

August 27, 2020

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

Re: Violations of the Hatch Act by Chad Wolf

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether acting Secretary of Homeland Security Chad Wolf violated the Hatch Act by participating in a naturalization ceremony in his official capacity that appears to have been designed and promoted to support the Republican National Convention and the Republican nominee for president, Donald Trump. By participating in this event that mixed official government business with support of a political party and a candidate for partisan political office, Mr. Wolf appears to have used his official authority or influence for the purpose of interfering with or affecting the result of an election. His participation in during this event constitutes political activity prohibited by law.

Factual Background

According to the Department of Homeland Security (“DHS”) website, President Trump designated Chad Wolf to serve as the Acting Secretary of Homeland Security on November 13, 2019.¹ Mr. Wolf was previously confirmed by the Senate to serve as the first Under Secretary of the DHS Office of Strategy, Policy, and Plans.² On August 14, 2020, the US Government Accountability Office (“GAO”), which issues decisions on agency compliance with the Vacancies Reform Act, found that Mr. Wolf’s appointment as Acting Secretary was “improper” and “invalid” under the law.³

Use of Official Position for Partisan Political Purpose

On August 25, 2020, the Republican National Convention aired video of a naturalization ceremony of five new American citizens.⁴ The ceremony took place earlier that day on White

¹ U.S. Department of Homeland Security, Chad F. Wolf, <https://www.dhs.gov/person/chad-f-wolf>.

² *Id.*

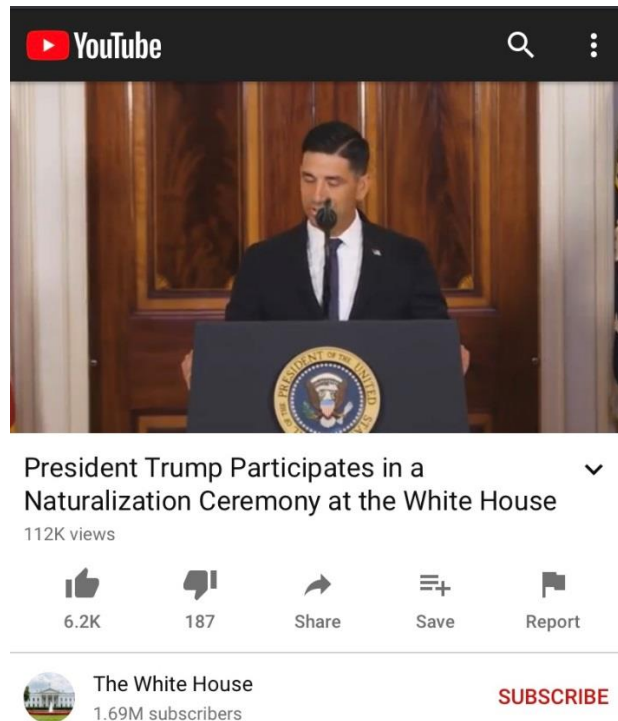
³ U.S. Government Accountability Office, Decision, Matter of: Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security, Aug. 14, 2020, <https://www.gao.gov/assets/710/708830.pdf>.

⁴ RNC Airs Trump Hosting Naturalization Ceremony, *Associated Press*, Aug. 26, 2020, <https://www.pbs.org/newshour/politics/watch-rnc-air-trump-hosting-naturalization-ceremony>; C-SPAN, 2020 Republican National Convention, Day 2, Tuesday, August 25, 2020 (showing the ceremony aired at 10:04 p.m.), <https://www.c-span.org/convention/?party=rnc&day=1598328000>.

House grounds and was attended by President Trump.⁵ Mr. Wolf participated in the event by making introductory remarks and administering the naturalization oath of allegiance to the new citizens.⁶ Notwithstanding GAO's recent decision, Mr. Wolf was introduced by the official title "Acting Secretary Wolf."⁷ Mr. Wolf spoke from behind a podium bearing the seal of the President of the United States.⁸

According to the *New York Times*, the White House began coordinating with the Washington office of the U.S. Citizenship and Immigration Services ("USCIS"), a DHS agency under Mr. Wolf's control, to organize this event the week before the Republican National Convention.⁹ As part of the planning, White House officials suggested USCIS find immigrants from Mexico for the ceremony, but ultimately, none appeared at the event.¹⁰ No USCIS officials spoke at the ceremony, but Mr. Wolf did.

Mr. Wolf's appearance was posted on the official White House YouTube page.¹¹



⁵ Zolan Kanno-Youngs and Michael D. Shear, [Trump Takes Night Off From Anti-Immigrant Talk to Swear In U.S. Citizens](https://www.nytimes.com/2020/08/26/us/politics/trump-naturalization-ceremony-rnc.html), *New York Times*, Aug. 26, 2020, <https://www.nytimes.com/2020/08/26/us/politics/trump-naturalization-ceremony-rnc.html>.

⁶ [RNC Airs Trump Hosting Naturalization Ceremony](#), *Associated Press*, Aug. 26, 2020.

⁷ *Id.*

⁸ *Id.*

⁹ Kanno-Youngs and Shear, *New York Times*, Aug. 26, 2020.

¹⁰ *Id.*

¹¹ The White House YouTube Channel, [President Trump Participates in a Naturalization Ceremony at the White House](https://www.youtube.com/watch?time_continue=44&v=vb9qXvGAQTA&feature=emb_title), Aug. 25, 2020, https://www.youtube.com/watch?time_continue=44&v=vb9qXvGAQTA&feature=emb_title.

After Mr. Wolf's participation, the Trump campaign posted the video of the event on Twitter.¹² The @TeamTrump twitter account notes that it is the "official Twitter account for the Trump Campaign."¹³



Public reports indicate immediate concerns that the naturalization ceremony was designed for political purposes.¹⁴ For example, two of the new citizens who took the naturalization oath reported that "[t]hey found out only minutes before the ceremony that President Trump would attend, and they didn't know it would be aired during the Republican convention that night."¹⁵ The *Wall Street Journal* reported that the "White House directed inquiries related to the ceremony to Mr. Trump's campaign."¹⁶

¹² See Team Trump (@TeamTrump), Twitter, <https://twitter.com/TeamTrump/status/1298448487655383043>.

¹³ See generally Team Trump (@TeamTrump), Twitter, <https://twitter.com/TeamTrump>.

¹⁴ See, e.g., Michelle Ye Hee Lee and Josh Dawsey, *Focus on Trump's official White House actions as part of Republican convention programming raises Hatch Act concerns*, *Washington Post*, Aug. 26, 2020, https://www.washingtonpost.com/politics/hatch-act-republican-convention/2020/08/25/53b72b44-e6f8-11ea-970a-64c73a1c2392_story.html.

¹⁵ Tarini Parti and Michael C. Bender, *Immigrants in Trump-Led Ceremony Didn't Know They Would Appear at RNC*, *Wall Street Journal*, Aug. 26, 2020, <https://www.wsj.com/articles/immigrants-in-trump-led-ceremony-didnt-know-they-would-appear-at-rnc-11598481345>.

¹⁶ *Id.*

White House officials claimed that the ceremony “was an official government event because it was taped Tuesday afternoon and publicly made available on the White House website.”¹⁷ According to a White House spokeswoman, “the president’s re-election campaign had simply decided to use it once it was on the website.”¹⁸

During an interview on August 26, 2020 with *Politico* Playbook, White House Chief of Staff Mark Meadows provided a different assessment of the event.¹⁹ Following questions regarding the Hatch Act concerns raised by Secretary Pompeo’s Republican National Convention speech from Jerusalem and the White House hosting parts of the convention, Meadows affirmatively referenced the naturalization ceremony.²⁰ He said:

When you look at official acts, and whether it’s the naturalization process that went through where you had five new citizens being sworn in or the pardon -- you know, there are a couple of things you can do to make sure that you’re in compliance with the Hatch Act. But for the vast majority ... nobody outside of the Beltway really cares.²¹

Potential Violations

The Hatch Act - 5 U.S.C. §§ 7321-26

The Hatch Act prohibits any executive branch employee from “us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election.”²² Activities covered by this prohibition include a federal employee’s use of their official authority or position while participating in political activity.²³ “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.”²⁴ The Hatch Act further prohibits most federal employees from engaging in political activity while on duty, but it does not prohibit certain employees appointed by the President, by and with the advice and consent of the Senate, from doing so.²⁵ However, if these officials do engage in political activity, they must do so in their personal capacities and the costs associated with their political activity must not be paid with money derived from the United States Treasury.²⁶ Penalties under the Hatch Act are generally administrative in nature,

¹⁷ Kanno-Youngs and Shear, *New York Times*, Aug. 26, 2020.

¹⁸ *Id.*; see also Rebecca Ballhaus, (@rebeccaballhaus), Twitter (quoting White House official asserting that the ceremony 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 publicly available content for campaign purposes”), <https://twitter.com/rebeccaballhaus/status/1298467883656388608>.

¹⁹ *Playbook Interview with W.H. Chief of Staff Mark Meadows*, *Politico*, Aug. 26, 2020, <https://www.politico.com/video/2020/08/26/playbook-meadows-rnc-trump-086799>.

²⁰ *Id.*

²¹ *Id.*

²² 5 U.S.C. § 7323(a)(1).

²³ 5 C.F.R. § 734.302(b)(1).

²⁴ 5 C.F.R. § 734.101.

²⁵ 5 U.S.C. § 7324(b).

²⁶ *Id.*

but can include removal from government service, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or a civil fine.²⁷

In its August 2012 report regarding Hatch Act violations by then-Secretary of Health and Human Services Kathleen Sebelius, OSC found that she violated that Hatch Act by “making extemporaneous political remarks in a speech delivered in her official capacity.”²⁸ OSC stated:

Secretary Sebelius appeared at the [Human Rights Campaign] gala in her official capacity as HHS Secretary. As explained above, twice during the speech, Secretary Sebelius diverged from her prepared remarks. First, she endorsed the gubernatorial campaign of North Carolina Lieutenant Governor Walter Dalton and stated that it is “hugely important” to elect a Democratic Governor in North Carolina. Although Secretary Sebelius testified that she “had not intended to endorse him,” her words had that effect. Because she made this endorsement in her official capacity as HHS Secretary, she violated the Hatch Act.

In addition, Secretary Sebelius advocated for the reelection of President Obama in a series of extemporaneous remarks. ... These statements were made in Secretary Sebelius’ official capacity and therefore violated the Hatch Act’s prohibition against using official authority or influence to affect the results of an election.²⁹

Because of the political nature of Secretary Sebelius’ comments at the event, the Department of Health and Human Services “retroactively reclassified the event as political” and then “took appropriate and timely steps to ensure that the government received reimbursement for all travel related costs and expenses” in order to cure any violation of § 7324(b).³⁰

In 2011, OSC found that in the George W. Bush White House in 2006, the Office of Political Affairs and Bush political appointees violated the Hatch Act by encouraging and arranging for “high-level agency political appointees to attend events with targeted Republican candidates in order to attract positive media attention to their campaigns” and coordinating “high-level political appointees’ travel to both political and official events with Republican candidates.”³¹

Mr. Wolf Violated the Hatch Act by Participating in the Naturalization Ceremony

Mr. Wolf violated the Hatch Act by participating in the August 25, 2020 naturalization ceremony at the White House which was aired during the Republican National Convention by

²⁷ 5 U.S.C. § 7326.

²⁸ Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-12-1989 (Kathleen G. Sebelius), Aug. 23, 2012, [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).

²⁹ *Id.*

³⁰ *Id.*

³¹ Office of Special Counsel, Investigation of Political Activities by White House and Federal Agency officials During the 2006 Midterm Elections, Jan. 2011, http://www.judicialwatch.org/wp-content/uploads/2013/07/F_D_2011_2006MidTermElectionWHPolActivities.pdf.

impermissibly mixing official government business with a political event to promote President Trump's re-election. There is no doubt that Mr. Wolf attended the ceremony in his official capacity and was on duty. Mr. Wolf was introduced by his title and made his remarks standing behind the official seal of the President of the United States. The White House promoted the event on its official YouTube account. Indeed, the event itself – a naturalization ceremony – was an inherently governmental function. Given these facts, Mr. Wolf used his official position, authority, and title while presiding over this ceremony.

There is also little doubt that the naturalization event Mr. Wolf participated in was aimed at influencing the success or failure of a candidate in a partisan election. While White House officials claimed that the Trump campaign decided to use the video once it was independently filmed and uploaded to the White House website, the timing of the event and Chief of Staff Meadows' comments strongly suggest otherwise. The White House and USCIS started planning for the event a week before the Republican National Convention and sought a particular nationality of participants. The naturalization ceremony took place on the second day of the convention, and the video of it was uploaded to the White House website. That night, video of the event was broadcast as part of the convention and promoted by the Trump campaign. It would blink reality to accept the White House's contention that there was no connection between the ceremony and the convention. Political conventions are meticulously choreographed and planned events, put together carefully and well in advance; the explanation that the party simply found public footage of the naturalization ceremony from that same afternoon and decided that day to incorporate it into that night's convention program bears no relation to how these events actually work.

Chief of Staff Meadows' comments also undermine that claim. In his interview with *Politico* Playbook, Mr. Meadows explicitly and pre-emptively invoked the naturalization ceremony when the reporters raised concerns about the Hatch Act. Specifically, he said that “[w]hen you look at official acts, and whether it's the naturalization process that went through where you had five new citizens being sworn in ... there are a couple of things you can do to make sure that you're in compliance with the Hatch Act.”³² Mr. Meadows' admission suggests that while the event was technically public and not held live during the Republican National Convention, it was designed and executed in such a way that it could be used at the convention. The explanation that the event was designed to comply with the Hatch Act makes clear that it was an official event created for a political purpose.

As OSC found in 2011, participation in the planning and execution of official events designed to boost political candidates is a violation of the Hatch Act. Pre-recording an event for airing at a political convention as opposed to airing it live at that convention is hardly a defense, especially when doing so is clearly meant to avoid legal liability. In addition, it would be difficult to believe that Mr. Wolf was not aware that the ceremony would be used at the convention and for political purposes. It is unclear how frequently Mr. Wolf has participated in

³² [Playbook Interview with W.H. Chief of Staff Mark Meadows](#), *Politico*, Aug. 26, 2020.

naturalization ceremonies before.³³ But it is difficult to imagine that Mr. Wolf would not think that a naturalization ceremony performed on short notice, at the White House, with President Trump in attendance, on the second day of the Republican National Convention, and less than three months before Election Day, would not be used for political purposes. Mr. Wolf's participation in this event, which appears to have been explicitly orchestrated "for the purpose of ... affecting the result of an election" and promoting the candidacy of President Donald Trump, a candidate for a partisan political office, during the Republican National Convention, constituted political activity under the Hatch Act.

Conclusion

The Hatch Act is intended to prevent federal employees from engaging in partisan political activity in their official capacity. The statute prohibits an employee from undertaking any activity directed toward the success or failure of a political candidate or a political party while using her official title or position.

By using his official position, authority, and title to participate in an official event that was likely orchestrated and recorded to promote a candidate in a partisan election, Mr. Wolf ran afoul of the statute. OSC should commence an immediate investigation into the conduct described in this letter and recommend any appropriate disciplinary action against Mr. Wolf.

Sincerely,



Noah Bookbinder
Executive Director

³³ See Andrew Harnik, Shutterstock Stock Image, July 2, 2020 (describing Acting Secretary Wolf arriving at a naturalization ceremony on July 2, 2020), <https://www.shutterstock.com/editorial/image-editorial/virus-outbreakinternational-studentschristian-groups-washington-united-states-02-jul-2020-10707926a>.