

February 4, 2020

The Honorable Henry Kerner  
Special Counsel  
Office of Special Counsel  
1730 M Street, NW, Suite 218  
Washington, DC 20036-4505

Re: Violation of the Hatch Act by Jared Kushner

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Senior Advisor and Assistant to the President Jared Kushner violated the Hatch Act during an interview on CNN with Fareed Zakaria when he advocated for the Trump campaign while appearing in his official capacity on behalf of the Trump administration.

**Factual Background**

On Sunday, February 2, 2020, CNN aired a recorded interview of Mr. Kushner on Mr. Zakaria’s show, Global Public Square (“GPS”).<sup>1</sup> In an article released on Saturday before the interview aired on the network, CNN identified its guest as “President Donald Trump’s senior adviser Jared Kushner.”<sup>2</sup> CNN’s website identifies him as “Senior Advisor to the President.”<sup>3</sup> On Saturday, Mr. Zakaria promoted the show as covering both Trump administration policies and the Trump campaign: “On GPS tomorrow @ 10am & 1pm ET on @CNN: You can see my interview w/ @jaredkushner about Pres. Trump’s Middle East peace plan, trade, reelection prospects for 2020, & more.”<sup>4</sup> At the start of the interview, which aired on Sunday, Mr. Zakaria introduced Mr. Kushner by reference to his official title: “I’ll talk to President Trump’s senior adviser, Jared Kushner, the man who worked for three years to produce this plan.”<sup>5</sup>

The discussion of Mr. Kushner’s work in the government confirmed that Mr. Kushner was appearing in his official capacity. Opening the first segment of the interview with a discussion of the Trump administration’s proposed plan for Israel, Mr. Zakaria referenced Mr. Kushner’s official role in developing the plan: “I had the opportunity to talk to the man behind it all, Jared Kushner, on Friday.”<sup>6</sup> Mr. Kushner talked about the administration’s

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<sup>1</sup> Fareed Zakaria GPS, Rush Transcript (episode: 10:00 a.m., Feb. 2, 2020), <https://cnn.it/3b6FvLV> (last viewed Feb. 3, 2020) (“CNN Rush Transcript”).

<sup>2</sup> Nicole Gaouette, [Kushner says Trump critics like Bolton ‘didn’t have what it took’](https://cnn.it/2GJLKHt), *CNN*, Feb. 1, 2020, <https://cnn.it/2GJLKHt>.

<sup>3</sup> Fareed Zakaria, [On GPS: Will Palestine be a state?](https://cnn.it/2Ulwzwl), *CNN*, <https://cnn.it/2Ulwzwl> (last viewed Feb. 3, 2020).

<sup>4</sup> Twitter account of Fareed Zakaria, @FareedZakaria, Feb. 1, 2020 (posted at 12:41 p.m.), <https://bit.ly/2UiopVe>.

<sup>5</sup> CNN Rush Transcript.

<sup>6</sup> *Id.*

approach to the negotiations.<sup>7</sup> His words made clear he was speaking for the Trump administration, as in the case of this response: “We’ve been working on this for now about three years. We’ve studied this very carefully and what President Trump was able to accomplish this past week is first of all unify Israel on a plan during an election on the most divisive issue in Israeli politics which [has] never been done before.”<sup>8</sup>

Mr. Zakaria characterized the second segment of the interview as a discussion with “Jared Kushner on Donald Trump’s strategy to win again.”<sup>9</sup> During the segment, the chyron identified Mr. Kushner as “Senior Adviser to President Trump” and the topic as “Jared Kushner on Trump’s Reelection.”<sup>10</sup> At the opening of the segment, Mr. Zakaria specifically framed the discussion in terms of Mr. Kushner’s role as a leader of the Trump campaign: “Let me ask you about the campaign because you are now moving on to -- to run the president’s campaign or at least to be substantially involved in it.”<sup>11</sup> The discussion that followed included a pitch for President Trump’s reelection:

KUSHNER: Yes, I think there’s just a big difference between what the voters see and what the voters want, and from what the -- what people maybe in the Washington or in the media are calling for. What we’ve seen since the impeachment started is that most people by the way are not paying attention to it.

We’ve seen the president’s numbers go up by seven points. We got polling back last night that showed that the president’s approval rating nationally was over 50 percent. It was the highest that it’s been since right after the inauguration. So we’ve seen --

ZAKARIA: Yes, the RealClearPolitics average is more like 44 percent.

KUSHNER: I think it was about 46 percent, but again everything is relative, right? Again there is a lot of polls that were wrong in the last election. I think our data proved to be more right than the public holds and I think that it will continue to be. But I’ll also say about approval, though, is in the last election, when Romney ran, two percent of the people who disapproved of him voted for him.

In the last election, 15 percent of the people who disapproved of president -- of

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<sup>7</sup> Twitter account of Fareed Zakaria, @FareedZakaria, Feb. 1, 2020 (“Could Palestine become a state under Pres. Trump’s peace plan, realistically? @jaredkushner defends the high bar it lays out. You can see our interview (on the peace plan & more) tomorrow on GPS, @ 10am & 1pm ET on @CNN”) (posted at 12:22 p.m., linked to video), <https://bit.ly/2S7skBL>.

<sup>8</sup> CNN Rush Transcript.

<sup>9</sup> *Id.*

<sup>10</sup> YouTube: [Jared Kushner: Trump’s base is getting strong](https://www.youtube.com/watch?v=36PT6Ux), CNN, Feb. 2, 2020 (see video clip at roughly 54 seconds after start), <https://bit.ly/36PT6Ux>.

<sup>11</sup> CNN Rush Transcript; *see also* Twitter account of Fareed Zakaria, @FareedZakaria, Feb. 1, 2020 (“If impeachment has helped Pres. Trump with his base, what happens once it’s over? @jaredkushner runs through a list of reasons to bet on reelection in 2020. You can see our full interview on GPS, @ 10am & 1pm ET Sunday on @CNN”) (posted at 2:29 p.m., linked to video), <https://bit.ly/36N3In1>.

Donald Trump as a candidate, and they're voting for him. So look, I think his base is strong, getting stronger. Last night we were in Iowa, we had a massive crowd. We were around in New Jersey this week. About 160,000 people signed up for it. I mean, the energy that I'm feeling today was stronger than what we felt at the end of the campaign last year.

I think that President Trump has not lost many supporters. If any at all. And I think that a lot of people who say well, what he's talking about, now he's actually done all the things he's promised. He's actually done more things than he's promised. He got done criminal justice reform work done. He did promise he was going to do that. He did a lot of things that he didn't even promise he was going to do.

And again, the American consumer has never been stronger. He's created seven million jobs. You have 2.5 million Americans that have been -- that have entered the work force, and 2.5 million Americans who've been lifted out of poverty, almost 10 million Americans that have come off of food stamps.

The numbers are unbelievable. But I will say this, the more time we spend in Washington and the more the administration gets better and better at it, and the more the president has his vision for what he wants to do, he believes that the potential for this country is unbelievable. And so as we finish implementing our deregulation agenda, our tax reform agenda, hopefully we'll do more tax cuts as we, you know, focus on becoming energy independent, which is critical to our nation's security, bringing down energy cost for people, folks on workforce training, training people for the future economy.

We have a lot of things. We have folks in the judiciary where the president has been very successful. The potential for making this country strong is unbelievable and the president has been very enthusiastic about what he's been able to accomplish so far.<sup>12</sup>

The second segment closed with Mr. Kushner emphasizing that Americans should be proud of President Trump "whether you voted for the president or you didn't vote for him":

And when I look around the administration, the White House, the Cabinet, I think that the people we have now are spectacular. I feel honored every day to be able to work with them. And I really believe we're getting a lot of things done and we're getting better and better at this every day.

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<sup>12</sup> CNN Rush Transcript; *see also* [Jared Kushner: Trump's base is getting strong](https://bit.ly/36PT6Ux) (video clip), CNN, Feb. 2, 2020, <https://bit.ly/36PT6Ux>.

And I'll just say this, which is that, the president is very focused, he really does not -- he's not somebody who's taking political decisions. He's saying what's right or wrong for the country. And as an American, whether you voted for the president or you didn't vote for him, I think you can be very proud that you have a president who shows up every day at work, trying to make the country stronger, make our economy better, make our country richer and keeping our country safe.<sup>13</sup>

In the interview's third segment, Mr. Zakaria and Mr. Kushner switched back to a discussion of Mr. Kushner's official activities on behalf of the Trump administration, this time in connection with a trade deal with Mexico and Canada.<sup>14</sup> In this segment, Mr. Kushner articulated the Trump administration's views on the United States-Mexico-Canada Agreement.<sup>15</sup>

In the article published on Saturday, February 1, previewing his appearance, CNN also reported that Mr. Kushner criticized the opposing political party in the interview: "Kushner also blamed Democrats for 'harassing' him and Trump, and suggesting they are to blame for divisions in the country."<sup>16</sup> This exchange did not air on Sunday, but the article publishing his remarks during the interview quoted him as saying, "I think people want to blame the President for the country being divided, but I think they should look at the Dems and what they are doing."<sup>17</sup> Mr. Kushner reportedly told CNN that Trump is "strong, he's getting stronger, the campaign is running well, his supporters are fired up and I do think this November is going to be a very, very important election."<sup>18</sup>



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<sup>13</sup> CNN Rush Transcript.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*; see also Twitter account of the Republican National Committee, @GOP, Feb. 2, 2020 ("Jared Kushner on the USMCA [arrow pointing to video clip] 'It is one of the greatest trade deals of all time.'") (posted at 2:08 p.m., linked to video), <https://bit.ly/2vJSova>.

<sup>16</sup> Gaouette, *CNN*, Feb. 1, 2020.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

## **Potential Violations**

### *The Hatch Act - 5 U.S.C. § 7323(a)(1)*

The Hatch Act provides that an executive branch employee may not “use his official authority or influence for the purpose of interfering with or affecting the result of an election.”<sup>19</sup> Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”<sup>20</sup> “Political activity” is defined as “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”<sup>21</sup> In a report recommending the firing of Senior Counselor to the President Kellyanne Conway, OSC explained that “a federal employee violates the Hatch Act if she promotes the election or defeat of candidates for partisan political office while speaking in her official capacity.”<sup>22</sup>

Mr. Kushner violated 5 U.S.C. § 7323(a)(1) when he appeared on CNN in his official capacity as a White House official and devoted much of the second segment to delivering a pitch for the Trump campaign. There is no doubt that he was appearing in his official capacity, for he repeatedly was identified by his official title and spoke on behalf of the Trump administration about its activities. In the first and third segments of the interview, Mr. Kushner spoke about his official responsibilities connected to the plan for Israel and the United States-Mexico-Canada Agreement.

Sandwiched between these segments, however, was a second segment in which Mr. Kushner advocated for the Trump campaign. During part of that segment, Mr. Kushner appeared on screen above a chyron that identified him as “Senior Adviser to President Trump” but characterized him as talking about “Trump’s Reelection.”<sup>23</sup> His language was that of campaign rhetoric, which included a direct appeal to voters: “And as an American, whether you voted for the president or you didn’t vote for him, I think you can be very proud that you have a president who shows up every day at work, trying to make the country stronger, make our economy better, make our country richer and keeping our country safe.”<sup>24</sup> At one point, he seemed to be trying to build enthusiasm for President Trump’s campaign rallies: “So look, I think his base is strong, getting stronger. Last night we were in Iowa, we had a massive crowd. We were around in New Jersey this week. About 160,000 people signed up for it. I mean, the energy that I’m feeling today was stronger than what we felt at the end of the campaign last year.”<sup>25</sup> In addition, CNN quoted Mr. Kushner as saying, in a part of the interview that has not yet aired, that Trump is “strong, he’s getting stronger, the campaign is running well, his supporters are fired up and I do think this November is going to be a very, very important

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<sup>19</sup> 5 U.S.C. § 7323(a)(1).

<sup>20</sup> 5 C.F.R. § 734.302(b)(1).

<sup>21</sup> 5 C.F.R. § 734.101.

<sup>22</sup> U.S. Office of Special Counsel, *Report of Prohibited Political Activity, OSC File Nos. HA-19-0631 & HA-19-3395 (Kellyanne Conway)*, at 4, May 30, 2019, <https://go.aws/36TBeLu> (“Conway Report”).

<sup>23</sup> Jared Kushner: Trump’s base is getting strong, *CNN*, Feb. 2, 2020 (see video clip at roughly 54 seconds after start), <https://bit.ly/36PT6Ux>.

<sup>24</sup> CNN Rush Transcript.

<sup>25</sup> *Id.*

election.”<sup>26</sup> CNN also indicates he criticized the Democratic Party, saying it was responsible for divisions in the country that some had attributed to President Trump.<sup>27</sup>

This conduct parallels OSC’s description of Hatch Act violations that Ms. Conway committed during televised interviews. In a report on Ms. Conway’s misconduct, OSC found that “while speaking in her official capacity, Ms. Conway also engaged in campaign rhetoric, remarking on the strength of President Trump’s candidacy and/or the weaknesses of the Democratic Party’s candidates in the upcoming 2020 presidential election.”<sup>28</sup> As in the case of Ms. Conway, Mr. Kushner’s apparent violation of the Hatch Act reached a nationwide television audience. Unlike Ms. Conway, the conduct was even more clearly tied to the Trump campaign’s election efforts because Mr. Kushner was identified as “now moving on to . . . run the President’s campaign or at least to be substantially involved in it.”<sup>29</sup> This conduct runs the risk of inappropriately leveraging the power and prestige of the federal government for the advancement of a candidate, one of the harms against which the Hatch Act aims to protect, and appears to be the kind of conduct which would result in employment consequences if engaged in by lower-level employees.

### **Conclusion**

The Hatch Act is intended to prevent federal employees from engaging in partisan political activity in their official capacity. Mr. Kushner’s remarks during a nationally televised interview violated the Hatch Act’s prohibition against using official authority or influence for the purpose of interfering with or affecting the result of an election. It was inappropriate for him to advocate for President Trump’s reelection during an appearance as a White House official to discuss official Trump administration policies. Therefore, OSC should commence an immediate investigation of this apparent violation and take appropriate corrective action.

Sincerely,



Noah Bookbinder  
Executive Director



Walter M. Shaub, Jr.  
Senior Advisor

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<sup>26</sup> Gaouette, *CNN*, Feb. 1, 2020.

<sup>27</sup> *Id.*

<sup>28</sup> Conway Report, at 6.

<sup>29</sup> CNN Rush Transcript.