



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 804-7000

December 30, 2020

Mr. Austin Evers
American Oversight
1030 15th Street NW, Suite B255,
Washington, DC 20005
Via Email:

Re: Freedom of Information Act Request (#FOIA-2021-005)

Dear Mr. Evers:

Please be advised that this is a final response to your request dated October 13, 2020, in which you asked the U.S. Office of Special Counsel (OSC) to provide you with all records related to the Republican National Convention between (a) Special Counsel Henry Kerner and (b) the White House. On 11/24/2020, we attempted to clarify/narrow the scope of your request and we did not receive a response from you. We contacted you a second time on 12/2/2020 and we still did not receive a response. As such, we sent you a "still interested" email on 12/14/2020. We also called your office on 12/21/2020, but was unable to leave a message because the mailbox was full. Since we have not received a response from you, we interpreted your request based on other FOIA requests requesting similar documents. Your request has been processed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a.

OSC identified nineteen (19) responsive pages. We are releasing seventeen (17) pages to you in full and two (2) pages in part pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).

- FOIA Exemption 6 protects information if disclosure would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6).
- FOIA Exemption 7(C) protects law enforcement information if disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(7)(C).

You have the right to appeal this determination under the FOIA. An appeal must be made in writing and sent to OSC's General Counsel at the address shown at the top of this letter or by email to FOIAappeal@osc.gov. The appeal must be received by the Office of General Counsel within ninety (90) days of the date of this letter.

If you have any questions or you require dispute resolution services, please feel free to contact Mahala Dar, OSC's Chief FOIA Officer and acting FOIA Public Liaison, at mdar@osc.gov or (202) 804-7000. Please reference the above tracking number when you call or write. Additionally, you

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may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer.¹

Thank you,

/s/

Mahala Dar, Esq.
Clerk

¹ Office of Governmental Information Services (OGIS), National Archives and Records Administration 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov (Email) 202-741-5770 (Office) 1-877-684-6448 (Toll Free) 202-741-5769 (Fax)



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

August 12, 2020

The Honorable Carolyn Maloney
Chairwoman
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Re: Hatch Act Advisory on Convention Acceptance Speech at the White House

Dear Chairwoman Maloney:

This letter is in response to a request by your committee staff for an advisory opinion concerning Hatch Act¹ compliance related to a possible political event to be held on White House grounds.² Recent media stories have reported that President Donald J. Trump is considering holding his Republican National Convention (RNC) acceptance speech at the White House. Please find our guidance concerning this event below.

The Hatch Act governs the political activity of federal civilian executive branch employees and prohibits them from: using their official authority or influence for the purpose of affecting the result of an election; knowingly soliciting, accepting, or receiving political contributions from any person; being candidates for public office in partisan elections; and knowingly soliciting or discouraging the political activity of any individual with business before their employing office.³ The Hatch Act also prohibits most employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle.⁴ Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.⁵

The President and Vice President are not covered by any of the provisions of the Hatch Act.⁶ Accordingly, the Hatch Act does not prohibit President Trump from delivering his RNC acceptance speech on White House grounds. However, White House employees are covered by the Hatch Act, so there may be Hatch Act implications for those employees, depending on their level of involvement with the event and their position in the White House.

¹ The U.S. Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² Your staff also inquired into Hatch Act compliance related to political events held on federal property other than the White House. Because there are different types of federal property, under the custody and control of different federal agencies, we are unable to provide guidance without more specific information about the property at issue.

³ 5 U.S.C. § 7323(a)(1)-(4).

⁴ 5 U.S.C. § 7324.

⁵ 5 C.F.R. § 734.101.

⁶ 5 U.S.C. § 7322 (1).

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While it is not possible to provide an exhaustive list of permitted or prohibited activities, the following are relevant examples. For one, most White House employees are subject to the Hatch Act's prohibition against engaging in political activity while on duty or in a federal room or building. Therefore, these employees would not be able to assist with an RNC event while they are on duty or in a federal room or building. They also would not be able to attend the event while on duty. But, if the employees take leave, and the event is held on the White House lawn or in the residence,⁷ the Hatch Act would not prohibit the employees from attending the event. If, however, the event is held in the West Wing or in another area of the White House that is regarded as a federal room or building for purposes of the Hatch Act, the law would prohibit the employees from attending the event at any time, even while off-duty. These same restrictions do not apply to White House Commissioned Officers because they are not subject to the Hatch Act's prohibition against engaging in political activity while on duty or in a federal room or building.⁸

In addition, all White House employees, including White House Commissioned Officers, are subject to the prohibition against using their official authority or influence to affect an election. Accordingly, Hatch Act concerns could arise if White House employees who are supervisors were to task subordinate staff with work in support of the political event.

Please note that this opinion provides only general advice and does not purport to address every situation that could result from holding a political event at the White House. Should you or your staff have any questions, please contact me at (202) 804-(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

cc: The Honorable James Comer
Ranking Member

⁷ For purposes of the Hatch Act, a federal room or building does not include all rooms in the White House or in the residence of the Vice President, *e.g.*, rooms which are part of the residence area or which are not regularly used solely in the discharge of official duties are not considered a federal room or building. *See* 5 C.F.R. § 734.101.

⁸ *See* 5 U.S.C. § 7324(b).

Congress of the United States
Washington, DC 20515

August 26, 2020

The Honorable Henry Kerner
Special Counsel
Office of Special Counsel
1730 M Street, N.W.
Suite 218
Washington, D.C. 20036-4505

Dear Special Counsel Kerner:

I'm writing to respectfully request that the Office of Special Counsel (OSC) investigate whether Acting DHS Secretary Chad Wolf and other senior members of the Trump Administration violated the Hatch Act on August 25, 2020 through using their positions, official resources, and the White House itself, to participate in the Republican National Convention. Specifically, they coordinated a citizenship ceremony and a pardon as elements in the convention's nationally-televised programming. These actions were clearly directed toward the specific success of a political party and candidates in a partisan race, including President Donald J. Trump. Through their actions, these officials mixed official government business with political activities as part of one of the largest political campaign events of the year.

Under the Hatch Act, any executive branch employee is explicitly barred from "us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election."¹ Activities covered by this prohibition include the official "[u]sing his or her official title while participating in political activity," with the act defining "political activity" as "an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group."²

Notably, the OSC has already acknowledged in its report on Kellyanne Conway that while the President and Vice President are exempt from the Hatch Act, executive branch employees acting on their behalf are not in turn exempted:

While the President is exempt from the Hatch Act, his exemption does not extend to any other employee, including those employed in the White House Office. OSC understands that [an employee's] job duties may include publicly reinforcing the Administration's positions on a host of policy issues. And the Hatch Act does not prohibit [an employee] from doing so, provided she carries out her job duties in a manner that complies with the law.³

On the evening of August 25, 2020, Rebecca Ballhaus, a journalist reporting for the Wall Street Journal, tweeted that a White House official argued the naturalization ceremony led by Acting Secretary Wolf didn't violate the Hatch Act because the White House "publicized the content of the event on a public website this afternoon and the campaign decided to use the publically available content for campaign purposes."⁴ Regardless of what the White House may contend was the nature of the scheduling, I would point you again to the Hatch Act itself which is explicit about purpose as it prohibits an executive branch employee from, "us[ing] his official authority or

¹ 5 U.S.C. § 7323(a)(1).

² 5 C.F.R. § 734.302(b)(1), 5 C.F.R. § 734.101.

³ Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-18-0966 (Kellyanne Conway), Mar. 6, 2018

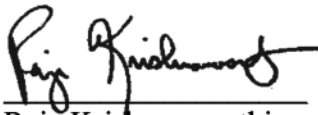
⁴ Ballhaus, Rebecca, Tweet, August 25, 2020

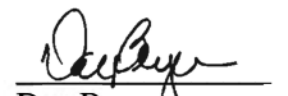
influence for the purpose of interfering with or affecting the result of an election.”⁵ The publicization of the event offers no defense for actions clearly orchestrated for the purpose of influencing an election as part of a nationally-televised partisan event carefully planned days, if not weeks, in advance.

The Hatch Act explicitly prohibits federal employees from participating in partisan political activity in an official capacity, barring them from engaging in any activity directed toward the success or failure of any political party or candidate. The inclusion of Acting Secretary Wolf and other federal employees in an official capacity in the proceedings of the Republican National Convention, which explicitly advocates for the success of a political party, appears to have violated the Hatch Act, and OSC should immediately commence an investigation and take appropriate disciplinary action against those involved and responsible.

We request an update on your actions on this matter by September 9th.

Sincerely,


Raja Krishnamoorthi
Member of Congress


Don Beyer
Member of Congress

⁵ 5 U.S.C. § 7323(a)(1).

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074
<https://oversight.house.gov>

September 3, 2020

The Honorable Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

Dear Special Counsel Kerner:

The Committee requests that the Office of Special Counsel (OSC) conduct a series of independent investigations on multiple potential violations of the Hatch Act by the Trump Administration during the Republican National Convention.

Throughout the Convention, Administration officials repeatedly used their official positions and the White House itself to bolster President Trump's reelection campaign. The Trump Administration staged a pardon and naturalization ceremony in order to use video of the event during the Convention later that day, they repeatedly used the White House for Convention speaking engagements, and Secretary of State Michael Pompeo engaged in political activity speaking at the Convention while on official travel abroad.

We are particularly concerned with the consequences of White House actions on career employees who may have felt pressured to help organize and put on these events, potentially subjecting them to legal jeopardy. Career employees have faced severe consequences for behavior far less egregious than what the country witnessed last week. For example, a Department of Energy employee who provided a tour of a federal facility to a Congressional candidate was forced to resign, and a Defense Logistics Agency employee who included the phrase "Vote Republican" in a PowerPoint presentation received a suspension of 30 days without pay.¹

We are alarmed that President Trump and some senior Administration officials are actively undermining compliance with—and respect for—the law. President Trump reportedly "enjoyed the frustration and anger" in response to holding Convention events on the White House grounds and "relished the fact" that he could not be stopped, according to President

¹ *As Trump Appointees Flout the Hatch Act, Civil Servants Who Get Caught Get Punished*, Washington Post (online at www.washingtonpost.com/politics/hatch-act-trump-convention/2020/08/28/dce68a7e-e877-11ea-bc79-834454439a44_story.html).

Trump's aides.² According to one press report, President Trump "joked he would excuse anyone found to be violating the act on his behalf."³ White House Chief of Staff Mark Meadows reportedly disregarded the law because of his belief that "Nobody outside of the Beltway really cares" about the Hatch Act.⁴ Another Administration official explained, "What are the consequences? No one gets punished."⁵

When OSC recommended last year that President Trump fire White House counselor Kellyanne Conway for being a "repeat offender" of the Hatch Act, President Trump refused to take action, and she continued to frequently violate the Hatch Act throughout her tenure.⁶

Last year, you testified after President Trump declined to follow OSC's recommendation that Kellyanne Conway be terminated for her violations. You said this:

So why do we even have a Hatch Act? We have a Hatch Act, which was passed in 1939 because its central purpose remains unchanged, to separate the nonpartisan governance of the country from partisan political campaigning. By maintaining the separation, the Hatch Act protects two groups, Federal workers who are protected from the possibility they could be ordered or pressured into taking part in partisan campaigns, and the American people. They are also protected because they know that their tax dollars are being spent on government, and not on election campaigns they may or may not support.⁷

As the Committee of jurisdiction over the Hatch Act, we urge you to investigate and publicly report whether any of the actions taken by Administration officials during the Convention violated the law.

Application of Hatch Act to White House Employees

The Hatch Act prohibits executive branch employees from using their "official authority or influence for the purpose of interfering with or affecting the result of an election."⁸ Under

² *Rival Themes Emerge as Race Enters Final Weeks: Covid vs. Law and Order*, New York Times (Aug. 28, 2020) (online at www.nytimes.com/2020/08/28/us/politics/joe-biden-trump-conventions.html).

³ *'No One Gets Punished': RNC Utilizes White House for Speeches and Surprises Despite Ethics Concerns*, CNN (Aug. 26, 2020) (online at www.cnn.com/2020/08/26/politics/donald-trump-rnc-speech-ethics/index.html).

⁴ *Meadows Dismisses Hatch Act Concerns at RNC: 'Nobody Outside of the Beltway Really Cares,'* Politico (Aug. 26, 2020) (online at www.politico.com/news/2020/08/26/mark-meadows-hatch-act-rnc-402194).

⁵ *'No One Gets Punished': RNC Utilizes White House for Speeches and Surprises Despite Ethics Concerns*, CNN (Aug. 26, 2020) (online at www.cnn.com/2020/08/26/politics/donald-trump-rnc-speech-ethics/index.html).

⁶ *Id.* See also *Trump is Urged to Fire Kellyanne Conway for Hatch Act Violations*, New York Times (June 13, 2019) (online at www.nytimes.com/2019/06/13/us/politics/kellyanne-conway-hatch-act.html).

⁷ Committee on Oversight and Reform, *Hearing on Violations of the Hatch Act Under the Trump Administration*, 116th Cong. (June 26, 2019) (online at <https://oversight.house.gov/legislation/hearings/violations-of-the-hatch-act-under-the-trump-administration>).

⁸ 5 U.S.C. § 7323(a)(1).

Hatch Act regulations, executive branch employees are prohibited from using their “official title while participating in political activity.”⁹ The regulations define “political activity” as “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”¹⁰

Although the Hatch Act exempts the President and Vice President, the law and its prohibition on using one’s official authority to influence elections apply to all other White House employees.¹¹ The White House questioned whether Kellyanne Conway and other White House employees are covered by the Hatch Act.¹² However, you testified before our Committee that “the Hatch Act only exempts two people, the President and the Vice President, from its reach, and so Ms. Conway is bound by it.”¹³

You also made clear that the Hatch Act does not prevent White House employees from advocating on behalf of the President’s policies. Referring to Kellyanne Conway, you stated, “She’s entitled to advocate on behalf of his policies. She’s not allowed to use her official authority to inject herself in campaign activity.” You also explained, “being an advisor does not inherently require Ms. Conway to leverage her official authority to attack candidates of the opposing party, or otherwise engage in political activity as defined under the Act.”¹⁴

Official Actions to Influence the Election

On August 25, 2020, the Convention aired President Trump’s pardon and participation in a naturalization ceremony.¹⁵ The ceremony appeared to have been planned and designed as

⁹ 5 C.F.R. § 734.302(b)(1).

¹⁰ 5 C.F.R. § 734.101.

¹¹ See 5 U.S.C. § 7322. The fact that Congress felt it necessary to expressly exempt the President and Vice President further confirms that the Hatch Act applies to all other White House employees. See, e.g., *United States v. Jicarilla Apache Nation*, 564 U.S. 162 (2011) (“As our cases have noted in the past, we are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.”) (quoting *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988)). The Hatch Act also expressly exempts some White House employees from certain prohibitions of the Act, thereby confirming that its other prohibitions—including the prohibition on using one’s official authority to influence elections—apply to White House employees. See 5 U.S.C. § 7324(b) (exempting certain employees “paid from an appropriation for the Executive Office of the President” from the prohibition on engaging in political activities on duty).

¹² Letter from Pat A. Cipollone, Counsel to the President, The White House, to Special Counsel Henry J. Kerner, Office of Special Counsel (June 11, 2019) (online at [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White House Letter to Henry Kerner.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White_House_Letter_to_Henry_Kerner.pdf)).

¹³ Committee on Oversight and Reform, *Hearing on Violations of the Hatch Act Under the Trump Administration* 116th Cong. (June 26, 2019) (online at <https://oversight.house.gov/legislation/hearings/violations-of-the-hatch-act-under-the-trump-administration>).

¹⁴ *Id.*

¹⁵ The White House, *President Donald Trump Issues a Full Pardon to Jon Ponder* (Aug. 25, 2020) (online at www.youtube.com/watch?v=X7icpKAqWfg); The White House, *President Trump Participates in a Naturalization Ceremony at the White House* (Aug. 25, 2020) (online at www.youtube.com/watch?v=vb9qXvGAQTA); *Republican National Convention—Night 2*, Republican National Convention (Aug. 25, 2020) (online at www.youtube.com/watch?v=gZRQL7jxsPE).

content for the Convention broadcast in support of President Trump's reelection campaign. We are concerned that White House officials who are subject to the Hatch Act may have assisted in planning and carrying out these actions in a manner that violated the law.

According to a White House official, these were "official events." The official stated, "The White House publicized the content of both events on a public website this afternoon and the campaign decided to use the publicly available content for campaign purposes."¹⁶

The timing of the events, however, suggests that the official events were being used to support President Trump's candidacy. According to two aides, the "primary purpose" of the naturalization ceremony was to be broadcast as part of the Convention.¹⁷ White House reporters were not notified about the naturalization ceremony, and the ceremony was not listed on President Trump's public schedule.¹⁸ Jon Ponder, who was pardoned by President Trump, and former Federal Bureau of Investigation agent Richard Beasley, who was also featured in the pardon segment, were both listed in a Trump campaign press release previewing the speakers for the second night of the Convention.¹⁹ The White House posted the videos to its YouTube channel before the start of Tuesday's Convention broadcast, and the segments were aired during the Convention in their entirety.²⁰

A Hatch Act Advisory issued by OSC in 2018 stated that "OSC views candidates' requests to visit federal facilities that are coordinated by candidates' campaigns as presumptively for a campaign purpose and not official business."²¹ If the pardon and naturalization ceremonies were coordinated by or with President Trump's campaign or the Convention, this same presumption should apply.

Chad Wolf participated in the naturalization ceremony in his official capacity as Acting Secretary of Homeland Security. Mr. Wolf was announced as "Acting Secretary Wolf,"

¹⁶ *'No One Gets Punished': RNC Utilizes White House for Speeches and Surprises Despite Ethics Concerns*, CNN (Aug. 26, 2020) (online at www.cnn.com/2020/08/26/politics/donald-trump-rnc-speech-ethics/index.html).

¹⁷ *See Focus on Trump's Official White House Actions as Part of Republican Convention Programming Raises Hatch Act Concerns*, Washington Post (Aug. 26, 2020) (online at www.washingtonpost.com/politics/hatch-act-republican-convention/2020/08/25/53b72b44-e6f8-11ea-970a-64c73a1c2392_story.html).

¹⁸ *Id.*

¹⁹ Donald J. Trump for President, Inc., *America, Land of Opportunity: RNC Day Two Preview* (Aug. 25, 2020) (online at www.donaldjtrump.com/media/america-land-of-opportunity-rnc-day-two-preview/).

²⁰ *'No One Gets Punished': RNC Utilizes White House for Speeches and Surprises Despite Ethics Concerns*, CNN (Aug. 26, 2020) (online at www.cnn.com/2020/08/26/politics/donald-trump-rnc-speech-ethics/index.html).

²¹ Office of Special Counsel, *Federal Hatch Act Advisory: Candidate Visits to Federal Agencies* (Feb. 15, 2018) (online at <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Candidate%20Visits%20to%20Federal%20Agencies.pdf>).

President Trump referred to Mr. Wolf by this title, and Mr. Wolf spoke on behalf of the Department of Homeland Security.²²

In OSC's analysis of former Secretary of Health and Human Services Kathleen Sebelius' violation of the Hatch Act, OSC wrote that "it is a use of official authority or influence to affect an election when an employee uses her 'official title while participating in political activity.'"²³ The use of the pardon and naturalization ceremonies as part of the Convention make it virtually impossible to separate them from campaign related activity.

White House employees and U.S. Citizenship and Immigration Services (USCIS) employees also coordinated the naturalization ceremony, according to reports. The week before the Convention, White House staff asked USCIS to organize a naturalization ceremony, and White House employees reportedly requested information about the potential participants and made suggestions as to the type of candidates for USCIS to identify.²⁴ Mr. Wolf also explained that there were multiple USCIS employees at the White House "making sure that ceremony goes off without a hitch."²⁵

Military personnel were also used as part of the naturalization ceremony. Although military personnel are not within OSC's jurisdiction, the military personnel who attended the ceremony may have been put in the position of violating Department of Defense guidance prohibiting them from "wearing military uniforms at political campaign events," and any Defense Department civilian employees who participated in the execution of the event may have violated the Hatch Act.²⁶

We are also concerned that Department of Housing and Urban Development Regional Administrator Lynne M. Patton may have misused her official position for political purposes. Regional Administrator Patton organized and interviewed four New York City tenants for a segment broadcast during the Convention. Three tenants later explained that they were not aware that the video would be included in Convention programming, raising questions about

²² The White House, *President Trump Participates in a Naturalization Ceremony at the White House* (Aug. 25, 2020) (online at www.youtube.com/watch?v=vb9qXvGAQTA).

²³ Letter from Special Counsel Carolyn N. Lerner, Office of Special Counsel, to President Barack Obama (Sept. 12, 2012) (online at [https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kathleen%20Sebelius%20\(HA-12-1989\).pdf](https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kathleen%20Sebelius%20(HA-12-1989).pdf)); 5 C.F.R. § 734.302(b)(1).

²⁴ *Trump Takes Night Off from Anti-Immigrant Talk to Swear In U.S. Citizens*, New York Times (Aug. 26, 2020) (online at www.nytimes.com/2020/08/26/us/politics/trump-naturalization-ceremony-rnc.html).

²⁵ *Wolf Says He Did Not Know Naturalization Ceremony Would Be Shown at RNC*, Axios (Aug. 30, 2020) (online at www.axios.com/chad-wolf-naturalization-ceremony-rnc-1edb07b9-d900-4709-ba14-57232709db13.html).

²⁶ *What is the Policy for Participating in Political Campaigns?*, Department of Defense (Mar. 4, 2019) (online at www.defense.gov/ask-us/faq/Article/1774809/what-is-the-policy-for-participating-in-political-campaigns/).

whether Regional Administrator Patton used her official position, title, and federal resources to organize and carry out this segment.²⁷

Use of the White House and Federal Property

The Republican National Convention filmed multiple segments and speeches on federal property. The Hatch Act prohibits federal employees from engaging in political activity while on duty, in any federal government room or building, or while wearing a uniform or official insignia identifying the office or position of the employee.

OSC issued an advisory opinion in 2018 that prohibits “authorizing the use of a federal building or office” for “campaign activities” including, among other examples, “speeches, fundraisers, press conferences, and photo ops. The advisory stated: “Federal agencies should ensure that candidates who visit their facilities to conduct official business do not engage in any political campaign or election activity during the visit.”²⁸

On August 12, 2020, OSC wrote to our Committee to explain that the President and Vice President are exempt from the Hatch Act and can give Convention speeches on White House grounds. However, OSC’s letter to the Committee made clear that:

White House employees are covered by the Hatch Act, so there may be Hatch Act implications for those employees, depending on their level of involvement with the event and their position in the White House.²⁹

President Donald Trump, First Lady Melania Trump, and Advisor to the President Ivanka Trump gave addresses on the White House grounds.³⁰ There were also multiple pre-recorded segments filmed in the White House. These segments include President Trump speaking with former hostages and Americans impacted by coronavirus.³¹ These segments raise serious questions about the use of White House employees and resources in coordinating and executing Convention programming.

²⁷ *N.Y.C. Tenants Say They Were Tricked Into Appearing in R.N.C. Video*, New York Times (Aug. 28, 2020) (online at www.nytimes.com/2020/08/28/nyregion/nyc-tenants-rnc-video-trump.html).

²⁸ Office of Special Counsel, *Federal Hatch Act Advisory: Candidate Visits to Federal Agencies* (Feb. 15, 2018) (online at <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Candidate%20Visits%20to%20Federal%20Agencies.pdf>).

²⁹ Letter from Deputy Chief Erica S. Hamrick, Office of Special Counsel, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Aug. 12, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/AO%20re%20Convention%20speech%20at%20WH.pdf>).

³⁰ *Republican National Convention—Night 2*, Republican National Convention (Aug. 25, 2020) (online at www.youtube.com/watch?v=gZRQL7jxsPE); *Republican National Convention—Night 4*, Republican National Convention (Aug. 27, 2020) (online at www.youtube.com/watch?v=t0SS9jjaU6E).

³¹ *Republican National Convention—Night 1*, Republican National Convention (Aug. 24, 2020) (online at www.youtube.com/watch?v=GyqHUPoDpoM).

In addition, OSC's guidance addressed only political events held on White House grounds. OSC wrote:

Your staff also inquired into Hatch Act compliance related to political events held on federal property other than the White House. Because there are different types of federal property, under the custody and control of different federal agencies, we are unable to provide guidance without more specific information about the property at issue.³²

Vice President Mike Pence filmed multiple Convention segments on federal property. On August 25, 2020, Vice President Pence appeared in a pre-recorded segment filmed at the Lincoln Boyhood National Memorial in Lincoln City, Indiana.³³ The U.S. National Park Service (NPS) manages this memorial.³⁴ Vice President Pence also gave the keynote address on August 26, 2020, from Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland.³⁵ NPS also manages Fort McHenry.³⁶

Political Activity on Official Travel Abroad

Secretary Pompeo filmed a video from the roof of the King David Hotel in Jerusalem, Israel that was shown as part of the Convention on August 25, 2020.³⁷ Secretary Pompeo's speech advocated for reelecting President Trump. He stated: "The way each of us can best ensure our freedoms is by electing leaders who don't just talk, but who deliver" and called on Americans to "stay the course."³⁸

Secretary Pompeo's speech raises concerns about the use of federal resources for the Secretary's political activity, including the cost of his travel. As part of its evaluation of Secretary Sebelius' compliance with the Hatch Act, OSC analyzed whether "the U.S. Treasury paid for the costs of her political activity, which would be a violation of 5 U.S.C. § 7324(b)."

³² Letter from Deputy Chief Erica S. Hamrick, Office of Special Counsel, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Aug. 12, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/AO%20re%20Convention%20speech%20at%20WH.pdf>).

³³ *Republican National Convention—Night 2*, Republican National Convention (Aug. 25, 2020) (online at www.youtube.com/watch?v=gZRQL7jxsPE).

³⁴ National Park Service, *Lincoln Boyhood National Memorial* (online at www.nps.gov/libo/index.htm).

³⁵ *Republican National Convention—Night 3*, Republican National Convention (Aug. 26, 2020) (online at www.youtube.com/watch?v=6SVFWxmKXt8).

³⁶ National Park Service, *Fort McHenry National Monument and Historic Shrine Maryland* (online at www.nps.gov/fomc/index.htm).

³⁷ *Republican National Convention—Night 2*, Republican National Convention (Aug. 25, 2020) (online at www.youtube.com/watch?v=gZRQL7jxsPE); *Pompeo Stirs Up Outrage Among Some Diplomats Over Speech to RNC*, Washington Post (Aug. 25, 2020) (online at www.washingtonpost.com/national-security/pompeo-stirs-up-outrage-among-some-diplomats-over-speech-to-rnc/2020/08/25/66dddf66-e6cf-11ea-a414-8422fa3e4116_story.html).

³⁸ *Republican National Convention—Night 2*, Republican National Convention (Aug. 25, 2020) (online at www.youtube.com/watch?v=gZRQL7jxsPE).

OSC concluded that particular issue was “resolved” because the Department of Health and Human Services received reimbursement for “all travel related costs and expenses” from the Obama for America campaign and the Democratic National Committee.³⁹ There has been no indication thus far of whether the Trump Campaign or Republican National Committee paid for or reimbursed the Department of State for any portion of Secretary Pompeo’s travel to Israel.

When Secretary Sebelius was found to have violated the Hatch Act for going “off script” and getting “a little caught up” during one official appearance, then-Chairman of the Committee on Government Reform Darrell Issa stated:

As he decides the appropriate consequences for Secretary Sebelius, the President should consider the important leadership role of cabinet secretaries and the example they must set for the entire executive branch.⁴⁰

Unlike the actions of Secretary Sebelius, Secretary Pompeo’s actions were planned in advance and clearly coordinated with the Republican National Committee. Secretary Pompeo’s video also appears to violate a directive from the State Department’s Office of the Legal Advisor warning that “Senate-confirmed Presidential appointees may not even attend a political party convention or convention-related event.” The memorandum emphasized:

This guidance reflects the provisions of the Hatch Act (the federal statute governing political activities by federal employees), government-wide regulations implementing that Act, and State Department policies.⁴¹

For these reasons we are referring these issues to your office for a thorough review of any Hatch Act violations related to the participation of White House and agency employees in the Republican National Convention. We request a response to our request by September 17, 2020.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. If you have any questions regarding this request, please contact the staff of the Committee on Oversight and Reform at (202) 225-5051.

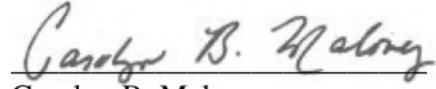
³⁹ Letter from Special Counsel Carolyn N. Lerner, Office of Special Counsel, to President Barack Obama (Sept. 12, 2012) (online at [https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kathleen%20Sebelius%20\(HA-12-1989\).pdf](https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kathleen%20Sebelius%20(HA-12-1989).pdf)).

⁴⁰ *OSC, HHS’ Sebelius at Odds over Hatch Act Violation*, Federal News Network (Sept. 12, 2012) (online at <https://federalnewsnetwork.com/all-news/2012/09/osc-hhss-sebelius-at-odds-over-hatch-act-violation/>).

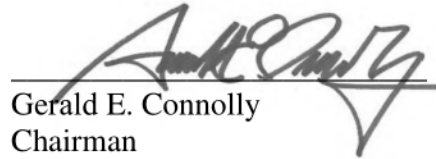
⁴¹ Department of State, *Memorandum from Office of the Legal Advisor to All Presidential Appointees and All Political Appointees* (Dec. 3, 2019) (online at www.politico.com/f/?id=00000174-227a-d006-a7f4-e27fc5690000).

Thank you for your assistance in this matter.

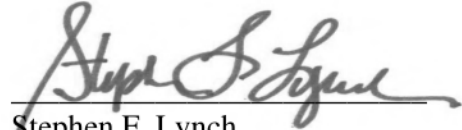
Sincerely,



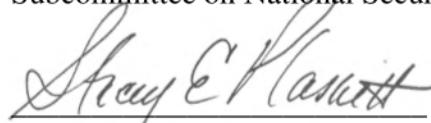
Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Gerald E. Connolly
Chairman
Subcommittee on Government Operations



Stephen F. Lynch
Chairman
Subcommittee on National Security



Stacey Plaskett
Member
Committee on Oversight and Reform

cc: The Honorable James R. Comer, Ranking Member

The Honorable Glenn Grothman, Ranking Member
Subcommittee on National Security

The Honorable Jody B. Hice, Ranking Member
Subcommittee on Government Operations

Congress of the United States

Washington, D.C. 20515

August 25, 2020

The Honorable Stephen E. Biegun
Deputy Secretary
Department of State
2201 C Street, N.W.
Washington D.C. 20520

Deputy Secretary Biegun:

I write concerning Secretary of State Mike Pompeo's decision to speak at a partisan political event, the Republican National Convention, on August 25, 2020. It is highly unusual, and likely unprecedented, for a sitting Secretary of State to speak at a partisan convention for either of the political parties. It appears that it may also be illegal.

According to documents obtained by the Foreign Affairs Committee, it is readily apparent that the Secretary's choice to speak at a political convention may violate the Hatch Act, government-wide regulations implementing that Act, and State Department policies, as described in guidance from the Office of the Legal Adviser.¹ This guidance was circulated to Department employees over your own signature less than a month ago.² In furtherance of the constitutionally mandated obligation to conduct oversight of the State Department, as well as to determine whether and legislative action is necessary, to address this matter, the Subcommittee on Oversight and Investigations intends to examine this issue carefully. Accordingly, I seek written answers and documents as set forth below.

Media reports have revealed that Secretary Pompeo's speech was filmed on August 24, 2020 while he was visiting Jerusalem on official U.S. business. The State Department has claimed that the speech is appropriate because Secretary Pompeo did not use his official title or any State Department resources or staff, and an unnamed source recently told *McClatchy* that "[Pompeo's] lawyer, the State Department lawyers, RNC lawyers, White House lawyers have all worked on his appearance to make sure it is completely lawful and appropriate."³ The Secretary, however, has not made any of this supposed legal analysis public. Instead, the legal analysis that has come to light shows precisely the opposite.

¹ Memorandum from the Office of the Legal Adviser to All Presidential Appointees and All Political Appointees, December 3, 2019 (online at: <https://foreignaffairs.house.gov/cache/files/e/e/eed06418-12ee-496f-8476-8c266c53ddb6/8F33EFAA29B676D27832D35876407707.hatch-act.pdf>)

² See Cable to All Diplomatic and Consular Posts Collective, July 24, 2020, signature: Pompeo re: "2020 Hatch Act/Political Activities" (online at: <https://foreignaffairs.house.gov/cache/files/8/0/805ea04a-93b3-46c0-8baf-8a2d37b16730/4265E7B626B880B793C28C23199903C2.20-state-71636eml.pdf>).

³ Michael Wilner, "Lawyers Examined Pompeo's Plan to Address GOP Convention From Jerusalem, Aides Say," *McClatchy*, August 23, 2020.

In a December 2019 memorandum made available to all State Department employees, the Office of the Legal Adviser makes clear that “[t]he Department has a long-standing policy of limiting participation in partisan campaigns by its political appointees in recognition of the need for the U.S. Government to speak with one voice on foreign policy matters.”⁴ Using both bold type and italics (lest there be any confusion), the memo specifically notes that, under a variety of laws and regulations, including “the provisions of the Hatch Act . . . government-wide regulations implementing that Act, and State Department policies,” Senate-confirmed political appointees such as Secretary Pompeo “***may not even attend a political party convention or convention-related event.***”⁵ It appears incontrovertible that the Secretary’s speech to the RNC violates this prohibition.

Secretary Pompeo was on official travel – funded on an apolitical basis by every American taxpayer – when the speech was pre-recorded and likely will be on official business when it will be shown at the RNC. Similarly, he was outside the United States when the speech was recorded and will be outside the United States when it airs. This is a flagrant violation not only of the laws, regulations and policies summarized in the December 2019 memorandum, but also of the Foreign Affairs Manual, which prohibits not just State Department employees, but also their spouses or family members from “engag[ing] in partisan political activities abroad.”⁶

Mr. Deputy Secretary, I applaud the example you set in your February 18, 2020 email to the State Department’s entire workforce where you recognized the prohibition on Senate-confirmed officials participating in political events like the party conventions when you wrote: “as a Senate confirmed Department official, I will be sitting on the sidelines of the political process this year and will not be attending any political events, to include the national conventions.” The Department’s previous cited legal guidance unambiguously applies the same standard to the Secretary.

In light of this very serious apparent violation, and to obtain more information on the underlying events, I ask that you provide a written response to the following questions **no later than September 1, 2020 and arrange for a briefing with the State Department by that date:**

- What legal guidance was prepared, by whom, and when, authorizing Secretary Pompeo’s speech to the RNC?
- Precisely which attorneys comprised the “four teams of lawyers” who reportedly approved the Secretary’s speech, despite the unambiguous prohibition set forth in the December 3, 2019 memo from the Office of the Legal Adviser?
- What Department of State resources, if any, were used to organize this event, including transportation, coordination with the host government, diplomatic security, and lodging? For instance, were any State Department officials—including the U.S.

⁴ Memorandum from the Office of the Legal Adviser to All Presidential Appointees and All Political Appointees, December 3, 2019.

⁵ *Id.* (emphasis in original).

⁶ See 3 FAM 4123.3

Ambassador to Israel and our Embassy officials (both in Jerusalem and Tel Aviv)—involved in securing the King David Hotel for the site of the speech?

- Were any Department of State employees, including support and security staff, present at the location where the Secretary of State made this address? If so, what employees were present and what responsibilities did they carry out?
- Will the Department of State be incurring all costs related to airfare to Israel or travel between countries on this trip? If not, what parts and/or percentages of the costs will be reimbursed by outside groups, including the RNC and the Trump campaign?
- When was the Department of State first made aware of the Secretary's intention to make this address from Jerusalem while on a trip abroad?
- Has the Government of Israel or any of its officials raised any concerns about the partisan nature of this speech and how it could impact bipartisan support for Israel in the United States?
- When did the Department of State first start planning this trip to the region? Did the Department of State initiate the trip to Israel? Did Secretary of State Pompeo or any of his staff members ask the Government of Israel to host him in Jerusalem on this date?
- Has the trip itinerary changed in any way to accommodate the Secretary's decision to make this address from Jerusalem?
- Will you be making any referrals to the Department of State Office of Inspector General or the U.S. Office of the Special Counsel regarding these actions and violations of the Hatch Act and Department policy?

In addition, to assist the Subcommittee in investigating whether any legislative actions are needed, including strengthening the effectiveness of the Hatch Act, I ask you provide the following documents to me **by September 10, 2020**:

- Any and all records prepared by or sent to or from the Office of the Legal Adviser on or after December 3, 2019 regarding restrictions on political activities by Secretary Pompeo or Presidential Appointees or Political Appointees; and
- A list of expenditures from the trip during which Secretary Pompeo recorded his remarks to the RNC, including receipts demonstrating that any expenses incurred by the State Department were reimbursed by the RNC, Trump's campaign, or other outside sponsors.

Given the importance to our democracy in ensuring that public resources are not used for improper campaign purposes—a principle that is particularly important in the conduct of the Nation's foreign policy—I look forward to working with you to address this important issue.

Sincerely,



JOAQUIN CASTRO

Chairman, Subcommittee on Oversight and Investigations
House Foreign Affairs Committee

CC:

Office of the Legal Adviser, Department of State
Office of the Inspector General, Department of State
United States Office of Special Counsel



The Special Counsel

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

September 9, 2020

The Honorable Carolyn B. Maloney
Chairwoman
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Stephen F. Lynch
Chairman
Subcommittee on National Security
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Gerald E. Connolly
Chairman
Subcommittee on Government Operations
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Stacey E. Plaskett
Member
House Committee on Oversight and
Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Re: Response to September 3, 2020 Letter

Dear Chairwoman Maloney, Chairman Lynch, Chairman Connolly, and Representative Plaskett:

This letter is in response to your request that the U.S. Office of Special Counsel (OSC) investigate alleged Hatch Act violations by members of the Trump Administration during the Republican National Convention. OSC takes seriously all allegations of Hatch Act violations and has opened files to address the activities detailed in your letter. Let me assure you we will conduct a full and even-handed investigation and do so with dispatch. Where investigations establish an employee violated the law, we will pursue appropriate remedies as prescribed by law. We will keep you updated on the progress of our investigations into these allegations. In the interim, if you have any questions, please do not hesitate to contact me or Deputy Special Counsel for Legislative Affairs Thomas Fuller. He can be reached at (b)(6); (b)(7)(C)@osc.gov or at 202-

294-(b)(6);
(b)(7)(C)

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner".

Henry J. Kerner
Special Counsel

U.S. Office of Special Counsel

Page 2

cc: The Honorable James R. Comer
Ranking Member, Committee on Oversight and Reform

The Honorable Glenn S. Grothman
Ranking Member, Subcommittee on National Security

The Honorable Jody B. Hice
Ranking Member, Subcommittee on Government Operations