

THE WHITE HOUSE

Washington

MEMORANDUM FOR CERTAIN FORMER JONES DAY PARTNERS AND EMPLOYEES

FROM: Stefan C. Passantino, Deputy Counsel to the President and
James D. Schultz, Senior Associate Counsel to the President

SUBJECT: Waiver Certification Under Section 3 of Executive Order 13770 for Ethics Pledge Paragraph 6 and Authorization to Participate Under 5 C.F.R. Section 2635.502 for Communications and Meetings with Jones Day

Pursuant to section 3 of Executive Order 13770, “Ethics Commitments by Executive Branch Employees,” (“Ethics Pledge”), and 5 C.F.R. § 2635.502(d), I am issuing this memorandum to provide a limited waiver to the restrictions found in paragraph 6 of the Ethics Pledge and section 2635.502(a). This limited waiver is granted to the following commissioned officers¹ and employees in the White House Office: Donald F. McGahn II, Counsel to the President; Gregory G. Katsas, Deputy Counsel to the President; Ann M. Donaldson, Special Counsel and Chief of Staff to the White House Counsel; James M. Burnham, Senior Associate Counsel to the President; David M. Morrell, Associate Counsel to the President; and Blake W. Delaplane, Special Assistant to the White House Counsel (hereinafter “covered employees”). This limited waiver allows covered employees from the date of each employee’s appointment to participate in communications and meetings with Jones Day, notwithstanding the limitations found in paragraph 6 of the Ethics Pledge and section 2635.502(a).

In addition to other restrictions found in the Ethics Pledge, paragraph 6 establishes certain restrictions related to an appointee’s “former employers”². In particular, paragraph 6 prohibits all appointees, including commissioned officers, from:

- Participating in any particular matter involving specific parties in which a “former employer” is a party or represents a party for two years from the date of their appointment; and

¹ A commissioned officer is any employee who is appointed under 3 U.S.C. § 105(a) or 3 U.S.C. § 107(a) and has received a commission from the President, and any employee who has been detailed to the White House Office and has received a commission from the President for the position they hold in the White House Office.

² A “former employer” is defined by the pledge as “any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that ‘former employer’ does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, or any United States territory or possession.” Executive Order 13770, Sec. 2(j).

- Participating in any official meeting or communication with a former employer or former client, except where such meeting or communication relates to a particular matter of general applicability and the meeting or other event is open to all interested parties.

In addition, Section 2635.502(a) states, in part:

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his/her household, or knows that a person with whom he has a covered relationship is or represents a party to such a matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his/her impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee . . .

Authorization under section 2635.502(d) may be granted by the designated White House Ethics Official when

. . . an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. § 208(a), but would raise a question in the mind of a reasonable person about his/her impartiality . . . [but] the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.

After careful consideration, I have determined that it is appropriate and in the public interest to provide a limited waiver of the restrictions in section 1, paragraph 6, of the Executive Order and section 2635.502(a) to allow covered employees, who would otherwise be barred from communicating or meeting with Jones Day under those provisions, to participate in meetings and communications with Jones Day regarding particular matters where Jones Day represents the President of the United States, the Donald J. Trump for President, Inc. campaign committee, Trump for America, Inc., Republican National Committee, Trump Victory Committee and Make America Great Again Committee as it relates to transactions, counseling, litigation or other legal matters. The Administration has an interest in interacting with Jones Day in those limited instances to ensure its interests and the interests of the President of the United States in his official capacity are protected. It is important that all covered employees be able to communicate and meet with Jones Day to ensure the interests of the President are protected, and disqualification from such meetings or communications would limit the ability of the office of White House Counsel to effectively carry out its duties. Furthermore, in accordance with section 2635.502(d), the need for the covered employees' services outweighs the concern that a reasonable person may question the integrity of the White House Office's programs and operations.

This limited waiver does not affect the application of any other provision of law, including any other provision of the Ethics Pledge; the Standards of Ethical Conduct for Executive Branch Employees (5 C.F.R. part 2635); the criminal bribery, graft and conflict of interest statutes (18 U.S.C. 201-209); or the Hatch Act (5 U.S.C. 7323).