

United States Senate

WASHINGTON, DC 20510

April 6, 2018

The Honorable Jefferson B. Sessions III
Attorney General of the United States
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Sessions:

We are writing to request an investigation into whether Elliot Broidy, a top fund-raiser for President Trump, and Mr. Broidy's companies, Threat Deterrence and Circinus, may have violated the Foreign Corrupt Practices Act (FCPA). The FCPA bars U.S. corporations or individuals from bribing foreign officials in order to obtain or retain business.

The FCPA declares that "anything of value" provided to a foreign official may constitute a bribe that could result in an FCPA violation. The SEC's top enforcement official noted in 2015 that "bribes come in many shapes and sizes. . . . [T]he FCPA is properly read to cover providing valuable favors to a foreign official." Access to and beneficial treatment by the President of the United States would, by any reading, be viewed as a "valuable favor" provided to a foreign official.

In this case, public information reveals that Mr. Broidy may have offered something of value – access to the President of the United States – in exchange for action by foreign officials to "obtain or retain" business for his companies. The extent to which other individuals, including President Trump, were knowing participants in these potential FCPA violations is unknown and requires further investigation.

We therefore ask you to promptly open an investigation into Mr. Broidy and his companies for violations of the FCPA. The remainder of this letter provides additional details on our concerns.

The Foreign Corrupt Practices Act

The FCPA was signed into law by President Carter in 1977 to prevent abuses identified during the Watergate investigation by ensuring that American businesses were not obtaining unfair business advantages via bribery or illegal payments to foreign officials. In simple terms, the FCPA prohibits American business officials from engaging in bribery or offering illicit payments to foreign officials to get their way. The law applies to "any individual who is a citizen, national, or resident of the United States" and "any corporation . . . which has its principal

place of business in the United States,”¹ including “any officer, director, employee, or agent of” these corporations. Mr. Broidy and his companies clearly are covered by this definition.

The FCPA prohibits covered individuals or corporations from making “any offer, payment, promise to pay, or authorization of the payment of money or anything of value . . . to a foreign official to influence the foreign official in his or her official capacity . . . or to secure any improper advantage in order to assist in obtaining or retaining business . . . or directing business t[o] any person.”² Individuals or businesses that violate the FCPA are subject to criminal penalties, enforced under DOJ authority.

A key question to ask in evaluating Mr. Broidy’s conduct is whether the FCPA’s definition of “anything of value” applies narrowly, including only items of cash value for the foreign recipient. Although there have been no specific cases regarding access to the President or other high-ranking U.S. government officials, several recent cases indicate that the DOJ has interpreted the provision broadly. In 2015 and 2016, DOJ settled FCPA cases in which U.S. corporate officials provided unpaid internships to family members of foreign officials in order to influence their behavior.³

In 2016, former SEC Director of Enforcement Andrew Ceresney described the relevant interpretation of the statute:

“[A]nything of value” is a broad term and is not limited to cash or tangible gifts but includes less traditional items of value that have been given in order to influence foreign officials. . . . When these benefits are given to influence a foreign official in the performance of their official duties to assist an issuer in obtaining or retaining business, the FCPA is violated.⁴

In 2015 Mr. Ceresney similarly noted that “bribes come in many shapes and sizes. . . . [T]he FCPA is properly read to cover providing valuable favors to a foreign official, as well as providing cash, tangible gifts, travel or entertainment.”⁵

Foreign governments place tremendous value on access to President Trump. Indeed, by some reports, “governments have donated public land, approved permits and eased environmental regulations for Trump-branded developments, creating a slew of potential conflicts as foreign leaders make investments that can be seen as gifts or attempts to gain access

¹ Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-2(h)(1) (2016).

² U.S. Dep’t of Justice, *Foreign Corrupt Practices Act: An Overview*, Feb. 3, 2017, <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>.

³ *JPMorgan Chase to Pay \$264 Million to Settle Foreign Bribery Case*, NEW YORK TIMES, Nov. 17, 2016, <https://www.nytimes.com/2016/11/18/business/dealbook/jpmorgan-chase-to-pay-264-million-to-settle-foreign-bribery-charges.html>.

⁴ U.S. Sec. and Exch. Comm’n, *Keynote Speech, ACI’s 33rd International Conference on the FCPA*, Nov. 3, 2016, <https://www.sec.gov/news/speech/speech-ceresney-113016.html>.

⁵ U.S. Sec. and Exch. Comm’n, *Keynote Speech, ACI’s 32nd Conference on the FCPA*, Nov. 17, 2016, <https://www.sec.gov/news/speech/ceresney-fcpa-keynote-11-17-15.html>.

to the American president through his sprawling business empire.”⁶ Foreign governments have also granted trademarks to businesses owned by the Trump family⁷ and booked events at Trump properties.⁸ It is clear from the behavior of foreign governments and from common sense that these governments see access to President Trump as a “[t]hing of value.”

Mr. Broidy’s Activities Relating to the FCPA

Public reporting reveals that Mr. Broidy appears to have used access to President Trump as a valuable enticement to foreign officials who may be in a position to advance Mr. Broidy’s business interests abroad. For example, the *New York Times* reports the following:⁹

- Mr. Broidy invited two officials from Romania, a prospective Circinus client, to a private party with Mr. Trump during inauguration week. One of the officials reported asking at the party for closer ties between Romania and the United States and securing President Trump’s approval. Circinus then entered into an agreement with a defense company owned by the Romanian government that put the company on track for contracts worth over \$200 million.
- Mr. Broidy sent João Lourenço, then-Angolan defense minister, an invitation to President Trump’s inauguration festivities along with a proposal for Circinus to provide security services to Angola for up to \$64 million. Angola sent Circinus an initial payment of \$6 million on the same day Angolan officials and Mr. Broidy met with senators on Capitol Hill; Mr. Broidy had arranged those meetings. Mr. Broidy then invited Mr. Lourenço to Mar-a-Lago and reminded him of Angola’s past-due payment for Circinus’s services, and, after Mr. Lourenço became president of Angola, offered to set up meetings for him with President Trump and Vice-President Pence.
- Mr. Broidy met with Tunisian officials Eymen Errais and Fadhel Abdelkefi, seeking to build an intelligence center for Tunisia. Mr. Broidy emphasized his connections to Mr. Trump and proposed a contract worth \$80 million.
- Mr. Broidy invited President Denis Sassou-Nguesso of the Republic of Congo to a candlelight dinner featuring President Trump and Vice-President Pence, as well as other inauguration week events. The next day, he had Circinus prepare a \$2 million invoice to Mr. Sassou-Nguesso’s office for “military capabilities assessment and review/services.”

⁶ *Foreign governments are finding ways to do favors for Trump’s business*, MCCLATCHY, Jan. 2, 2018, <http://www.mcclatchydc.com/news/nation-world/article192131074.html>.

⁷ *Trump’s Trademark Continues Its March Across the Globe, Raising Eyebrows*, NEW YORK TIMES, April 11, 2017, <https://www.nytimes.com/2017/04/11/us/politics/trump-trademark-ethics.html>.

⁸ *Trump Properties Earned a Fortune from GOP and Foreign Governments During President’s First Year in Office: Report*, NEWSWEEK, Jan. 16, 2018, <http://www.newsweek.com/trump-properties-profit-foreign-governments-gop-782260>.

⁹ *Fund-Raiser Held Out Access to Trump as a Prize for Prospective Clients*, NEW YORK TIMES, March 25, 2018, <https://www.nytimes.com/2018/03/25/us/politics/elliott-broidy-trump-access-circinus-lobbying.html?smprod=nytcore-ipad&smid=nytcore-ipad-share>.

Summary

The Foreign Corrupt Practices Act is designed to bar U.S. business owners from providing "anything of value" to foreign officials in order to illegally enhance their business operations in foreign countries. Mr. Broidy is in a position to provide an extremely valuable offering: access to the President of the United States. Press reports indicate that Mr. Broidy has already done so in exchange for favorable treatment of his business interests abroad. This raises important questions about the applicability of the FCPA. The same actions may run afoul of other laws as well, such as the Foreign Agents Registration Act. We encourage you to explore all potential violations.

We therefore ask that you open an investigation into Mr. Broidy and his companies as rapidly as possible.

Sincerely,



RICHARD BLUMENTHAL
United States Senate



ELIZABETH WARREN
United States Senate