

April 9, 2020

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

Re: OSC File No. HA-20-000136 (Jared Kushner)

Dear Special Counsel Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) reconsider its March 20, 2020, decision regarding Jared Kushner, who is both a Senior Advisor to the President and President Trump’s son-in-law. OSC concluded that Jared Kushner did not violate the Hatch Act during an interview with *CNN*’s Fareed Zakaria; however, OSC’s conclusion did not flow from its findings of fact. Most troubling was OSC’s refusal to consider some of his remarks because, instead of airing them on television, *CNN* published them in an article—an approach to Hatch Act enforcement for which there is no basis in the law.

OSC made three key findings but failed to consider two of them. First, OSC found that Mr. Kushner participated in the interview in his official capacity.<sup>1</sup> Second, OSC found that some of his remarks were inappropriate for an employee appearing in an official capacity.<sup>2</sup> Third, OSC found that Mr. Zakaria indicated the second segment of the interview was about President Trump’s campaign for reelection,<sup>3</sup> which Mr. Kushner was running.<sup>4</sup> However, OSC expressly declined to consider the remarks that it deemed inappropriate because *CNN* published them in an article instead of airing them on television.<sup>5</sup> *CNN* aired other troubling remarks by Mr. Kushner on television, but OSC evaluated them as though they had not been made in the context of a discussion with Mr. Zakaria about the campaign.<sup>6</sup>

Although the full interview did not air on television, *CNN* published an article citing the remarks OSC found inappropriate on its digital platform.<sup>7</sup> The article explained that Mr. Kushner had criticized the opposing political party: “Kushner also blamed Democrats for ‘harassing’ him

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<sup>1</sup> Letter from Erica S. Hamrick, Deputy Chief, Hatch Act Unit, U.S. Office of Special Counsel, to Noah Bookbinder, Executive Director, Citizens for Responsibility and Ethics in Washington, OSC File No. HA-20-000136, at 1, Mar. 20, 2020 (“OSC Decision”).

<sup>2</sup> *Id.*, at 2 n.4.

<sup>3</sup> *Id.*, at 1-2.

<sup>4</sup> Annie Karni and Maggie Haberman, Kushner’s Global Role Shrinks as He Tackles Another: The 2020 Election, *New York Times*, Jan. 9, 2020, <https://nyti.ms/36B1xnK>.

<sup>5</sup> OSC Decision, at 2 n.4.

<sup>6</sup> *Id.*, at 2.

<sup>7</sup> Nicole Gaouette, Kushner says Trump critics like Bolton ‘didn’t have what it took’, *CNN*, Feb. 1, 2020, <https://cnn.it/2GJLKHt>.

and Trump, and suggesting they are to blame for divisions in the country.”<sup>8</sup> The article also 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>9</sup> The article also directly quoted him as saying 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>10</sup>

Upon reviewing CREW’s February 4, 2020, Hatch Act complaint against Mr. Kushner, OSC wrote: “This is the type of statement OSC would advise an employee against making when speaking in his official capacity.”<sup>11</sup> OSC also acknowledged *CNN*’s reporting on this language in the article on its digital platform.<sup>12</sup> Yet OSC’s decision explained that “OSC cannot factor it into the analysis” because it “does not appear in either the aired interview or the transcript of the interview.” This approach to Hatch Act enforcement runs contrary to the law.

Nothing in the Hatch Act provides that an executive branch employee’s words can violate the law only if they are released in the form of video or a transcript of a video.<sup>13</sup> To the contrary, OSC has found other employees guilty of Hatch Act violations based on written remarks. For example, OSC recently determined that one employee violated the law by including a single comment in a PowerPoint presentation for his coworkers.<sup>14</sup> In another recent case, OSC determined that an employee violated the law by sending emails to coworkers and posting remarks on his personal Facebook account.<sup>15</sup>

OSC has not indicated how many coworkers or friends saw the PowerPoint presentation, emails and Facebook posts in these cases,<sup>16</sup> but the article about Mr. Kushner’s interview undoubtedly reached a vastly greater audience. *CNN*’s online content receives over 200 million unique visitors each month.<sup>17</sup> This volume exceeds even that of major newspapers, which publish behind paywalls, like the *New York Times*, with its 4.4 million digital subscribers, and the *Wall Street Journal*, with its 2 million digital subscribers.<sup>18</sup>

Mr. Kushner’s expectations regarding the interview could not have factored into OSC’s analysis. He made his remarks with the knowledge—and presumably the hope—that they would reach a broad public audience. Whether *CNN* chose to air the video, release the transcript or

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<sup>8</sup> *Id.*

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

<sup>10</sup> *Id.*

<sup>11</sup> OSC Decision, at 2 n.4; Citizens for Responsibility and Ethics in Washington, *CREW Files Hatch Act Complaint Against Jared Kushner*, Feb. 4, 2020, <https://bit.ly/2xFSvbW>.

<sup>12</sup> OSC Decision, at 2 n.4.

<sup>13</sup> 5 U.S.C. § 7323.

<sup>14</sup> U.S. Office of Special Counsel, *OSC Announces Significant Discipline Imposed on Two Federal Employees for Hatch Act Violations*, Oct. 18, 2019, <https://bit.ly/2O4Gkej>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *CNN*, *CNN Worldwide Fact Sheet*, <https://cnn.it/2JuXJdu> (last viewed Apr. 6, 2020).


<sup>18</sup> Joshua Benton, *The Wall Street Journal joins The New York Times in the 2 million digital subscriber club*, *NiemanLab*, Feb. 10, 2020, <https://bit.ly/33XLQGP>.

publish an article, Mr. Kushner made his remarks to the news outlet on the record. Therefore, OSC erred by ignoring published remarks that it has acknowledged Mr. Kushner made in his official capacity. Standing alone, they constituted a Hatch Act violation.

It is also troubling that OSC considered other remarks by Mr. Kushner out of context. Discussing the portion of the interview's second segment that aired on television, OSC wrote: "it is only Mr. Zakaria's comments and CNN's chyron that give any indication the segment is supposed to be about the campaign." But to reach this conclusion, OSC had to ignore the fact that Mr. Zakaria *told* Mr. Kushner—and the audience—that he was asking about the campaign: "Let me ask you about the campaign."<sup>19</sup> OSC also had to ignore that, in response, Mr. Kushner discussed two Trump campaign rallies, voters, polling data, the possibility of the impeachment hurting his chances, two past elections, and a former presidential candidate.<sup>20</sup> In addition, OSC had to ignore that a quote from Mr. Kushner in *CNN*'s article confirmed he was talking about the campaign: "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>21</sup> Finally, OSC's acknowledgment that Mr. Kushner discussed President Trump's "base" is hard to reconcile with its assertion that he was not clearly talking about the campaign—inasmuch as the term refers to the voters most likely to support President Trump in the election.<sup>22</sup>

For these reasons, we respectfully request that OSC reconsider its March 20, 2020, conclusion that Mr. Kushner did not violate the Hatch Act during a *CNN* interview in his official capacity. We encourage OSC to treat Mr. Kushner the same as it has treated other executive branch employees whose unlawful political remarks were released in written form.

Sincerely,



Noah Bookbinder  
Executive Director

Enclosures

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<sup>19</sup> Fareed Zakaria GPS, Rush Transcript (episode: 10:00 a.m., Feb. 2, 2020), <https://cnn.it/3b6FvLV>.

<sup>20</sup> *Id.*

<sup>21</sup> Gaouette, *CNN*, Feb. 1, 2020.

<sup>22</sup> OSC Decision, at 2; Peter K. Enns, Jonathon P. Schuldt, and Adrienne Scott, [Trump's political base is weaker than it seems, our new study finds](https://wapo.st/2Jqg8Ip), *Washington Post*, Aug. 7, 2018, <https://wapo.st/2Jqg8Ip>; [In Party Politics, Who Exactly Is "The Base"?](https://www.npr.org/2011/06/29/139517000) (Talk of the Nation), *NPR*, June 29, 2011, <https://www.npr.org/2011/06/29/139517000>.



U.S. OFFICE OF SPECIAL COUNSEL  
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March 20, 2020

Noah Bookbinder  
Executive Director  
Citizens for Responsibility and Ethics in Washington  
1101 K Street, N.W. Suite 201  
Washington, DC 20005

VIA EMAIL: [dsherman@citizensforethics.org](mailto:dsherman@citizensforethics.org)

Re: OSC File No. HA-20-000136

Dear Mr. Bookbinder:

This letter is in response to a complaint you filed with the U.S. Office of Special Counsel (OSC) alleging that Senior Advisor and Assistant to the President Jared Kushner violated the Hatch Act. Specifically, your complaint alleges that, during a pre-recorded interview with Fareed Zakaria, which aired on the February 2, 2020 edition of CNN's Global Public Square, Kushner engaged in political activity while appearing in his official capacity on behalf of the Trump Administration. As explained below, OSC has concluded that Mr. Kushner did not violate the Hatch Act.

The Hatch Act restricts certain political activities of federal executive branch employees, except for the President and the Vice President.<sup>1</sup> Accordingly, as Senior Advisor and Assistant to the President, Mr. Kushner is covered by the Hatch Act and prohibited from, among other things, using his official authority or influence for the purpose of interfering with or affecting the result of an election.<sup>2</sup> For example, Mr. Kushner may not use his official title while engaging in political activity or his official position to advance or oppose candidates for partisan political office. Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office, or partisan political group.<sup>3</sup>

The facts support the conclusion that Mr. Kushner appeared in his official capacity during the interview with Mr. Zakaria – he was introduced with his official title, his title appeared in the chyron, and he spoke on behalf of the Administration about official matters. Indeed, the first and third segments of the interview were about his role with respect to the Administration's Israeli-Palestinian peace plan and its trade agreement with Mexico and Canada.

Although Mr. Kushner gave this interview in his official capacity, the facts do not support the conclusion that he used his official authority to affect an election. Mr. Zakaria began

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<sup>1</sup> 5 U.S.C. §§ 7321-7326.

<sup>2</sup> *Id.* § 7323(a)(1).

<sup>3</sup> 5 C.F.R. § 734.101.

the second segment of the interview by asking Mr. Kushner about the campaign and noting that Mr. Kushner will be substantially involved in it. During this segment, the chyron read, “Jared Kushner on Trump’s Reelection Campaign” while identifying him as “Senior Advisor to President Trump.” Mr. Kushner first discussed impeachment and how there is “a big difference between what the voters see and what the voters want” and that most people are not paying that much attention to the impeachment. He also discussed President Trump’s approval ratings, noted that “his base is strong, getting stronger,” and that “the energy that [he’s] feeling today was stronger than what [they] felt at the end of the campaign last year.”

During the rest of that second segment, Mr. Kushner touted President Trump’s accomplishments and how he has done the things he promised. He also discussed former Administration officials’ perceived dissatisfaction with President Trump. He ended by saying:

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.

Notably, Mr. Kushner did not talk about reelecting President Trump or about any of the Democratic Party candidates. Indeed, it is only Mr. Zakaria’s comments and CNN’s chyron that give any indication the segment is supposed to be about the campaign. But Mr. Kushner’s statements about impeachment, approval ratings, the strength of President Trump’s base, and the Administration’s successes are all acceptable talking points for a White House official speaking in his official capacity. And OSC consistently has advised this and past Administrations that similar talking points from White House officials do not violate the Hatch Act. Accordingly, despite how Mr. Zakaria introduced this segment of the interview, OSC cannot conclude that Mr. Kushner used his official authority to affect an election.<sup>4</sup>

Based on the preceding, we are closing our file without further action. You may contact me at (202) 804-7054 if you have any questions.

Sincerely,



Erica S. Hamrick  
Deputy Chief  
Hatch Act Unit

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<sup>4</sup> As additional evidence of Mr. Kushner’s alleged violation, your complaint points to a February 1, 2020 CNN article previewing Mr. Zakaria’s interview of Mr. Kushner. The article quotes Mr. Kushner as saying, “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.’” This is the type of statement OSC would advise an employee against making when speaking in his official capacity. But that statement does not appear in either the aired interview or the transcript of the interview. So OSC cannot factor it into the analysis.

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.