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United States Senate

COMMITTEES
ENVIRONMENT AND PUBLIC WORKS
ENERGY AND NATURAL RESOURCES
COMMERCE, SCIENCE,
AND TRANSPORTATION
SMALL BUSINESS
AND ENTREPRENEURSHIP

August 30, 2017

VIA ELECTRONIC DELIVERY

The Honorable Christopher Wray
Director, Federal Bureau of Investigation
FBI Headquarters
935 Pennsylvania Avenue, NW
Washington DC, 20535-0001

Dear Director Wray:

I am writing to request that the Federal Bureau of Investigation (FBI), in carrying out the FBI's priority of combating major white-collar crime and public corruption at all levels, initiate a criminal investigation into the activities of Carl Icahn and his potential violations of Federal law and fraudulent activity tied to the Federal Renewable Fuel Standard (RFS) program.

Based on extensive, in-depth public reporting and publicly available statements and documents (such as Icahn Enterprise's March 1, 2017 filing with the U.S. Securities and Exchange Commission that noted, "Mr. Icahn is currently serving as a special advisor to President Donald J. Trump on issues relating to regulatory reform"), it appears Mr. Icahn potentially violated the principal criminal conflict of interest statute, Section 208 of Title 18 of the United States Code, which prohibits officers or employees of the Executive Branch from participating personally and substantially in a particular government matter that will affect their own financial interests.

Mr. Icahn appears to have abused his role as a special advisor to the President of the United States on issues relating to regulatory reform by participating personally and substantially, through recommendation and the rendering of advice, on a government matter that directly affects his own financial interests. Specifically, Mr. Icahn's efforts advising and recommending that President Trump direct the U.S. Environmental Protection Agency to move the point of obligation under the RFS program constituted his personal and substantial involvement in a particular government matter in which Mr. Icahn had a direct financial interest as the Chairman of the Board of Directors of CVR Energy (Mr. Icahn also controls 82 percent of CVR Energy).

As a refiner, CVR Energy is an obligated party under the Federal RFS program and must comply with the law by making sure a certain amount of renewable fuel is blended into their product or purchasing renewable identification numbers (RINs) credits, the "currency" of the RFS program that may be purchased to comply with the program in lieu of blending renewable fuels into their products.

A recent report published in *The New Yorker* indicates that dating back to February 2017, Mr. Icahn may have either acted in his role as a special advisor to President Trump to negotiate directly with Bob Dinneen, the President and CEO of the Renewable Fuels Association, over the terms of a forthcoming executive action that would move the point of obligation under the RFS program; or fraudulently used his Presidentially-appointed position and special advisor title to falsely represent himself as empowered to negotiate on behalf of the Trump Administration in a scheme to trick industry representatives into agreeing to a change in a Federally-funded program that would bring Mr. Icahn significant financial benefits.

The article describes in detail Mr. Icahn's negotiations with industry over the contents of the forthcoming executive action and his subsequent work, at the direction of President Trump, to coordinate with staff from the White House National Economic Council on potentially moving the point of obligation under the RFS Program. It appears that Mr. Icahn, under the supervision of President Trump, would brief the President on the substance of his calls with industry and it was President Trump who personally directed his special advisor on regulatory reform to coordinate with his White House staff in crafting a future action related to the RFS program that would bring Mr. Icahn significant personal financial benefits. It also is clear that Mr. Dinneen was well aware of Mr. Icahn's title and viewed Mr. Icahn as a Trump Administration official:

"When I called Dinneen, he told me that the only Trump Administration official he had been speaking with was Icahn. 'I'm old-school,' Dinneen said. 'If I get a call from a special adviser to the President, I'm going to take it.' Dinneen explained that although Icahn never said explicitly that he was speaking on behalf of the President, he did say that he had discussed the point of obligation with Trump, and that he was confident that a change in policy was coming soon. Normally, Dinneen pointed out, any negotiation between the government and private industry would take place with 'an army of people' assembled on opposite sides of a conference table: a phalanx of lawyers, technical specialists, and other advisers. This was different. Then again, he noted, with a dry chuckle, 'This whole town is different now.' Now he was cutting deals, mano a mano, with Icahn: a friend of Trump, the owner of a refiner, and a special adviser to the President. If this was the new reality, Dinneen figured, he needed to find a way to work with it. To do otherwise would be malpractice, he said, adding, 'Icahn had a title I couldn't ignore."

Dinneen insisted to me that he and Icahn never struck a conclusive deal; they simply came to an agreement that he would propose to his board that the association end its opposition to shifting the point of obligation. But, after a phone call with Dinneen on February 23rd, Icahn spoke with the President and relayed the substance of this agreement. Icahn, who had been out walking his dog, talked to Trump from the lobby of his apartment building. Bloomberg News later reported that, according to Icahn, "Trump seemed receptive." Trump instructed Icahn to telephone Gary Cohn, his senior adviser on economic issues. Cohn handed the matter to an aide on the National Economic Council, a former oil lobbyist named Mike Catanzaro, who spent an hour going through the details with Icahn. When,

four days later, Bloomberg News broke the story that an executive order was imminent, corn and gasoline prices went berserk [emphasis added].”¹

However, subsequent statements, including a quote from the Deputy White House Counsel describing Mr. Icahn as “...simply a private citizen whose opinion the President respects and whom the President speaks with from time to time,” raise questions over whether Mr. Icahn was actually acting in his role as an appointed special advisor under the supervision of the President, or instead making materially false or fraudulent statements or representations in an effort to trick the Renewable Fuels Association into believing he was operating as a Trump Administration official.²

Conflicting statements and accounts of this event warrant further FBI investigation to determine whether this action violated Section 208 of Title 18 of the United States Code, or constituted fraud by a private citizen who falsely posed as a special advisor to the President to negotiate a change in how a Federal program is implemented to realize direct personal financial benefits.

Mr. Icahn’s role as a special adviser to President Trump and his persistent efforts to aid CVR Energy by convincing the Trump Administration to move the point of obligation under the RFS program were well-known and widely acknowledged by Members of Congress, the biofuel industry, good government advocates and reporters who published stories detailing Mr. Icahn’s efforts to provide President Trump with advice and recommendations aimed at dramatically modifying a Federally-funded program to benefit Mr. Icahn’s personal financial interests. For example, an A1 story published by *The New York Times* in March 2017 noted:

“Since Carl Icahn, the billionaire investor, was named by President Trump as a special adviser on regulatory matters, he has been busy working behind the scenes to try to revamp an obscure Environmental Protection Agency rule that governs the way corn-based ethanol is mixed into gasoline nationwide.

It is a campaign that fits into the charge Mr. Trump gave Mr. Icahn, to help the nation “break free of excessive regulation.” But there is an additional detail that is raising eyebrows in Washington: Mr. Icahn is a majority investor in CVR Energy, an oil refiner based in Sugar Land, Tex., that would have saved \$205.9 million last year had the regulatory fix he is pushing been in place.

Mr. Icahn, known internationally for his pugnacious and persistent approach to activist investing, has brought that same technique to his new role. He quizzed Scott Pruitt, a former Oklahoma attorney general, about the ethanol rule when Mr. Icahn helped interview Mr. Pruitt for the E.P.A. job. Mr. Icahn later reached out to Gary D. Cohn, Mr. Trump’s top economic adviser, to raise the issue. Mr. Icahn said he even had a telephone conversation in February with Mr. Trump himself.

¹ Keefe, Patrick Radden. “Carl Icahn’s Failed Raid On Washington.” *The New Yorker*, August 28, 2017. Accessed August 18, 2017. <https://www.newyorker.com/magazine/2017/08/28/carl-icahns-failed-raid-on-washington>.

²*Ibid.*

The blitz has already generated at least one clear outcome: Since Mr. Trump was elected president with Mr. Icahn's very vocal support and nearly \$200,000 in political contributions to Republican causes — the stock price of CVR Energy has soared. By late December, it had doubled. It is still up 50 percent from the pre-election level, generating a windfall, at least on paper, of \$455 million as of Friday.

The merging of private business interest with government affairs — aspects of which have previously been reported by Bloomberg, but which The New York Times has found further evidence of — has generated protests from ethics experts in Washington, as well as certain Senate Democrats. They consider Mr. Icahn's dual roles perhaps the most troubling conflict of interest to emerge so far in the new administration [emphasis added].”³

Our Nation relies on the FBI to combat major white collar crime and public corruption that undermines public trust in government. It would set a dangerous precedent for the FBI to turn a blind eye to suspicious activity that was so flagrant, President George W. Bush's former chief ethics lawyer told *The New Yorker*, “He's walking right into possible criminal charges” in reference to Mr. Icahn's potential violation of Section 208 of Title 18 of the United States Code.⁴

As the former head of the U.S. Department of Justice's Criminal Division, you witnessed firsthand the FBI's critical role in combating public corruption. I am confident that you will understand my grave concern that, if the FBI fails to thoroughly investigate Mr. Icahn's potential violations of criminal conflict of interest statutes, our Nation could experience a significant increase in future public corruption, as wealthy individuals are empowered to take advantage of a new “Icahn loophole” to serve as unpaid officers or employees of the Executive Branch of the United States Government while working to modify Federal programs and policies in a manner that directly benefits their own personal financial interests.

Thank you in advance for consideration of my urgent request and I look forward to receiving your response.

Sincerely,

A handwritten signature in blue ink that reads "Tammy Duckworth". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tammy Duckworth
United States Senator

CC: Mr. Raymond Hulser, Chief of the Public Integrity Section, U.S. Department of Justice
The Honorable Eric T. Schneiderman, New York State Attorney General

³ Lipton, Eric. “Icahn Raises Ethics Flags With Dual Roles as Investor and Trump Adviser.” *The New York Times*, March 26, 2017. <https://www.nytimes.com/2017/03/26/us/politics/carl-icahn-trump-adviser-red-flags-ethics.html>.

⁴ Keefe, Patrick Radden. “Carl Icahn's Failed Raid On Washington.” *The New Yorker*, August 28, 2017. Accessed August 18, 2017. <https://www.newyorker.com/magazine/2017/08/28/carl-icahns-failed-raid-on-washington>.