



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

June 26, 2024

The Honorable John G. Roberts, Jr.
Chief Justice
Supreme Court of the United States
1 First Street, NE
Washington, D.C. 20543

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Re: Supplement to April 14, 2023 Request for Investigation of Associate Justice Clarence Thomas' failure to report gifts of private travel on his public financial disclosure reports

Dear Chief Justice Roberts and Attorney General Garland:

This letter supplements Citizen for Responsibility and Ethics in Washington's April 14, 2023 letter requesting an investigation into Associate Justice Clarence Thomas' failure to properly disclose a series of luxury travel gifts and other items that he accepted from Dallas real estate magnate and political mega donor Harlan Crow in violation of federal law.¹ This letter provides further support for an investigation into Justice Thomas' conduct based on documentation newly released by the Senate Judiciary Committee.

The Senate Judiciary Committee has recently released documented evidence provided by Mr. Crow's own attorney that shows Justice Thomas accepted, but failed to disclose on his annual disclosure reports, the following three private jet trips:

¹ Letter from Noah Bookbinder, President/CEO, CREW, et al. to Chief Justice Roberts & Att'y Gen. Garland (Apr. 14, 2023), <https://www.citizensforethics.org/wp-content/uploads/2023/04/Justice-Clarence-Thomas-DOJ-Complaint-April-14-2023-5.pdf>; Adam Rappaport & Meghan Faulkner, *Harlan Crow's Deep Dark Money Connections*, CREW (June 15, 2023), <https://www.citizensforethics.org/news/analysis/harlan-crows-deep-dark-money-connections/>; Taylor Giorno, *Harlan and Kathy Crow Ramped Up Political Contributions Over the Decades Since Meeting U.S. Supreme Court Justice Clarence Thomas*, Open Secrets (Apr. 12, 2023), <https://www.opensecrets.org/news/2023/04/harlan-and-kathy-crow-ramped-up-political-contributions-over-the-decades-since-meeting-u-s-supreme-court-justice-clarence-thomas/>.

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- May 2017 private jet travel from St. Louis, MO, to Kalispell, MT, and return flight to Dallas, TX;
- March 2019 private jet travel from Washington, D.C., to Savannah, GA, and back; and
- June 2021 private jet travel from Washington, D.C., to San Jose, CA, and back.²

In addition, the evidence shows Justice Thomas accepted from Mr. Crow, but failed to disclose, the private jet and yachting portions of his 2019 trips to and from Indonesia and Santa Rosa, California, despite having just amended his 2019 public financial disclosure report, on May 15, 2024, to include seemingly related “food and lodging” entries that were “paid or provided” by Mr. Crow for stays in a Bali, Indonesia hotel on July 12, 2019, and a private club in Monte Rio, California on July 18-21, 2019.³ In particular, Justice Thomas failed to disclose a series of expensive transportation items he accepted from Mr. Crow on his 2019 public financial disclosure report, either initially or later by retroactive amendment:

- June 29, 2019, private jet travel from Washington, D.C. to Indonesia;
- July 1-8, 2019, eight-day yacht excursion in and around Indonesia;
- July 9, 2019, private jet travel from Indonesia to Washington, D.C.;
- July 18, 2019, private jet travel from Washington D.C. to Santa Rosa, California; and
- July 21, 2019, private jet travel from Santa Rosa, California to Washington, D.C.⁴

The failure to report the private jet and yachting portions of the 2019 Indonesia trip is highly noteworthy since their estimated value is at least \$500,000.⁵

Moreover, there is no question that private jet and yachting travel constitute a gift of transportation that is statutorily required to be publicly disclosed by Justice Thomas on his annual reports.⁶ While there is a statutory exclusion for reporting gifts of “food, lodging, or entertainment received as ‘personal hospitality of any individual,’”⁷ the list of items covered by that exclusion – “food, lodging, or entertainment” – clearly does not include transportation. Furthermore, the personal hospitality exclusion for food, lodging or entertainment is clearly limited and can only be used when covered gift items are extended “for a nonbusiness purpose

² *Durbin Reveals Omissions of Gifted Private Travel to Justice Clarence Thomas from Harlan Crow*, Dick Durbin U.S. Senator Illinois (June 13, 2024),

<https://www.durbin.senate.gov/newsroom/press-releases/durbin-reveals-omissions-of-gifted-private-travel-to-justice-clarence-thomas-from-harlan-crow#:~:text=WASHINGTON%20%E2%80%93%20U.S.%20Senate%20Majority%20Whip,disclosure%2C%20despite%20last%20week's%20amendment.>

³ Comm. on Fin. Disclosure, Financial Disclosure Report for Calendar Year 2023 (2024),

<https://fixthecourt.com/wp-content/uploads/2024/06/Thomas-Clarence-Annual-2023.pdf>.

⁴ Excerpt of Info. Following Subpoena Authorization by the U.S. Senate Judiciary Comm. app. B (June 13, 2024),

<https://www.judiciary.senate.gov/imo/media/doc/2024-06-13%20REDACTED%20Crow%20Materials%20for%20distribution.pdf>.

⁵ Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas and the Billionaire*, ProPublica (Apr. 6, 2023),

<https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow>.

⁶ Ethics in Government Act of 1978, codified as amended at 5 U.S.C. § 13104(a)(2)(A)).

⁷ 5 U.S.C. § 13104(2)(A); 2018 Judicial Financial Disclosure Regulation, Guide to Judicial Policy on Financial Disclosure, Vol. 2D, Admin. Off. of the U.S. Cts. (Mar. 23, 2018) [hereinafter 2018 JFDR],

<https://web.archive.org/web/20200730135324/https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf> (The 2018 version of the JFDR appears to have been in effect at the time of Justice Thomas’ 2019 trip to Indonesia.); 2018 JFDR § 330.30(b) (For gift reporting only, any food, lodging, or entertainment received as “personal hospitality of any individual” (as defined by 2018 JFDR § 170) need not be reported. Certain exclusions are also specified in the definitions of gift and reimbursement in 2018 JFDR § 170).

by an individual, not a corporation or organization, at the personal residence of . . . or on property or facilities owned by that individual or the individual's family."⁸

Claims by Justice Thomas' attorney that he was not required to report private jet and yacht travel gifts prior to amendments made in 2023 to the *Judicial Financial Disclosure Regulation* ("JFDR") borders on the absurd.⁹ That argument is completely belied by the fact from at least 2018 until it was amended in 2023, the JFDR explicitly, at section 330.10, required "in-kind travel-related gifts" to be reported along with their "travel locations, dates, and nature of expenses provided."¹⁰

Further, to the extent that amendments to the JFDR were made in 2023, they made no substantive change to the definition of "personal hospitality of any individual" itself. In fact, the definition of "personal hospitality of any individual" in the 2023 JFDR reads substantially the same as that of the 2018 version, which mirrors the language in the governing statute, as follows:

[H]ospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or the individual's family or on property or facilities owned by that individual or the individual's family.¹¹

Rather the Judicial Conference added "notes" in 2023 that largely echo statutory language. For example, the notes state that "the personal hospitality gift reporting exemption applies only to *food, lodging, or entertainment* and is intended to cover such gifts of a *personal, nonbusiness* nature" and "does not include gifts other than *food, lodging or entertainment*, such as transportation that substitutes for commercial transportation."¹² Having added these notes,

⁸ 5 U.S.C. § 13101(14); 2018 JFDR § 170 definition of "personal hospitality of any individual."

⁹ @BenjaminSWeiss, X (June 13, 2024, 6:19 PM), <https://x.com/BenjaminSWeiss/status/1801378840561819800/photo/1>.

¹⁰ 2018 JFDR § 330.10; 2022 Judicial Financial Disclosure Regulation § 330.10, Guide to Judicial Policy on Financial Disclosure, Vol. 2D, Admin. Off. of the U.S. Cts. (Sept. 26, 2022) [hereinafter 2022 JFDR], <https://web.archive.org/web/20221209234046/https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf> ("Except as indicated in Guide, Vol. 2D, § 210.30, each financial disclosure report must contain the identity of the source, a brief description, and the value of all gifts aggregating more than \$415 in value that are received by the filer during the reporting period from any one source. For in-kind travel-related gifts, include travel locations, dates, and nature of expenses provided. (For exclusions, see: § 330.30.)"; see also 2022 JFDR § 330.20 ("Except as indicated in Guide, Vol. 2D, § 210.30, each financial disclosure report must contain the identity of the source and a brief description (including travel locations, dates, and nature of expenses provided) of any travel-related reimbursements aggregating more than \$415 in value that are received by the filer from one source during the reporting period.").

¹¹ 5 U.S.C. §13101(14); 2018 JFDR § 170 definition of "personal hospitality of any individual"; 2023 Judicial Financial Disclosure Regulation § 170 definition of "personal hospitality of any individual," Guide to Judicial Policy on Financial Disclosure, Vol. 2D, Admin. Off. of the U.S. Cts. (Mar. 23, 2023) [hereinafter 2023 JFDR], https://www.uscourts.gov/sites/default/files/guide-vol02d_1.pdf.

¹² 2023 JFDR, Notes to § 170 definition of "personal hospitality of any individual" ("The personal hospitality gift reporting exemption applies only to food, lodging, or entertainment and is intended to cover such gifts of a personal, nonbusiness nature. Therefore, the reporting exemption does not include: gifts other than food, lodging or entertainment, such as transportation that substitutes for commercial transportation; gifts extended for a business purpose; gifts extended at property or facilities owned by an entity, rather than by an individual or an individual's family, even if the entity is owned wholly or in part by an individual or an individual's family; gifts paid for by any individual or entity other than the individual providing the hospitality, or for which the individual providing the hospitality receives reimbursement or a tax deduction related to furnishing the hospitality; or gifts extended at a commercial property, e.g., a resort or restaurant, or at a property that is regularly rented out to others for a business purpose.")

and particularly the note on “transportation,” the Judicial Conference apparently deemed it appropriate to delete the “in-kind travel-related gifts” reference, in section 330.10, that had been included in pre-2023 versions of the JFDR. It is patently obvious from both the pre-2023 and post-2023 versions of the JFDR that transportation is not included in the list of “food, lodging, or entertainment” items covered by the personal hospitality exemption. Nor did the 2023 amendments make any change that alters Justice Thomas’ continuing obligation to report private jet and yacht travel gifts on each annual public financial disclosure report filed with the Judicial Conference.

Furthermore, since the private jets and yachts used by Mr. Crow were likely owned by Crow family business entities and subject to contemporaneous business tax deductions,¹³ their use serves an underlying business purpose, and any claims that the “personal hospitality from *any individual*” exemption did not require Justice Thomas and other federal judges before 2023 to report hundreds of thousands of dollars worth of travel on transportation owned by these business entities runs counter to the plain language of the statute and to the regulations then and now in effect.

While his attorney represents that Justice Thomas relied on advice to the contrary,¹⁴ we are unaware that any advisory opinion has been rendered by the Judicial Conference on the subject or that any independent investigation has been conducted at even the most rudimentary level to verify that advice, including who he relied on for that advice, how and when it was conveyed to him, and whether Justice Thomas provided all relevant facts about the nature and value of the travel gifts prior to obtaining that advice.¹⁵ Even if Justice Thomas did rely on erroneous professional advice, the appropriate corrective action would be for him to amend his past annual reports so that they accurately account for all in-kind private jet and yacht travel that he and his spouse received from Mr. Crow over the years.

The purpose of the financial disclosure system is to promote integrity and public confidence in our federal government officials and institutions through enhanced

¹³ Paul Kiel, *How Harlan Crow Slashed His Bill by Taking Clarence Thomas on Superyacht Cruises*, ProPublica (July 17, 2024), <https://www.propublica.org/article/harlan-crow-slashed-tax-bill-clarence-thomas-superyacht>; Letter from Harlan Crow to Ron Wyden, Chairman of the U.S. Senate Comm. on Fin. (June 2, 2023), https://www.documentcloud.org/documents/23872049-harlan_crow_second_response_to_sfc_letter.

¹⁴ @BenjaminSWeiss, *supra* note 9.

¹⁵ When complaints were filed with the Judicial Conference in 2011 about Justice Thomas’ failure to report the source of spousal income, questions about Justice Thomas’ undisclosed private jet trips aboard Mr. Crow’s aircraft also were raised, but apparently were never fully investigated. The absence of an investigation into the 2011-2012 private travel allegations not only raises fundamental questions about the credibility of the Judicial Conference’s investigative process, but also additional new concerns now that Justice Thomas’ defenders are relying on the Judicial Conference’s determination to mistakenly assert that his “trips weren’t subject to disclosure.” Mark Paoletta, *ProPublica Recycles Old Clarence Thomas News*, Wall Street Journal, (June 4, 2023), 2024, https://www.wsj.com/articles/propublica-recycles-old-clarence-thomas-news-trips-crow-judicial-conference-investigation-b9d23640?st=fspseg2mxc9kgz1&reflink=article_email_share; Mark Paoletta, *The ‘Fix’ Is in With the Latest Attack on Clarence Thomas*, Wall Street Journal, (June 23, 2024), https://www.wsj.com/articles/the-fix-is-in-with-the-latest-attack-on-clarence-thomas-scotus-c64453aa?st=s9zn14s6cs9cwy6&reflink=article_email_share. Rather than investigate the private jet travel allegations in 2011-2012, the then-Chair of the Judicial Conference’s Financial Disclosure Committee, Judge Joseph H. McKinley, Jr., reportedly made the decision to close the entire inquiry in 2012 after Justice Thomas amended his filings to include the source of spousal income, but without having investigated the private jet travel allegations. Brett Murphy & Kirsten Berg, *The Judiciary Has Policed Itself for Decades. It Doesn’t Work.*, ProPublica (Dec. 13, 2023) <https://www.propublica.org/article/judicial-conference-scotus-federal-judges-ethics-rules>.

transparency into their conflicts of interest.¹⁶ The financial disclosure system is implemented by supervising ethics offices and has been vigorously enforced by the U.S. Department of Justice across all three branches of government, including when other government officials have failed to properly disclose in-kind private jet travel.¹⁷ For example, in 2016, a senior government official in the executive branch who accepted free personal trips on an aircraft owned by his wealthy friends, but failed to disclose them on his annual public financial disclosure, was subsequently indicted and pled guilty to false statements under 18 U.S.C. § 1001(a).¹⁸ Any failure to investigate and enforce the ethics disclosure laws under these circumstances would perpetuate the falsehood that the 2023 amendment had somehow changed his in-kind travel gift reporting obligations, and would be a grave disservice not only to the integrity of the Supreme Court but also to all three branches of the federal government.

An investigation into Justice Thomas' newly revealed reporting failures would not only confirm whether he may have violated his statutory reporting obligations but also would provide insight into whether these travel-related gifts were permitted to be accepted under 5 U.S.C. § 7353 and the *Judicial Conference Gift Regulations*, which prohibit the giving, solicitation or acceptance of certain gifts by officers and employees of the judicial branch.¹⁹ Under the *Judicial Conference Gift Regulations*, judicial officers are prohibited from accepting a gift from any person “who is seeking official action from or doing business with the court” or from any other person whose interests “may be substantially affected by the performance or nonperformance of the judicial officer’s . . . official duties.”²⁰ Additionally, a gift may not be accepted if a “reasonable person would believe it was offered in return for being influenced in the performance of an official act or . . . from the same or different sources on a basis so frequent that a reasonable person would believe that [his] public office is being used for private gain.”²¹ While there is an exclusion for “social hospitality based on personal relationships,”²² this exclusion, like the “personal hospitality” reporting exclusion, would not apply when the gift is paid for, reimbursed or expensed by a business or corporation rather than an individual.²³

¹⁶ Ethics in Government Act of 1978, P. Law No. 95-521, 92 Stat. 1824, available at <https://www.senate.gov/about/resources/pdf/watergate-ethics-gov.pdf>; Emory Rounds, *Keeping Public Financial Disclosure Serving its Purpose: Identifying and Preventing Conflicts of Interest*, U.S. Off. of Gov’t Ethics (May 15, 2023), <https://www.oge.gov/web/oge.nsf/Resources/Keeping+Public+Financial+Disclosure+Serving+its+Purpose:+Identifying+and+Preventing+Conflicts+of+Interest>.

¹⁷ 5 U.S.C. §§ 13102, 13106.

¹⁸ See Memorandum dated August 7, 2017, from David Apol, Acting Dir. and Gen. Couns. of the U.S. Off. of Gov’t Ethics to Designated Agency Ethics Officers, Re: 2016 Conflict of Int. Prosecution Surv., [https://www.oge.gov/web/oge.nsf/0/E15D086E908893B1852585BA005BEC3F/\\$FILE/FINAL%202016%20Prosecution%20Survey%20LA.pdf](https://www.oge.gov/web/oge.nsf/0/E15D086E908893B1852585BA005BEC3F/$FILE/FINAL%202016%20Prosecution%20Survey%20LA.pdf) (discussing Statement of Offense and Other Conduct, *United States v. Leonardo Silva* (2016) (No. 1:16-cr-00069-TFH), 2016 WL 3040027, available at [https://www.oge.gov/web/oge.nsf/0/D80535E5A0FC14AA852585B6005A1C53/\\$FILE/Silva%20Statement%20of%20Offense.pdf](https://www.oge.gov/web/oge.nsf/0/D80535E5A0FC14AA852585B6005A1C53/$FILE/Silva%20Statement%20of%20Offense.pdf)).

¹⁹ Judicial Conference Gift Regulations § 620.15, Vol. 2C, Guide to Judicial Policy on Ethics Statutes, Regulations, and Judicial Conference Resolutions, Admin. Conf. of the U.S. Cts. (July 27, 2021) [hereinafter JCGR], <https://www.uscourts.gov/sites/default/files/vol02c-ch06.pdf>. The JCGR applied to Justice Thomas at the time the travel gifts were conveyed to him by virtue of an internal resolution adopted by Members of the Supreme Court in 1991, in which the Justices agreed to “follow the very same practices..as their lower court colleagues.” Chief Justice John G. Roberts, Jr., *2011 Year-End Report on the Federal Judiciary*, Sup. Ct. (Dec. 31, 2011).

²⁰ JCGR § 620.35(a).

²¹ *Id.* § 620.45.

²² See *Id.* § 620.25(a).

²³ See 2023 JFDR § 170 definition of “personal hospitality of any individual.”

The private jets and yachts used by Mr. Crow were likely owned through Crow family business entities and subject to business tax deductions.²⁴ If Mr. Crow's payment for these trips were contemporaneously treated as a business expense for tax purposes, it would evidence that the travel was conveyed to Justice Thomas from a business or corporate entity in furtherance of Mr. Crow's business interests rather than from an individual based on their personal relationship. It would also indicate that the gifts were offered and accepted on a basis so frequent that it would cause a reasonable person to believe that Justice Thomas permitted his public office to be used to further Mr. Crow's own private business interests. Based on reporting that Justice Thomas had previously complained about what he considered his diminutive judicial salary and his personal financial situation, it would also cause a reasonable person to believe that he used his public office as a means to supplement his own personal standard of living.²⁵

It is unclear why Justice Thomas failed to disclose multiple private jet and yachting excursions taken with Mr. Crow, including those trips taken in 2017, 2019 and 2021 that were newly reported to the Senate Judiciary Committee, or why he failed to properly decline them in accordance with the *Judicial Conference Gift Regulations*, but a full investigation into these and any other undisclosed gifts bestowed on Justice Thomas or his spouse is necessary to preserve public confidence in the integrity of the Supreme Court.

Sincerely,



Noah Bookbinder
President

cc: The Honorable Robert J. Conrad, Jr.
Director, Administrative Office of the United States Courts
Secretary, Judicial Conference of the United States

²⁴ Kiel, *supra* note 13; Letter from Harlan Crow to Ron Wyden, *supra* note 13.

²⁵ Justin Elliot et al., *A "Delicate Matter": Clarence Thomas' Private Complaints About Money Sparked Fears He Would Resign*, ProPublica (Dec. 18, 2023), <https://www.propublica.org/article/clarence-thomas-money-complaints-sparked-resignation-fears-scotus>.