WILMERHALE

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By Email

The Honorable Lisa O. Monaco
Deputy Attorney General of the United States
Attn: Andrew Bruck and Bradley Weinsheimer
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530-0001

Re: *Mayor Eric Adams*

Dear Deputy Attorney General Monaco:

We represent Mayor Eric Adams in an investigation being conducted by the United States Attorney's Office for the Southern District of New York ("SDNY"). SDNY has advised us that the U.S. Attorney has authorized criminal charges against Mayor Adams. The proposed charges fail on both the facts and the law and are not in the interests of justice.

As we understand the theories of prosecution, the central charge – quid pro quo bribery – is premised on a non-transferable quid (travel-related upgrades provided on a space-available basis) that was not reportable under New York City's ethics laws, and a quo (a single text exchange regarding a permit application by the Turkish consulate) that (a) could not have been agreed to at the time the upgrades began, (b) was provided by someone with no apparent connection to the quid beyond shared nationality, and (c) fits neatly into *McDonnell's* paradigmatic examples of things that do not constitute an official act. The charges proposed here are much more likely to end up in an acquittal or another Supreme Court decision narrowing the scope of public corruption laws than in sustainable convictions. *Snyder v. United States*, 144 S. Ct. 1947 (2024); *Percoco v. United States*, 598 U.S. 319 (2023); *Ciminelli v. United States*, 598 U.S. 306 (2023); *Kelly v. United States*, 590 U.S. 391 (2020); *McDonnell v. United States*, 579 U.S. 550, 576 (2016); *Skilling v. United States*, 561 U.S. 358 (2010); *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999).

But victory, whether at trial or on appeal, will come far too late for Mayor Adams and the more than 750,000 voters who chose him to lead their city if the filing of these ill-conceived charges force him from office. Given factual infirmities of the allegations, the irreversible and severe collateral consequences to the Mayor, his constituents, and New York City, and the dramatic impact another legal setback would have on the Department's ability to address public corruption at the state and local level, we respectfully request that the Department decline to prosecute Eric Adams.

Theories of Prosecution

SDNY has advised us that the U.S. Attorney has authorized charges against Mayor Adams for quid pro quo bribery and campaign finance violations. Based on our limited, one-way communications with SDNY over the past 10 months, our understanding is that the bribery theory is focused on the Mayor's receipt of complimentary flight upgrades for himself and others on approximately five Turkish Airlines trips, approximately three hotel upgrades for himself and others, and travel-related assistance at the airport for himself and others from 2016 through 2021. The only corrupt official act allegedly taken in exchange for these favors that SDNY has identified is a September 2021 outreach then-Brooklyn Borough President Eric Adams made to the then-New York City Fire Commissioner to request his assistance with a Temporary Certificate of Occupancy ("TCO") for the Turkish consulate in New York.[1] We assume that SDNY is considering charging the Mayor as part of a corrupt quid pro quo bribery conspiracy involving: (i) Rana Abassova, a former campaign and city government staff member; (ii) Reyhan Ozgur, the Consul General for Turkey in New York from 2020 to 2024; (iii) Cenk Ocal, the former General Manager of Turkish Airlines' New York office; and (iv) Arda Sayiner, a Turkish businessman.

With respect to the campaign finance theory, SDNY has identified approximately $14,000 in contributions from approximately 11 donors employed by KSK Construction and $10,000 in refunded contributions from five employees at Bay Atlantic University, collectively constituting a miniscule portion of the more than $10 million the campaign collected from over 15,000 contributors to the 2021 campaign. We assume that the allegations focus on the solicitation and receipt of contributions from Turkish nationals by the Mayor and members of his campaign, including Rana Abassova. Based on communications with SDNY, we also understand that they are focused on alleged fundraising activities by Ozgur and Sayiner within the local Turkish community, which were coordinated by Abassova.

Exculpatory Information

Although SDNY has provided us very limited information about their theories of prosecution, we already have identified multiple sources of exculpatory information that undermine SDNY's proposed charges. Taken together, this material raises serious legal and evidentiary concerns in an area of the law where the courts – including the Second Circuit – have steadily narrowed the Department's authority to address public corruption over the past decade. As the evidence below demonstrates, the Mayor's actions and words over the past 10 years belie his participation in either of the alleged criminal conspiracies, do not reflect the clear betrayal of

[1] Eric Adams served as Brooklyn Borough President from January 2014 through the end of 2021. He won the Democratic primary for Mayor in July 2021 and the general election in November 2021. He began his term as Mayor on January 1, 2022.

the public interest that should be required to charge a sitting elected official, and will establish reasonable doubt as to his knowledge and intent at trial.

While reviewing this description of exculpatory information, it is critical to keep in mind that SDNY's key witness, Rana Abassova, provided exculpatory statements about the Mayor to city lawyers on the day her residence was searched. In addition, after the Mayor was informed of misconduct committed by Abassova on that day, City Hall reported her misconduct to the New York City Department of Investigation knowing that it would share the information with SDNY. Neither of these facts is consistent with the Mayor's participation in a criminal conspiracy with Abassova.

Quid Pro Quo Bribery

- The Evidence of the "Quo" Fails as a Matter of Law
  - In September 2021, as Brooklyn Borough President, Eric Adams had no authority over the New York City Fire Department ("FDNY"), the New York City Department of Buildings ("DOB"), or the processes by which those agencies reviewed and approved TCOs for buildings in Manhattan. *See NYC Green Book Online, https://a856-gbol.nyc.gov/GBOLWebsite/GreenBook/Online*.
  - Then-Brooklyn Borough President Adams did not pressure the FDNY Commissioner to facilitate or grant the TCO and he made clear that he understood the assistance might not be provided. *See* Appendix 1 (Eric Adams to then-FDNY Commissioner Daniel Nigro: "If it is[n't] possible please let me know and I will manage their expectation.")
  - Then-Brooklyn Borough President Eric Adams did not take any action in response to Ozgur's request for assistance from the DOB Commissioner to provide the actual TCO for the consulate building.
  - We understand that Ozgur sought assistance with the TCO from other government officials and New York real estate industry leaders, in addition to the Brooklyn Borough President.
- The "Pro" Defies Logic
  - The "difficulty" Ozgur referenced in his text message in obtaining FDNY and DOB approval for the Turkish Consulate opening only arose in September 2021, so Ozgur could not have identified the TCO as a question or matter to be addressed by official action before that date. *See* Appendix 2.

- Relatedly, Ozgur did not become Turkey's Consul General in New York until August 15, 2020 – more than four years after the alleged bribes via Turkish Airlines upgrades began – and therefore could not have had any kind of corrupt agreement with the Mayor until after that date.

- In 2016, when then-Brooklyn Borough President Eric Adams received the first upgrade on Turkish Airlines, construction on the Turkish consulate had not even begun.

- The Evidence of the "Quid" is Insufficient

  - It is not a violation of New York City ethics rules for city employees to receive flight and hotel upgrades from businesses that are not doing business with New York City. At all relevant times, it is our understanding that Turkish Airlines was not doing business with New York City.

  - The complimentary Turkish Airline upgrades were consistent with the airline's policy and provided for a bona fide business purpose to encourage VIP travel with the airline.

  - With respect to the trips identified by SDNY, Eric Adams paid, or attempted to pay, for his personal flights and hotels, as well as the flights and hotel of Brianna Suggs in June 2021, and he made no effort to conceal his receipt of complimentary upgrades. *See* Appendix 3.

  - As Brooklyn Borough President, Eric Adams spoke publicly beginning in 2017 about his preference for Turkish Airlines, he attended Turkish Airlines events, and he made no effort to hide his affinity for the airline. *See* Appendix 4.

Campaign Finance Violations

- The Mayor specifically warned Rana Abassova not to accept donations from Turkish nationals in the middle of the alleged conspiracy.

  - On August 28, 2021, after Abassova received the donation link for the Turkish community, the Mayor instructed Abassova: "Rana please be aware [w]e can't take any money from people who are not US citizens." *See* Appendix 5.

- The Mayor and his campaign team informed potential donors that foreign donations were prohibited.

- In an August 4, 2021 email exchange with a potential donor, counsel for the campaign made clear that contributors must be US citizens. *See* Appendix 6.

- The Mayor had no incentive to conspire to receive corrupt contributions in the summer of 2021 as the campaign exceeded the donation limit.

  - The campaign received more than $10 million in contributions from more than 15,000 contributors during the 2021 campaign. *See* Appendix 7.

  - The $10,000 in donations from employees associated with Bay Atlantic University that were identified by SDNY were refunded shortly after receipt in September 2021 because the campaign had exceeded its donation limit.

- The Federal Election Commission permits foreign nationals to volunteer for campaigns and even to solicit contributions.

  - Any voluntary assistance to the campaign provided by Ozgur, Ocal, or Sayiner was therefore not improper. *See* Appendix 8.

Trial and Appellate Risks

As a result of the significant exculpatory information described above, SDNY will not be able to obtain and sustain a conviction. Pursuing this prosecution also will lead the Department headlong into the Supreme Court's recent and repeated rejection of novel and expansive readings of federal fraud statutes in state and local public corruption cases. *See, e.g., Snyder v. United States*, 144 S. Ct. 1947 (2024); *Ciminelli v. United States*, 598 U.S. 306 (2023); *Kelly v. United States*, 590 U.S. 391 (2020). With only a general sense of SDNY's theories, we have identified multiple sources of exculpatory material, which creates ample reasonable doubt as to the quid, the pro, and the quo here. And with respect to any campaign finance charge based on foreign donations, a prosecution of a local elected official on these facts for contributions of this minimal dollar amount would be unprecedented.

Quid Pro Quo Bribery

Flight and hotel upgrades provided years before a broadly distributed constituent request for assistance with an entirely unanticipated Manhattan building permitting issue (at a structure that did not even exist when the flight upgrades began in 2016) were, at most, efforts to cultivate generalized goodwill with the Mayor. They plainly did not and could not constitute a bribe under Supreme Court and Second Circuit law. The Supreme Court has been clear about what a bribe requires: "a *quid pro quo*." *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 404–05 (1999). A quid pro quo means "a specific intent to give or receive something of value *in exchange* for an official act." *Id*. at 404–05. Thus, for a payment to constitute a bribe, a

particular question or matter to be addressed by official action must be identified at the time the official accepts the payment. *Id.* at 404; *see also McDonnell v. United States*, 579 U.S. 550, 571–73 (2016); *United States v. Silver*, 948 F.3d 538, 558 (2d Cir. 2020).

Here, there are serious legal and factual barriers to each element: the quid, the pro, and the quo.

First, the *quid*: There is a substantial argument that a complimentary flight or hotel upgrade to a seat or a room that would otherwise be left vacant is not a thing of value as defined by applicable statutes. Non-transferable, time-dependent upgrades do not have inherent value like cash or tangible goods. An unsold, unused seat certainly cannot be assigned its sale price for these purposes, and federal tax law supports the view that the value is so amorphous that it cannot be reasonably calculated. Under the Internal Revenue Code, a "no-additional-cost service" "is any service that is (1) provided by an employer to an employee, (2) at no substantial additional cost to the employer (including forgone revenue), (3) for use by the employee, and (4) offered for sale to customers in the ordinary course of business of the employer. Excess capacity services, such as stand-by flights provided by commercial airlines to their employees, are generally considered no-additional-cost services and are non-taxable to the recipients." *Mihalik* v. *Comm'r*, T.C. Memo 2022-36, 2022 WL 1102156, at *7. In other words, when airlines permit their employees to fill a seat that would otherwise go vacant, the Internal Revenue Code does not treat those employees as having received any "value."

Upgrades as a quid also fail because receipt of complimentary flight and hotel upgrades in connection with personal travel did not violate New York City ethics rules. We have engaged an experienced and respected New York City ethics lawyer who would testify that the applicable New York City Conflict of Interests Board rules would not have required the Mayor to disclose the upgrades and the Mayor's receipt of them was not itself an ethical violation. As the Supreme Court recently acknowledged, "state and local governments have adopted a variety of approaches" when it comes to ethics rules. *Snyder v. United States*, 144 S. Ct. at 1956. Rather than subjecting "19 million state and local officials" to a "vague and unfair trap" by "concluding that Congress prohibited gratuities that state and local governments have allowed," the Supreme Court reasoned that state and local officials should be subject to the "carefully calibrated policy decisions that the States and local governments have made." *Id.* at 1956–59.

In pursuing this case, SDNY is attempting to do what *Snyder* clearly cautioned against. Here, the complimentary upgrades provided to the Mayor by Turkish Airlines were consistent with the airlines policy and provided for a bona fide business purpose. And the Mayor always paid, or attempted to pay, for his personal travel and made no effort to conceal his receipt of complimentary upgrades for flights or hotels. A prosecution in this case would have disingenuously and dangerously set a vague and unfair federal trap to catch an elected Mayor who was acting consistently with local ethics rules.

Nor does the *pro* fair any better. The government's burden here is to prove – at the time of the bribe – an agreement to perform "acts that benefit the payor" as to a "a particular *question* or *matter* [] identified at the time the official makes a promise or accepts a payment." *See Silver*, 948 F.3d at 558. A mere open-ended promise to perform some undefined act "to benefit the payor" as the opportunity arises "is so lacking in definition or specificity that it amounts to no promise at all." *Id.* Criminalizing such a vague promise would risk "subject[ing] [public officials] to prosecution, without fair notice, for the most prosaic interactions." *McDonnell v. United States*, 579 U.S. 550, 576 (2016). "Indeed, without a requirement that an official must promise to influence a particular question or matter, any official who accepts a thing of value and then later acts to the benefit of the donor, in any manner, could be vulnerable to criminal prosecution." *Silver*, 948 F.3d at 558. As the Supreme Court recognized, "[o]fficials might wonder whether they could respond to even the most commonplace requests for assistance, and citizens with legitimate concerns might shrink from participating in democratic discourse." *McDonnell*, 579 U.S. at 575.

Here, the impact of prosecution on prosaic interactions would be even stronger than in *Silver* and *McDonnell.* Those cases at least involved the official taking actions alleged to benefit the same person who had earlier provided the official something of value. The Courts nonetheless required *more* than that, in order to avoid chilling officials' ability to respond to even commonplace requests. Here, the alleged beneficiary (Ozgur) is an entirely different person from the source of the earlier benefits (Ocal), and the topic of Ozgur's request was a permit for a building that did not even exist when the first upgrades were provided by Ocal. If that is bribery, then officials will have to wonder whether they can respond to even the most commonplace requests not just from anyone who has ever given them something (which *McConnell* and *Silver* rightly reject), but also from anyone with any theoretical connection (including, apparently, nationality) to anyone who has previously conferred some gift or benefit. That is a recipe for complete paralysis far more extreme than what the Supreme Court has already rejected.

Nor is there any evidence here that the Mayor had the corrupt state of mind required to establish the "pro" element. There is no evidence that the Mayor accepted upgrades intending to be influenced in any way, much less regarding entirely unrelated constituent service-driven assistance with a permit issue. We are aware of no documents, communications or witnesses that could establish the Mayor's knowledge of any relevant coordination between Ocal and Ozgur. The Mayor did not discuss upgrades with Ozgur, and the Mayor had no reason to believe Ocal and Ozgur were working together to influence or cultivate him. The Mayor simply had no knowledge of any connection between the flight upgrades associated with Ocal starting in 2016 and the widely distributed request for assistance with the Turkish consulate from Ozgur in 2021.

The *quo* is also lacking. All that is alleged here is a brief text to another official who did not report (even indirectly) to then-Borough President Adams. *McDonnell* holds that such outreach is insufficient. *McDonnell*, 579 U.S. at 573 ("calling an official (or agreeing to do so)

merely to talk about a[n issue] or to gather additional information . . . does not qualify as a decision or action" sufficient to constitute an official act.). What is required to turn a mere call or text to another official into an "official act" is the "public official . . . using his official position to exert pressure on another official to perform an official act." *Id.* at 2370. But that is not possible here, because Borough President Adams' official position gave him no ability to pressure the FDNY Commissioner, over whom he had absolutely no power.[2] The communication itself refutes any theory of pressure, since it made clear that he understood if the help in expediting a response could not be provided. And the Mayor did not take any action in response to Ozgur's request seeking assistance from the DOB Commissioner, who he did not even know at the time. This is plainly deficient under *McDonnell*.

Campaign Finance Violations

The Federal Election Campaign Act ("FECA") prohibits contributions by foreign nationals to all United States elections, whether federal, state, or local. 52 U.S.C. § 30121. The statute also prohibits any person from knowingly "solicit[ing], accept[ing], or receiv[ing]" such a contribution from a foreign national. 52 U.S.C. § 30121(a)(2). FECA violations become potential crimes when they are committed "knowingly and willfully," that is, by offenders who acted with knowledge that their conduct was against the law.[3] DOJ, Federal Prosecution of Election Offenses, at 14 (8th ed. Dec. 2017). DOJ has explained: "This standard creates an elevated *scienter* element requiring, at the very least, that application of the law to the facts in question be fairly clear. When there is substantial doubt concerning whether the law applies to the facts of a particular matter, the offender is more likely to have an intent defense." *Id.* at 123.

Here, there is no evidence that the Mayor had knowledge that the source of any funds the campaign received was a foreign national. In fact, the text message from the Mayor specifically warning Abassova not to accept donations from Turkish nationals is fatal to proving the heightened knowledge standard. We are not aware of any evidence that the Mayor knew facts

[2] Any suggestion that Borough President Adams' not-then-assured ascension in the future to Mayor created the ability to pressure the FDNY Commissioner fails under *Percoco v. United States*, 598 U.S. 319 (2023) (rejecting bribery theory premised on informal power allegedly possessed by a former (and future) advisor to the governor). In addition, despite the FDNY Commissioner's text exchange with the Mayor in September 2021, the Mayor did not re-appoint him in January 2022 when he began his term and the Commissioner retired from the FDNY in February 2022.

[3] DOJ has explained: "While this is at times a difficult element to satisfy, examples of evidence supporting the element include: (a) an attempt to disguise or conceal financial activity regulated by FECA; (b) status or prior experience as a campaign official, candidate, professional fundraiser, or lawyer; and (c) efforts by campaigns to notify contributors of applicable campaign finance law (e.g., donor card warnings)." DOJ, Federal Prosecution of Election Offenses, at 14.

that would have led a reasonable person to conclude that there was a substantial probability the source was a foreign national. The Mayor campaigned in every immigrant community across the city. He was attempting to attract voters who had been traditionally ignored, not the contributions of foreign nationals. The campaign received more than $10 million in contributions from more than 15,000 contributors, and there was no incentive to conspire to receive corrupt contributions in the summer of 2021. The Mayor repeatedly trained his campaign staff not to accept foreign donations, the donations identified by SDNY constitute approximately 0.4% of the overall funds raised, and he had no reason to suspect any foreign donations were in fact being made.

Moreover, the FEC has drawn a distinction that the term "contribution" does not include "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 52 U.S.C. § 30101(8)(B)(i). In Advisory Opinion 2004-26 (Weller), the FEC found that a foreign national did not provide a contribution to a candidate by participating without compensation in certain of the candidate's campaign-related activities, including the solicitation of contributions, attendance at political events, and meeting with the candidate and his campaign committee. These services were deemed not to be contributions to the campaign by the FEC. As a result, any voluntary assistance to the campaign provided by Ozgur, Ocal or Sayiner was permitted and not evidence of a conspiracy.

Conclusion

We appreciate that the Department approaches every public corruption case against an elected official with a sensitivity to the individual facts and a desire to avoid interference with the electoral process. As Attorney General Garland noted in his 2022 memo on "Election Year Sensitivities," even the appearance that an election-related investigation is motivated by an improper purpose must be avoided. *See* May 25, 2022 Garland Memo at 1. The Department also maintains an institutional interest in avoiding novel or unprecedented prosecutions that create unnecessary legal risk for the government's enforcement priorities.

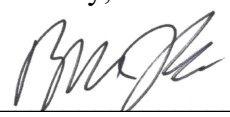
The consequences of charging Mayor Adams will be severe – for him, for his supporters, and for New York City. The legal and reputational risks for the Department will be significant. A close evidentiary case that does not include an express betrayal of the public trust, a logical quid pro quo, or an explicit motive to be influenced will be questioned by the courts and the public, especially given the consistent media coverage of confidential details of the investigation over the past ten months.

The recent charges brought by SDNY against former New York Lieutenant Governor Brian Benajamin are a cautionary tale. In that case, the connection between any quid and any quo was far clearer than anything that exists here, and the district court nonetheless dismissed the bribery charges. *See United States v. Benjamin*, No. 21-CR-706, 2022 WL 17417038 (S.D.N.Y.

Dec. 5, 2022). Though the Second Circuit temporarily resurrected Benjamin's case, a petition for certiorari is pending before the Supreme Court. Regardless of the outcome of the appeal, Brian Benjamin's political career has ended. A similar fate would face Mayor Adams if he were charged here based on evidence that is far less compelling.

We urge the Department to decline prosecution of Eric Adams in the interests of justice.

Sincerely,



Boyd M. Johnson III
Brendan R. McGuire

cc: U.S. Attorney Damian Williams, Southern District of New York