

Congress of the United States
Washington, DC 20510

June 1, 2017

Laurent Morali
President, Kushner Companies
666 Fifth Avenue
New York, NY 10103

Dear Mr. Morali:

The Judiciary Committees of the Senate and the House of Representatives have oversight and authorizing jurisdiction over the EB-5 Regional Center program. Since 2015, bipartisan members of these committees have worked together to develop broad reforms to the program. Members have also engaged with the Department of Homeland Security, under both the Obama and Trump administrations, through a regulatory effort to administratively improve the program. Despite wide recognition that the EB-5 program is in need of reform, however, these efforts have been opposed by select entities.

We are concerned about recent reports detailing Kushner Companies' use of the EB-5 Regional Center program, especially in light of Jared Kushner's role in the Trump administration and the potential for conflicts of interest. These reports indicate that Kushner Companies and its latest EB-5 project, "One Journal Square," may be seeking to benefit from the Kushner family's connections to the White House. These reports also suggest that luxury developers have aggressively lobbied Congress to prevent reforms to the EB-5 program. Such lobbying appears intended to benefit luxury development projects like those built by Kushner Companies, and thus presents the appearance of a conflict of interest given Mr. Kushner's new position in the administration.

As Congress considers what reforms are necessary to the EB-5 program, we request that you provide additional details regarding your participation in this federal immigration program.

Jared Kushner's Financial Ties to EB-5

1. Jared Kushner has retained numerous holdings in Kushner Companies. *The Washington Post* recently reported that Mr. Kushner has retained 220 assets, including 124 real estate properties, worth a minimum of \$167 million.¹ The White House confirmed that Mr.

¹ Darla Cameron, Amy Brittain and Jonathan O'Connell, "What Jared Kushner still owns," *The Washington Post* (May 21, 2017), available at https://www.washingtonpost.com/graphics/politics/kushner-conflicts/?utm_term=.fe63045a2137.

Kushner still owns a stake in another Kushner Companies' project financed in part by EB-5, "Trump Bay Street."²

- a. Please provide complete details of any holdings of Kushner Companies in which Mr. Kushner, directly or indirectly, is a partial or full owner.
 - b. Please describe which of those holdings have been financed or expect to be financed, in whole or in part, using any proceeds derived from capital investments by immigrants seeking a visa under the EB-5 program ("EB-5 Investors").
2. Even though Jared Kushner has stepped away from a leadership position within Kushner Companies for the time being, we understand that he may step back into a leadership or more prominent ownership role once he leaves his White House position. This raises the question of what steps Mr. Kushner would have to take to regain any ownership interests from which he has divested.
- a. If he chooses to do so, could Mr. Kushner merely resume identical ownership interests? Would his family be permitted to gift him equity interests in the company or projects, or would he have to purchase or otherwise acquire any interest at fair market value (or at a discount or premium)?

Marketing Familial Relationships with the White House

3. Earlier this month, at a promotional event in Beijing for One Journal Square, Jared Kushner's sister, Nicole Kushner Meyer, included in her pitch to potential investors that her brother served as Kushner Companies' chief executive until he left to serve in the Trump administration.³ She also noted that "this project means a lot to me and my entire family."⁴ Ms. Meyer was scheduled to attend additional conferences to pitch the family business but those were cancelled after the press reported on the Beijing event.⁵ Kushner Companies has since stated that it "apologizes if that mention of [Meyer's] brother was in any way interpreted as an attempt to lure investors."⁶
- a. According to a report in *Reuters*, Kushner Companies is using the Chinese migration agency Qiaowai to market the One Journal Square project to potential

² Anna Werner and Laura Strickler, "Kushners use controversial EB-5 visa program to finance their developments," *CBS News* (May 8, 2017), available at <http://www.cbsnews.com/news/kushners-use-controversial-eb-5-visa-program-to-finance-their-developments/>.

³ Javier Hernandez, Cao Li, and Jesse Drucker, "Jared Kushner's Sister Highlights Family Ties in Pitch to Chinese Investors," *The New York Times* (May 6, 2017), available at https://www.nytimes.com/2017/05/06/world/asia/jared-kushner-sister-nicole-meyer-china-investors.html?_r=0.

⁴ *Id.*

⁵ "Kushner family company to skip Chinese Investor conference," *The Associated Press* (May 12, 2017), available at <http://www.cbsnews.com/news/jared-kushner-sister-nicole-kushner-meyer-eb-5-visa-china-ap/>.

⁶ Merrit Kennedy, "Kushner Companies' Pitch to Chinese Investors Raises Conflict of Interest Questions," *NPR* (May 7, 2017), available at <http://www.npr.org/sections/thetwo-way/2017/05/07/527282482/kushner-companies-pitch-to-chinese-investors-raises-conflict-of-interest-questio>.

- Chinese investors.⁷ Qiaowai claims to have raised money for the Trump Bay Street project as well.⁸ Qiaowai's promotional materials noted Ms. Meyer's familial relationship to President Trump and called her the event's "heavyweight honored guest."⁹ According to *The New York Times*, one potential investor stated that Qiaowai "said [that President Trump] would make sure [the visas] came through" and that Kushner Companies' ties to President Trump ensured that "there was no chance [the project] could fail."¹⁰ Have you requested that Qiaowai cease exploiting Ms. Meyer's and Kushner Companies' connections to the White House in its efforts to recruit investors on your behalf?
- b. What steps, if any, have you taken to ensure that no one affiliated with Kushner Companies or Qiaowai references or otherwise exploits Kushner Companies' connections to the White House?
4. Qiaowai has reportedly described the marketing event with Ms. Meyer as a success, stating that it resulted in a "buying rush."¹¹
- a. How many investors have either committed or signaled they intend to commit to investing in One Journal Square following the marketing event with Ms. Meyer at which Mr. Kushner and President Trump were mentioned?

Lobbying in Opposition to EB-5 Reform

5. Since 2015, members of the Judiciary Committees of the Senate and House have worked together to develop broad bipartisan reforms to the EB-5 Regional Center program. Members also requested in March 2016 that then-Secretary of Homeland Security Jeh Johnson do what he could administratively to improve the program.¹² The Obama administration then issued new proposed rules in January 2017.¹³ These efforts have been actively opposed by select large developers and business interests. In a report titled, "Changes to visa program could set back Kushner family's real estate company," The

⁷ Alexandra Harney, "Behind Kushner Companies, a Chinese agency skirts visa-for-investment rules," *Reuters* (May 12, 2017), available at <http://www.reuters.com/article/us-china-kushner-qiaowai-insight-idUSKBN1882EI>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Javier C. Hernandez and Jesse Drucker, "How to Woo Chinese Investors: With Visa Offers and the Trump Name," *The New York Times* (May 19, 2017), available at <https://www.nytimes.com/2017/05/19/business/kushner-trump-china-green-cards.html>.

¹¹ "Kushner Companies has yet to secure EB-5 funds for Jersey City project after Chinese road show," *The Real Deal* (May 15, 2017), available at <https://therealdeal.com/2017/05/15/kushner-companies-has-yet-to-secure-eb-5-funds-for-jersey-city-project-after-chinese-road-show/>.

¹² Letter from Bob Goodlatte, Charles Grassley, John Conyers, Jr., and Patrick Leahy to Jeh Johnson, Secretary, Department of Homeland Security, at 1 (Mar. 2, 2016).

¹³ 82 Fed. Reg. 4738 et seq. (Jan. 13, 2017).

Washington Post reports that “[b]ig-name developers have hired armies of lobbyists to fight changes in the EB-5 rules.”¹⁴

In order to secure EB-5 funding for its projects, Kushner Companies partners with a regional center known as U.S. Immigration Fund.¹⁵ A *New York Times* report described the U.S. Immigration Fund as “at the forefront of efforts to stop an overhaul of the EB-5 program in 2015 and 2016.”¹⁶ According to public disclosure records, between 2013 and the first quarter of 2017, U.S. Immigration Fund spent \$980,000 on lobbying related to the EB-5 program.¹⁷

The Chairman and CEO of U.S. Immigration Fund, Nicholas Mastroianni II, was featured in a *Fortune Magazine* report titled “The tangled past of the hottest money-raiser in America’s visa-for-sale program.”¹⁸ According to the *Washington Post*, U.S. Immigration Fund’s president, Nicholas Mastroianni III, contributed \$100,000 to the Trump inauguration.¹⁹ The younger Mastroianni was then “invited to an exclusive dinner with Trump’s future Cabinet members on Jan. 18, days after the [EB-5 rule] changes were proposed.” The *Palm Beach Daily News* reported that Mr. Mastroianni III sat at the same table as Department of Homeland Security Secretary Kelly.²⁰

- a. Aside from partnering with U.S. Immigration Fund to secure EB-5 funds for its projects, has Kushner Companies coordinated, pursued, or discussed any lobbying or advocacy efforts with U.S. Immigration Fund?
- b. Prior to Jared Kushner resigning as CEO of Kushner Companies in January 2017, did anyone associated with U.S. Immigration Fund have any communication with Mr. Kushner regarding EB-5 regulations?

¹⁴ Shawn Boburg, “Changes to visa program could set back Kushner family’s real estate company,” *The Washington Post* (May 11, 2017), available at https://www.washingtonpost.com/national/kushner-family-drops-out-of-china-presentation/2017/05/11/a8368ea0-34cf-11e7-b4ee-434b6d506b37_story.html?utm_term=.2145a4b8c517.

¹⁵ See, e.g., the list of U.S. Immigration Fund projects on its website, which includes “88 Kushner-KABR,” available at <http://visaeb-5.com/usi-fund-projects/new-york-regional-center/>.

¹⁶ Javier C. Hernandez and Jesse Drucker, “How to Woo Chinese Investors: With Visa Offers and the Trump Name,” *The New York Times* (May 19, 2017), available at <https://www.nytimes.com/2017/05/19/business/kushner-trump-china-green-cards.html>.

¹⁷ The United States Senate, “Query the Lobbying Disclosure Act Database,” available at <https://soprweb.senate.gov/index.cfm?event=processSelectFields> (click “Client Name,” submit, and then query “immigration fund LLC”).

¹⁸ Peter Elkind and Marty Jones, “The tangled past of the hottest money-raiser in America’s visa-for-sale program,” *Fortune Magazine* (Oct. 14, 2014), available at <http://fortune.com/2014/10/14/eb-5tangled-past/>.

¹⁹ Shawn Boburg, “Changes to Visa Program could set back Kushner family’s real estate company,” *The Washington Post* (May 11, 2017), available at https://www.washingtonpost.com/national/kushner-family-drops-out-of-china-presentation/2017/05/11/a8368ea0-34cf-11e7-b4ee-434b6d506b37_story.html?utm_term=.2145a4b8c517.

²⁰ George Bennett and Bill DiPaolo, “Many County residents gave big to Trump inaugural committee,” *Palm Beach Daily News* (April 24, 2017), available at <http://www.palmbeachdailynews.com/news/local/many-county-residents-gave-big-trump-inaugural-committee/ZhzSjhcW5WXYVfofVzOoYN/>.

- c. To your knowledge, has anyone associated with U.S. Immigration Fund made any representations to any EB-5 stakeholders regarding policy positions or actions that Mr. Kushner or the White House intends to take with respect to regulations or reforms to the EB-5 program?
6. Jared Kushner, as CEO of Kushner Companies, was a member of the Real Estate Roundtable in both 2015²¹ and 2016.²² The Real Estate Roundtable has been active lobbying Congress on issues related to EB-5, and it includes the program among only six “Policy Issues” listed on its website.²³ The Real Estate Roundtable also describes itself as a “Founding Member” of another EB-5 lobbying group, the “EB-5 Investment Coalition.”²⁴ On January 4, 2017, representatives from the Real Estate Roundtable, the EB-5 Investment Coalition, and the U.S. Chamber of Commerce met in person with government officials regarding the DHS proposed rule.²⁵ These organizations then wrote to the President on the day of his inauguration, and to Secretary Kelly on February 24, 2017, requesting that the regulations be withdrawn.²⁶
- a. Now that Mr. Kushner has stepped down as CEO, is anyone affiliated with Kushner Companies still a member of the Real Estate Roundtable?
 - b. What other lobbying or advocacy activities has Kushner Companies engaged in, directly or indirectly, related to reform or reauthorization of the EB-5 program?
 - c. Has anyone affiliated with Kushner Companies discussed the DHS proposed regulations, or EB-5 issues generally, with Jared Kushner since President Trump took office?
 - d. Has anyone affiliated with the Real Estate Roundtable, the EB-5 Investment Coalition, or the U.S. Chamber of Commerce discussed the proposed regulations, or EB-5 issues generally, with Jared Kushner since President Trump took office?

²¹ “2015 Annual Report,” The Real Estate Roundtable, available at <http://www.rer.org/2015-Annual-Report/> (accessed May 30, 2017).

²² “2016 Annual Report,” The Real Estate Roundtable, available at <http://www.rer.org/2016-Annual-Report/> (accessed May 30, 2017).

²³ See The Real Estate Roundtable, “The Urgent Need to Reform and Reauthorize the EB-5 Investment Program,” *Policy Issues*, available at <http://www.rer.org/EB5/>.

²⁴ *Id.* (“The Real Estate Roundtable supports legislative efforts to extend EB-5 regional centers and is a ‘Founding Member’ of a broad-based EB-5 coalition”).

²⁵ Office of Information and Regulatory Affairs, “View EO 12866 Meeting 1615-AC07 (Title: EB-5 Immigrant Investor Program Modernization)” available at

<https://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=1615-AC07&meetingId=2289&acronym=1615-DHS/USCIS>.

²⁶ See “Exhibit 1,” Comments to Proposed EB-5 Regulations, EB-5 Investment Coalition, available at <https://www.regulations.gov/document?D=USCIS-2016-0006-0257>.

7. *The New York Times* has reported that Qiaowai and U.S. Immigration Fund brought Rudolph W. Giuliani to Beijing last year to speak to potential investors.²⁷ Mr. Giuliani is employed by Greenberg Traurig,²⁸ the same law firm that is “fighting changes to the rules of the EB-5 program” on behalf of the EB-5 Investment Coalition.²⁹
 - a. Has Mr. Giuliani recruited investors on behalf of One Journal Square or Trump Bay Street?
 - b. Has Mr. Giuliani had any communication with Jared Kushner, while he was serving as CEO of Kushner Companies or afterwards, regarding the pending EB-5 regulations?
8. *Reuters* reported that Ding Ying, the founder and president of Qiaowai, the Chinese migration agency used by Kushner Companies and U.S. Immigration Fund, attended the inauguration of President Trump and met with the President, his family, and members of his cabinet. *Reuters* did not find evidence that Ms. Ying or Qiaowai donated any money to the Trump inaugural committee. The company’s website stated that “[t]he fact that Ms. Ding has once again been invited to attend a presidential inauguration shows that the U.S. Congress values and approves of the Qiaowai group.”³⁰
 - a. To your knowledge, did Ms. Ying, or anyone affiliated with Qiaowai, provide any or all of the \$100,000 that Nicholas Mastroianni III donated to the Trump inaugural committee, either in the form of a direct payment, fee discount, or any other form of transfer? If so, how much?

Use of EB-5 Development Incentives for Distressed Areas

9. The current default investment amount of \$1 million is lowered to \$500,000 in a targeted employment area (TEA), which is a rural area or an area with an unemployment rate of at least 150 percent of the national rate.³¹ However, this provision has been interpreted to allow “developers who propose projects in wealthy urban areas, such as Manhattan and even Beverly Hills, to qualify for [the] incentives that are supposed to be reserved for

²⁷ Javier C. Hernandez and Jesse Drucker, “How to Woo Chinese Investors: With Visa Offers and the Trump Name,” *The New York Times* (May 19, 2017), available at <https://www.nytimes.com/2017/05/19/business/kushner-trump-china-green-cards.html>.

²⁸ Greenberg Traurig, “Biography: Rudolph W. Giuliani,” available at <http://www.gtlaw.com/People/Rudolph-W-Giuliani>.

²⁹ Javier C. Hernandez and Jesse Drucker, “How to Woo Chinese Investors: With Visa Offers and the Trump Name,” *The New York Times* (May 19, 2017), available at <https://www.nytimes.com/2017/05/19/business/kushner-trump-china-green-cards.html>.

³⁰ Alexandra Harney, “Behind Kushner Companies, a Chinese agency skirts visa-for-investment rules,” *Reuters* (May 12, 2017), available at <http://www.reuters.com/article/us-china-kushner-qiaowai-insight-idUSKBN1882EI>.

³¹ 8 U.S.C. § 1153(b)(5).

[the] poorer areas.”³² In a statement before the Senate Judiciary Committee last year, the Leadership Conference on Civil and Human Rights described the misuse of TEAs as a civil rights issue, and observed that “the EB-5 Program has become a ‘bait and switch’ for the thousands of blighted communities it was meant to serve.”³³

This economic gerrymandering—with census tracts stitched together to connect a project’s actual location with distressed areas to meet the requisite unemployment rate to qualify as a TEA—is now the norm. The Government Accountability Office reviewed a sample of EB-5 petitions filed in 2015³⁴ and found that 97 percent of petitioners were investing in projects that claimed to be in a high unemployment area. Of those, 90 percent needed to stitch together multiple census tracts (or census block groups) to reach the statutorily required unemployment rate.

- a. There is concern about the manner in which Kushner Companies’ EB-5 projects appear to qualify as high unemployment areas. The *Washington Post* reported yesterday that the TEA map for Trump Bay Street “stretched nearly four miles and included some of the city’s poorest and most crime-ridden neighborhoods [while it] excluded some wealthy neighborhoods only blocks away.”³⁵ The report included a similar map for One Journal Plaza. Are the TEA maps for the two Kushner Companies’ projects as reported in the *Washington Post* accurate?
- b. It has been reported that Kushner Companies may also seek EB-5 investment for 666 Fifth Avenue,³⁶ a building that, according to a *Bloomberg* report, has you “casting about for a savior” due to escalating fees and rising debt costs.³⁷ Yet this building is located in Midtown Manhattan, one of the most affluent neighborhoods in the country. Please provide any anticipated TEA map, with reference to the census tracts used to meet the requisite unemployment rate.

³² Shawn Boburg, “Changes to Visa Program could set back Kushner family’s real estate company,” *The Washington Post* (May 11, 2017), available at https://www.washingtonpost.com/national/kushner-family-drops-out-of-china-presentation/2017/05/11/a8368ea0-34cf-11e7-b4ee-434b6d506b37_story.html?utm_term=.2145a4b8c517.

³³ Statement of Nancy Zirkin, Executive Vice President, The Leadership Conference on Civil and Human Rights, Senate Judiciary Committee, Hearing on “The Distortion of the EB-5 Targeted Employment Areas: Time to End the Abuse” (Apr. 13, 2016).

³⁴ “Immigrant Investor Program: Proposed Project Investments in Targeted Employment Areas, U.S. Government Accountability Office (Mar. 8, 2017), available at <https://www.gao.gov/products/GAO-17-487T>.

³⁵ Shawn Boburg, “How Jared Kushner built a luxury skyscraper using loans meant for job-starved areas,” *The Washington Post* (May 31, 2017), available at https://www.washingtonpost.com/investigations/jared-kushner-and-his-partners-used-a-program-meant-for-job-starved-areas-to-build-a-luxury-skyscraper/2017/05/31/9c81b52c-4225-11e7-9869-bac8b446820a_story.html?utm_term=.6e4ffc68b2c9.

³⁶ David Kocieniewski and Caleb Melby, “Kushners May Get \$400 Million From Chinese on Tower,” *Bloomberg* (Mar. 13, 2017), available at <https://www.bloomberg.com/news/articles/2017-03-13/kushners-set-to-get-400-million-from-chinese-on-marquee-tower>.

³⁷ Caleb Melby and David Kocieniewski, “Inside the Troubled Kushner Tower: Empty Offices and Mounting Debt,” *Bloomberg* (Mar. 22, 2017), available at <https://www.bloomberg.com/news/articles/2017-03-22/kushners-troubled-tower-debt-empty-offices-and-rising-fees>.

Potential Violations of EB-5 Program Rules and Securities Laws

10. In a report titled “Behind Kushner Companies, a Chinese agency skirts visa-for-investment rules,”³⁸ *Reuters* found six instances in which Qiaowai guaranteed potential investors either a green card or their investment. On May 5, 2017, Qiaowai wrote that One Journal Square “in a real sense guarantees a permanent green card and the safety of the investment principal.” Other materials indicated that the project “fully safeguards investors’ green cards and funds.” According to *The New York Times*, one potential investor said that Qiaowai “said [that President Trump] would make sure it came through. . . . They said there was no chance it could fail.” At the promotional event with Mr. Kushner’s sister in attendance, the *New York Times* reported that “Qiaowai representatives said that citizenship and getting money back were ‘highly guaranteed.’”³⁹

However, a green card cannot be guaranteed under program rules as regulations require that an immigrant investor’s capital be placed “at risk” for the duration of the investment.⁴⁰ Furthermore, Securities and Exchange Commission (SEC) Rule 10b-5 provides that it “is unlawful for any person . . . to make any untrue statement of a material fact” in connection with the purchase or sale of any security.⁴¹

- a. Were you aware that Qiaowai has been making such representations prior to the reporting by *Reuters* and *The New York Times*?
- b. Have you asked Qiaowai to cease marketing the One Journal Square project in violation of program rules and U.S. securities laws?
- c. What steps have you taken to ensure One Journal Square is marketed in compliance with program rules and U.S. securities laws?

11. *Reuters* reports that EB-5 agents can make as much as \$100,000 per investor they recruit, which represents a finder’s fee of 20 percent of the underlying investment. Both finding investors and receiving transaction-related compensation are indicators that a person may need to register as a broker with the SEC,⁴² and the SEC has recently pursued enforcement actions against individuals facilitating EB-5 investments for failing to register.⁴³

³⁸ Alexandra Harney, “Behind Kushner Companies, a Chinese agency skirts visa-for-investment rules,” *Reuters* (May 12, 2017), available at <http://www.reuters.com/article/us-china-kushner-qiaowai-insight-idUSKBN1882EI>.

³⁹ Javier C. Hernandez and Jesse Drucker, “How to Woo Chinese Investors: With Visa Offers and the Trump Name,” *The New York Times* (May 19, 2017), available at <https://www.nytimes.com/2017/05/19/business/kushner-trump-china-green-cards.html>.

⁴⁰ 8 C.F.R. § 204.6(j)(2).

⁴¹ 17 C.F.R. § 240.10b-5.

⁴² “Guide to Broker-Dealer Registration,” U.S. Securities and Exchange Commission (Oct. 6, 2009), available at <https://www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html#II>.

⁴³ Securities and Exchange Commission, “SEC: Lawyers Offered EB-5 Investments as Unregistered Brokers,” *SEC Press Release* (Dec. 7, 2017), available at <https://www.sec.gov/news/pressrelease/2015-274.html>.

- a. Do Qiaowai migration agents receive transaction-related compensation for each investor they recruit for One Journal Square? If so, how much? What other fees or compensation do they receive?
- b. Are Qiaowai agents—or any other agents recruiting EB-5 investors for Kushner Companies' projects—registered as brokers or dealers with the SEC? If not, what exemption do they rely on? If none, how does this arrangement comply with U.S. securities laws?

Thank you for your prompt attention to this matter. Please respond by June 16, 2017.

Sincerely,



PATRICK LEAHY
Senate Judiciary Committee



JOHN CONYERS, Jr.
Ranking Member
House Judiciary Committee



ZOE LOFGREN
Ranking Member
House Judiciary Immigration Subcommittee