

United States Senate
WASHINGTON, DC 20510

April 15, 2020

Scott Gast
Senior Counsel to the President
And Designated Ethics Official
The White House
1600 Pennsylvania Avenue, NW

Dear Mr. Gast:

We write regarding a series of recent reports that raise significant ethics and conflict of interest concerns about the White House Coronavirus Task Force and the roles and influence of Jared Kushner, President Trump, and other individuals with financial conflicts of interest. These reports are troubling: amidst the coronavirus pandemic, the American public should not have to worry that critical public health and economic decisions are being made in secret by public officials influenced by financial connections and personal ties.

Financial Conflicts of Jared Kushner and His Task Force

Our first concern is that Jared Kushner—President Donald Trump’s son-in-law and senior advisor—has been managing a “shadow task force” of key government officials and private sector actors tasked with coordinating the private sector response to the coronavirus disease 2019 (COVID-19) pandemic.¹ Mr. Kushner’s task force reportedly includes “a suite of McKinsey consultants,” a private equity executive, and a host of other representatives from private industries. Though they have purportedly signed “voluntary service agreements” and have avoided participating in procurement processes,² questions remain as to who exactly comprises this task force, the vetting process for its members, and what role the members play in addressing issues related to the pandemic. Moreover, reports indicate that Mr. Kushner’s task force has been “attract[ing] companies seeking to entrench themselves in hopes of winning lucrative government contracts down the line,”³ underscoring the need for robust ethics oversight.

Mr. Kushner and his task force appear to have substantial, and often disruptive, influence over White House policy initiatives related to the COVID-19 pandemic. For example, Mr. Kushner has played a “central role” in the federal government’s ongoing fiasco of procurement and delivery of ventilators and personal protective equipment to states that desperately need these

¹ Politico, “Behind the scenes, Kushner takes charge of coronavirus response,” Adam Cancryn and Dan Diamond, April 1, 2020, <https://www.politico.com/news/2020/04/01/jared-kushner-coronavirus-response-160553>; The Daily Beast, “Jared Kushner Is Running ‘Shadow’ Coronavirus Task Force and Causing Confusion, Officials Say,” Julia Arciga, March 18, 2020, <https://www.thedailybeast.com/jared-kushner-is-running-shadow-coronavirus-task-force-and-causing-confusion-officials-say>.

² Politico, “Behind the scenes, Kushner takes charge of coronavirus response,” Adam Cancryn and Dan Diamond, April 1, 2020, <https://www.politico.com/news/2020/04/01/jared-kushner-coronavirus-response-160553>.

³ *Id.*

resources.⁴ And according to reports, because of Mr. Kushner’s efforts, legitimate experts like U.S. Department of Health and Human Services (HHS) Assistant Secretary Robert Kadlec, National Institute of Allergies and Infectious Diseases Director Anthony Fauci, Centers for Disease Control and Prevention Director Robert Redfield “and others have repeatedly had to divert their attentions from core operations to contend with ill-conceived requests from the White House they don’t believe they can ignore.”⁵

Several companies with connections to Mr. Kushner appear to be benefitting from White House and administration policies and decisions. Trump Administration officials reportedly selected Oscar Insurance Corporation (Oscar Health), a company co-founded by Mr. Kushner’s brother Joshua Kushner, and formerly owned or controlled by Jared Kushner, to develop and launch a website that would direct people to testing sites for COVID-19.⁶ To make matters worse, Oscar Health misled the public about its work, initially claiming that it had only “shared code” with HHS in an effort to assist the agency with developing a website, when in reality, “a team of Oscar engineers, project managers, and executives spent about five days building a stand-alone website at the government’s request.”⁷ This confusing interaction raises obvious questions about whether Mr. Kushner “may have mingled his family’s business interests with his political interests and his role in the administration’s coronavirus response.”⁸

Similarly, Apollo Global Management, the private equity firm that lent Kushner Companies nearly \$200 million in 2017,⁹ has “been pressing government officials in recent weeks to expand the types of assets eligible to be offered as collateral in a Federal Reserve lending program,”¹⁰ and appears to have received some of the favors it sought late last week, when the Federal Reserve announced that it would be backing lower-rated bonds.¹¹ Ethical questions about the Trump Administration’s pandemic response efforts are magnified by news that the White House is considering over 100 business executives to include in a new economy-focused task-force.¹²

⁴ Washington Post, “Jared Kushner’s coronavirus briefing sparks outcry, confusion,” April 3, 2020, <https://www.washingtonpost.com/nation/2020/04/03/jared-kushner-coronavirus-briefing/>.

⁵ Washington Post, “The U.S. Was Beset by Denial and Dysfunction as the Coronavirus Raged,” April 4, 2020, <https://www.washingtonpost.com/national-security/2020/04/04/coronavirus-government-dysfunction/>.

⁶ The Atlantic, “Exclusive: Kushner Firm Built the Coronavirus Website Trump Promised,” Robinson Meyer, March 30, 2020, <https://www.theatlantic.com/politics/archive/2020/03/kushner-coronavirus-testing-oscar-company/609139/>.

⁷ *Id.*

⁸ *Id.*

⁹ Letter from Sens. Warren, Carper, Cummings, and Peters, to Leon Black, Chairman and CEO, Apollo Global Management, March 8, 2018, <https://www.warren.senate.gov/imo/media/doc/Letter%20to%20Apollo%20on%20Kushner%20Loans%20030718.pdf>.

¹⁰ New York Times, “Private Equity Firm Pushes for Broader Access to Fed Lending Program,” April, 4, 2020, <https://www.nytimes.com/2020/04/04/business/economy/apollo-federal-reserve-lending-talf.html>.

¹¹ Board of Governors of the Federal Reserve System, Federal Reserve Takes Additional Actions To Provide Up to \$2.3 Trillion In Loans to Support the Economy, April 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>.

¹² Politico, “Trump’s grand reopening council triggers a slew of new questions,” Nancy Cook, April 13, 2020, <https://www.politico.com/news/2020/04/13/trump-coronavirus-reopening-council-184927>.

Mr. Kushner’s actions also raise questions about his compliance with the *Presidential Records Act* (PRA)¹³, under which the President and his staff are obligated to document, preserve, and maintain all records that “reflect the performance of the President’s constitutional, statutory, or other official or ceremonial duties.”¹⁴ As a senior advisor to the President tasked with responding to COVID-19, Mr. Kushner and members of his task force are obligated to preserve and make public all records related to their pandemic response efforts. But reports indicate that private sector members of this task force are using private email addresses to communicate with government officials, raising concerns about whether the White House is preserving records in accordance with the law.¹⁵ Moreover, because this task force includes members who are not employed by the federal government providing advice and recommendation to executive branch officials, the task force is obligated under the *Federal Advisory Committee Act* (FACA)¹⁶ to make publicly available “the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents” prepared by or made available to the task force.¹⁷ To our knowledge, this has not occurred, in clear violation of the law.

Financial Interests of White House Officials and Other Influential Individuals

Our second concern is that the personal financial interests of individuals advising President Trump may be affecting White House COVID-19 decision making, in particular with regard to the use of the drug hydroxychloroquine. President Trump has aggressively touted the use of this drug, which recently received an Emergency Use Authorization from the U.S. Food and Drug Administration (FDA) to allow its use from the Strategic National Stockpile.¹⁸

However, senior government officials and well-connected, non-government donors who are—or may be—advising President Trump either formally or informally on COVID-19 appear to have financial interests in hydroxychloroquine and the FDA’s decision.¹⁹ According to reports, “Fisher Asset Management, the investment company run by Ken Fisher, a major donor to Republicans, including Mr. Trump” is one of the largest shareholders in a company that manufactures the brand-name version of hydroxychloroquine, and Chirag Patel, a member of one of Mr. Trump’s golf clubs who has golfed with the President at least twice, is the co-founder of a generic pharmaceutical company that is “gearing up” to produce the drug.²⁰

Additionally, the vast majority of the members in Vice President Pence’s task force do not “have any training in science or medicine” and “mostly hail from the business world”—including the

¹³ 44 U.S. Code § 2201-2209.

¹⁴ 44 U.S. Code § 2203.

¹⁵ Vanity Fair, “So Jared Kushner Is Running a ‘Shadow’ Coronavirus Task Force,” Bess Levin, March 19, 2020, <https://www.vanityfair.com/news/2020/03/jared-kushner-shadow-coronavirus-task-force>; Citizens for Ethics and Responsibility in Washington, “KUSHNER’S SHADOW TASK FORCE APPEARS TO VIOLATE MULTIPLE LAWS,” March 27, 2020, press release, <https://www.citizensforethics.org/press-release/kushners-shadow-task-force-violate-multiple-laws/>.

¹⁶ Public Law 92–463.

¹⁷ *Id.*

¹⁸ U.S. Food and Drug Administration, Hydroxychloroquine Emergency Use Authorization, March 28, 2020, <https://www.fda.gov/media/136534/download>.

¹⁹ New York Times, “Trump’s Aggressive Advocacy of Malaria Drug for Treating Coronavirus Divides Medical Community,” April 6, 2020, <https://www.nytimes.com/2020/04/06/us/politics/coronavirus-trump-malaria-drug.html>.

²⁰ *Id.*

pharmaceutical industry.²¹ For instance, before joining the White House as Director of the U.S. Domestic Policy Council and now serving as a member of the Vice President’s task force, Joseph Grogan was a lobbyist for Gilead Sciences, a pharmaceutical “company that stands to gain big from a possible treatment for the respiratory disease.”²² This raises alarms since reports already indicate the Vice President Pence’s task force “has favored some of the nation’s largest corporations and ignored smaller producers of goods and services with long track records of meeting emergency needs” and has “operated almost entirely in the dark, releasing few details of [its] arrangements with the big companies.”²³

Compliance with Federal Law

These potential conflicts raise obvious questions regarding whether the actions of White House and other Trump Administration officials during the COVID-19 pandemic are consistent with federal criminal conflict of interest law, which prohibits a Government employee from “participating personally and substantially, on behalf of the Federal Government, in any particular matter in which he or she has a financial interest.”²⁴

You have the responsibility to make compliance with federal ethics law a priority for the White House during this pandemic. Toward that end, in order to help us better understand what steps you have taken and plan to take to address these concerns, we request answers to the following question no later than April, 29, 2020.

1. Does your office or any office within the White House have a complete list of companies, consultants, advisors or any other individuals not employed by the federal government that are working with or are members of the task force being managed by Jared Kushner or otherwise providing information and advice to President Trump and other White House officials? If so, please provide a copy of the list, including the names of the members and the nature of the services they are providing.
2. Since the private sector members of Mr. Kushner’s task force and numerous other individuals providing advice and information to President Trump and other White House officials are not considered federal employees, what steps have been taken to prevent their access to non-public, confidential, or otherwise privileged information in the course of their duties?
3. What financial disclosures have private sector members of Mr. Kushner’s task force and other individuals providing advice and information to President Trump and other White House officials made to the Administration?

²¹ The Intercept, “Cronyism and Conflicts of Interest in Trump’s Coronavirus Task Force,” Sharon Lerner, February 29, 2020, <https://theintercept.com/2020/02/29/cronyism-and-conflicts-of-interest-in-trumps-coronavirus-task-force/>.

²² *Id.*

²³ NBC News, “Behind closed doors, Trump’s coronavirus task force boosts industry and sows confusion,” Jonathan Allen, Phil McCausland and Cyrus Farivar, April 12, 2020, <https://www.nbcnews.com/politics/white-house/trump-s-coronavirus-task-force-amassed-power-it-boosted-industry-n1180786>.

²⁴ 18 USC § 208.

4. What systems have been put in place to ensure that White House officials, and private sector members of the task force are not providing advice on pandemic response that might be intended to, or will actually, financially benefit them or their companies?
5. Will Mr. Kushner’s task force or other White House officials be required to publicly disclose the names, dates, and subject matter of any briefings or meetings provided by any outside individual or entity?
6. What steps has the White House taken to ensure that Mr. Kushner’s task force is in compliance with the PRA? Are all task force records being documented, preserved and maintained as required by law?
7. Is Mr. Kushner’s task force in compliance with FACA provisions that require the publication of all “records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents”?
8. Reports indicate that private sector members of Mr. Kushner’s task force have signed “voluntary service agreements.” Please provide copies of all agreements signed by members of the task force, and what if any ethics and conflict of interest requirements they include.
9. Have any members of Mr. Kushner’s task force or any other White House officials recused themselves from any decisions or from providing advice related to policies or personnel that may present a conflict of interest, or the appearance thereof, with their personal financial holdings? If so, provide a copy of the recusal paperwork, and any and all documents referring to or regarding the recusal.

Thank you for your attention to this matter.

Sincerely,

Elizabeth Warren
United States Senator

Richard Blumenthal
United States Senator

Thomas R. Carper
United States Senator