

January 7, 2019

Assistant Attorney General Lee J. Lofthus
Justice Management Division and
Designated Agency Ethics Official
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Room 1111
Washington, D.C. 20530

Re: Recusal of Acting Attorney General Matthew G. Whitaker

Dear Assistant Attorney General Lofthus:

This letter further supplements Citizens for Responsibility and Ethics in Washington's ("CREW's") letters of November 8 and 14, 2018, requesting that Acting Attorney General Matthew G. Whitaker be required to recuse from (1) the investigation by Special Counsel Robert Mueller into possible coordination between the Russian government and individuals associated with the campaign of President Donald J. Trump, and (2) the investigation by the U.S. Attorney for the Southern District of New York ("SDNY") of personal income tax, false statements, campaign finance, and other offenses involving Michael Cohen, the Trump Organization and the Trump Campaign.¹ New reporting of President Trump's displeasure with the investigations and his interactions with Acting Attorney General Whitaker about how they are being overseen is further ground for you to exercise your authority to advise Acting Attorney General Whitaker to recuse from them.

CREW initially requested Acting Attorney General Whitaker recuse from these investigations based on his public statements demonstrating bias and prejudice, his personal and political relationship with a person substantially involved in the conduct that is the subject of the investigation, and the fact that his appointment is the latest in a series of attempts by the President and possibly other White House officials to interfere with these investigations.

To address these and potentially other ethics concerns, Acting Attorney General Whitaker met with and provided relevant information to Department of Justice ("DOJ") ethics officials.² Following the process established in the Standards of Ethical Conduct for Employees of the Executive Branch ("Standards of Conduct"),³ DOJ ethics officials determined "that a reasonable person with knowledge of the relevant facts likely would question the impartiality of the Acting Attorney General" and "concluded" that Acting Attorney General Whitaker "should recuse himself from supervision of the Special Counsel investigation."⁴

¹ Letter from Noah Bookbinder and Norman Eisen to Assistant Attorney General Lee J. Lofthus, Nov. 8, 2018, available at <https://bit.ly/2Riexdj>; Letter from Noah Bookbinder and Norman Eisen to Assistant Attorney General Lee J. Lofthus, Nov. 20, 2018, <https://bit.ly/2OQEs6m>

² Letter from Assistant Attorney General Stephen E. Boyd to Senate Majority Leader Mitch McConnell and Senate Minority Leader Charles E. Schumer, Dec. 20, 2018 ("Boyd Letter"), available at <https://bit.ly/2Riexdj>.

³ See 5 C.F.R. § 2635.502.

⁴ Boyd Letter at 2.

CREW subsequently requested that DOJ Inspector General Michael E. Horowitz investigate whether Acting Attorney General Whitaker violated the Standards of Conduct by refusing to recuse from the Special Counsel investigation after DOJ ethics officials' determination.⁵ Ethics officials making this independent determination triggered a mandatory requirement that Acting Attorney General Whitaker recuse from the investigation.⁶ By refusing to do so, Acting Attorney General Whitaker violated the Standards of Conduct.

New reporting lends additional weight to DOJ's ethics officials' determination that a reasonable person with knowledge of the relevant facts likely would question the impartiality of Acting Attorney General Whitaker. According to *CNN*, President Trump views prosecutors in the SDNY investigation as "going rogue" and last month "pressed Whitaker on why more wasn't being done to control prosecutors in New York."⁷ President Trump reportedly contacted Acting Attorney General Whitaker on at least two occasions to express his "displeasure" and "anger" about SDNY prosecutors who "made Trump look bad."⁸ These incidents occurred after President Trump learned that his personal attorney, Mr. Cohen, pleaded guilty to lying to Congress about the proposed Trump Tower project in Moscow and implicated President Trump in a "hush-money scheme" to buy the silence of women in connection with the 2018 campaign.⁹ President Trump subsequently denied he "lashed out" at Acting Attorney General Whitaker over these developments.¹⁰

This new information, when added to the existing body of evidence, further indicates Acting Attorney General Whitaker was appointed to the nation's highest law enforcement position to represent the interests of President Trump rather than to fulfill the constitutional duties of his office in a fair and impartial manner consistent with his ethical obligations. Under

⁵ Letter to DOJ Inspector General Michael E. Horowitz from Noah Bookbinder and Norman Eisen, *Citizens for Responsibility and Ethics in Washington*, Dec. 21, 2018 ("Horowitz Letter"), available at <https://bit.ly/2AavEDU>.

⁶ *Id.* CREW explains this process in the Horowitz Letter as follows:

Section 2635.502 of the Standards of Conduct establishes the process for addressing concerns about the appearance of loss of impartiality by executive branch employees. Section 2635.502(a) provides that when an employee determines that his participation in a matter would cause a reasonable person with knowledge of the relevant facts to question his impartiality in that matter, the employee should not participate in that matter without authorization from an agency ethics official addressing "the appearance problem." Separate from this self-regulation, section 2635.502(c) provides that an agency ethics official, "on his own initiative," may make an "independent determination" that a reasonable person would question the employee's impartiality. When the agency ethics official makes that determination, "the employee will be disqualified from participation in the matter," unless the agency authorizes the employee to participate pursuant to section 2635.502(d).

⁷ Laura Jarrett and Pamela Brown, Trump lashed out at Whitaker after explosive Cohen revelations, *CNN*, Dec. 21, 2018, available at <https://cnn.it/2PXbRNc>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Veronica Stracqualursi, Trump denies he 'lashed out' at acting Attorney General Matt Whitaker, *CNN*, Dec. 24, 2018, available at <https://cnn.it/2QLnIDk>.

Assistant Attorney General Lee J. Lofthus

January 7, 2019

Page 3

these circumstances, Acting Attorney General Whitaker lacks the requisite impartiality expected of a federal official under the Standards of Conduct.¹¹

These investigations are of historical consequence as they appear to implicate President Trump personally, as well as his family members, businesses, and campaign. It is incumbent upon you as DOJ's most senior career ethics official to ensure that every measure of public confidence is maintained in these investigations. CREW therefore again requests that you exercise your authority under the Standards of Conduct to advise Acting Attorney General Whitaker to recuse from the investigations. To the extent that Acting Attorney General Whitaker fails to recuse, CREW requests that you immediately refer the matter to DOJ Inspector General Horowitz for investigation.

Sincerely,



Noah Bookbinder
Executive Director

cc: The Honorable Michael E. Horowitz, Inspector General, U.S. Department of Justice

¹¹ 5 C.F.R. 2635.502(a).