



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

December 20, 2021

The Hon. Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

The Hon. Christopher Wray Director
Director
Federal Bureau of Investigation
935 Pennsylvania Ave., NW
Washington, DC 20535

Re: Request for Investigation of Donald J. Trump, Michael Pompeo, and Chad Wolf for Violating Federal Law by Using Their Official Authority to Engage in Political Activities

Dear Attorney General Garland and Director Wray:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Department of Justice (“DOJ”) investigate whether former President Donald J. Trump, former Secretary of State Michael Pompeo, former Acting Secretary of Homeland Security Chad Wolf, and other senior Trump administration officials violated federal criminal law by using their official authority to affect the 2020 presidential election, including during the 2020 Republican National Convention (“RNC”).

This complaint is based on conclusions reached by the Office of Special Counsel (“OSC”) that thirteen senior Trump administration officials, including Secretary Pompeo and Acting Secretary Wolf, engaged in willful and repeated violations of the Hatch Act in the lead up to the 2020 presidential election.¹ OSC determined that Secretary Pompeo and Acting Secretary Wolf’s violations originated within the White House, or possibly the Trump campaign or President Trump himself, and that President Trump laid the foundation for these and other Hatch Act violations by refusing to hold officials accountable for even the most flagrant and clear-cut Hatch Act violations.

OSC’s findings and conclusions lay the predicate for DOJ to conduct its own investigation into whether President Trump, Secretary Pompeo, Acting Secretary Wolf, and other senior Trump administration officials violated 18 U.S.C. § 595, a criminal provision of the Hatch Act that falls under DOJ’s jurisdiction. Because OSC has determined it lacks any meaningful mechanism to hold President Trump or his senior administration officials accountable under the provisions of the Hatch Act it enforces, it is incumbent upon DOJ as the chief law enforcement arm of the Executive Branch to investigate whether President Trump and senior Trump administration officials violated Section 595 by unlawfully using their official authority to affect the outcome of the 2020 presidential election.

¹ Office of Special Counsel, Investigation of Political Activities by Senior Trump Administration Officials During the 2020 Presidential Election, Nov. 9, 2021, (“OSC Report”), <https://bit.ly/3HC5bjy>; see also Letter from Professors Richard W. Painter and Claire O. Finkelstein to the Office of Special Counsel and the State Department’s Office of Inspector General, Aug. 26, 2020, <https://bit.ly/3rh8WVV>.

Factual Background

OSC's Report on its Investigation of Political Activities by Senior Trump Administration Officials During the 2020 Presidential Election

OSC recently concluded that at least thirteen senior Trump administration officials, including Secretary Pompeo and Acting Secretary Wolf in connection with their role in the RNC, engaged in “willful,” and “repeated” violations of the Hatch Act in the lead up to the 2020 presidential election.² Furthermore, OSC found that these thirteen Trump administration officials “did so with the administration’s approval.”³ In this regard, President Trump encouraged and laid the foundation for these violations, having failed to hold the most egregious violators accountable, and appears to have used his official authority in connection with both Secretary Pompeo’s and Acting Secretary Wolf’s violations. OSC’s findings and conclusions lay the predicate for DOJ to conduct its own investigation into whether President Trump, Secretary Pompeo, Acting Secretary Wolf, and other senior Trump administration officials violated 18 U.S.C. § 595, a criminal provision of the Hatch Act that falls under DOJ’s jurisdiction.

Secretary Pompeo’s Hatch Act Violations

OSC determined that Secretary Pompeo violated 5 U.S.C. § 7323(a)(1), a civil provision of the Hatch Act subject to OSC jurisdiction, based on the following:

- On August 24, Secretary Pompeo delivered a pre-recorded speech to the RNC, which he taped while on official State Department travel to Jerusalem. Disregarding State Department advice on how to comply with the Hatch Act, Secretary Pompeo’s speech, delivered from a podium overlooking the Old City, focused almost exclusively on matters within his official portfolio, including China trade policy; North Korean denuclearization; Ukrainian arms sales; treaties with Russia; controlling Iran’s nuclear weapons; and brokering a peace deal between Israel and the United Arab Emirates.⁴
- Just days before delivering his speech and against the advice of senior State Department lawyers, Secretary Pompeo approved a change to a State Department policy that until then had prohibited him and all other political appointees at the State Department from engaging in many partisan political activities, including addressing a political party convention. Under the new policy, the Secretary of State “is not restricted from addressing a political party convention when requested by or for the President.”⁵
- Less than a month before issuing the policy change, the State Department circulated a document under Secretary Pompeo’s signature that reiterated the political activity restrictions on State Department political appointees. The State Department’s restrictions

² OSC Report at 17. In addition to Secretary Pompeo and Acting Secretary Wolf, OSC concluded that eleven other Trump administration officials violated the Hatch Act over the course of 18 different official interviews or media appearances.

³ OSC Report at 2.

⁴ *Id.* at 31-32, 34.

⁵ Memorandum from the Under Secretary of State for Management to the Designated Agency Ethics Official (Aug. 21, 2020), quoted in OSC Report at 30.

derived from the president's authority to restrict the political activity of presidential and political appointees pursuant to 5 C.F.R. § 734.104. The Secretary of State was delegated that authority in 1994 and imposed restrictions shortly thereafter to prevent the work of the State Department from being viewed as overtly partisan. Since then neither OSC nor the State Department is aware of a sitting Secretary of State addressing a political convention.⁶

- The memorandum implementing the change stated that an exception to the policy was warranted “[g]iven that the Secretary’s participation in the national convention is requested on behalf of the President.” The memorandum further stated the existing policy was based “on an exercise of the President’s own authority” and that “the Department should not exercise that authority to interfere with otherwise permissible actions directed or requested by or for the President.”⁷
- Secretary Pompeo’s policy change also implicated a Foreign Affairs Manual policy, which bars all U.S. government employees, including their family members, from engaging in partisan political activities abroad.⁸ On August 21, one of Secretary Pompeo’s subordinate political appointees granted him a “one-time exception” to that policy “in the event [Secretary Pompeo] chooses to address the Republican National Convention and needs to record his remarks while on travel.” No other U.S. citizen State Department employees stationed overseas, or their spouses or family members, received the benefit of the exception.⁹

Based on these findings, OSC concluded that Secretary Pompeo in two instances violated 5 U.S.C. § 7323(a)(1), a provision of the Hatch Act that bars a covered federal employee from using his official authority or influence for the purpose of interfering with or affecting the result of an election.¹⁰ First, OSC concluded that Secretary Pompeo’s approval of a last-minute change to State Department policy was a “manipulation of government business to benefit a particular candidate” since the “timing, justification, and scope of the change suggest its sole purpose was to promote President Trump’s reelection campaign.”¹¹

Second, OSC concluded that Secretary Pompeo violated the Hatch Act by devoting “nearly the entirety of his RNC speech to discussing matters within his purview as Secretary of State, thereby using his official authority in furtherance of President Trump’s reelection.”¹² By focusing “almost exclusively on the work of the State Department,” he acted contrary to long-standing advice OSC has given cabinet officials and advice he was given in this instance by the State Department.¹³ That is, when speaking in a personal capacity for a partisan political purpose cabinet officials “must avoid talking about the work of their agencies to ensure that they do not mix their official work with their personal political activity.”¹⁴

⁶ OSC Report at 30.

⁷ *Id.* at 31.

⁸ 3 Foreign Affairs Manual 4123.3.

⁹ OSC Report at 31.

¹⁰ *Id.* at 32.

¹¹ *Id.*

¹² *Id.*

¹³ OSC Report at 32, 34.

¹⁴ *Id.* at 34.

Acting Secretary Wolf's and Other Trump Administration Officials' Hatch Act Violations

OSC determined that Acting Secretary Wolf, and likely others, violated 5 U.S.C. § 7323(a)(1) based on the following:

- On August 25, President Trump and Acting Secretary Wolf “presided over a naturalization ceremony at the White House.” That evening, the RNC broadcast footage of the ceremony that had been recorded earlier that day by the White House.
- A week earlier, on August 18, the White House rescheduled the naturalization ceremony, which had been originally planned for September 17, and moved it to the same week as the RNC. On August 20, the White House told Acting Secretary Wolf’s scheduler that the ceremony would be “pre-taped” for the RNC.¹⁵
- After being informed about the event and concluding that staging an official event in coordination with a political party and for the purpose of creating content for that party’s national convention would violate the Hatch Act, a DHS ethics official advised the Acting Secretary’s scheduler on August 21, by email, that Acting Secretary Wolf would likely violate the Hatch Act if he participated in the ceremony.¹⁶
- On August 21, the scheduler forwarded the ethics official’s email to the DHS acting Chief of Staff (“CoS”) and DHS’s Senior Official Performing the Duties of the General Counsel (“GC”). The scheduler told the GC that the CoS would be calling him to discuss the ethics official’s Hatch Act determination. That same day, the GC spoke with an attorney in the White House Counsel’s Office, and together they agreed that the ceremony would be planned and executed as an official event. The White House attorney communicated that determination to White House staff and, according to that attorney, the ceremony “was thereafter organized and executed as an official event.”¹⁷
- On August 21, the DHS ethics official advised the GC that characterizing the ceremony as an official event would not cure the problem, since the original purpose of the event was to use government resources to produce content for a political convention.¹⁸
- Once OSC learned of the event, it “repeatedly warned both DHS and the Trump White House” prior to the event that, “because the ceremony was designed to produce content for the RNC, the proposed naturalization ceremony would violate the Hatch Act even if it was later characterized as an official event.”¹⁹

As a result of these findings, OSC concluded that Acting Secretary Wolf “violated the Hatch Act by presiding over a naturalization ceremony held for the purpose of creating content for the RNC”

¹⁵ *Id.* at 35.

¹⁶ *Id.*

¹⁷ *Id.* 35-36.

¹⁸ OSC Report at 35-36.

¹⁹ *Id.* 36.

since “Government functions cannot be scheduled, coordinated, or designed for the purpose of promoting a political party, campaign, or candidate for partisan political office.”²⁰ OSC explained:

That the White House decided subsequently to classify the event as official, and thereby use even more government resources to stage an event intended for use as part of a political campaign, does not cure the Hatch Act problem. As of August 20, the White House and DHS understood that the August 25 ceremony was scheduled so that it could be featured as part of the RNC—i.e., to serve a partisan political purpose.²¹

OSC acknowledged it did not have direct evidence showing that Acting Secretary Wolf knew in advance that the White House intended to use the naturalization ceremony as content for the RNC and that he denied in a statement knowing that it would be used at the RNC or that the matter had been raised with him beforehand. However, OSC determined that circumstantial evidence supported its conclusion that “he knew, or should have known of its intended use by the White House,” since the ceremony was being held on the same day of the RNC when Acting Secretary Wolf was scheduled to attend and at the same venue as the RNC.²² In addition, “multiple senior DHS officials, including the GC, CoS, and senior agency ethics officials each knew of the partisan nature of the event.”²³ OSC’s evidence indicated that “at least one of them would have informed Acting Secretary Wolf of the White House’s intended purpose for scheduling and filming the naturalization ceremony during the RNC,” “if only to prepare him for questions about his participation afterward.”²⁴

While its focus was primarily on Acting Secretary Wolf, OSC also concluded that other Trump administration officials within the Trump White House and at DHS “were instrumental in orchestrating the ceremony for the RNC.” However, OSC reported that “enforcement challenges” made it “unable to identify which specific DHS and White House were most culpable.” Because OSC can “neither enforce its own subpoenas nor compel agencies to respond to its investigative requests,” OSC explained that it did not receive the “good faith cooperation necessary to ensure full compliance with the Hatch Act.” In this regard, the White House attorney “made dubious claims of privilege to avoid responding to certain OSC questions,”²⁵ while some of the CoS’s and GC’s responses appear to have been totally disingenuous. For example, OSC’s evidence showed that the CoS knew on August 21 that a DHS ethics official had advised against Acting Secretary Wolf participating in the ceremony, but the CoS told OSC investigators that if he knew there were any Hatch Act concerns with the event, then he would have told Acting Secretary Wolf.²⁶ Although OSC’s evidence indicated that the DHS ethics official knew the ceremony was to be recorded and then played at the RNC, the GC told OSC investigators that he disregarded the ethics official’s advice because the ethics official’s analysis was based on the incorrect assumption that the ceremony was going to be livestreamed during the RNC.²⁷ Nor is it clear that either the White House attorney or Acting Secretary Wolf, who both submitted written statements, were available for follow-up questioning through in-person interviews with OSC, which would have allowed them to more thoroughly address their own, as well as others’, possible culpability.

²⁰ *Id.* at 37-38.

²¹ *Id.* at 38.

²² OSC Report at 38.

²³ *Id.*

²⁴ *Id.* at 38, n. 135.

²⁵ *Id.* at 48.

²⁶ OSC Report at 36.

²⁷ *Id.*

President Trump's Role in Acting Secretary Wolf's and Secretary Pompeo's Hatch Act Violations

President Trump participated in his official capacity in the same naturalization ceremony that gave rise to Acting Secretary Wolf's Hatch Act. Yet OSC could not hold President Trump accountable for his role in the naturalization ceremony and the intended use of its recorded content for the RNC, since both the president and vice president are expressly exempt from coverage under the provisions of the Hatch Act that OSC is authorized to enforce.²⁸

President Trump likewise was the impetus for the policy change that gave rise to Secretary Pompeo's Hatch Act violation, although his use of official authority appears to be less overt than in connection with the White House naturalization ceremony. Regarding Secretary Pompeo's Hatch Act violation, OSC reported that the policy change was "precipitated" by Secretary Pompeo "being asked, on behalf of President Trump to participate in the RNC."²⁹ As a result, the State Department memorandum implementing Secretary Pompeo's policy change indicated that "while the overall goal of projecting a non-partisan foreign policy remains sound," an exception was warranted "[g]iven that the Secretary's participation in the national convention is requested on behalf of the President."³⁰ The memorandum goes on to state that the existing policy was based "on an exercise of the President's own authority," but that "the Department should not exercise that authority to interfere with otherwise permissible actions directed or requested by or for the President."³¹

By directly or indirectly requesting Secretary Pompeo participate in the RNC while on official travel, President Trump appears to have drawn upon his own presidential authority to restrict the Secretary of State's authority to regulate the political activities of State Department political appointees. That authority, which had previously been broadly delegated to the Secretary of State for State Department political appointees,³² was now viewed by the State Department as being more limited in scope. Accordingly, President Trump's request for Secretary Pompeo to participate in the RNC necessitated a policy change by Secretary Pompeo as it pertains to "otherwise permissible actions directed or requested by or for the President."³³ Yet as it does with his role in Acting Secretary Wolf's violation, OSC lacks jurisdiction under the Hatch Act provisions it enforces to hold President Trump accountable for his role and use of presidential authority in connection with the policy change that gave rise to Secretary Pompeo's Hatch Act violation.

²⁸ *Id.* at 2.

²⁹ OSC Report at 31.

³⁰ *Id.*

³¹ *Id.*

³² Prior to undertaking the policy change that authorized him to participate in the RNC while on official travel overseas, Secretary Pompeo, like many Secretaries of State before him, had been operating under a broad delegation of presidential authority. Under that delegation of authority, State Department political appointees were barred from engaging in many partisan political activities, including addressing a political party convention. Memorandum for the Secretary of State, 59, Fed. Reg. 54,121 (Oct. 27, 1993) ("Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of State, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.").

³³ OSC Report at 32.

President Trump's Role in Encouraging and Laying the Foundation for Hatch Act Violations by 13 Senior Trump Administration Officials

President Trump was not only instrumental in Secretary Pompeo's and Acting Secretary Wolf's Hatch Act violations but encouraged a litany of other senior Trump administration officials to violate the Hatch Act in the lead up to the 2020 presidential election. President Trump's former press secretary, Stephanie Grisham, recently noted about her experience in the White House, that "when we would get Hatch Act violations, that was a badge of honor."³⁴ Last month, OSC found that at least thirteen Trump administration officials violated the Hatch Act with the administration's express or tacit approval, and that President Trump "laid the foundation" for these violations, having failed to hold the most egregious of violators accountable.³⁵ The fact that no one in the Trump administration was punished for even the most egregious Hatch Act violations is further evidence that President Trump allowed "members of the administration to 'violate the Hatch Act with seeming impunity.'"³⁶

President Trump and the most senior officials in the administration were "publicly and, reportedly, privately dismissive of the Hatch Act's restrictions."³⁷ The same former Trump press secretary stated, "The president used to say to us, 'You know who's in charge of the Hatch Act? It's me, [so] go ahead, say whatever you want to say.'"³⁸ Chief of Staff Mark Meadows said "during an interview that 'nobody outside of the Beltway really cares' about whether senior administration officials violated the Hatch Act and called such allegations 'a lot of hoopla,'" while former Counselor to the President Kellyanne Conway, was dismissive when asked about one of OSC's reports concluding that she had violated the Hatch Act, saying "'blah, blah, blah,' and 'let me know when the jail sentence starts.'"³⁹ Trump aides reportedly "privately scoff[ed] at the Hatch Act," viewing the law as a "joke."⁴⁰ They "traded quips over how consequence-free their infractions have been," while "bragg[ing] about their alleged violations as a 'proud rite of passage.'"⁴¹

Prior to the 2020 presidential election, OSC had sent President Trump three reports "documenting numerous unequivocal violations of the Hatch Act" by senior Trump administration officials,⁴² including two reports regarding Kellyanne Conway prior to the 2020 presidential election. Ms. Conway's, "repeated, flagrant violations led OSC to call for the president to remove her from federal service."⁴³ In addition to OSC's reports pertaining to Ms. Conway, OSC sent an "unprecedented 15 warning letters" to senior administration officials notifying them that they had violated the Hatch Act.⁴⁴ With regard to the 2020 presidential election, OSC sent President Trump a third report documenting Hatch Act violations by President Trump's senior advisor, Dr. Peter Navarro, and OSC

³⁴ Mary Papenfuss, *Trump Encouraged Staff to Break the Law, Says Former Press Secretary*, *Huffington Post*, Nov. 14, 2021, <https://bit.ly/31c0sVx>.

³⁵ OSC Report at 1, 38.

³⁶ *Id.* at 2.

³⁷ *Id.* at 40.

³⁸ Papenfuss, *Huffington Post*, Nov. 14, 2021.

³⁹ OSC Report at 40-41.

⁴⁰ Michael M. Grynbaum and Annie Karni, *Republicans Rush to Finalize Convention ('Apprentice' Producers Are Helping)*, *New York Times*, Aug. 22, 2021, <https://nyti.ms/3061LVC>; Lachlan Markay and Asawin Suebsaeng, *Trump Isn't Building a Case Against Biden. He's Running a Convention to Troll the Press*, *Daily Beast*, Aug. 26, 2020, <https://bit.ly/3xZUMtG>.

⁴¹ Markay and Suebsaeng, *Daily Beast*, Aug. 26, 2020, <https://bit.ly/3xZUMtG>.

⁴² OSC Report, at 39.

⁴³ *Id.* at 40.

⁴⁴ *Id.* at 4.

sent President Biden a fourth report documenting violations by another senior Trump administration official, which was completed after President Trump left office.⁴⁵

Because OSC determined it lacked authority to hold senior Trump administration officials accountable for violations under the provisions of the Hatch Act it enforces,⁴⁶ OSC expected from its “repeated enforcement and outreach efforts, the administration would take the necessary actions to ensure that employees complied with the law.”⁴⁷ Instead, President Trump “defended and supported even the most egregious of the violators” and in doing so, he “sent a clear message to similarly-situated officials” that “there will be no consequences for breaking the law by campaigning on behalf of President Trump and other Republican candidates at taxpayer expense.”⁴⁸ In addition to the lack of accountability, the “frequency and similarity of the violations” and the “fact that some administration officials repeatedly ignored the advice OSC provided to them,” led OSC to conclude that the “Trump administration tacitly or expressly approved of its senior officials violating the Hatch Act by campaigning for President Trump’s reelection.”⁴⁹ As a result, OSC concluded that President Trump’s “failure to impose discipline created the conditions for what appeared to be a taxpayer-funded campaign apparatus within the upper echelons of the executive branch.”⁵⁰

Potential Hatch Act Criminal Violations

The Hatch Act protects federal funds, employees, and programs from political manipulation. In particular, the statute has criminal provisions that are designed to provide penalties for egregious attempts at using federal authority to influence a federal election. While prosecutions under the criminal provisions of the Hatch Act are rare, they are not unprecedented. In 1974, for example, President Richard Nixon’s personal lawyer pled guilty to a criminal Hatch Act violation for attempting to trade an ambassadorship appointment for contributions to support President Nixon’s reelection.⁵¹

The conduct of President Trump, Secretary Pompeo, Acting Secretary Wolf, and other senior Trump administration officials is significantly more egregious. As OSC determined, Secretary Pompeo and Acting Secretary Wolf violated the civil provision of the Hatch Act by commingling campaign-related activity during the RNC with government operations in furtherance of President Trump’s reelection. OSC determined that Secretary Pompeo’s and Acting Secretary Wolf’s violations originated within the White House, or possibly the Trump campaign or President Trump himself, and President Trump’s alleged encouragement of violations and failure to hold officials like Ms. Conway accountable for even the most flagrant and clear-cut Hatch Act violations precipitated Hatch Act violations by at least thirteen senior officials in the weeks leading up to the 2020 presidential election. OSC viewed these Hatch Act violations as “especially pernicious” since they were made “in the final months of an election cycle” when “the benefit to the administration and resultant harm” would accrue on or before

⁴⁵ *Id.* at 39.

⁴⁶ OSC Report at 2 (“Under current law, OSC may seek disciplinary action, up to and including removal from federal service, against most federal employees who violate the Hatch Act by prosecuting alleged violations before the Merit Systems Protection Board (MSPB). But in the case of violations by Senate-confirmed presidential appointees—and, in OSC’s view, also by commissioned officers within the Executive Office of the President—OSC may only submit a report to the president.”).

⁴⁷ OSC Report at 40.

⁴⁸ *Id.* at 39.

⁴⁹ *Id.* 38.

⁵⁰ *Id.* at 2.

⁵¹ Anthony Ripley, *Kalmbach Pleads Guilty to 2 Campaign Charges; May Be Jaworski Witness*, *New York Times*, Feb. 26, 1974, <https://nyti.ms/3otSqAh>.

election day.⁵² Secretary Pompeo's and Acting Secretary Wolf's violations are particularly offensive since they were carried out against advice provided by State Department lawyers, agency ethics officials, and/or OSC.

A criminal provision of the Hatch Act prohibits public officers or employees from using their official authority to interfere or affect the nomination or election of a candidate for federal office. Specifically, 18 U.S.C. § 595 provides:

Whoever, being a person employed in any administrative position by the United States, or by any department or agency thereof, . . . or by any State, Territory, or Possession of the United States, . . . uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, [or] Presidential electors, . . . shall be fined under this title or imprisoned not more than one year, or both.

Like 5 U.S.C. § 7323(a)(1), which bars a covered federal employee from using his official authority or influence for the purpose of interfering with or affecting the result of an election, Section 595 is "aimed at the misuse of official authority"⁵³ and contains nearly identical elements. For example, both statutes require proof that a covered official used his official authority for purposes of affecting the nomination or the election of a candidate. As a result, OSC's conclusions that Secretary Pompeo and Acting Secretary Wolf violated 5 U.S.C. § 7323(a)(1) by using their official authority or influence for the purpose of benefiting President Trump as a candidate in the 2020 presidential election lay the predicate for DOJ to investigate whether they also violated Section 595.

While Section 7323(a)(1) is more limited in application, Section 595 "applies to all public officials, whether elected or appointed, federal or non-federal."⁵⁴ There is no question that President Trump, as an elected U.S. government official, and Secretary Pompeo and Acting Secretary Wolf, as presidential appointees confirmed by the Senate, are subject to Section 595. It is also clear that the DHS CoS and GC and the unnamed White House attorney identified in the OSC Report are subject to Section 595 by virtue of their appointments.

The critical element in proving a Section 595 offence is demonstrating "[t]he nexus between the official action and an intent to influence."⁵⁵ The evidence in this case clearly demonstrates that both Secretary Pompeo and Acting Secretary Wolf were using their official authority in order to carry out their respective roles at the RNC, the primary purpose of which was to promote President Trump's reelection as the Republican candidate. The "timing, justification, and scope" of Secretary Pompeo's policy change show its impetus was to remove the State Department bar that would otherwise prevent him from addressing the RNC, as requested by President Trump. Just a few days after he implemented the policy change, Secretary Pompeo strategically recorded his RNC speech while on official travel to Jerusalem, focusing its contents almost exclusively on the Trump administration's major foreign policy accomplishments.

⁵² OSC Report at 3.

⁵³ Federal Prosecution of Election Offenses 111 (Richard C. Pilger et al. eds., 8th ed. 2017), <https://www.justice.gov/criminal/file/1029066/download>.

⁵⁴ *Id.*

⁵⁵ *Id.*

For Acting Secretary Wolf, OSC determined that both the White House and DHS “understood that the August 25 ceremony was scheduled so that it could be featured as part of the RNC—i.e., to serve a partisan political purpose.” This fact was clearly established by White House communications with DHS, but a lack of “good faith cooperation” on the part of some White House and DHS witnesses and other “enforcement challenges” may have hindered OSC’s ability to obtain all relevant evidence. Nevertheless, OSC determined that Acting Secretary Wolf “knew, or should have known,” of the ceremony’s intended use as part of the RNC based on the timing and location of the ceremony relative to the RNC, and the likelihood that at least one of Acting Secretary Wolf’s key subordinates would have notified him of the partisan nature of the event.⁵⁶ The nexus between the use of official authority and the intent to influence or affect the election was also made perfectly clear to the White House attorney and DHS political appointees involved in these events, after the DHS career ethics attorney and OSC repeatedly informed them that the decision to move forward with the naturalization ceremony “for the purpose of creating content for the RNC violated the Hatch Act” and could not be cured by trying to change the ceremony into an official event.⁵⁷

As the Republican Party’s 2020 presidential nominee, President Trump likely was personally responsible for determining Secretary Pompeo’s and Acting Secretary Wolf’s respective roles at the RNC. At the same time, President Trump also appears to have used his official authority to effectuate Secretary Pompeo’s and Acting Secretary Wolf’s RNC appearances. There is no question that President Trump presided over the White House naturalization ceremony in an official capacity, and likely knew that ceremony was being recorded for broadcast that same evening to the RNC. Similarly, by asking, or arranging for someone else to ask, Secretary Pompeo to record an address to the RNC, President Trump made a request that was viewed de facto as a partial roll back of his presidential delegation of authority, the timing and circumstances of which strongly indicate it was carried out for the benefit his own reelection campaign.⁵⁸ Given the long-standing policy barring the Secretary of State (and other State Department political appointees) from actively participating in political conventions, President Trump likely knew or should have known that Secretary Pompeo would have to alter State Department policy to accommodate his request. As a result, President Trump appears to have improperly commingled campaign-related activity with government operations for the purpose of affecting the outcome of the 2020 presidential election in violation of Section 595.

Conclusion

By using their official authority to affect the outcome of the 2020 presidential election during the RNC, President Trump, Secretary Pompeo, Acting Secretary Wolf, and other senior Trump administration officials appear to have engaged in an “unprecedented challenge to th[e] foundational principle of executive branch neutrality with respect to political parties and candidates for partisan political office,”⁵⁹ and violated 18 U.S.C. § 595, the criminal provision of the Hatch Act that falls under DOJ’s jurisdiction. President Trump’s statements encouraging Hatch Act violations and his blatant disregard for enforcing the most flagrant and egregious Hatch Act violations are further evidence that senior Trump administration officials were emboldened to engage in Hatch Act violations and to wear those violations as a “badge of honor.”⁶⁰ Yet, OSC had no meaningful mechanism for holding President

⁵⁶ OSC Report at 38.

⁵⁷ *Id.*

⁵⁸ OSC Report at 32.

⁵⁹ *Id.* at 9.

⁶⁰ Papenfuss, *Huffington Post*, Nov. 14, 2021.

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Trump, Secretary Pompeo, Acting Secretary Wolf and other senior Trump administration officials fully accountable for their violations, while “enforcement challenges” prevented OSC from obtaining evidence that would have helped them identify the persons most culpable. Under these circumstances, a DOJ investigation is not only necessary to hold these individuals accountable but is essential to preventing and deterring future administrations from pursuing similar violations with impunity.

Sincerely,

A handwritten signature in blue ink, appearing to read "Noah Bookbinder".

Noah Bookbinder
President

A handwritten signature in blue ink, appearing to read "Virginia Canter".

Virginia Canter
Chief Ethics Counsel