

March 7, 2019

Michael K. Atkinson
Inspector General of the Intelligence Community
Office of the Director of National Intelligence
Reston 3 Room E220
Washington, DC 20511

Re: Request for Investigation into White House Security Clearance Review Process
for Jared Kushner and Other White House Staff

Dear Mr. Atkinson,

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Inspector General for the Intelligence Community (“ICIG”) investigate the process by which Senior Advisor and Assistant to the President Jared Kushner received a top-secret security clearance and determine whether he was granted that clearance in violation of Executive Order No. 12968 and established adjudicative security guidelines.

Throughout his employment at the White House, questions about Mr. Kushner’s foreign entanglements and his potential susceptibility to foreign influence have impacted his eligibility to obtain a security clearance. Those concerns reportedly resulted in career White House security specialists and then-White House Counsel Donald McGahn recommending that Mr. Kushner should not receive a top-secret security clearance. Despite these recommendations, Mr. Kushner was granted that top-secret clearance in May 2018.

The process by which Mr. Kushner received the security clearance, and who exactly granted it, are currently unclear. According to several recent news reports, President Donald J. Trump ordered his then-Chief of Staff John F. Kelly to grant Mr. Kushner the clearance.¹ However, this reporting is contradicted by public statements made by President Trump and his daughter Ivanka Trump denying that President Trump had any role in granting his son-in-law a security clearance.² And, according to earlier news reporting, the White House security specialists’ recommendations were overruled by the then-director of the Executive Office of the President (“EOP”) personnel security office, Carl Kline.³

¹ Maggie Haberman, Michael S. Schmidt, Adam Goldman, and Annie Karni, Trump Ordered Officials to Give Jared Kushner a Security Clearance, *New York Times*, Feb. 28, 2019, available at <https://nyti.ms/2TseAE6>; Josh Dawsey, Seung Min Kim, and Shane Harris, Trump demanded top-secret security clearance for Jared Kushner last year despite concerns of John Kelly and intelligence officials, *Washington Post*, Feb. 28, 2019, available at <https://wapo.st/2VFDUUV>.

² Excerpts From Trump’s Interview With The New York Times, *New York Times*, Feb. 1, 2019, available at <https://nyti.ms/2HLQDTE>; Allison Pecorin, Ivanka Trump says she and Jared Kushner got no special treatment for security clearances, *ABC News*, Feb. 8, 2019, available at <https://abcn.ws/2SF12kd>.

³ Laura Strickler, Ken Dilanian, and Peter Alexander, Officials rejected Jared Kushner for top security clearance but were overruled, *NBC News*, Jan. 24, 2019, available at <https://nbcnews.to/2MvKr15>

The uncertain – but highly unusual and possibly unprecedented – circumstances through which Mr. Kushner received a top-secret security clearance raise the prospect that rules in place to protect our nation’s security were flagrantly ignored to accommodate Mr. Kushner, notwithstanding his foreign entanglements.

In separate but also concerning instances, approximately 30 other staff members in the EOP reportedly received security clearances from Mr. Kline despite concerns identified in the applicants’ FBI background investigations.⁴ For these individuals, as with Mr. Kushner, recommendations from career security specialists reportedly were overturned, again raising concerns that the normal process based on factors impacting national security was abandoned here.

As the Inspector General of the Intelligence Community, you are responsible for conducting “independent and objective audits, investigations, inspections, and reviews to promote economy, efficiency, effectiveness, and integration across the Intelligence Community.”⁵ The ICIG further ensures that applicable federal laws, executive orders, regulations, and policies are followed.⁶

An investigation by the ICIG is necessary to determine how Mr. Kushner was granted a top-secret clearance and by whom, and whether it should have been granted. It is unclear if President Trump ordered a top-secret clearance to be given to Mr. Kushner, but it appears the clearance was granted against the recommendations of career security specialists, raising questions about whether procedures for establishing his eligibility for that clearance were followed. Moreover, based on the unresolved concerns about Mr. Kushner’s potential susceptibility to foreign influence, it is unclear whether he should have been granted a clearance under Executive Order No. 12968 and adjudicative guidelines for determining eligibility for access to classified information. An investigation also should examine the legal significance of those facts. Even if President Trump, despite his denial of any involvement in Mr. Kushner’s security clearance, issued a Presidential order based on his authority as Commander-in-Chief that superseded the applicable legal requirements, the ICIG should review whether Mr. Kushner’s top-secret clearance presents a threat to national security.

The ICIG further should investigate whether it was proper for Mr. Kline to override the recommendations from career security specialists and grant security clearances to approximately 30 other EOP staff members.

⁴ *Id.*

⁵ Office of the Director of National Intelligence website, “Office of the Intelligence Community Inspector General - Who We Are” page, available at <https://bit.ly/2UaFa1V>.

⁶ Office of the Director of National Intelligence website, “ICIG Divisions and Offices” page, available at <https://bit.ly/2TdcSXP>

Legal Background

“[A]s Commander-in-Chief, the President has the authority to establish the standards for access to classified national security information.”⁷ This authority “typically” has been exercised through the issuance of executive orders.⁸

Under Executive Order No. 12968, “[n]o employee shall be granted access to classified information unless that employee has been determined to be eligible . . . and to possess a need-to-know.”⁹ Eligibility for access to classified information requires a background investigation that “affirmatively indicates”:

[L]oyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information . . . Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.”¹⁰

Executive Order No. 12968 exempts the President and the Vice President but applies to White House staff.¹¹ Accordingly, White House staff are expected to undergo background investigations and national security clearance processes similar to the process used for other government employees.¹²

The Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (“Adjudicative Guidelines”) set forth detailed standards for processing security clearance applications that are used by government departments and agencies to make all final clearance determinations.¹³ While the Adjudicative Guidelines allow that “[e]ach case must be judged on its own merits” and should be “evaluated in the context of the whole person,” they also caution that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”¹⁴

⁷ Michelle D. Christensen, *Security Clearance Process: Answers to Frequently Asked Questions*, *Congressional Research Service*, Oct. 7, 2016, at 4, available at <https://fas.org/sgp/crs/secrecy/R43216.pdf>.

⁸ *Id.*

⁹ E.O. 12968, Access to Classified Information, § 1.2(a), 60 F.R. 40245, 40246 (Aug. 7, 1995).

¹⁰ E.O. 12968, § 3.1(b) (Aug. 7, 1995).

¹¹ E.O. 12968, § 1.1(e) (defining “[e]mployee” to mean “a person, other than the President and Vice President, employed by, detailed or assigned to, an agency”).

¹² Partnership for Public Service and Boston Consulting Group, *Presidential Transition Guide*, Jan. 2018, at 86, available at <https://bit.ly/2zcAznk>.

¹³ Memorandum from Stephen J. Hadley, Assistant to the President for National Security Affairs, Adjudicative Guidelines, Attachment Tab A: *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, Dec. 29, 2005, available at <https://fas.org/sgp/isoo/guidelines.html>.

¹⁴ Adjudicative Guidelines, ¶ 2(b), (c).

Adjudicative Guideline B on “Foreign Influence” describes several conditions relevant to Mr. Kushner’s eligibility for a security clearance, including:

- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation;
- (f) failure to report, when required, association with a foreign national; . . .
- (h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion.¹⁵

Factual Background

Jared Kushner’s Top-Secret Clearance

Mr. Kushner applied for a top-secret security clearance even before President Trump was inaugurated.¹⁶ His application “was troubled from the start,” with Mr. Kushner failing to disclose numerous contacts with foreign governments and needing to amend his application multiple times.¹⁷ The issues with Mr. Kushner’s application likely resulted in him receiving only a temporary security clearance throughout 2017.¹⁸ The temporary clearance allowed Mr. Kushner to receive both top-secret and sensitive compartmented information (“SCI”) information, but in February 2018 then-Chief of Staff Kelly limited the access of employees with temporary security clearances to “secret” information, a far lower level of access than Mr. Kushner had been receiving.¹⁹

Mr. Kushner’s application was under review while he held the temporary clearance. According to a January 2019 *NBC News* report, Mr. Kushner’s application for top-secret clearance was first rejected by two career White House security specialists after his FBI background check raised “questions about foreign influence and foreign business entanglements.”²⁰ These questions reportedly arose from his “family’s business, his foreign

¹⁵ Adjudicative Guideline B, para. 7.

¹⁶ Adam Entous and Evan Osnos, *Jared Kushner is China’s Trump Card*, *New Yorker*, Jan. 29, 2018, available at <https://www.newyorker.com/magazine/2018/01/29/jared-kushner-is-chinas-trump-card>; Jo Becker and Matthew Rosenberg, *Kushner Omitted Meeting With Russians on Security Clearance Forms*, *New York Times*, Apr. 6, 2017, available at <https://nyti.ms/2nSc6Mr>. See also Letter from Noah Bookbinder to White House Chief of Staff John F. Kelly, Feb. 15, 2018, available at <https://bit.ly/2tcxU9D>.

¹⁷ Entous and Osnos, *New Yorker*, Jan. 29, 2018.

¹⁸ Carol E. Lee, Mike Memoli, Kristen Welker, and Rich Gardella, *Scores of top White House officials lack permanent security clearances*, *NBC News*, Feb. 15, 2018, available at <https://www.nbcnews.com/politics/white-house/scores-top-white-house-officials-lack-permanent-security-clearances-n848191>; Jim Sciutto, Gloria Borger, and Zachary Cohen, *Dozens of Trump officials still lack full security clearance*, *CNN*, Feb. 9, 2018, available at <http://www.cnn.com/2018/02/09/politics/trump-officials-pending-security-clearances/index.html>.

¹⁹ Dawsey, Min Kim, and Harris, *Washington Post*, Feb. 28, 2019; Haberman, Schmidt, Goldman, and Karni, *New York Times*, Feb. 28, 2019.

²⁰ Strickler, Dilanian, and Alexander, *NBC News*, Jan. 24, 2019.

contacts, his foreign travel and meetings he had during the campaign.”²¹ Based on “potential foreign influence” on him, a White House career security specialist gave Mr. Kushner an “unfavorable” adjudication with which her supervisor agreed.²² According to the *NBC News* report, their recommendation was “overruled” by Mr. Kline the then-director of the EOP personnel security office, who recommended Mr. Kushner receive a top-secret clearance.²³

More recently, however, the *New York Times* and the *Washington Post* reported that in May 2018 President Trump personally ordered then-Chief of Staff Kelly to grant Mr. Kushner a top-secret security clearance.²⁴ According to these reports, the clearance was granted against the recommendation of the White House Counsel’s Office, which was led at the time by Mr. McGahn, who wrote an internal memorandum that “outlin[ed] the concerns that had been raised about Mr. Kushner – including by the C.I.A.”²⁵ President Trump’s reported directive also “made Kelly so uncomfortable” that he wrote a “contemporaneous internal memo” to memorialize that he had been “ordered” to grant Mr. Kushner a top-secret security clearance.²⁶

In addition, following receipt of his top-secret clearance, Mr. Kushner’s file was sent to the CIA for a ruling on whether to clear him for access to SCI, according to *NBC News*.²⁷ The CIA officers who reviewed his file reportedly “balked,” wondering how he was cleared for even a top-secret clearance.²⁸ To date, Mr. Kushner apparently has not been granted clearance by the CIA for access to SCI material, which would allow him access to the nation’s most sensitive methods and sources of intelligence.²⁹

These reports do not specify exactly how President Trump’s order was given. The *New York Times* said that the “precise language” President Trump used is unclear, and that while there might be different interpretations of what he said, Mr. Kelly “believed it was an order.”³⁰ The *Washington Post* reported President Trump “instructed Kelly to fix the problem.”³¹ It is not known if President Trump signed a written order overruling the White House security specialists at any point.

These accounts of President Trump’s involvement directly contradict public claims President Trump and Ivanka Trump made in the last two months. In an interview with the *New York Times*, President Trump flatly denied having any involvement in approving Mr. Kushner’s

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Haberman, Schmidt, Goldman, and Karni, *New York Times*, Feb. 28, 2019; Dawsey, Min Kim, and Harris, *Washington Post*, Feb. 28, 2019.

²⁵ Haberman, Schmidt, Goldman, and Karni, *New York Times*, Feb. 28, 2019.

²⁶ Dawsey, Min Kim, and Harris, *Washington Post*, Feb. 28, 2019; Haberman, Schmidt, Goldman, and Karni, *New York Times*, Feb. 28, 2019.

²⁷ Strickler, Dilanian, and Alexander, *NBC News*, Jan. 24, 2019.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Haberman, Schmidt, Goldman, and Karni, *New York Times*, Feb. 28, 2019

³¹ Dawsey, Min Kim, and Harris, *Washington Post*, Feb. 28, 2019

top-secret security clearance.³² “I was never involved with the security,” he said in response to questions about Mr. Kushner’s clearance.³³ Further asked if he told “General Kelly or anyone else in the White House to overrule security officials” and if had “direct[ed] General Kelly or anyone like that to do it,” President Trump both times answered, “No.”³⁴ Ms. Trump likewise told *ABC News* in February 2019 that “the president had no involvement pertaining to my clearance or my husband’s clearance, zero.”³⁵

Foreign Entanglements and Foreign Influence

Questions raised during Mr. Kushner’s security clearance review about his foreign entanglements and foreign influence are consistent with allegations CREW previously raised in its February 15, 2018 letter to Mr. Kelly requesting that Mr. Kushner’s interim temporary clearance be revoked.³⁶ CREW made that request based on various security concerns that appeared to make Mr. Kushner ineligible for access to classified information.³⁷ These concerns included: Mr. Kushner’s failure to disclose multiple contacts with Russian officials and other foreign governments on his initial security clearance application; his role as a key advisor in the Donald J. Trump Presidential campaign and transition in matters that are being examined by the FBI and Special Counsel Robert Mueller, including his participation in a controversial June 9, 2016 Trump Tower meeting with a Kremlin-connected Russian lawyer; and his failure to fully divest from his family’s real estate businesses, making him susceptible to foreign entanglements and influence, including specific reports of potential foreign attempts to influence him.³⁸

Since CREW submitted its letter, additional conflicts of interest concerns have been raised based on Mr. Kushner’s family business interests and his broad work portfolio, including negotiating Middle East peace. In June 2017, Mr. Kushner reportedly backed Saudi Arabia and the United Arab Emirates in their efforts to blockade Qatar, resulting in President Trump rejecting the State Department’s position supporting Qatar, a U.S. ally.³⁹ This controversy caused speculation that Mr. Kushner’s lack of support for Qatar may have been in retaliation for Qatar not following through on a financing deal for 666 Fifth Avenue – one of the Kushner family’s properties with the highest levels of debt – when the family had sought it in April 2017.⁴⁰

Charles Kushner, Mr. Kushner’s father, subsequently claimed that his company turned down financing from the Qataris in April 2017 and would turn down offers from sovereign

³² Excerpts From Trump’s Interview With The New York Times, *New York Times*, Feb. 1, 2019.

³³ *Id.*

³⁴ *Id.*

³⁵ Pecorin, *ABC News*, Feb. 8, 2019

³⁶ Letter from Noah Bookbinder to Chief of Staff John F. Kelly, Feb. 15, 2018.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Clayton Swisher and Ryan Grim, Jared Kushner’s Real-Estate Firm Sought Money Directly From Qatar Government Weeks Before Blockade, *Intercept*, Mar. 2, 2018, available at <https://bit.ly/2HWTdTT>.

⁴⁰ Carol E. Lee, Julia Ainsley, and Robert Windrem, Mueller team asking if Kushner foreign business ties influenced Trump policy, *NBC News*, Mar. 2, 2018, available at <https://nbcnews.to/2FMRTkK>.

wealth funds in the future.⁴¹ Yet last year, Mr. Kushner's family business obtained financing for 666 Fifth Avenue from Brookfield Asset Management, a Canadian asset fund with ties to Qatar's sovereign wealth fund.⁴² Brookfield reportedly offered Mr. Kushner's family business a "larger-than-expected deal" that enabled it to pay off its liabilities in the project – approximately half of the \$1.2 billion mortgage held on the property.⁴³ Brookfield's offer consisted of a 99-year lease arrangement in which the rent for the entire lease was all paid up front.⁴⁴ Due to these generous terms, the controversial deal is being viewed by some as a bailout for Mr. Kushner's family business.⁴⁵

Brookfield's recent investment in 666 Fifth Avenue came after years of unsuccessful efforts by the Kushner family to obtain financing from other overseas investors, including investors from South Korea, France, Israel, Saudi Arabia, China, and possibly Russia.⁴⁶ The financing for 666 Fifth Avenue serves to highlight the foreign entanglements and foreign influence that arise from Mr. Kushner's family business. Although Mr. Kushner sold his interest in 666 Fifth Avenue to a family trust controlled by his mother when he joined the Trump Administration,⁴⁷ the terms of the trust (which have not been made publicly available), Mr. Kushner's decision to retain extensive financial investments in his family's business and other investments, and the perceived bailout of the 666 Fifth Avenue project by Qatar raise the same types of conflicts of interest CREW flagged in its letter to Mr. Kelly.

Top-Secret Clearances for Approximately 30 Other EOP and White House Officials

In addition to his involvement in granting Mr. Kushner's top-secret clearance, Mr. Kline also reportedly "overruled" his career staff approximately 30 times to grant top-secret clearances to White House and other EOP officials after they received adverse adjudications.⁴⁸ By contrast, the recommendations of career security experts were overruled only once in the three years before Mr. Kline became director of the security office, according to *NBC News*.⁴⁹ Mr. Kline also ceased credit checks for security clearance applicants under his jurisdiction.⁵⁰

⁴¹ Michael Kranish and Karen DeYoung, Kushner Companies confirms meeting with Qatar on financing, *Washington Post*, Mar. 19, 2018, available at <https://wapo.st/2Go1i5G>.

⁴² Peter Grant, Kushner Family Closes Deal to Unload 666 Fifth Avenue, *Wall Street Journal*, Aug. 3, 2018, available at <https://on.wsj.com/2E5CE7k>; Bob Bryan, The real-estate company owned by Jared Kushner's family is dumping its financially troubled flagship skyscraper in New York City, *Business Insider*, Aug. 3, 2018, available at <https://read.bi/2RWuYbh>; Charles V. Bagli and Jesse Drucker, Kushner's Near Deal with Qatar-Linked Company for Troubled Tower, *New York Times*, May 17, 2018, available at <https://nyti.ms/2I0txuY>.

⁴³ Grant, *Wall Street Journal*, Aug. 3, 2018; David Kocieniewski and Caleb Melby, Kushner's China Deal Flop Was Part of Much Bigger Hunt for Cash, *Bloomberg*, Aug. 31, 2017, available at <https://bloom.bg/2graHO9>.

⁴⁴ Bryan, *Business Insider*, Aug. 3, 2018.

⁴⁵ Dmitry Zhdannikov, Herbert Lash, and Saeed Azhar, Qatar revamps investment strategy after Kushner building bailout, *Reuters*, Feb. 11, 2019, available at <https://reut.rs/2GC1sW8>.

⁴⁶ See Letter from Noah Bookbinder to White House Chief of Staff John F. Kelly, Feb. 15, 2018, at 12.

⁴⁷ Bagli and Drucker, *New York Times*, May 17, 2018.

⁴⁸ Strickler, Dilanian, and Alexander, *NBC News*, Jan. 24, 2019.

⁴⁹ *Id.*

⁵⁰ *Id.*

While the exact nature of the concerns for these 30 plus individuals are not publicly known, reports of Mr. Kline's decisions follows alarming reports from last year that more than 130 White House and EOP officials, including Mr. Kushner, were given questionable access to classified information without having obtained a permanent security clearance almost 10 months into the Trump Administration, and that at least 30 White House officials were still operating without full clearance as of February 2018.⁵¹

Request for Investigation

The unusual and deeply concerning circumstances giving rise to Mr. Kushner receiving a top-secret security clearance warrant a thorough investigation by the ICIG. Giving a government employee access to sensitive classified information when there is a risk of foreign influence and foreign entanglements is inconsistent with the applicable executive order and adjudicative guidelines, and for White House appointees the stakes could not be higher. This is particularly so for Mr. Kushner and his wife Ivanka Trump. As family members, they are largely unaccountable to anyone in the White House other than President Trump himself.⁵²

An investigation is needed to ascertain the process by which Mr. Kushner's clearance was granted, and by whom. News reports claiming that President Trump personally ordered Mr. Kushner to be granted the clearance are directly contradicted by President Trump's and Ivanka Trump's prior public statements, and it is unclear exactly how Mr. Kelly and Mr. Kline were involved. In any event, it appears that White House security specialists who determined that Mr. Kushner was ineligible for a top-secret clearance and the White House Counsel's Office were overruled, a highly unusual occurrence. A full account of the facts of these events is needed to make any judgments about the granting of Mr. Kushner's clearance, including whether processes for granting security clearances were followed.

An investigation further should examine the legal significance of those facts and the legal status of Mr. Kushner's security clearance. For instance, it is possible that President Trump issued a Presidential order granting Mr. Kushner a top-secret clearance, and that the order overrides the legal effect of Executive Order No. 12968 and adjudicative guidelines. The legal implications, however, may be less clear if President Trump's directive was less certain or less formal, or did not occur at all.

An investigation also should address whether Mr. Kushner was or is eligible for a top-secret security clearance under Executive Order No. 12968 and the adjudicative guidelines. As discussed above, the questions about potential foreign influence on Mr. Kushner were and remain so strong that experts in the White House and the CIA concluded that he should not be given access to highly sensitive national security information. The prospect of giving Mr.

⁵¹ Lee, Memoli, Welker, and Gardella, *NBC News*, Feb. 15, 2018; Sciutto, Borger, and Cohen, *CNN*, Feb. 9, 2018.

⁵² See Citizens for Responsibility and Ethics in Washington, *The Most Unethical Presidency: Year One*, at 17, available at <https://bit.ly/2EK3xuY> (discussing the application of the anti-nepotism statute to President Trump's appointment of his son-in-law and daughter to senior advisor positions, and noting that "it has become apparent that the White House lacks any real mechanism for holding the president's family members accountable for their ethical transgressions").

Kushner that access similarly drove Mr. McGahn and Mr. Kelly to write memoranda memorializing President Trump's order and objections to it. Coupled with the highly irregular process by which Mr. Kushner's security clearance was granted, these circumstances raise serious questions about his eligibility to hold a top-secret clearance and about whether his clearance presents a national security threat.

Relatedly, the ICIG should investigate Mr. Kline's decisions overruling his career staff at least 30 times to grant top-secret clearances to White House and other EOP officials. Although Mr. Kline reportedly has left the EOP and taken a position in the Pentagon, the number of unfavorable adjudications overruled by the former director apparently is "unprecedented" and raises national security concerns.⁵³ The top-secret security clearances Mr. Kline granted also should be examined to determine if they violate the applicable executive order and adjudicative guidelines and present a national security threat.

Conclusion

To protect national security, Executive Order No. 12968 and the adjudicative guidelines impose stringent standards on granting security clearances. When there is evidence that an employee may be subject to foreign entanglements and foreign influence, security professionals scrutinize the applicant even more carefully and commonly recommend against granting top-secret clearance. That is exactly what happened with Mr. Kushner's application. Despite these recommendations, as well as the apparent disagreement of senior White House officials, Mr. Kushner was granted a top-secret clearance. A thorough investigation is needed to ascertain exactly how this happened and the legal implications of these events, and to determine whether Mr. Kushner is eligible for the top-secret clearance he received. That investigation also should examine how and why approximately 30 other White House and EOP officials were granted security clearances despite the recommendations of career security specialists.

Thank you for your attention to this matter.

Sincerely,



Noah Bookbinder
Executive Director

⁵³ Strickler, Dilanian, and Alexander, *NBC News*, Jan. 24, 2019.