



November 8, 2019

Hon. Steve Linick, Inspector General  
U.S. Department of State  
Office of Inspector General  
SA-39  
1700 North Moore Street  
Arlington, VA 22209

Dear Inspector General Linick,

The Campaign Legal Center respectfully requests that your office investigate whether Rudolph W. Giuliani, President Trump’s personal lawyer, was engaged in official government business on behalf of President Trump in his official capacity as President, and on behalf of the State Department, and therefore should have been considered a government employee subject to conflict-of-interest laws. If Giuliani met all elements of employee status while conducting work on behalf of President Trump and the State Department, and it appears likely that he did, then your office should also investigate whether Giuliani violated any conflict of interest laws under Title 18 of the U.S. code, and whether he should file a financial disclosure report.

President Trump told Ukrainian president Volodymyr Zelensky to work directly with Giuliani on matters of U.S. foreign policy toward Ukraine—specifically, the investigations that were a precondition for Ukraine receiving taxpayer-funded aid from the U.S., and for Zelensky receiving an in-person White House meeting with President Trump. In addition, President Trump “directed Ambassador [Kurt] Volker, [Energy] Secretary [Rick] Perry, and [Ambassador to the European Union Gordon Sondland] . . . to discuss issues related to the President’s concerns about Ukraine” with Giuliani, according to Sondland’s sworn testimony before the U.S. House Committees on Intelligence, Oversight and Reform, and Foreign Affairs.<sup>1</sup> Those U.S. officials “understood that satisfying Mr. Giuliani was a condition for scheduling the White House visit,”<sup>2</sup> connected Giuliani with high-ranking Ukrainian officials, and deferred to Giuliani’s demands regarding the contents of a statement being negotiated by State Department officials with a foreign power.

<sup>1</sup> *Declaration of Gordon D. Sondland*, 116<sup>th</sup> Cong., para. 3 at 377 (Nov. 4, 2019), <https://int.nyt.com/data/documenthelper/6418-ambassador-sondland-deposition/dd957d9ed5d25b7c000e/optimized/full.pdf#page=1>.

<sup>2</sup> *Id.*

President Trump thus assigned Giuliani a formal foreign policy role within the administration. At the same time, Giuliani has continued to represent private clients, some of whom are Ukrainian,<sup>3</sup> and many of whom are unknown to the public. The fact that Giuliani was conducting U.S. foreign policy while retaining unknown private clients whose interests could be affected by his government work raises serious questions of conflicts of interest.

### **Rudy Giuliani’s Status as an Employee of the Executive Branch**

Section 208 of Title 18 prohibits “an officer or employee of the executive branch” from participating personally and substantially in any particular matter in which he has a financial interest. Moreover, 18 U.S.C. § 205 prohibits “an officer or employee of the United States” from “act[ing] as an agent or attorney for anyone before any department, agency, court. . . [or] officer. . . in connection with any covered matter in which the United States is a party or has a direct and substantial interest.” The application of these conflict-of-interest restrictions hinges on the definition of “employee.”<sup>4</sup>

Title 18 does not define “officer or employee,” but the Office of Legal Counsel (“OLC”) has said that the definition of employee provided in 5 U.S.C. § 2105 controls for purposes of Title 18 applicability.<sup>5</sup>

Under Section 2105, an individual must meet three requirements to be a government employee. First, the individual must be appointed to the civil service by the president or other specified senior officers acting in their official capacity.<sup>6</sup> Second, the individual must be engaged in the performance of a federal function under the authority of law or an executive act.<sup>7</sup> Finally, the individual must be subject to the supervision of the president or senior officer.<sup>8</sup>

Giuliani meets all three Section 2105 requirements to be considered a federal officer or employee subject to the conflict-of-interest law and other ethics requirements.

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<sup>3</sup> One of Giuliani’s firm’s private clients is the city of Kharkiv, Ukraine. Josh Dawsey, Tom Hamburger & Ashley Parker, *Giuliani works for foreign clients while serving as Trump’s attorney*, WASH. POST (July 10, 2018), [https://www.washingtonpost.com/politics/giuliani-works-for-foreign-clients-while-serving-as-trumps-attorney/2018/07/09/e21554ae-7988-11e8-80be-6d32e182a3bc\\_story.html](https://www.washingtonpost.com/politics/giuliani-works-for-foreign-clients-while-serving-as-trumps-attorney/2018/07/09/e21554ae-7988-11e8-80be-6d32e182a3bc_story.html).

<sup>4</sup> OFF. OF LEGAL COUNSEL, Memorandum Op. for the Att’y Gen., *Conflict of Interest—Status of an Informal Presidential Advisor as a “Special Government Employee,”* 1 Op. O.L.C. 20, 20 (Feb. 24, 1977), <https://www.justice.gov/file/20966/download>; OFF. OF LEGAL COUNSEL, Memorandum Op. for the General Counsel, Off. of Gov’t Ethics, *Application of Conflict of Interest Rules to Appointees Who Have Not Begun Service*, 26 Op. O.L.C. 32, 32, 34-35 (May 8, 2002), <https://www.justice.gov/file/19071/download>.

<sup>5</sup> OFF. OF LEGAL COUNSEL, 1 Op. O.L.C. 20, *supra* note 4, at 2; OFF. OF LEGAL COUNSEL, 26 Op. O.L.C. 32, *supra* note 4, at 32, 34-35.

<sup>6</sup> 5 U.S.C. § 2105(a)(1).

<sup>7</sup> *Id.* § 2105(a)(2).

<sup>8</sup> *Id.* § 2105(a)(3).

## I. Giuliani was constructively appointed to the civil service.

First, Giuliani was constructively appointed to the civil service by President Trump, because the President formally put him in charge of coordinating elements of U.S. foreign policy in Ukraine.

The Office of Legal Counsel (“OLC”) concluded in a 1977 opinion that an “identifiable act of appointment” may not be “absolutely essential” for an individual to be regarded as an officer or employee, if “there was a firm mutual understanding that a relatively formal relationship existed,” or if the parties omitted the act of appointment for the purpose of avoiding conflict-of-interest laws.<sup>9</sup> Using that standard, OLC determined in the 1977 opinion that a president’s informal advisor crossed the threshold into government employee status when he began assuming “considerable responsibility for coordinating the Administration’s activities” in a particular area.<sup>10</sup> Because that advisor was engaging in a governmental function and working under the direction or supervision of the president, OLC recommended that he be designated as an employee subject to conflict-of-interest laws.<sup>11</sup>

Subsequent OLC opinions since 1977 have affirmed this standard. A 2002 OLC opinion emphasized that appointment can be established “even in the absence of an identifiable act of appointment, if a ‘formal relationship’ had been established between the individual and the government.”<sup>12</sup> In 2005, OLC again affirmed that where an identifiable act of appointment is not present, a firm mutual understanding that a relatively formal relationship existed is sufficient.<sup>13</sup>

As explained below, Giuliani had such a formal relationship with the government. Among other indicators of such a relationship, President Trump held him out to Ukrainian president Zelensky as an official envoy; Giuliani stated publicly that he acted with the support of the President and the State Department; and senior State Department employees understood that the president had given Giuliani formal responsibilities and deferred to him on substantial diplomatic matters.

Most notably, on a July 25, 2019 official call, President Trump asked Zelensky to communicate directly with Giuliani (as well as Attorney General William Barr) on Ukrainian investigations.<sup>14</sup> Those investigations were understood to be necessary preconditions for the release of U.S. security aid to Ukraine and a

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<sup>9</sup> OFF. OF LEGAL COUNSEL, 1 Op. O.L.C. 20, *supra* note 4, at 21.

<sup>10</sup> *Id.* at 23.

<sup>11</sup> *Id.*

<sup>12</sup> OFF. OF LEGAL COUNSEL, 26 Op. O.L.C. 32, *supra* note 4, at 35.

<sup>13</sup> OFF. OF LEGAL COUNSEL, Memorandum Op. for the Counsel to the President, *Whether Conflict of Interest Laws Apply to a Person Assisting a Supreme Court Nominee*, 29 Op. O.L.C. 127, 129 (July 22, 2005), <https://www.justice.gov/file/450886/download>.

<sup>14</sup> *Full Document: Trump’s Call with The Ukrainian President*, N.Y. TIMES (updated Oct. 30, 2019), <https://www.nytimes.com/interactive/2019/09/25/us/politics/trump-ukraine-transcript.html?module=inline>.

meeting between the two presidents.<sup>15</sup> Specifically, President Trump sought investigations into Joe Biden and Burisma, the Ukrainian firm that employed Biden's son, and matters pertaining to the Democratic National Committee (DNC).

As summarized by the White House's memorandum of the telephone call, President Trump said to President Zelensky, regarding the potential investigation into DNC matters: "I would like [Giuliani] to call you. I will ask him to call you along with the Attorney General. Rudy very much knows what's happening and he is a very capable guy. If you could speak to him that would be great."<sup>16</sup> President Zelensky also said that Giuliani had already spoken with one of his assistants.<sup>17</sup> President Trump presented Giuliani as an official point of contact for the Ukrainian president on investigations considered essential to U.S.-Ukraine relations. The president's insistence that a foreign leader work with Giuliani—as well as the Attorney General—on matters that would typically be handled by government employees indicates that he understood Giuliani to have a formal relationship with the government.

Giuliani's formal role with the government is further established by his engagement with State Department officials. Giuliani has made public statements that his work with Ukraine was requested by the State Department, saying that he had "never talked to a Ukrainian official until the State Department called me and asked me to do it. And then I reported every conversation back to [the State Department]."<sup>18</sup>

Congressional testimony and other evidence confirm that State Department officials had a shared understanding that, although Giuliani may have had an "irregular" foreign policy role, he had a formal relationship with the government and had been given considerable responsibility by the president. Ambassador William Taylor, the chargé d'affaires for Ukraine, stated in written Congressional testimony that Giuliani had "guided" "an irregular policy channel" of "U.S. policymaking with respect to Ukraine," and that the channel included U.S. Special Representative to

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<sup>15</sup> For example, Ambassador William Taylor testified that, on September 1, 2019, he became aware that "everything" – a meeting between the two presidents and security aid, was dependent on the investigations. *Opening Statement of Ambassador William B. Taylor, chargé d'affaires for Ukraine, to House Committee on Foreign Affairs, Permanent Select Committee on Intelligence, and Committee on Oversight* 116<sup>th</sup> Cong. 10-11 (Oct. 22, 2019), <https://d3i6fh83elv35t.cloudfront.net/static/2019/10/Taylor-openingstatement.pdf>. See also, Andrew E. Kramer & Kenneth P. Vogel, *Ukraine Knew of Aid Freeze by Early August, Undermining Trump Defense*, N.Y. TIMES (Oct. 23, 2019), <https://www.nytimes.com/2019/10/23/us/politics/ukraine-aid-freeze-impeachment.html> ("The timing of the communications. . . means that the Ukrainian government was aware of the freeze during most of the period in August when Mr. Trump's personal lawyer Rudolph W. Giuliani and two American diplomats were pressing President Volodymyr Zelensky of Ukraine to make a public commitment to the investigations.").

<sup>16</sup> *Full Document: Trump's Call with The Ukrainian President*, *supra* note 14.

<sup>17</sup> *Id.*

<sup>18</sup> Justin Baragona, *Rudy Giuliani: State Department Asked Me to Look Into Ukraine*, DAILY BEAST (Sept. 25, 2019), <https://www.thedailybeast.com/rudy-giuliani-state-department-asked-me-to-look-into-ukraine>.

Ukraine Volker, E.U. Ambassador Sondland, and Energy Secretary Perry, all senior government officials.<sup>19</sup> Sondland confirmed in sworn testimony that President Trump had “directed” the three of them to discuss Ukraine issues with Giuliani, and that Giuliani had communicated that the “White House visit for President Zelensky was conditioned upon President Zelensky’s agreement to make a public anti-corruption statement.”<sup>20</sup> Sondland, Volker, and Perry “understood that satisfying Mr. Giuliani was a condition for scheduling the White House visit,” according to Sondland.<sup>21</sup> Moreover, Volker introduced Giuliani to a senior advisor to President Zelensky<sup>22</sup> in order to “better facilitate direct contacts between Trump and Zelensky,” the *Washington Post* reported.<sup>23</sup>

Ambassador Taylor further testified about Giuliani’s central role in conditioning an official meeting between Trump and Zelensky on pledges for political investigations.<sup>24</sup> He said that “the meeting President Zelensky wanted [with President Trump] was conditioned on the investigations of Burisma and alleged Ukrainian interference in the 2016 U.S. elections,” and that “this condition was driven by” Giuliani’s policy channel.<sup>25</sup> Ambassador Sondland similarly told

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<sup>19</sup> *Opening Statement of Ambassador William B. Taylor*, *supra* note 15, at 4, 6.

<sup>20</sup> *Declaration of Gordon D. Sondland*, *supra* note 1, at para. 3.

<sup>21</sup> *Id.*

<sup>22</sup> *Testimony of Ambassador Kurt Volker, Former U.S. Special Representative for Ukraine Negotiations, to the House Committee on Foreign Affairs, Permanent Select Committee on Intelligence, and Committee on Oversight*, 3 (Oct. 3, 2019), <https://int.nyt.com/data/documenthelper/1871-kurt-volker-testimony/36334b440b50a297da5a/optimized/full.pdf#page=1>.

<sup>23</sup> Karoun Demirjian, Rachael Bade, Josh Dawsey & John Hudson, *Officials’ texts reveal belief that Trump wanted probes as condition of Ukraine meeting*, WASH. POST (Oct. 4, 2019), [https://www.washingtonpost.com/world/national-security/this-is-when-the-inquiry-gets-real-former-us-special-envoy-to-ukraine-testifies-in-impeachment-probe-today/2019/10/03/51365c1b-5a01-4e44-872a-299b67949a5e\\_story.html](https://www.washingtonpost.com/world/national-security/this-is-when-the-inquiry-gets-real-former-us-special-envoy-to-ukraine-testifies-in-impeachment-probe-today/2019/10/03/51365c1b-5a01-4e44-872a-299b67949a5e_story.html); see also Aaron Blake, Danielle Rindler, Tim Meko, Kevin Schaul & Kevin Uhrmacher, *Read the text message excerpts between U.S. diplomats, Giuliani and a Ukrainian aide*, WASH. POST (Oct. 4, 2019), <https://www.washingtonpost.com/politics/2019/10/04/read-text-message-excerpts-between-us-diplomats-giuliani-ukrainian-aide/> (including excerpt from July 19, 2019 text message where Volker connects Giuliani with Zelensky advisor Andrey Yermak).

<sup>24</sup> In fact, Giuliani’s appointed role on Ukrainian matters preceded the July 25, 2019 call between President Trump and President Zelensky. Ambassador Taylor testified that he learned from Ukrainian officials on July 10, 2019 that Giuliani had told them “that the phone call between the two presidents was unlikely to happen and that they were alarmed and disappointed.” *Opening Statement of Ambassador William B. Taylor*, *supra* note 15, at 6. Text messages also indicate that Volker placed significance on Giuliani’s later support for a Trump-Zelensky call, which further demonstrates Giuliani’s appointed role in U.S.-Ukraine relations. See Blake, Rindler, Meko, Schaul & Uhrmacher, *supra* note 23 (disclosing excerpts from July 22, 2019 text messages between Volker and Sondland, where Volker writes “Orchestrated a great phone call w Rudy and [Zelensky advisor Andrey] Yermak. They are going to get together when Rudy goes to Madrid in a couple of weeks . . . In the meantime Rudy is now advocating for a phone call . . . I can tell [NSC Director John] Bolton and you can tell [acting White House Chief of Staff] Mick [Mulvaney] that Rudy agrees on a call if that helps”).

<sup>25</sup> *Opening Statement of Ambassador William B. Taylor*, *supra* note 15, at 6.

Congress that it was Giuliani who had conditioned a coveted White House invitation for Zelensky on a public statement from Ukraine that it would investigate Biden and the DNC.<sup>26</sup>

Following the July 25, 2019 call, Giuliani met with an advisor to Zelensky in Madrid, and Giuliani said that he then “briefed” the State Department after the meeting, and that Volker texted him: “Thank you very much for your help.”<sup>27</sup> Giuliani then worked with Volker and Sondland on negotiating with the Ukrainian government about a statement regarding the Biden and DNC investigations. The statement was understood to be a precondition to an in-person meeting between Zelensky and President Trump.<sup>28</sup>

Volker, in a text message, asked Giuliani to advise him on what he should relay to President Zelensky about the statement: “Hi Mr Mayor! Had a good chat with [Zelensky advisor Andrey] Yermak last night. He was pleased with your phone call. Mentioned Z[elensky] making a statement. Can we all get on the phone to make sure I advise Z[elensky] correctly as to what he should be saying? Want to make sure we get this done right. Thanks!”<sup>29</sup>

The Ukrainian government then drafted a statement, which Volker and Sondland had approved; Giuliani, however, demanded edits, and Volker then communicated Giuliani’s preferred edits to Ukrainian officials.<sup>30</sup> As the *New York Times* characterized it, “[n]ot only was Mr. Giuliani meeting with Ukrainian officials, he was effectively dictating the contents of a statement being negotiated by State Department officials with a foreign power.”<sup>31</sup>

This evidence suggests that Giuliani had formal government power, authorized by the White House, to make conditions and to bargain on behalf of President Trump and the U.S. government; he was not merely the President’s personal advisor. High-ranking officials involved in U.S. foreign policy regarding Ukraine not only deferred to Giuliani on diplomacy efforts with the Ukrainian president; according to Sondland’s testimony, they also “understood that satisfying Mr. Giuliani was a condition for scheduling a White House visit,” which U.S. officials

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<sup>26</sup> Declaration of Gordon D. Sondland, *supra* note 1, at para. 3; see also Aaron C. Davis, *U.S. ambassador to E.U. ‘does not recall’ threatening Ukraine over funding, attorney says*, WASH. POST (Oct. 23, 2019), [https://www.washingtonpost.com/national-security/us-ambassador-to-eu-does-not-recall-threatening-ukraine-over-funding-attorney-says/2019/10/23/d2232f9e-f5c4-11e9-8cf0-4cc99f74d127\\_story.html](https://www.washingtonpost.com/national-security/us-ambassador-to-eu-does-not-recall-threatening-ukraine-over-funding-attorney-says/2019/10/23/d2232f9e-f5c4-11e9-8cf0-4cc99f74d127_story.html).

<sup>27</sup> Rebecca Ballhaus, Alan Cullison, Georgi Kantchev, & Brett Forrest, *Giuliani Sits at the Center of the Ukraine Controversy*, WALL ST. J. (Sept. 26, 2019), [https://www.wsj.com/articles/giuliani-sits-at-the-center-of-the-ukraine-controversy-11569546774?mod=article\\_inline](https://www.wsj.com/articles/giuliani-sits-at-the-center-of-the-ukraine-controversy-11569546774?mod=article_inline).

<sup>28</sup> See, e.g., Declaration of Gordon D. Sondland, *supra* note 1, at para. 3.

<sup>29</sup> See Blake, Rindler, Meko, Schaul & Uhrmacher, *supra* note 23 (disclosing excerpts from Aug. 9, 2019 text messages).

<sup>30</sup> Opening Statement of Ambassador William B. Taylor, *supra* note 15, at 8.

<sup>31</sup> Peter Baker, *Volker Gives New Details on Giuliani’s Role in Ukraine Policy*, N.Y. TIMES (Oct. 4, 2019), <https://www.nytimes.com/2019/10/04/us/politics/volker-giuliani-ukraine.html>.

“strongly believed to be in the mutual interest of the United States and Ukraine.”<sup>32</sup> The deference toward Giuliani on matters that would determine U.S. support of Ukraine demonstrates “a firm mutual understanding” between Giuliani and State Department employees, and between Giuliani and President Trump, that a formal relationship existed. By President Trump giving Giuliani an appointed role on Ukrainian policy issues and delegating authority to Giuliani to secure Ukrainian commitments to investigations, the president had constructively appointed Giuliani to a government position.

## **II. Giuliani was engaged in the performance of a federal function under the authority of law.**

Second, Giuliani engaged in the performance of a governmental function under authority of law.

OLC considers several factors to determine if an individual was engaging in a government function, including whether he was authorized to speak or purported to speak for the government and whether he was directing the actions of federal officials, by, for example, “coordinating the Administration’s activities” in a given area or calling or chairing meetings of government personnel.<sup>33</sup>

Giuliani was authorized to speak or purported to speak for the government throughout the course of his work on Ukraine issues. President Trump authorized Giuliani to speak for the government on Ukrainian investigations when he repeatedly insisted that he would have Giuliani call President Zelensky to discuss matters pertaining to U.S.-Ukraine relations.<sup>34</sup> The U.S. Special Representative to Ukraine, Kurt Volker, implicitly authorized Giuliani to speak on behalf of the government when Volker set up official meetings between Giuliani and Ukrainian government officials to discuss matters of U.S.-Ukraine policy.<sup>35</sup> Moreover, Giuliani insisted that he met with Ukrainian officials only at the behest of the State Department.<sup>36</sup>

Giuliani also directed government employees and coordinated the Trump administration’s activities regarding foreign policy in Ukraine.<sup>37</sup> Ambassador Taylor described an “irregular” foreign policy channel that involved the participation of senior government employees but that was “guided by Giuliani”; this irregular channel was the driving force behind the conditioning of a meeting between

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<sup>32</sup> *Declaration of Gordon D. Sondland, supra* note 1, at para. 3.

<sup>33</sup> *See, e.g.,* OFF. OF LEGAL COUNSEL, 1 Op. O.L.C. 20, *supra* note 4, at 21; *see also* OFF. OF LEGAL COUNSEL, 29 Op. O.L.C. 127, *supra* note 13, at 129-130 (citing OFF. OF LEGAL COUNSEL, 1 Op. O.L.C. at 21).

<sup>34</sup> *Full Document: Trump’s Call with The Ukrainian President, supra* note 14.

<sup>35</sup> Karoun Demirjian, Rachael Bade, Josh Dawsey & John Hudson, *Officials’ texts reveal belief that Trump wanted probes as condition of Ukraine meeting*, WASH. POST (Oct. 4, 2019), [https://www.washingtonpost.com/world/national-security/this-is-when-the-inquiry-gets-real-former-us-special-envoy-to-ukraine-testifies-in-impeachment-probe-today/2019/10/03/51365c1b-5a01-4e44-872a-299b67949a5e\\_story.html](https://www.washingtonpost.com/world/national-security/this-is-when-the-inquiry-gets-real-former-us-special-envoy-to-ukraine-testifies-in-impeachment-probe-today/2019/10/03/51365c1b-5a01-4e44-872a-299b67949a5e_story.html).

<sup>36</sup> Baragona, *supra* note 18.

<sup>37</sup> *Opening Statement of Ambassador William B. Taylor, supra* note 15.

Zelensky and President Trump on Ukraine committing to the Biden and DNC investigations.<sup>38</sup> Sondland testified that Giuliani himself communicated that the meeting was conditioned on a statement from Zelensky committing to the investigations, and that “satisfying Mr. Giuliani” by procuring the statement was critical to securing the meeting.<sup>39</sup> Giuliani also was directing government employees as he “effectively dictat[ed] the contents of a statement being negotiated by State Department officials with a foreign power,” and had his preferred edits communicated to Ukraine by a senior State Department official, Volker.<sup>40</sup>

In sum, Giuliani’s conduct was that of someone performing official government functions.

### **III. Giuliani was subject to the supervision of a federal officer or employee while engaged in the performance of the duties of his position.**

Last, Giuliani met the third requirement of Section 2105 because he was working under the direction or supervision of the president while engaged in his governmental functions related to Ukraine. A person is working under such direction or supervision if the president, rather than the individual himself, is determining the individual’s activities.<sup>41</sup>

When President Trump held Giuliani out as an envoy on Ukraine issues on the call with President Zelensky, Trump repeatedly made clear that Giuliani was working under his direction and supervision: “*I will ask [Giuliani] to call you along with the Attorney General. . . . I will have Mr. Giuliani give you a call and I am also going to have Attorney General Barr call and we will get to the bottom of it. . . . I will tell Rudy and Attorney General Barr to call.*”<sup>42</sup> President Trump also directed Secretary Perry, along with Ambassadors Sondland and Volker, to go through Giuliani on Ukraine issues.<sup>43</sup> Sondland testified that criteria for a visit by President Zelensky “had been communicated by Rudy Giuliani, with whom President Trump directed Ambassador Volker, Secretary Perry, and [Sondland], on May 23, 2019, to

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<sup>38</sup> *Id.*

<sup>39</sup> *Declaration of Gordon D. Sondland, supra* note 1, at para. 3

<sup>40</sup> Baker, *supra* note 31.

<sup>41</sup> OFF. OF LEGAL COUNSEL, 29 Op. O.L.C. 127, *supra* note 13, at 130.

<sup>42</sup> *Full Document: Trump’s Call with The Ukrainian President, supra* note 14 (emphases added).

<sup>43</sup> “Energy Secretary Rick Perry said he sought out Rudy Giuliani this spring at President Trump’s direction to address Mr. Trump’s concerns about alleged Ukrainian corruption, a sign of how closely the president’s personal lawyer worked with the administration on Ukraine policy.” Timothy Puko & Rebecca Ballhaus, *Rick Perry Called Rudy Giuliani at Trump’s Direction on Ukraine Concerns*, WALL ST. J. (Oct. 16, 2019), <https://www.wsj.com/articles/rick-perry-called-rudy-giuliani-at-trumps-direction-on-ukraine-concerns-11571273635>; see also Philip Bump, *Both the president’s men: Giuliani, Mulvaney and Trump’s dream of Ukrainian dirt*, WASH. POST (Oct. 18, 2019), <https://www.washingtonpost.com/politics/2019/10/18/both-presidents-men-giuliani-mulvaney-trumps-dream-ukrainian-dirt/>.



discuss issues related to the President's concerns about Ukraine."<sup>44</sup> Giuliani, therefore, was working under the direction of President Trump.

### Conclusion

Based on the above, Giuliani should have been considered a government employee throughout his tenure as the president's envoy to Ukraine, and Giuliani is therefore subject to the primary criminal conflict-of-interest statute, 18 U.S.C. § 208. The statute prohibits executive branch employees from participating personally and substantially in any particular matters in which they know they have financial interests directly and predictably affected by the particular matters. Giuliani has retained his consulting firm and has continued to represent clients.<sup>45</sup> His client list appears to include Ukrainian actors, and also involves people directly involved in Ukrainian influence efforts.<sup>46</sup> These facts raise serious questions about whether Giuliani may have had impermissible conflicts of interest while engaging in work on behalf of the U.S. government.

Because Giuliani should have been considered an employee of the executive branch, he should also be required to file public financial disclosure reports like all other high-level executive branch employees.<sup>47</sup> These reports mandate the disclosure of an official's "source, type, and amount or value of income. . . from any source," revealing financial arrangements that might pose conflicts of interest.<sup>48</sup> Giuliani's continued failure to file these reports will perpetuate the obscurity surrounding the sources of his income and hinder the ability of ethics officials and the public to discern possible conflicts.

Giuliani's employee status may also have implications for his compliance with 18 U.S.C. § 205. Section 205 prohibits an officer or employee of the executive branch from acting as an agent or attorney for anyone before any department, agency, court, or officer in connection with any judicial proceeding, investigation, charge, or accusation where the United States is a party or has a direct and substantial interest. For example, it has been reported that Giuliani met with the head of the Department of Justice's Criminal Division, and lawyers from the division's Fraud Section "to discuss a bribery case in which he and other attorneys were representing the defendants."<sup>49</sup> If Giuliani is considered an employee, his representation of a client before the Department of Justice regarding a foreign bribery case likely violated this law.

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<sup>44</sup> Declaration of Gordon D. Sondland, *supra* note 1, at para. 3.

<sup>45</sup> Katie Benner, *Justice Department Distances Itself From Giuliani*, N.Y. TIMES (Oct. 20, 2019), <https://www.nytimes.com/2019/10/20/us/politics/rudy-giuliani-justice-department.html>.

<sup>46</sup> Lucien Bruggeman & Soo Rin Kim, *Rudy Giuliani's high-dollar foreign clients could present legal problems: Experts*, ABC NEWS (Oct. 30, 2019), <https://abcnews.go.com/Politics/rudy-giulianis-high-dollar-foreign-clients-present-legal/story?id=66613693>.

<sup>47</sup> 5 U.S.C. app. § 101(f)(3).

<sup>48</sup> *Id.* § 102(a)(1)(A).

<sup>49</sup> Benner, *supra* note 45.

We respectfully ask that your office investigate whether Giuliani should have been considered an employee subject to these ethics requirements, and whether Giuliani had any conflicts or engaged in activities that would have violated those laws.

Sincerely,

*/s/*

Delaney N. Marsco  
Legal Counsel, Ethics

*/s/*

Brendan Fischer  
Director, Federal and FEC Reform

cc:

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