boeing matter is appropriate.

¹ The Boeing Company is a publicly traded American multinational corporation. It is the world's largest aerospace company and leading provider of commercial airplanes, defense, space and security systems, and global services, the fifth-largest defense contractor in the world, and the top U.S. exporter. It employs more than 150,000 people worldwide and supports commercial and government customers in more than 150 countries.

CRM (b)(5)

The Fraud Section opened its investigation in November 2018. At the start of the investigation, Boeing did not retain outside counsel and instead was represented by its in-house legal department. On May 17, 2019, the Fraud Section was notified that AAG's Benczkowski's former firm, K&E, and McGuire Woods LLP undertook representation of Boeing in this matter.² Due to K&E's involvement in the matter, AAG Benczkowski is recused from participating in the matter. Prior to recusal, AAG Benczkowski had been significantly involved in the investigation.³ He oversaw the investigation and has been a valuable resource to the attorneys handling the investigation because of his depth of experience in criminal, administrative and regulatory matters and experience dealing with large corporations in cases of this magnitude, having represented both subjects/defendants and the Department.⁴

² Specifically, K&E attorneys Mark Filiip, Craig Primis, and Patrick Haney appeared on behalf of Boeing.

³ AAG Benczkowski supervised the investigation, has been briefed by Fraud Section attorneys and the Deputy Assistant Attorney General over the investigation, and has discussed with them theories of potential criminal liability and investigative steps. He has also briefed the Attorney General on the matter.

⁴ AAG Benczkowski has a depth of knowledge and prior experience in similar fraud cases both from his time in leadership positions at the Department and in private practice. He has an extensive background as a white collar practitioner where he specialized in litigation and white collar criminal defense including government and internal investigations. He has particular expertise in criminal, regulatory, and administrative matters, each of which plays a significant role in the current investigation and makes him uniquely qualified to oversee the Boeing investigation. While in private practice, he had been involved in several cases involving significant investigations of large companies, including BP, VW and GM, where disaster and/or loss of life occurred as a result of corporate malfeasance. Each of these matters also included criminal, regulatory and administrative issues. Due to his prior DOJ experience with both the Office of the Attorney General and the Office of the Deputy Attorney General, he is intimately familiar with DOJ's handling of high profile cases against large companies, including the appeals and review process within the Department. CRM (b)(5)

CRM (b)(5)

Based on the involvement of AAG Benczkowski's former law firm in the matter, we seek a determination under the impartiality standard of conduct. For purposes of making this determination, guidance is provided by the standard of conduct at 5 C.F.R. § 2635.502. That standard addresses the problem that arises when an employee finds himself in a situation that would cause a "reasonable person with knowledge of the relevant facts to question the employee's impartiality in the matter." When such a situation exists, the employee should disclose a potential conflict to the appropriate Departmental official and seek a determination about disqualification.

Where an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to the matter, he should not participate in the matter without informing an agency official and receiving authorization to participate. Included in the definition of a "covered relationship" is any person for whom the employee served, within the preceding year, as an attorney, partner, or employee. 5 C.F.R. § 2635.502(b)(1)(iv).

In order for the employee to participate in the matter, the agency designee, in this case you, with the recommendation of an ethics official, must make a determination that the interest of the government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the Department's programs and operations. In making this determination, you should consider such factors as: 1) the nature of the relationship involved; 2) the effect that resolution of the matter will have on the financial interest of the person involved in the matter; 3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter; 4) the sensitivity of the matter; 5) the difficulty of reassigning the matter; and 6) adjustments, if any, that are viable to reduce or eliminate the likelihood that a reasonable person will question the employee's impartiality. 5 C.F.R. § 2635.502(d).

We believe that the government's interest in AAG Benczkowski's continued participation in the Boeing matter outweighs the concern that a reasonable person may question the integrity of the Department's programs and operations. We believe the most noteworthy considerations are that the AAG's participation is important because senior leadership involvement is required due to the significance and extreme sensitivity of the investigation;⁵ the fact that the AAG has been

⁵ The Boeing investigation is among the most significant investigations in the Fraud Section. If

CRM (b)(5)

CRM (b)(5)

CRM (b)(5)

it is important to have the Presidentially-appointed, Senate-confirmed head of the Criminal Division overseeing and directing this matter. Given the media attention this matter has garnered and will continue to generate, it is important to have the AAG and the gravitas his position engenders, serving as the face of the Criminal Division in this investigation.

involved in supervising the investigation for the past six months prior to recusal; that his participation in the investigation has been invaluable to the attorneys handling the investigation because of his knowledge and prior experience in similar cases; his continued involvement in dealing with defense counsel will be invaluable because of his prior DOJ experience handling high profile cases against large corporations; the matter arose after the AAG left his former firm; the relationships the AAG has with the K&E lawyers that are representing Boeing are not of a close nature;⁶ and that while K&E has represented Boeing in the past, it was not a major client of the firm.⁷ Authorizing the AAG to supervise the Criminal Division's activities related to the investigation is an appropriate exercise of your discretion under the regulation. To be deprived of AAG Benczkowski's knowledge and insight is going to immeasurably disadvantage the government. Accordingly, we recommend that you make a determination under 5 C.F.R. § 2635.502(d) that the AAG can supervise the Boeing matter. The only limitation we recommend is that the AAG not be involved in substantive discussions with any K&E lawyers concerning the Boeing matter unless a Criminal Division lawyer assigned to the Boeing matter, with no affiliation to K&E, is also involved in those discussions. It is our understanding that there will be no detriment to the Department as a result of this limitation. In reaching this

⁶ AAG Benczkowski has indicated that his relationship with each of the K&E lawyers would not affect his ability to oversee the investigation because he does not have a close connection with any of these persons likely to induce impartiality. Mr. Benczkowski first worked, indirectly, with Mr. Filip during Mr. Filip's Senate confirmation process as Deputy Attorney General. At that time, Mr. Benczkowski served as the Principal Deputy Assistant Attorney General for the Department's Office of Legislative Affairs. Mr. Benczkowski served as the chief of staff for Mr. Filip from March 2008 until July 2008 when he went to work for then-Attorney General Michael Mukasey. Mr. Benczkowski again worked for Mr. Filip when Mr. Filip served as Acting Attorney General for approximately two weeks in January and February 2009. Following their service in the Department, both men became partners at K&E, though in different offices of the firm. CRM (b)(6) and Mr. Benczkowski in Washington, D.C. CRM (b)(6)

CRM (b)(6)

CRM (b)(6)

CRM (b)(6)

While Mr. Benczkowski does consider Mr. Filip a friend, the nature of their relationship is no closer than the one he shares with many of his former partners at K&E.

AAG Benczkowski indicated that while Mr. Primas was his former partner, they did not have a close relationship or friendship. Concerning Patrick Haney, AAG Benczkowski indicated that he has never worked with, nor met, Mr. Haney, as Mr. Haney joined K&E after AAG Benczkowski left the firm to become the AAG.

⁷ During his almost nine-year tenure at K&E, AAG Benczkowski billed one hour of time to Boeing on a congressional affairs matter unrelated to the current investigation. AAG Benczkowski provided advice to Boeing CRM (b)(5)

CRM (b)(5)

recommendation, I have consulted with Cynthia Shaw, Director, Departmental Ethics Office, and she concurs in this recommendation.

As a result of K&E's representation of Boeing, AAG Benczkowski is also now recused from involvement in the investigation in accordance with the restrictions of the Ethics Pledge, E.O. 13770, Ethics Commitments by Executive Branch Appointees, which generally requires a political appointee to recuse from participation in any particular matter with parties in which his former firm is a party or represents a party, and includes recusal from any meeting or communications with his former firm where the meeting or communications relate to the performance of the appointee's official duties, for two years following appointment. E.O 13770, Sec. 1 and Sec. 2(s). If you approve this request, we will also seek a waiver from the White House under the Ethics Pledge to allow AAG Benczkowski's participation in the matter.



AUTHORIZATION UNDER 5 CFR 2635.502(d)

CRM (b)(5)

Boeing recently undertook representation by the law firm Kirkland & Ellis, LLP. Prior to his confirmation as Assistant Attorney General (AAG), AAG Brian Benzckowski was a partner at Kirkland & Ellis. Because of the existence of a covered relationship with Kirkland & Ellis that would otherwise require AAG Benzckowski's recusal, I have been asked to consider authorization pursuant to 5 CFR 2635.502(d) for AAG Benzckowski's participation in the Boeing investigation.


Based on a recommendation by the Criminal Division in which the Departmental Ethics Office concurs, and having fully considered the factors of 5 CFR 2635.502(d), I hereby authorize AAG Benzckowski's participation in the Boeing investigation. To the extent AAG Benzckowski engages in substantive discussions with any Kirkland & Ellis lawyers concerning the Boeing investigation, however, another Department lawyer with no affiliation to Kirkland & Ellis who is working on the Boeing investigation must also be involved in those discussions.

Bradley Weinsheimer
Associate Deputy Attorney General

6/24/19

Date

(b) (5)



I therefore request that, pursuant to the authority delegated under Section 3 of Executive Order 13770, you grant a waiver of the restrictions of Section 1, paragraph 6, of the Ethics Pledge to Attorney General William Barr to allow his participation in matters in which his former firm represents a party. This waiver does not otherwise affect Attorney General Barr's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.



U.S. Department of Justice

Washington, D.C. 20530

April 8, 2019

MEMORANDUM FOR THE WHITE HOUSE COUNSEL

FROM: Lee J. Loftus
Assistant Attorney General
for Administration, and
DOJ Designated Agency Ethics Official

SUBJECT: Ethics Pledge Waiver for Attorney General William Barr

William Barr, Attorney General (AG), requires a waiver from the Ethics Pledge pursuant to Executive Order 13770 (E.O. or Ethics Pledge) before he may participate in a matter before the Department of Justice. The Department is investigating and in litigation in a matter referred to as 1 Malaysian Development Berhad (1MDB), that is under investigation and in litigation at the Department of Justice.

(b) (5) [Redacted]

The Attorney General's former law firm, Kirkland & Ellis LLP ("K&E"), represents Goldman Sachs. The Department considers Goldman a party for the purposes of the Standards of Conduct and the Ethics Pledge. (b) (5)

[Redacted]

(b) (5) [Redacted]. Because his former firm represents a party, AG

Barr requires a waiver pursuant to Executive Order 13770, Section 3, before he may participate in the IMDB matter.

(b) (5)



(b) (5)



I therefore request that, pursuant to the authority delegated under Section 3 of Executive Order 13770, you grant a waiver to the restrictions of Section 1, paragraph 6, of the Ethics Pledge to Attorney General William Barr to work on the IMDB matter. This waiver does not otherwise affect AG Barr's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.



Washington, D.C. 20530

March 20, 2018

MEMORANDUM FOR WHITE HOUSE COUNSEL

FROM: Lee Lofthus
Assistant Attorney General
for Administration, and
DOJ Designated Agency Ethics Official

SUBJECT: Ethics Pledge Waiver for Jeffrey Wall, Principal Deputy Solicitor General

Jeffrey Wall, Principal Deputy Solicitor General, requires a waiver from the Ethics Pledge pursuant to Executive Order 13770 (E.O. or Ethics Pledge) before he may participate in *Chamber of Commerce v. Internal Revenue Service*, 5th Cir., No. 17-51063.

Prior to becoming Principal Deputy on March 10, 2017, Mr. Wall was in private practice with Sullivan & Cromwell. While at the firm, he represented the U.S. Chamber of Commerce (Chamber), although not in this matter. The Chamber is, clearly, a named party in the litigation in which the Department seeks Mr. Wall's participation.

The Ethics Pledge provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to his or her former employer or former clients. E.O., Sec. 1.6. The Standards of Ethical Conduct for Employees of the Executive Branch also generally require recusal from participation in particular matters with specific parties in which an entity that the federal employee served as an employee or attorney within the last year is or represents a party (5 CFR Section 2635.502), unless an authorization is granted pursuant to 5 CFR 2635.502(d). Mr. Wall no longer has a covered relationship with the Chamber; he served as an attorney for the Chamber more than one year ago. Mr. Wall does, however, require a waiver pursuant to Executive Order 13770, Section 3, before he may participate in this matter, because the Chamber was a client within two years of his appointment.

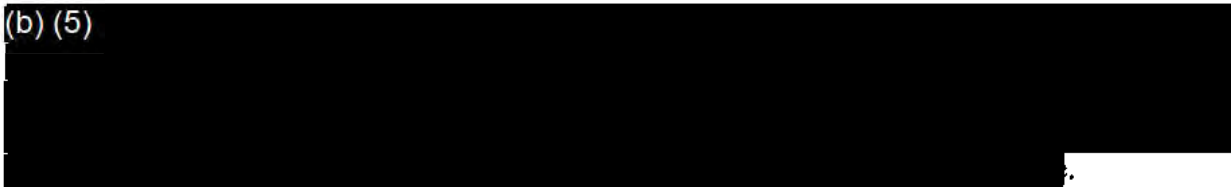
Mr. Wall did not represent the Chamber in this litigation while at Sullivan & Cromwell. The Chamber approached him about representation in the litigation but he did not accept the representation and does not recall having any substantive communications with the Chamber about the case. The Chamber ultimately hired Jones Day to represent it in the litigation. The other political appointee in the Office of the Solicitor General—Noel Francisco, Solicitor General—was a partner at Jones Day within two years of his appointment. He, therefore, like

Mr. Wall, is also recused from working on the matter pursuant to the requirements of the Ethics Pledge.

(b) (5)



(b) (5)



I therefore request that, pursuant to the authority delegated under Section 3 of Executive Order 13770, you grant a waiver to the restrictions of paragraph 6 of the Ethics Pledge to Jeffrey Wall to participate in *Chamber of Commerce v. Internal Revenue Service*, 5th Cir., No. 17-51063, (b) (5). This waiver does not otherwise affect Mr. Wall's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.




U.S. Department of Justice

Washington, DC 20530

FEB 21 2019

MEMORANDUM FOR THE WHITE HOUSE COUNSEL

FROM: Lee J. Lofthus
Assistant Attorney General
for Administration, and 
U.S. Department of Justice Designated Agency Ethics Official

SUBJECT: Ethics Pledge Waiver for
William Levi, Office of the Attorney General, U.S. Department of Justice

William Levi, Counselor to the Attorney General, is seeking an Ethics Pledge waiver to participate in the investigation and prosecution of Huawei Technologies Co., Ltd. (Huawei).

Mr. Levi was an associate at Sidley Austin (Sidley) until August 6, 2018, when he became a Special Assistant to the President at the White House. On December 10, 2018, he came to the Office of the Attorney General. (b) (5)

(b) (5), (b) (7)(C), (b) (6), (b) (7)(E), (b) (7)(A)

(b) (5)

5 CFR 2635.502. However, on February 7, 2019, he obtained an authorization, pursuant to 5 CFR 2635.502(d), to work on the matter. He now seeks an Ethics Pledge waiver.

(b) (5)

(b) (5) [Redacted]

(b) (5), (b) (7)(E), (b) (7)(A) [Redacted]

(b) (5) [Redacted]. I therefore request that, pursuant to the authority delegated under Section 3 of Executive Order 13770, you grant a waiver to the restrictions of paragraph 6 of the Ethics Pledge, to Mr. Levi to participate in the Huawei matter. This waiver does not otherwise affect Mr. Levi's obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.

From: Weinsheimer, Bradley (ODAG)
To: Shaw, Cynthia K. (JMD)
Subject: RE: Levi 502 authorization
Date: Thursday, February 7, 2019 10:37:43 AM

I agree that authorization is appropriate in this matter, subject to the limitation you have indicated. I am persuaded that consideration of the factors set forth in 5 CFR 2635.502(d) establish that the government's interest in Mr. Levi's participation in the Huawei matter described below outweighs the concern that a reasonable person would question the integrity of the Department's programs and operations.

Specifically, I note that while the relationship that gives rise to the apparent conflict of interest is that of a former employer, Mr. Levi did not represent Huawei while at Sidley. Neither did Mr. Levi work with (b) (6) while at Sidley. In addition, the representation at issue had not yet begun by the time Mr. Levi left Sidley. There is no reason to believe that resolution of the Huawei matter would have any impact on Mr. Levi. That is especially true given that, as reflected below, Mr. Levi is not authorized to participate in meetings, discussion, or any consideration on the issue of whether a Sidley lawyer may continue to participate in the matter as the result of a potential conflict. While

(b) (7)(A), (b) (7)(E)

For these reasons, subject to the limitation noted below, I authorize Mr. Levi's participation in the Huawei matter pursuant to 5 CFR 2635.502(d). I note that Mr. Levi also will need to obtain a waiver from the White House Counsel's Office as the Ethics Pledge also would seem to be implicated by Mr. Levi's participation in this matter. Also, Mr. Levi should take steps to ensure that others working on the matter are aware of the limited issue on which he remains recused.

Thanks, Brad.

Brad Weinsheimer
Associate Deputy Attorney General
Office: (b) (6)
Cell: (b) (6)
(b) (6)

From: Shaw, Cynthia K. (JMD) <(b) (6)>

Sent: Wednesday, February 6, 2019 11:25 AM

To: Weinsheimer, Bradley (ODAG) <(b) (6)>

Subject: Levi 502 authorization

Brad,

William Levi, Counselor to the Attorney General, is seeking authorization to participate in the investigation and prosecution of Huawei Technologies Co., Ltd. (Huawei). I recommend that you authorize his participation.

Mr. Levi was an associate at Sidley Austin (Sidley) until August 6, 2018, when he became a Special Assistant to the President at the White House. On December 10, 2018, he came to the Office of the Attorney General.

(b) (5)
[Redacted]

(b)(7)(A), (b)(5), (b)(6), (b)(7)(C), CRM (b)(3)(A)
[Redacted]

An employee has a covered relationship with any person for whom the employee has, within the last year, served as an attorney, partner, or employee. 5 C.F.R. § 2635.502(b)(1)(iv). Mr. Levi has a covered relationship with Sidley until August 6, 2019. Absent an authorization, he must be recused from the matter.

An authorization to participate in a matter may be granted if the agency designee determines that the government's interest in the employee's participation in a particular matter involving specific parties outweighs the concern that a reasonable person would question the integrity of the agency's programs and operations. 5 CFR 2635.502(d). I believe that an authorization is appropriate.

Factors that reduce the appearance of loss of impartiality are that, while the relationship that gives rise to the apparent conflict of interest is that of

a former employer, Mr. Levi did not represent Huawei while at Sidley. Neither did Mr. Levi work with (b) (6) while at Sidley. In addition, the representation at issue had not yet begun by the time Mr. Levi left Sidley.

(b) (5)

Based on these factors, I believe that you may find that the interest of the government in Mr. Levi's participation in the case outweighs any appearance concerns. Accordingly, I recommend that you authorize his participation in matters involving Huawei.

However, this authorization is subject a limitation. Mr. Levi (b) (5)

(b) (5)

Cindy

Cynthia K. Shaw
Director
Departmental Ethics Office
Justice Management Division
U.S. Department of Justice
145 N Street, NE
Washington, DC 20530

(b) (6)

From: [Gupta, Vanita \(OASG\)](#)
To: [Tirrell, Joseph W. \(JMD\)](#)
Cc: [Colangelo, Matthew \(OASG\)](#); [Morse, Jodie \(OASG\)](#); [Shaw, Cynthia K. \(JMD\)](#)
Subject: RE: 18 USC 208 Waiver, Jodie Morse - U.S. v. Idaho
Date: Tuesday, August 9, 2022 10:39:14 PM

I approve, thank you.

From: Tirrell, Joseph W. (JMD) (b) (6) >
Sent: Tuesday, August 9, 2022 3:45 PM
To: Gupta, Vanita (OASG) (b) (6) >
Cc: Colangelo, Matthew (OASG) (b) (6) >; Morse, Jodie (OASG) (b) (6) >; Shaw, Cynthia K. (JMD) (b) (6) >
Subject: FW: 18 USC 208 Waiver, Jodie Morse - U.S. v. Idaho
Importance: High

Ms. Gupta,

Pursuant to 18 U.S.C. § 208(b)(1), the Departmental Ethics Office (DEO) recommends that you approve a waiver from the prohibition in 18 U.S.C. § 208(a) for Jodie Morse. Under § 208(a), an employee of the United States is prohibited from participating personally and substantially in a particular matter that will have a direct and predictable effect on her financial interest unless she obtains a waiver under § 208(b)(1) or qualifies for a regulatory exemption under 18 U.S.C. § 208(b)(2). Section 208(b)(1) provides that a waiver may be granted upon a written determination that the financial interest involved is not so substantial as to be deemed likely to affect the integrity of the service that the government may expect from the employee. The U.S. Office of Government Ethics (OGE) was made aware of this waiver request and was provided a draft but was unable to provide feedback before I forwarded this waiver request to you for review. Due to the urgent need for Ms. Morse to resume her participation in below matter, I did not want to delay. Consultation with OGE is required only, "when practicable." 5 C.F.R. § 2640.304.

BACKGROUND

Ms. Morse is a senior counsel in the Office of Associate Attorney General (OASG). (b) (5)

[REDACTED]

. This includes working on *U.S. v. Idaho (Idaho)*, (b) (5)

(b) (5), (b) (6)

[REDACTED]

(b) (5), (b) (6)

(b) (5), (b) (6)

the Department's practice is to treat certain interested participants, such as *amici*, as parties for the purpose of the "catch-all" provision and review them for appearance of impartiality. A waiver under 18 U.S.C. § 208(b)(1), obviates the need for a separate authorization under 5 C.F.R. § 2635.502. See note in 5 C.F.R. § 2635.501. Finally, both a waiver under 18 U.S.C. § 208(b)(1), or an authorization under 5 C.F.R. § 2635.502 would be approved by you as head of Ms. Morse's component.

ANALYSIS

18 U.S.C. § 208 prohibits an employee from participating in an official capacity in a particular matter that will have a direct and predictable effect on her financial interest or the financial interest of a person whose interests are imputed to her. In this case, (b) (5), (b) (6)

The resulting amount of financial gain for Ms. Morse's (b) (6) is likely to be small. Jenner's representation of this one client on this matter is likely a very small portion of the firm's annual revenue. Furthermore, the financial benefit from this representation is so dispersed throughout all of the 500 partners as to have no more than a de minimis effect on Ms. Morse's (b) (6) compensation. The (b) (6) does not work in the area of reproductive rights law. Further, he has not worked on, and will not work on, the *Idaho* case, nor does he represent the declarant in any other matters.

The small amount of compensation that Ms. Morse's (b) (6) may receive based on revenue generated by the firm's representation of the declarant in this matter is not so significant an amount as to be deemed likely to affect the integrity of Ms. Morse's services. Ms. Morse is the day-to-day lead of the reproductive rights task force, but she is not the final decision maker on Task Force activities. There are representative from approximately a dozen Department components participating in the Task Force. Further, while she is involved in the *Idaho* litigation, it is being handled directly by a team of attorneys, and she is

(b)(5), (b)(6)

Based upon the foregoing information, (b) (5)

and I recommend that you approve the waiver allowing Ms. Morse to participate *U.S. v. Idaho*. This waiver does not permit Ms. Morse to participate in any other type of particular matter that would have a direct and predictable effect on this disqualifying financial interest or any other disqualifying financial interest. This waiver is based on the understanding that Ms. Morse does not have, and will not have in the future, any additional conflicting financial interest in this matter.

Pursuant to 5 C.F.R. § 2640.304, a copy of this waiver will be made available upon request to the public in accordance with the procedures described in 5 C.F.R. § 2634.603. In making this waiver publicly available, certain information may be withheld in accordance with 5 C.F.R. § 2640.304(b).

You may approve this way by response to this email. If you have any questions regarding this waiver, please don't hesitate to call.

Joseph W. Tirrell

Deputy Director

Department of Justice
Departmental Ethics Office

(b) (6)

Public Service is a Public Trust

From: [Rodgers, Janice \(JMD\)](#)
To: [Francisco, Noel \(OSG\)](#)
Cc: [Shaw, Cynthia K. \(JMD\)](#)
Subject: FW: Recommendation for waiver under 18 USC 208
Date: Tuesday, February 07, 2017 11:28:53 AM

Noel,

Waiver granted.

Thanks-

From: Schools, Scott (ODAG)
Sent: Tuesday, February 07, 2017 11:26 AM
To: Rodgers, Janice (JMD) <(b) (6)>
Subject: RE: Recommendation for waiver under 18 USC 208

I concur in your recommendation and grant the waiver. Thank you for the excellent analysis.

Scott

From: Rodgers, Janice (JMD)
Sent: Tuesday, February 7, 2017 9:40 AM
To: Schools, Scott (ODAG) <(b) (6)>
Cc: Shaw, Cynthia K. (JMD) <(b) (6)>; Rodgers, Janice (JMD) <(b) (6)>
Subject: Recommendation for waiver under 18 USC 208
Importance: High

Scott,

I am recommending that you grant a waiver, pursuant to the authority provided by the financial conflict of interest statute, 18 USC § 208(a)(1), to Acting Solicitor General Noel Francisco, in order for him to continue to participate in *States of Washington and Minnesota v. Trump* and related cases defending the Executive Order 13769 (the Order) on immigration. (b) (5)

Mr. Francisco (b) (5)
-he is seeking a waiver so that he may participate in the matter today.

Mr. Francisco, a former partner with the Jones Day law firm, is now the Acting Solicitor General and in that capacity has been leading the government's work on the immigration litigation. Yesterday, February 6, 2017, Jones Day filed an amicus brief in the Ninth Circuit on behalf of 97 technology companies and others. Mr. Francisco was authorized by you to continue working on the immigration litigation case under an authorization pursuant to 5 CFR 2635.502(d). Later in the evening, Mr. Francisco became aware that he (b) (5), (b) (6)

(b) (5), (b) (6)

A "particular matter" includes matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. It does not cover consideration or adoption of broad policy options directed to the interest of a large and diverse group of persons. Particular matters include judicial proceedings. 5 CFR § 2640.103(a)(1). Under the relevant regulations, a particular matter "... will have a "direct" effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effect on the general economy does not have a direct effect within the meaning of this part... (ii). A particular matter will have a "predictable" effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial." 5 CFR § 2640.103(a)(3).

(b) (5)

The standard for granting a waiver of the conflicting interest is that the interest "is not so substantial as to be deemed likely to affect the integrity of employee's services to the Government." 5 CFR § 2635.301(a). Under the Department's Ethics Order, DOJ Order 1200.1 Chapter 11, and delegated authority, you have the authority to grant the waiver, with a recommendation of an ethics official.

(b) (5), (b) (6)

For all of these reasons, we recommend that you grant a waiver under 18 USC 208(b)(1) of the financial conflict of interest statute.

Your response to this email will serve as your decision. If you have any questions please let me know.

Cynthia K. Shaw
Director

Departmental Ethics Office
U.S. Department of Justice
145 N Street, NE
Washington, DC 20530

(b) (6)