



# An Investigation of Alleged Misconduct by United States Attorney Rachael Rollins



OVERSIGHT AND REVIEW DIVISION

23-071

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## I. Introduction

This report describes an investigation by the Department of Justice (Department or DOJ) Office of the Inspector General (OIG) that began with allegations concerning the presence of U.S. Attorney for the District of Massachusetts Rachael Rollins at a Democratic Party fundraiser featuring First Lady Dr. Jill Biden on July 14, 2022. Available information indicated that Rollins arrived at a private home in Andover, Massachusetts, where the fundraiser was being held, driven in a government vehicle by a subordinate employee of the Massachusetts U.S. Attorney's Office (MA USAO). After news stories reported Rollins's presence at the fundraiser and questioned whether Rollins violated the Hatch Act, 5 U.S.C. §§ 7321–7326, a federal statute that limits the political activities of federal employees of the Executive Branch, Rollins posted a tweet suggesting that she had “approval” to be there.<sup>1</sup> The OIG opened this investigation to determine whether Rollins complied with Department policies and procedures governing attendance or appearance at partisan political events.

During the course of our investigation, the OIG received multiple additional allegations concerning Rollins, some relating to other alleged political activities and some relating to possible violations of the federal gift rules, the government's travel regulations, misuse of position, noncompliance with recusal decisions, and noncompliance with other Department policies. The most concerning was an allegation that Rollins secretly disclosed sensitive, non-public DOJ information to the *Boston Herald* about a potential DOJ investigation she and her office were recused from and that she may have done so for political purposes in relation to an upcoming local election.

Specifically, the OIG received information that Rollins may have used her position as U.S. Attorney to disclose non-public, sensitive DOJ information to a *Herald* reporter about a potential DOJ investigation of then Interim Suffolk County District Attorney (Suffolk D.A.) Kevin Hayden before the September 6, 2022 Democratic primary election for Suffolk D.A., in which Hayden was a candidate, and that Rollins may have done so to ensure that her desired candidate, Ricardo Arroyo, defeated Hayden in the primary. Before becoming the U.S. Attorney on January 10, 2022, Rollins was serving the last year of her 4-year term as Suffolk D.A.; therefore, the outcome of the September 6, 2022 primary election and November 8, 2022 general election would choose her successor as Suffolk D.A. On September 11, 2022, shortly after Hayden won the primary election and before the general election, the *Herald* published a story that cited a federal law enforcement source and quoted from a DOJ recusal memorandum in reporting that Rollins and the entire MA USAO were recused from a potential DOJ investigation of Hayden and his First Assistant D.A. We

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<sup>1</sup> See “[Rachael Rollins attends Democratic National Committee fundraiser with Jill Biden: ‘Questionable Judgment.’](https://www.bostonherald.com/2022/07/14/rachael-rollins-attends-democratic-national-committee-fundraiser-with-jill-biden-questionable-judgment/)” *Boston Herald*, July 14, 2022, [bostonherald.com/2022/07/14/rachael-rollins-attends-democratic-national-committee-fundraiser-with-jill-biden-questionable-judgment/](https://www.bostonherald.com/2022/07/14/rachael-rollins-attends-democratic-national-committee-fundraiser-with-jill-biden-questionable-judgment/) (accessed April 5, 2023); DA [Rachael Rollins on Twitter.com](https://twitter.com/DARollins/status/1547921083336011776?cxt=HHwWgMclicWBqfsqAAAA), July 15, 2022, [twitter.com/DARollins/status/1547921083336011776?cxt=HHwWgMclicWBqfsqAAAA](https://twitter.com/DARollins/status/1547921083336011776?cxt=HHwWgMclicWBqfsqAAAA) (accessed April 5, 2023).



received information that Rollins may have been the anonymous federal law enforcement source cited in the story and that she may have provided the *Herald* with a copy of the internal DOJ recusal memorandum quoted in the story.

In addition, we received information that in May 2022, Rollins secretly disclosed a non-public DOJ letter about an ongoing DOJ civil rights matter to the same *Herald* reporter noted above and, in June 2022, secretly disclosed another non-public DOJ letter about a different ongoing civil rights matter to a *Boston Globe* Associate Editor. We also received information alleging that Rollins: (1) as U.S. Attorney, solicited 30 free tickets from the Boston Celtics for local youth basketball players to attend a Celtics game, accepted 2 tickets for herself, and used a subordinate employee to help coordinate the event, contrary to ethics advice; (2) accepted non-federal payment of travel expenses on two separate occasions without advance authorization and without advising her office of both the true purpose of her travel or her intention to accept non-federal payment of certain expenses; (3) called a live local radio show and discussed a MA USAO criminal case from which she was recused; (4) participated with federal, state, and local elected officials from one political party in a press conference in response to the public reporting of a draft opinion in the U.S. Supreme Court case of *Dobbs v. Jackson Women's Health Organization*; (5) routinely used her personal cell phone to send text messages to her staff, including on matters relating to official DOJ business; and (6) continued to accept donations to her Suffolk D.A. campaign account after she was sworn in as U.S. Attorney.

#### **A. Methodology**

Our investigation included a review of documents, emails, phone records, text messages, and encrypted messages and an analysis of relevant laws, regulations, and DOJ policies. We also conducted interviews of 18 current Department employees, including Rollins, and several individuals not affiliated with the Department. We received full cooperation from all fact witnesses whose testimony is described in this report, including all fact witnesses we interviewed from the MA USAO, Executive Office for United States Attorneys (EOUSA), and Main Justice. During the course of our investigation, after we learned Rollins had used her personal cell phone to conduct DOJ business, the OIG asked Rollins for permission to image the contents of her personal cell phone in order to search for information related to Rollins's actions as U.S. Attorney and relevant to our investigation. Rollins declined to grant the OIG permission to image her personal phone; however, Rollins agreed to voluntarily provide the OIG with all communications, during specific time periods, with certain individuals the OIG identified. The materials produced included emails, text messages, and encrypted messages. This production included



Rollins's communications with members of the media related to the matters we were investigating.<sup>2</sup>

Because Rollins's presence at the location of the Democratic Party fundraiser, which was publicly reported, implicated not only DOJ policies but also the Hatch Act, the Office of Special Counsel (OSC) is conducting a parallel investigation of Rollins's presence at the fundraiser. OSC has exclusive jurisdiction to investigate allegations concerning prohibited political activities under the Hatch Act and to seek disciplinary action against employees who violate the Hatch Act's restrictions. 5 C.F.R. § 734.102(a). During the course of the OIG's investigation, we informed OSC about additional Hatch Act allegations and information that the OIG identified during our investigation, including Rollins's communications with Ricardo Arroyo and news reporters regarding matters relating to the primary race for Suffolk D.A. (discussed in Section II of this report) and information about her open Suffolk D.A. campaign account (discussed in Section IV.G.). OSC will separately report its findings on Hatch Act matters, and, therefore, our findings with respect to Rollins's presence at the fundraiser and other political activities described in this report address actions by Rollins that implicate DOJ policies and government ethics regulations.

## **B. Summary of OIG Findings**

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether Department personnel have committed misconduct. The Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii). We have provided a copy of our report to the Office of the Deputy Attorney General, EOUSA, and the Professional Misconduct Review Unit.

### **1. Rollins Assisted a Candidate in a Partisan Political Election and Sought to Influence the Election by, Among Other Things, Disclosing Non-Public, Sensitive DOJ Information to the Press; Rollins Made False Statements Under Oath and Lacked Candor about the Disclosures During Her OIG Interview**

Based on the evidence described in this report, our investigation determined that Rollins, while serving as U.S. Attorney, assisted Ricardo Arroyo with his Democratic primary campaign for Suffolk D.A., providing him campaign advice and direction and coordinating with Arroyo on activities to help his campaign. Rollins's efforts to advance Arroyo's candidacy included providing negative information about Hayden to *The Boston Globe* and suggesting where the *Globe* could look to find more information. The evidence

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<sup>2</sup> Consistent with OIG practice, the OIG did not seek to compel any members of the news media, or any news media member's telephone or Internet service providers, to produce call or email logs or other records.

demonstrated that at a critical stage of the primary race, Rollins brought her efforts to advance Arroyo's candidacy to the MA USAO, when she used her position as U.S. Attorney, and information available to her as U.S. Attorney, in an ultimately unsuccessful effort to create the impression publicly, before the primary election, that DOJ was or would be investigating Hayden for public corruption. These efforts included, but were not limited to, Rollins trying unsuccessfully to convince her First Assistant U.S. Attorney to issue a letter that would have created the impression that DOJ was investigating Hayden and, when that effort failed, disclosing non-public, sensitive DOJ information directly to a *Herald* reporter before the primary election. Then, after the *Herald* did not publish the story before the primary election and Arroyo lost to Hayden, Rollins disclosed additional information to the *Herald* to damage Hayden's reputation while he was an uncontested candidate in the general election.

We also concluded that Rollins falsely testified under oath during her OIG interview when she denied that she was the federal law enforcement source that provided non-public, sensitive DOJ information to the *Herald* reporter about a possible Hayden criminal investigation. Rollins only admitted to being the source during subsequent testimony after Rollins produced relevant text messages, which definitively showed that Rollins had indeed been a source for the reporter and had disclosed to him the internal DOJ recusal memorandum quoted in the story. Additionally, we found that Rollins lacked candor during her OIG interview when she answered questions about her communications with the *Herald* reporter before the primary election and when she described how she first learned of the *Globe's* interest in a transit police misconduct case, discussed later in this report.

In analyzing Rollins's conduct in the context of applicable government ethics rules, Department policy, and the law, and based on the evidence described in this report, we concluded that Rollins: (1) used her position as U.S. Attorney, and used non-public DOJ information available to her by virtue of her position as U.S. Attorney, in an effort to influence the outcome of an election, in violation of Sections 2635.702 and 2635.703 of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), as well as Department policy and the obligations under the Ethics Agreement she signed after her nomination as U.S. Attorney; (2) knowingly and willfully made a false statement of material fact during her OIG interview, in violation of 18 U.S.C. § 1001; (3) lacked candor during her OIG interview, in violation of 28 C.F.R. § 45.13; and (4) actively participated in a partisan political campaign, in violation of Department policy that further restricts the political activity of noncareer officials, including U.S. Attorneys. Furthermore, we believe that Rollins's actions fell short of the standards of professionalism, judgment, and impartiality that the Department should expect of a U.S. Attorney.

## **2. Rollins Attended a Partisan Political Fundraiser without Required Department Approval and Contrary to Ethics Advice She Received**

The evidence shows that after a subordinate employee in the MA USAO received an invitation for her and Rollins to attend the July 14, 2022 Democratic Party fundraiser featuring Dr. Biden, Rollins expressed interest in attending. As more fully described in this report, we found that based upon advice she received from MA USAO staff, Rollins agreed to a plan where she would meet with Dr. Biden outside the event and not go inside the home where the fundraiser was to be held. After the MA USAO Ethics Advisor informed EOUSA's General Counsel's Office (GCO) that Rollins would not attend the fundraiser and planned instead to meet Dr. Biden "outside the location of the event" in a "brief meet-and-greet outdoors," Rollins was given ethics advice from GCO to have a brief meet and greet with Dr. Biden outside and away from the fundraiser, and to then leave the area of the event after the meet and greet.

Our investigation revealed that, contrary to the advice she received, Rollins attended the fundraising event. Based on Rollins's own account of what she did after she arrived at the fundraiser location, Rollins went inside the home, mingled with the guests, and stood in the same receiving line as the other fundraiser guests to meet Dr. Biden. Rollins's interaction with Dr. Biden was identical to those of the other fundraiser guests whose primary purpose for being at the event was to get in line and meet Dr. Biden. She also posed for photos with the event hosts and guests, as well as a U.S. Senator, after meeting Dr. Biden and before leaving the event. Rollins told us that she believed she had complied with what she understood was the ethics advice. As described in this report, the facts do not support Rollins's claim.

We therefore concluded that Rollins attended a partisan political fundraiser without approval from the Deputy Attorney General, or her designee, as required by Department policy, and her attendance was contrary to the ethics advice she received before the event that gave permission for Rollins to meet and greet with Dr. Biden separately from the fundraiser but did not include approval from the Deputy Attorney General, or her designee, to attend the fundraiser itself. We also found Rollins's efforts to blame her staff for her own ethics failures deeply disturbing and contrary to her own independent responsibility as U.S. Attorney to hold herself to a high ethical standard and exercise sound judgment.

## **3. Findings Regarding Additional Allegations of Ethics and Policy Violations**

Our investigation revealed evidence substantiating the additional allegations described above, some of which we found demonstrated that Rollins committed additional violations of government ethics rules, regulations, Department policy, or applicable law, and others we found demonstrated Rollins failed to exercise sound judgment.

In particular, we concluded that Rollins violated Department policy by secretly disclosing non-public letters about two separate, ongoing DOJ civil rights matters to the *Herald* and the *Globe* in off-the-record and not-for-attribution text messages, using her personal cell phone. While Department policy authorized Rollins, as U.S. Attorney, to disclose to the public the existence of these matters if she determined that doing so was necessary to reassure the public, we found it obvious that reassuring the public that DOJ is investigating a matter necessarily involves the Department doing so overtly, not by sending a letter to the subject of an investigation and then secretly disclosing the letter to the news media using a personal cell phone and demanding that the disclosure not be attributed to the U.S. Attorney.

With respect to the Boston Celtics tickets, we concluded that Rollins violated the Standards of Ethical Conduct in 3 ways: (1) by soliciting 30 tickets for the youth basketball players for use by her in connection with her official position as U.S. Attorney; (2) by accepting, for herself, 2 tickets that the Celtics provided to her due to her official position; and (3) by improperly using a subordinate's time to coordinate the Celtics event, even after Rollins was informed that she could not use any office resources for this event.

Regarding the allegation that Rollins accepted non-federal payment of travel expenses on two separate occasions without required advance approval, because the OIG understands that EOUSA is considering Rollins's requests to be reimbursed by DOJ for these trips as official DOJ travel, we concluded that, even if EOUSA determines that these trips constituted official travel, Rollins nonetheless violated the Federal Travel Regulations by accepting payment of certain travel expenses by non-federal entities without prior approval. However, if EOUSA were to determine that Rollins's trips did not constitute official travel, then the Federal Travel Regulations do not apply, Rollins request for DOJ reimbursement would not be allowed, and Rollins's acceptance of travel-related expenses may have violated the federal ethics regulations concerning the acceptance of gifts.

The evidence also showed that on December 19, 2022, Rollins called a live radio show and discussed the upcoming sentencing of a defendant in a MA USAO case from which she was recused. Because we found that there was insufficient evidence that Rollins knew she was recused from the case, we did not find that she violated the terms of the Ethics Agreement she signed before she became U.S. Attorney. However, we concluded that Rollins's impulsive decision to call a live radio show to publicly comment on an upcoming federal sentencing demonstrated poor judgment given Rollins's own explanation that she was unfamiliar with both the defendant and his criminal case. In addition, her comments may have violated a local district court rule prohibiting extrajudicial statements in connection with pending criminal proceedings.

Similarly, we concluded that Rollins exercised poor judgment, but did not violate Department policy, when she participated with elected officials from one political party in a press conference on May 3, 2022, in response to the public reporting of the *Dobbs* draft opinion. We found that Rollins's conversation with the Department's Office of Public Affairs

(OPA)—at her First Assistant’s request—prior to her remarks at the press conference satisfied her obligation under DOJ policy to coordinate with OPA on media contacts that transcend her district or are of national importance. We also found that although Rollins did not coordinate with the Department’s Office of Legislative Affairs before the press conference, we concluded that Rollins did not knowingly violate Department policy because Rollins did not know in advance that a Member of Congress would be present at the event. Nevertheless, we found that Rollins exercised poor judgment by participating as the U.S. Attorney in an event that concerned a highly-charged political issue, involving elected officials from only one political party, and that predictably included election-related speech from other speakers. We found that she did not abide by the training, which she received as a new U.S. Attorney, that the Department requires U.S. Attorneys to be non-political and non-partisan in all respects and appearances.

In addition, we found that Rollins’s handling of substantive text messages sent from her personal cell phone to her staff and to reporters violated 44 U.S.C. § 2911, which requires federal employees to copy an official electronic messaging account of the employee or forward a copy of the record to an official electronic messaging account when the employee sends a record from a non-official electronic messaging account, and that her use of her personal cell phone’s text messaging application to conduct substantive government business on multiple occasions violated the U.S. Attorneys’ Information Systems Rules of Behavior.

Finally, we found that Rollins continued to accept political contributions to her Suffolk D.A. campaign account after she was sworn in as U.S. Attorney. Because the contributions described in this section potentially implicate the Hatch Act, we have referred our factual findings to OSC for its review and handling.

## **II. Rollins Assists a Candidate in the Democratic Primary Election for Suffolk County D.A. and Seeks to Influence the Election by Disclosing Information to the Press Critical of the Candidate’s Opponent, Including Sensitive, Non-Public DOJ Information; Rollins Makes False Statements Under Oath and Lacks Candor During Her OIG Interview Regarding the Disclosures**

In the sections that follow, we describe evidence of Rollins’s efforts, while serving as U.S. Attorney, to help Ricardo Arroyo with his Democratic primary campaign for Suffolk County District Attorney (Suffolk D.A.) and the circumstances leading up to Rollins’s unauthorized disclosures to the *Boston Herald* regarding a potential DOJ criminal investigation of Arroyo’s opponent—then Interim Suffolk D.A. Kevin Hayden, Rollins’s successor as D.A. We begin with background information on the Democratic primary race for Suffolk D.A. and Rollins’s communications with Arroyo in the 2 months before the primary election on September 6, 2022. We describe Rollins’s efforts to help Arroyo, ranging from offering words of encouragement to providing campaign advice and coordinating with Arroyo on activities to help his campaign. In particular, in the weeks

prior to the primary election, Rollins and Arroyo communicated about derogatory information they were providing to *The Boston Globe* about Hayden before the *Globe* published three articles on August 6, 8, and 10, 2022, critical of Hayden's handling of a police misconduct case that began under Rollins's tenure as D.A. and the understaffing of a special unit in the Suffolk D.A.'s Office responsible for handling police misconduct cases.

We describe how the derogatory information in these *Globe* articles, at least some of which Rollins had provided to the *Globe*, led to internal discussions within the MA USAO about whether the office should open a criminal investigation into Hayden and his First Assistant D.A. for possible public corruption in their handling of the police misconduct case and a separate civil rights investigation of the underlying police misconduct allegations against certain local transit police officers. We describe Rollins's discussions with the Executive Office for United States Attorneys (EOUSA) that eventually resulted in the Department, just days before the primary election, recusing Rollins and MA USAO from a possible DOJ investigation of Hayden and his First Assistant D.A.

We also detail how, despite this recusal, and contrary to DOJ policy prohibiting the timing of any action in any matter for the purpose of affecting an election and protecting the confidentiality of non-public, sensitive DOJ information, Rollins disclosed to a *Herald* reporter days before the September 6 primary election that DOJ was taking steps toward investigating Hayden. The *Herald* ultimately did not publish the story before the primary election. As we describe below, the evidence we obtained indicated that when asked for comment on September 3, spokespeople from the Suffolk D.A.'s Office and MA USAO separately raised questions with the *Herald* about the accuracy of the information and the motives of the *Herald's* (unidentified) source.

We describe how, 3 days after the primary election, fully aware that doing so was improper, Rollins disclosed to the *Herald* the internal DOJ memorandum recusing Rollins and the MA USAO from any investigation of Hayden as evidence that DOJ was taking steps toward investigating Hayden and his First Assistant D.A. Two days later, on September 11, the *Herald* published a story that Rollins and the MA USAO were recused from a potential DOJ investigation of Hayden and his First Assistant D.A. concerning information that appeared in the *Globe*.

We also detail Rollins's explanations to the OIG for her actions in connection with the Suffolk D.A. primary election and her disclosures to the press and her initial denial to the OIG of being a source for the *Herald* article. Finally, we describe our analysis and findings.

#### **A. The Suffolk D.A. Primary Election Between Kevin Hayden and Ricardo Arroyo, and Rollins's Efforts to Help Arroyo**

In 2018, Rachael Rollins was elected Suffolk D.A. and began a 4-year term on January 2, 2019. In 2021, President Joseph R. Biden, Jr. nominated Rollins to be the U.S. Attorney

for the District of Massachusetts, and, on January 10, 2022, after being confirmed by the U.S. Senate, Rollins was sworn in as U.S. Attorney. Upon Rollins becoming U.S. Attorney, then Massachusetts Governor Charles D. Baker, Jr. appointed Kevin Hayden, then Chair of the Massachusetts Sex Offender Registry Board and a former Assistant District Attorney, to finish the remainder of Rollins's term. This appointment meant that Hayden would serve as Interim D.A. until the swearing in of a newly-elected D.A. in January 2023. On February 16, 2022, Hayden stated that he would seek a full term as D.A. and announced his candidacy. In 2019, Ricardo Arroyo, a former public defender in Boston, was elected to the Boston City Council. On February 8, 2022, Arroyo announced his candidacy for Suffolk D.A.

As registered Democrats, Arroyo and Hayden faced each other in the Democratic primary election on September 6, 2022. Hayden defeated Arroyo in the primary election and won the uncontested general election on November 8, 2022.

Before the primary election, news articles compared Arroyo's and Hayden's approaches to criminal justice, with some describing Arroyo as the candidate who vowed to continue the criminal justice reforms of former D.A. Rollins and describing Hayden as a more "moderate" candidate who would strike a "middle" ground between public safety and systemic changes.<sup>3</sup> One news article reported: "Rachael Rollins's name won't be on the ballot this year, but her approach to prosecution in Suffolk County may end up being front and center."<sup>4</sup> Other news outlets reported the concerns of certain criminal justice reform advocates that Hayden, as Interim D.A., was scaling back some of Rollins's policies and programs.<sup>5</sup> On a local radio show, for example, a local law professor and professional acquaintance of Rollins described the race between Arroyo and Hayden as "a fascinating referendum on whether the progressive prosecutorial movement is here to stay in Boston, or whether it's just a short term blip on our political radar."<sup>6</sup> We did not find evidence indicating that Rollins publicly supported one candidate over the other in the D.A. race. However, our investigation determined that Arroyo and Rollins were in frequent communication with each other as the primary election approached, and their communications reflect that Rollins strongly favored Arroyo over Hayden in the race and tried to help him win the primary.

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<sup>3</sup> See, e.g., "Rollins Reforms Loom Over Suffolk DA Race," *Commonwealth Magazine*, February 18, 2022; "Interim Suffolk Co. DA Kevin Hayden Is Running For A Full Term," *Bay State Banner*, February 17, 2022; "Newly Appointed Suffolk District Attorney Kevin Hayden Will Run To Permanently Succeed Rachael Rollins," *The Boston Globe*, February 15, 2022.

<sup>4</sup> "Rollins Reforms Loom."

<sup>5</sup> "Is DA Hayden Reversing Rollins' Policies," *Bay State Banner*, June 22, 2022; "[If Elected DA, Will Kevin Hayden Keep Rachael Rollins' Progressive Policies in Place](#)," *GBH News*, March 15, 2022 (available at [wgbh.org/news/politics/2022/03/15/if-elected-da-will-kevin-hayden-keep-rachael-rollins-progressive-policies-in-place](http://wgbh.org/news/politics/2022/03/15/if-elected-da-will-kevin-hayden-keep-rachael-rollins-progressive-policies-in-place)) (accessed April, 20, 2023).

<sup>6</sup> "If Elected DA, Will Kevin Hayden Keep Rachael Rollins' Progressive Policies in Place."



Call detail records of Rollins’s personal cell phone obtained by the OIG indicate that in the 2 months before the September 6 primary election, Rollins had at least three phone conversations with Arroyo—on July 20 for 26 minutes, July 29 for 1 hour and 51 minutes, and August 17 for 35 minutes.<sup>7</sup> At our request, Rollins provided the OIG with text and encrypted messages, from her personal cell phone, with Arroyo in the 2 months before the primary election and in the days immediately following the primary. All told, Rollins and Arroyo exchanged over 380 text and encrypted messages during this time period, some during regular business hours and the vast majority of which concerned issues relating to Arroyo’s campaign or Hayden, or both.<sup>8</sup> In some of these messages, Rollins criticized the work of Hayden or the D.A.’s office under his interim appointment, including responding to a text chain with Arroyo and others (including a Member of Congress and three State Representatives) on July 7 concerning the recent parole from prison of an individual Rollins had taken an interest in while D.A., in which Rollins stated: “Who your DA is matters. This type of work is no longer being done in Suffolk. We need it to continue.”<sup>9</sup> In other messages, Rollins offered encouragement to Arroyo, stating on July 21: “Outstanding job. Fantastic. Keep it up,” on July 12: “No mercy. Finish him,” and on July 23: “You are doing a great job. Keep it up.”

In many of her messages to Arroyo, Rollins went beyond the expression of opinion or encouragement to providing him with specific campaign advice. Examples of this advice include:

- On July 6, in reference to a *Globe* report that Black drivers are pulled over in Boston at 2.4 times the rate of White drivers, Rollins told Arroyo: “Do not let him slide on this. He need[s] to be asked at the next forum, did you read the report yet? What are you doing about it? All option[s] on the table is political bullshit. This job (DA) needs a leader. He offered absolutely nothing yesterday. Nothing.” “He is a bafoon [sic]. Offered no relevant info. You saw him try to run up next to me [at a public event]. Get away from me scrub.”
- On July 20, Rollins sent Arroyo a joint statement from elected prosecutors published in June 2019 on abortion laws, stating: “I signed this letter as DA back in 2019 when ROE was still the law of the land. Get it to someone else

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<sup>7</sup> In addition, Arroyo made calls to Rollins on August 17 and 30, and Arroyo’s brother made a call to Rollins on July 31, but call detail records indicate these calls were transferred to her voicemail.

<sup>8</sup> On August 19, 2022, Arroyo began communicating with Rollins through an encrypted messaging service. The messaging service’s promotional materials state that messages and calls on its platform are end-to-end encrypted such that no one can read or listen to them, including the messaging service. The encrypted messages between Rollins and Arroyo stored on her personal cell phone were among the communications Rollins voluntarily produced to the OIG.

<sup>9</sup> This text chain was the only text chain Rollins produced to the OIG that included others besides Arroyo. All other text messages with Arroyo, and all encrypted messages, produced to the OIG were private conversations between Rollins and Arroyo.

to get out there.... And the acting DA didn't sign on." Arroyo responded later the same day: "We are doing a press release on it."

- On July 20, Rollins told Arroyo about her role, while D.A., in helping to bring about an extension on the ban on mandatory life sentences to young adults as well as juveniles, stating: "Not for public consumption. Just for you, but you can use those facts."
- On July 21, Rollins advised Arroyo: "[C]all [Hayden] out on the fact that he ended my investigation into the T [the Boston subway system (the T)] and my call [for] [a former Boston Police Detective] to be charged with perjury."<sup>10</sup> Rollins added that Hayden was a "liar."
- On July 22, Rollins sent Arroyo a link to a news article about the recent election losses of two "progressive prosecutors" with the message: "We have to have talking points about this." She then gave Arroyo points he could use to explain that the recent election losses were not signs of a trend.
- On July 23, 2 days before communications began between Rollins and *Globe* reporters regarding Hayden, as described below, Rollins told Arroyo to "hit" Hayden "on the MBTA investigation" and said: the "next time he says he is aligned with me, mention List of 15 (you already do that) and [the former Boston Police Detective] (just did, keep that up), and ADD THE MBTA." The "List of 15" was a reference to a policy Rollins implemented as D.A. in which she presumptively declined to prosecute a list of 15 misdemeanor crimes.<sup>11</sup>
- On August 19, Rollins advised Arroyo to have individuals write letters to various publications supporting his candidacy and, in that context, added: "Maybe point out that [Hayden] does not actually support much that I stand for." As part of this discussion, Rollins also advised Arroyo: "Start going to Black churches. 2 every Sunday. Go to [Hayden's] church. I'm serious."
- On August 21, Rollins asked Arroyo if he could obtain an endorsement from El Mundo and also told him to "[g]et on Haitian radio."
- On August 22, Rollins asked Arroyo: "Do you have anyone doing opposition research on [Hayden]? At [Hayden's secondary school]? At [Hayden's university]? Any domestic calls to his house? [A research service] search?"

Some of Rollins's messages with Arroyo indicate that they discussed coordinating certain actions to help Arroyo's campaign. For example, on July 10, Rollins sent a text message to Arroyo stating, in part: "Make sure you let me know about stuff that I can show

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<sup>10</sup> References to "the T" and "MBTA" in Rollins's messages are references to the Massachusetts Bay Transit Authority.

<sup>11</sup> See Suffolk County D.A.'s Office, [Mid-Term Report Summer 2021](#), (August 2021), 9, available at [suffolkdistrictattorney.com/press-office/speeches-and-correspondence/midterm21](http://suffolkdistrictattorney.com/press-office/speeches-and-correspondence/midterm21) (accessed April 20, 2023).

up at. And we can ‘happen’ to be there together.” We asked Rollins about this text message. Rollins stated:

...I am seen in public all the time with Kevin Hayden. And there is an assumption, I think an overwhelming assumption that I am endorsing Kevin Hayden. I had several missed calls, not just from Arroyo, but from [a Massachusetts State Senator] and, you know, lots of other Boston City Councilors about this event.

I am saying that it is more equal if I'm seen, if I'm going to always be seen with Kevin Hayden, I could occasionally be seen with you, was the point that I was making.

Later, on July 31, Rollins and Arroyo exchanged text messages about their attendance at the Puerto Rican Festival Parade, and text messages indicate they met at the parade.

In late August, Rollins provided advice to Arroyo concerning a story published in the *Globe* on August 23, 2022, about allegations against Arroyo of sexual assault dating back to 2005 and 2007.<sup>12</sup> On August 22, the day before the story broke, Rollins gave Arroyo feedback on his draft answers to the *Globe* reporter's questions and told Arroyo in a text message: “Ask [the reporter] to call me about the sexual assault suspect question. I will answer off the record.” Arroyo replied to Rollins that he would tell the reporter to contact Rollins, and Rollins then suggested that Arroyo tell the reporter to contact “some previous DAs” as well. The next day, August 23, Arroyo sent Rollins a draft public statement about the sexual assault allegations and asked for Rollins's feedback. Rollins responded the same day with significant edits and additions to Arroyo's statement and told him to “[p]roofread and spellcheck.” Rollins then advised Arroyo: “Just make sure what you say is accurate. And take a page out of his book. KEEP WORKING AND KNOCKING ON DOORS. Have a few quick talking points...” (Emphasis in original.) Two days later, Arroyo updated Rollins on where things stood, and Rollins responded: “Excellent. And if we can expose that [Hayden] did this—with ZERO regard for actual victims—it shows how selfish and heartless he is...” (Emphasis in original.)

The text and encrypted messages described above were not the only instances in which Rollins and Arroyo communicated with each other about information they were providing to the *Globe*. As described in the next section, Rollins provided information to the *Globe*, before it published three articles on August 6, 8, and 10, 2022, critical of Hayden's handling of a police misconduct case that began under Rollins's tenure as D.A. and the understaffing of a special unit in the Suffolk D.A.'s Office responsible for handling

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<sup>12</sup> See “[Suffolk DA candidate Ricardo Arroyo was twice investigated in possible sexual assaults. He says he was never informed](https://www.bostonglobe.com/2022/08/23/metro/suffolk-da-candidate-ricardo-arroyo-was-twice-investigated-possible-sexual-assaults-he-says-he-was-never-informed/),” *The Boston Globe*, August 23, 2022, [bostonglobe.com/2022/08/23/metro/suffolk-da-candidate-ricardo-arroyo-was-twice-investigated-possible-sexual-assaults-he-says-he-was-never-informed/#:~:text=In%20the%202005%20case%2C%20the,according%20to%20the%20police%20records](https://www.bostonglobe.com/2022/08/23/metro/suffolk-da-candidate-ricardo-arroyo-was-twice-investigated-possible-sexual-assaults-he-says-he-was-never-informed/#:~:text=In%20the%202005%20case%2C%20the,according%20to%20the%20police%20records) (accessed April 5, 2023).

police misconduct cases. Text messages between Rollins and Arroyo in the days preceding these *Globe* stories reflect that they were updating each other on their separate communications with one of the *Globe* reporters who authored the stories.

When we asked Rollins why she was communicating with Arroyo about his campaign, Rollins stated:

Ricardo is a friend. And when he was asking me questions about an office I led and had a lot of information about, I was truthful and responsive. There were definitely more communications with [Arroyo] than there were with Kevin Hayden. I just didn't know Kevin Hayden.

And for me, there was a lot of media attention, stating that Kevin was 100 percent aligned with my policies and practices, and was doing everything that I was doing...[w]hen I had the role [of D.A.], and that was not accurate. And so, I was, in my mind, speaking with a friend, the overwhelming majority of the time on my own personal time, and giving factual information to a friend.

So that is my answer with respect to Ricardo Arroyo, and he had been incredibly helpful when I was running for office, regarding putting me in touch with people and criminal defense attorneys and returning citizens to help me come up with some of my policies.

So, in my time, I answered his questions, and when Kevin Hayden asked me questions, which he did, often not on text, and certainly not nearly, I'm not in any way trying to make it seem as if there is the same amount with Ricardo Arroyo as Kevin. I was always truthful with Kevin.

I was giving information about an office that I had a lot of knowledge about, and it was public information that could have been found out but would have taken a lot of time and asking me truncated that quite a bit.

We asked Rollins specifically about text messages where she appeared to be giving Arroyo campaign advice. Rollins denied providing Arroyo campaign advice, stating:

I didn't know about Ricardo's campaign. Like, I was saying what I had done to run. This wasn't me speaking to his campaign staff or anything. This was me telling him what I essentially did when I did it, and I think some of those texts, he said, already doing that, you know, all over it. Whatever.

But I was simply giving information about what I did when I was running for the first time, and he had more experience than me.

Rollins stated that she “was speaking to a friend who was trying to achieve a goal,” and “she wasn't putting [her] finger on a scale.” Rollins told the OIG that she was not trying to get Arroyo elected. Rollins stated: “Like, anyone [who] is interested in running for office, I will speak with. I did it way more often with Ricardo because he is a friend.”

When we asked Rollins if she had any concerns at the time that her communications with Arroyo might violate her legal and ethical obligations under the Hatch Act and DOJ policy, Rollins stated:

I didn't because I believed I was having them in my individual capacity. They were not public, and I did, in fact, not nearly as much, but also speak to Kevin Hayden about this, and I was speaking openly about my office every single day with the press, right?

These are not secrets that I'm telling. I didn't give any confidential private top secret, you know, privileged information. I was talking with a friend after hours about questions he had regarding the office that I used to lead and policies that I had implemented, etc.

However, Rollins also stated: "I'm not saying these communications are appropriate." She added that when she read through all of her communications with Arroyo for the continuation of her OIG interview on January 24, 2023, it was "a very sobering moment." She told us that nevertheless the fact that her support for Arroyo was done privately and not during the regular workday the vast majority of the time was, in her view, mitigating.

**B. Rollins Provides Information Critical of Hayden to *The Boston Globe* Shortly Before the *Globe* Publishes Three Negative Articles about Hayden, and Rollins Continues Discussions with Arroyo about the D.A. Election**

In this section, we describe the information Rollins provided to a *Boston Globe* reporter before the *Globe* published three articles in early August 2022 critical of Hayden and his office, and her communications with Arroyo before and after the articles. The first article entitled, "'It was you!' Traffic spat turned police coverup leads to questions for D.A. Hayden," was published online on August 6, 2022.<sup>13</sup> The article described a police misconduct case involving allegations that a former MBTA Transit Police Officer (former Transit Officer) had, while off-duty, pulled out a gun during a traffic dispute with another driver and then conspired with a fellow transit police officer to cover up the incident. The article stated that Rollins had launched an investigation into the incident in the spring of 2021 while she was the Suffolk D.A., but that once Hayden became Interim D.A. in January 2022, "the office seemed far less eager to pursue the case." According to the article, Hayden disputed this characterization, stating that no charges had been filed by the Rollins administration and that the case remained open in his office.

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<sup>13</sup> "'It was you!' Traffic spat turned police coverup leads to questions for DA Hayden," *The Boston Globe*, August 6, 2022, [bostonglobe.com/2022/08/06/metro/it-was-you-traffic-spat-turned-police-coverup-leads-questions-da-hayden/](https://www.bostonglobe.com/2022/08/06/metro/it-was-you-traffic-spat-turned-police-coverup-leads-questions-da-hayden/) (accessed February 3, 2023).

The article contrasted Rollins's and Hayden's handling of allegations of misconduct against law enforcement officers. It stated that when Rollins became D.A. in 2019 "her administration began to routinely cast a critical eye on the actions of law enforcement." While noting that Hayden "suggested little would change on that score" when appointed D.A. in 2022, the article stated that "[b]ehind the scenes" Hayden began to make significant personnel changes in the Special Prosecutions Unit, which typically handled investigations of law enforcement officials. The article also stated that Hayden's office had other law enforcement cases that were still pending from Rollins's tenure. In the article, Hayden's office stated that it had "not ended any investigations of police misconduct cases inherited from the prior administration."

With respect to the investigation of the two former transit officers, the article stated that attorneys for the transit officers "say they were told explicitly in April [2022] by Hayden's top deputy...that the case was over and done with" and that the former Transit Officer's attorney "filed a sworn affidavit in Boston Municipal Court saying as much." According to the article, shortly after these assurances from the D.A.'s office, the former Transit Officer and his attorney donated \$225, collectively, to Hayden's re-election campaign. The article stated that Hayden's office denied that the donations were part of a *quid pro quo* and emphasized the fact that there was still an open and active investigation into the transit police misconduct matter.

Lastly, the article contained the following statement from Rollins:

A spokeswoman for the US attorney's office said that Rollins declined to comment. But Rollins, in a Twitter post Friday in response to news of federal charges filed against Louisville officers in the Breonna Taylor case, said that when district attorneys fail to prosecute police accused of wrongdoing "it erodes the public trust."

On August 8, the *Globe* ran a follow-up to the August 6 story entitled, "Suffolk DA faces criticism for handling of police misconduct case."<sup>14</sup> The article stated that Hayden "faced questions, criticism, and calls for an outside probe" after the *Globe's* reporting on August 6. The article also stated that Arroyo called for Hayden to resign his position, "a demand echoed by several elected officials who" supported Arroyo. Two days later, on August 10, the *Globe* ran a third story entitled, "Following Globe report, MBTA Transit Police calls for special prosecutor as Suffolk DA Hayden announces grand jury investigation into coverup."<sup>15</sup> The article stated that in a "rebuke" to Hayden, the "MBTA Transit Police

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<sup>14</sup> "[Suffolk DA faces criticism for handling of police misconduct case](https://www.bostonglobe.com/2022/08/08/metro/suffolk-da-faces-criticism-handling-police-misconduct-case/)," *The Boston Globe*, August 8, 2022, [bostonglobe.com/2022/08/08/metro/suffolk-da-faces-criticism-handling-police-misconduct-case/](https://www.bostonglobe.com/2022/08/08/metro/suffolk-da-faces-criticism-handling-police-misconduct-case/) (accessed February 3, 2023).

<sup>15</sup> "[Following Globe report, MBTA Transit Police calls for special prosecutor as Suffolk DA Hayden announces grand jury investigation into coverup](https://www.bostonglobe.com/2022/08/10/metro/mbta-transit-police-calls-for-special-prosecutor-as-suffolk-da-hayden-announces-grand-jury-investigation-into-coverup/)," *The Boston Globe*, August 10, 2022,

(Cont'd.)

leadership called Wednesday for the appointment of a special prosecutor to investigate two of their own officers involved in a coverup, signaling a lack of confidence in Hayden's handling of the case."

Based on call detail records and text messages from Rollins's personal cell phone, Rollins's communications with one of the two *Globe* reporters who authored these three articles began on July 25, 2022, and her text messages with the reporter and separately with Arroyo indicate that Rollins provided information to the reporter for the articles.

#### 1. July 25: Rollins Calls *The Boston Globe* about Suffolk D.A.'s Office

Rollins's call detail records show that 2 weeks before the *Globe* published its first story on August 6 about Hayden's handling of the transit police misconduct investigation, Rollins contacted a *Globe* editor who put her in touch with a reporter who would later co-author the August 6 story. Specifically, on July 25, Rollins called a *Globe* Associate Editor (*Globe* Associate Editor) at 2:49 p.m. The call lasted for 17 seconds, indicating that they likely did not connect at that time. At 2:51 p.m., the *Globe* Associate Editor called Rollins, and the call lasted for 1 minute and 45 seconds.

At 4:33 p.m. the same day, a *Globe* reporter (*Globe* Reporter) called Rollins, and the call went to voicemail. The *Globe* Reporter followed up shortly thereafter with a text message introducing himself and stating: "I tried to give you a call a bit ago. Was hoping to chat off record about Suffolk DA office and changes in Special Prosecution [sic] Unit." Rollins called the *Globe* Reporter at 6:22 p.m., and the call lasted for almost 4 minutes. Rollins then called the *Globe* Reporter again at 6:46 p.m., and they spoke for over 43 minutes.

Rollins told the OIG that the *Globe* Associate Editor reached out to her and asked if she would "speak to [the *Globe* Reporter] about, like, nuts and bolts things that [she] had put into place in the D.A.'s office." Rollins stated that she agreed to do so. We noted for Rollins that the call detail records of her personal cell phone, DOJ-issued cell phone, and DOJ desk phone show that Rollins called the *Globe* Associate Editor first, and we asked her why she reached out to the *Globe* Associate Editor. Rollins replied:

I don't know. And as I sit here, I'm not sure. I see [the *Globe* Associate Editor] a lot of places, like, so I don't know whether I saw him that day and he said, give me a call, but I don't remember. But my recollection is that he asked me if I would feel comfortable speaking to [the *Globe* Reporter], because I didn't know who [the *Globe* Reporter] was.

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[bostonglobe.com/2022/08/10/metro/following-globe-report-suffolk-da-hayden-announces-grand-jury-investigation-into-transit-police-coverup/](https://bostonglobe.com/2022/08/10/metro/following-globe-report-suffolk-da-hayden-announces-grand-jury-investigation-into-transit-police-coverup/) (accessed February 2, 2023).



Rollins stated that she then exchanged communications with the *Globe* Reporter. According to Rollins, the *Globe* Reporter had a lot of questions about “historical things about the D.A.’s office,” such as the structure of the office and the composition and responsibilities of the Special Prosecutions Unit. Referring to the transit police misconduct matter, Rollins also stated: “I did not have a clear memory about the allegedly unconstitutional stop. That happened while I was DA but didn’t really percolate up to me, and I think [the *Globe* Reporter] was giving me information about that...” We asked Rollins if she and the *Globe* Reporter discussed a potential federal investigation into the possible *quid pro quo* involving Hayden, i.e., that Hayden and his First Assistant D.A. chose not to pursue the transit police misconduct matter in exchange for \$225 in donations from the former Transit Officer and his attorney. Rollins replied: “Not that I, I don’t recall as I sit here today, talking to [the *Globe* Reporter] about that.” According to Rollins, she did not learn about a possible *quid pro quo* involving Hayden until she read about it in the August 6 *Globe* story.

## 2. July 29 through August 3: Rollins Communicates with Arroyo about Upcoming *Globe* Article and Provides Information to *Globe* Reporter about Hayden

Over the next several days, after her initial calls with the *Globe* Associate Editor and the *Globe* Reporter on July 25, Rollins communicated with Arroyo about topics she was discussing with the *Globe*, and Arroyo shared information he was learning about the upcoming article from his own conversations with the *Globe*. Rollins also provided additional information to the *Globe* Reporter that Rollins called Hayden’s “failures,” and Rollins advised Arroyo as to when she planned to talk to the *Globe* Reporter again.

Specifically, on July 29 at 6:21 p.m., Rollins texted Arroyo a link to a *Boston Herald* article about the Federal Transit Authority ordering the MBTA to address runaway trains and stated, in part: “Remember when I said I was opening a criminal investigation into the T? WTF? The acting DA shut it down.”<sup>16</sup> At 6:54 p.m., Arroyo “liked” Rollins’s text message, and Arroyo immediately sent follow-up text messages stating: “I do,” “PS call me,” and “Have news.” Rollins called Arroyo at 6:56 p.m., and they spoke for 1 hour and 51 minutes. Rollins told us that she did not remember talking to Arroyo about the forthcoming *Globe* story.

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<sup>16</sup> On January 6, 2022—just before Rollins departed the D.A.’s office to become the U.S. Attorney—Rollins issued a press release announcing an investigation into whether the MBTA was criminally liable for a crash that occurred in July 2021. Suffolk County D.A.’s Office, “[Suffolk DA Rachael Rollins Announces Investigations of MBTA and \[former Boston Police Detective\]](#),” January 6, 2022, [suffolkdistrictattorney.com/press-releases/items/investigations-mbta-brazil](https://suffolkdistrictattorney.com/press-releases/items/investigations-mbta-brazil) (accessed February 3, 2023).

On Sunday, July 31, Arroyo sent a text message to Rollins stating: “Story is coming Tuesday.”<sup>17</sup> Rollins immediately responded, in part: “I hope they aren’t holding it so he can respond. And if he says some bullshit about me. I will come for his throat.” Arroyo responded: “Its [sic] because they did some criminal conspiracy cover up shit on Friday.” Arroyo continued in another text message: “So now they need to include all that.”<sup>18</sup>

On August 1, Rollins sent a lengthy text message to the *Globe* Reporter. It began: “OFF THE RECORD!!!! Hey, Here are the things [Hayden] undid in the first few weeks of his appointment to serve the remain[der] of my elected term (or other failures).” (Emphasis in original.) The text message included 10 detailed, bulleted points describing actions that Hayden took or did not take as Interim D.A. with which Rollins disagreed. Some of these points involved personnel decisions Hayden had made within the D.A.’s office. On another point, Rollins wrote: “WHERE IS THE INVESTIGATION INTO THE T generally (for the complete shitshow that it is), and the cover-up by the police officers??? Ask if the Officer cover up was referred to us by the T. If it was, that makes it even worse that he isn’t going forward.” (Emphasis in original.) Rollins concluded by asking the *Globe* Reporter to let her know if he needed anything else.

The following day, August 2, the *Globe* Reporter sent a text message to Rollins asking if she had a few minutes to chat because he “want[ed] to bounce a few things off” of Rollins “from DA Hayden’s response to our questions.” After a back and forth, Rollins and the *Globe* Reporter agreed they would speak the following morning.

Also on August 2 at 10:20 p.m., Arroyo sent a text message to Rollins asking: “Did you speak with [the *Globe* Reporter]?” Rollins immediately replied: “Tomorrow morning.” Arroyo then replied: “Don’t let his man get away with trying to deflect this. And frankly this really no bullshit feels like pay for play and corruption coverup as we speak.” We asked Rollins what she understood Arroyo expected her to discuss with the *Globe* Reporter. Rollins replied:

I’m not, I don’t recall. I would have to assume, it’s an article about, you know, what is going on in the D.A.’s office, what my policies were, if they are continuing to be followed, but as I sit here today, I don’t specifically recall what that was....

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<sup>17</sup> The story was not published on Tuesday, August 2; instead, it was ultimately published on Saturday, August 6, as detailed below.

<sup>18</sup> In the Saturday, August 6 article that detailed the possible *quid pro quo* involving Hayden, the *Globe* reported: “Late last month, just a few hours after the *Globe* began asking questions about the case, Hayden’s office assigned yet another new prosecutor to the case, according to a document reviewed by the *Globe*.” See “[It was you! Traffic spat turned police coverup leads to questions for DA Hayden](https://www.bostonglobe.com/2022/08/06/metro/it-was-you-traffic-spat-turned-police-coverup-leads-questions-da-hayden/),” *The Boston Globe*, August 6, 2022, [bostonglobe.com/2022/08/06/metro/it-was-you-traffic-spat-turned-police-coverup-leads-questions-da-hayden/](https://www.bostonglobe.com/2022/08/06/metro/it-was-you-traffic-spat-turned-police-coverup-leads-questions-da-hayden/) (accessed April 5, 2023).

Rollins called the *Globe* Reporter on August 3 at 6:56 a.m., and they spoke for over 43 minutes. Rollins told us they talked about many of the topics the *Globe* Reporter described in an August 3 email to the MA USAO Executive Officer, discussed below, which included the transit police misconduct investigation. Rollins stated that she specifically recalled responding to comments from Hayden's office about steps that she either had or had not taken in various investigations during her tenure as Suffolk D.A.

**3. August 3-4: *Globe* Reporter Contacts MA USAO for Comment about Upcoming Hayden Story and Rollins Does Not Tell MA USAO Staff that She has Been Communicating with *Globe* Reporter about Hayden**

A few hours after Rollins and the *Globe* Reporter spoke over the phone on August 3, the *Globe* Reporter contacted the MA USAO Executive Officer, who, among her responsibilities, oversaw the MA USAO Public Affairs Office, for official comment from Rollins on his upcoming story. When the Executive Officer advised Rollins about the *Globe* Reporter's inquiry, Rollins did not disclose to the Executive Officer that she had already communicated substantively with the *Globe* Reporter several times for the story.

On August 3 at 10:35 a.m., the *Globe* Reporter sent an email to the Executive Officer. The *Globe* Reporter wrote:

We are working on a story about the Suffolk District Attorney's Office and we are seeking comment from US Attorney Rollins as the former Suffolk DA. We are looking for Rollins to address the comments from current DA Hayden, which are below.

The *Globe* Reporter's email explained that the *Globe* was "writing about how the current Suffolk District Attorney, Kevin Hayden, is handling several police misconduct cases that were initiated under the Rollins administration." The first matter he described was the transit police misconduct investigation in which he said an off-duty transit officer was "[a]ccused of brandishing a gun during an off duty traffic dispute and then trying to cover it up."

The Executive Officer sent the content of the *Globe* Reporter's email to Rollins in a text message and asked Rollins if she wanted to comment on the story. Rollins responded, in part: "I don't believe that I would want the USAO making a comment on any of this. Which is separate and apart from me saying something."

The Executive Officer responded to the *Globe* Reporter's email that evening: "I believe you spoke with her?" This email prompted the *Globe* Reporter to send a text message to Rollins later that night stating:

I wanted to double check one thing in terms of our communication. As agreed, our discussion has been off the record. As I mentioned, I sent a note to [the Executive Officer] to ask for comment generally about the law

enforcement investigations that initiated under you as DA and [were] inherited by Hayden. [The Executive Officer] responded, "I believe you spoke with her?"

I haven't told anyone we spoke because it was off the record. I haven't responded to [the Executive Officer] and I want to make sure [I'm] not getting my lines crossed and violating confidences.

Rollins responded to the *Globe* Reporter at 10:44 p.m. with a lengthy text message. That text message began:

I told her you and I spoke for a second and you were going to call her to officially ask me for a comment about something on the record.

So she does not know we have been speaking.

OFF THE RECORD, but if you can say sources close to the Rollins Administration???

As the elected DA, I had ZERO incentive to drag out investigations into corrupt police officers. No police endorsed me (aside from the T police Union) or contributed to my campaign. I would have been even more popular if I indicted police officers.

(Emphasis in original.) Rollins continued in the text message with a detailed description of her record as D.A. and her criticisms of Hayden, restating some of the same points she provided to the *Globe* Reporter in her text message on August 1. The *Globe* Reporter did not reply to Rollins's text message.

On August 4 at 4:00 p.m., the *Globe* Reporter emailed the Executive Officer a second time:

I was looking to get something on the record from US Attorney Rollins. Our focus has narrowed and the story is almost entirely about the Suffolk DA's handling of the investigation of [the former Transit Officer].

Most of the story focuses on DA Hayden, but the investigation of [the former Transit Officer] was launched by the Rollins administration at the request of Transit police. Hayden told us that he inherited the [former Transit Officer] case and he noted that "no charges were filed by the prior administration" and that the case remains open. We also note that there are other law enforcement cases pending at the [Suffolk] DA's office since the Rollins administration. Hayden said he has not ended any investigations of police misconduct cases inherited from the Rollins administration.

Let me know if US Attorney Rollins wants to add anything on the record.

The Executive Officer forwarded the *Globe* Reporter's inquiry to Rollins via text message. That evening the Executive Officer emailed the *Globe* Reporter that Rollins "does not have any comment."

We asked Rollins why she did not tell the Executive Officer the full extent of her contacts with the *Globe* Reporter. Rollins stated: "Here, I didn't believe that I had to talk to [the Executive Officer] about something I was going to talk about as DA, right?" She further stated: "[A]s far as this was concerned, I was talking about something I had done months prior to coming here, for three years."

#### 4. August 5: Rollins Posts a Tweet that is Included in the *Globe* Article

In lieu of officially commenting on the topics the *Globe* Reporter planned to cover in his upcoming story, Rollins posted a tweet that she suggested the *Globe* Reporter use instead. On August 5 at 8:45 a.m., Rollins tweeted about DOJ announcing charges the previous day against the officers involved in the Breonna Taylor case.<sup>19</sup> The MA USAO was not involved in the prosecution, which was being handled by other DOJ offices. Rollins wrote:

If DAs don't prosecute & hold police officers that are corrupt, use excessive force, or engage in cover-ups accountable, it erodes the public trust. Nobody will come forward & help us solve crimes if they know their DA allows criminals to remain police officers. PROUD OF THIS DOJ.

(Emphasis in original.)

Rollins sent a text message to the Executive Officer shortly after her tweet that, in part, stated: "Maybe tell [the *Globe* Reporter] that I made this general statement about Breonna Taylor but there are overlapping issues with the MBTA police officer." The Executive Officer then emailed a screenshot of the tweet to the *Globe* Reporter. As noted previously, Rollins's tweet was included in the *Globe's* August 6 article.

We asked Rollins why she instructed the Executive Officer to highlight this tweet for the *Globe* Reporter. Rollins replied:

Because I think it was an opportunity for us to say great things about the Department of Justice, and Breonna Taylor, in particular, and...local police officers are the ones that killed her, right? So I think it was a culmination of a million great things and it is a general statement that I think spoke to a lot of the issues that [the *Globe* Reporter] was going to be questioning about, and that's why I ran for DA.

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<sup>19</sup> [DA Rachael Rollins on Twitter.com](https://twitter.com/DARollins/status/1555535514559717377?cxt=HHwWgoCxzeLTr5YrAAAA), August 5, 2022, [twitter.com/DARollins/status/1555535514559717377?cxt=HHwWgoCxzeLTr5YrAAAA](https://twitter.com/DARollins/status/1555535514559717377?cxt=HHwWgoCxzeLTr5YrAAAA) (accessed February 3, 2023).

5. **August 6-8: *The Boston Globe* Publishes the Hayden Story and Rollins Advises Arroyo to Send It to “Every Single One” of His Endorsers**

On the evening of August 6, the *Globe* published its story entitled, “It was you! Traffic spat turned police coverup leads to questions for DA Hayden,” which focused on the lack of progress on the transit police misconduct matter under Hayden’s tenure and the understaffing of the Special Prosecutions Unit in the Suffolk D.A.’s Office responsible for handling police misconduct cases.<sup>20</sup>

The next morning, at 10:19 a.m., Rollins sent a text message to Arroyo that included a link to a *Boston Herald* story about MBTA safety issues and stated:

Two things/

1. Remember when I said I was opening a criminal investigation into the T? What happened to that? See whether any people from the T donated to anyone’s [sic] campaign...
2. Send the *Globe* article to every single one of your endorsers. Do not assume they have seen it. Nobody reads anymore or pays attention to shit.

Arroyo “liked” Rollins’s text message and followed up with text messages stating that numerous individuals had called for Hayden’s resignation.

We asked Rollins why she advised Arroyo to send the *Globe* article to “every single one” of his endorsers, which led to the following exchange:

MS. ROLLINS: I think this was more mistakes that I had made. Nobody reads anything. We can’t assume, I think, he says at some point, somewhere else, like, this is just a little publication. I shouldn’t do something. And I said, like, every, every interaction matters, so I was simply letting him know what I would have done in that circumstance.

OIG ATTORNEY: And is that just because you viewed that *Boston Globe* article as a good thing for his campaign?

MS. ROLLINS: I certainly think that it was positive, right?... I think it was also factually accurate, right? Like, there [are] positive stories about people that are not accurate or spun, etc., but I do think, if there is, if there is information that is helpful to your campaign, you should circulate it.

OIG ATTORNEY: And just to be clear, that story had nothing to do with Arroyo, either. That story was all about Kevin Hayden, right?

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<sup>20</sup> [“It was you! Traffic spat turned police coverup leads to questions for DA Hayden,”](https://www.bostonglobe.com/2022/08/06/metro/it-was-you-traffic-spat-turned-police-coverup-leads-questions-da-hayden/) *The Boston Globe*, August 6, 2022, bostonglobe.com/2022/08/06/metro/it-was-you-traffic-spat-turned-police-coverup-leads-questions-da-hayden/ (accessed February 3, 2023).

MS. ROLLINS: Well, or not the things that he was doing, yeah.... I think, but I think [Arroyo] was mentioned in the article.

OIG ATTORNEY: I think as far as maybe the election, but I think most of the article focused on what Hayden had and had not done, relating specifically to this transit police officer cover-up scandal.

MS. ROLLINS: Well, or I thought, and if you have the article, I can take a look at it, but I thought it was more pointing out inaccuracies, with respect to what some, you know, an individual, Kevin Hayden had said that he had done, right? And in any circumstance, if you're running for office and somebody that you're running against is shown to not be truthful, I think that's helpful.

The following day, August 8, Arroyo sent a text message to Rollins that stated: "Hes [sic] trying to pin this on you read this thread" and included a link to a Twitter thread. In response, Rollins told Arroyo: "Light him up." Arroyo stated:

Already doing that.

I think it'd be appropriate for you to at least comment since a) it seems potentially criminal and you have the public corruption unit and b) he's trying to misrepresent what you did on this case.

Rollins responded later that evening, in pertinent part: "People can ask for Ethics, [the Massachusetts Office of Campaign and Political Finance], [Attorney General], and US Attorney to look into this." Arroyo immediately "liked" Rollins's message.

#### **6. August 8: Rollins Praises August 6 Story to *Globe* Reporter and the *Globe* Publishes a Follow-Up Story about Hayden**

After the first story ran on August 6, the *Globe* Reporter sought additional information from Rollins, texting her on August 8 that he was "working on a follow up to [their] story that ran about the transit police officer" and asking Rollins to let him know if she was "hearing anything" or had "anything to say about it." Rollins responded by telling the *Globe* Reporter that "[t]he story was phenomenal," "[t]he T police are outraged," and "Great Job." The *Globe* Reporter told her that they were "still digging" in case she heard anything. Rollins's call detail records and text messages do not reflect further communications between Rollins and the *Globe* Reporter before the *Globe* ran a follow-up story on August 8 focused on Hayden facing "questions, criticism, and calls for an outside probe" after the *Globe's* reporting on August 6.

We asked Rollins how she knew that the MBTA Transit Police were "outraged." Rollins replied: "Because I know the T police." Rollins also stated that she had "heard that they were super upset" and added that the MBTA Transit Police had publicly tweeted their displeasure with Hayden.



7. **August 10: *The Boston Globe* Publishes a Third Story about Hayden and Rollins Sends the *Globe* Reporter Text Messages about Where to Find More Information Relevant to his Hayden Articles**

On August 10, the *Globe* ran its third article related to Hayden and the transit police misconduct investigation, which reported that the MBTA Transit Police called for a special prosecutor to investigate the two transit police officers involved in the alleged cover-up, “signaling a lack of confidence in Hayden’s handling of the case.”

On the evening of August 10, Rollins contacted the *Globe* Reporter and gave him advice about where to look for more information about the Suffolk D.A.’s investigation into the former Transit Officer. Specifically, on August 10 at 8:13 p.m., Rollins sent a text message to the *Globe* Reporter stating:

You could ask for the Grand Jury schedule. The GJ Coordinator...keeps a schedule in 1/2 hour increments about who has requested and has scheduled GJ time.

You could get the name of the ADA handling the case now and make a public records request for all emails to and from that person regarding this case. Also ask for all correspondence from the T to the office regarding the case. And all correspondence regarding this matter. Up to [and] including today. Emails, texts, [voicemails], calls, [encrypted messages], etc.

Remember, THE POLICE BROUGHT THIS TO US! ABOUT ONE OF THEIR OWN POLICE OFFICERS!!! They had done a thorough investigation and absolutely believed that he should be prosecuted if they took this extraordinary step.

This reaction is ABSOLUTELY in response to your article. 100%.

(Emphasis in original.) Rollins sent another text message a few minutes later, at 8:22 p.m., stating:

Re: GJ schedule, you can see when the times got requested.

It took LESS THAN 1 week from reading your article for them to miraculously have enough to present to the grand jury. DOESN'T THAT PROVE YOU RIGHT? But he is claiming they have been looking into this for 8+ months beyond what my administration already found.

(Emphasis in original.)

Rollins told us that she mentioned grand jury schedules to the *Globe* Reporter because such information, obtained through public records requests, can help discern whether the Suffolk D.A.’s Office was likely working on the transit police misconduct investigation, either under her tenure or Hayden’s.

**C. Rollins Cites *Globe* Articles in Internal MA USAO Discussions About Opening a Possible Hayden Investigation and Raises Recusal Issue with EOUSA; Arroyo and Rollins Discuss Impending Negative *Globe* Story About Arroyo, and Rollins Tells Arroyo She is “Working on Something”**

In this section, we describe Rollins’s internal discussions within the MA USAO, following publication of the *Globe*’s August 6 article, about whether the office should open a criminal investigation into Hayden and his First Assistant D.A. for possible public corruption in their handling of the police misconduct case and a separate civil rights investigation into the underlying transit police misconduct allegations. We also describe how information in the three *Globe* articles led to Rollins contacting EOUSA’s General Counsel on August 10 and 11 regarding her potential conflict of interest in any future MA USAO federal criminal investigation into Hayden.

We then discuss a letter the MA USAO received on August 17 from a law professor requesting an investigation of Hayden and his First Assistant D.A. and how that letter led to further discussions with EOUSA and Rollins, and eventually the recusal of the entire MA USAO from any such investigation. Finally, we describe communications Rollins had with the *Globe* Reporter and with Arroyo about the law professor’s letter and the possibility of a DOJ investigation.

**1. Internal MA USAO Discussions about Possible DOJ Investigation and Rollins’s Likely Recusal**

According to the MA USAO First Assistant U.S. Attorney (First Assistant), sometime after the *Globe*’s reporting on the transit police misconduct matter, he and Rollins discussed whether the information in the *Globe* warranted the MA USAO opening a civil rights investigation into the transit officers’ alleged misconduct or a separate public corruption investigation into the possible *quid pro quo* involving Hayden and his First Assistant D.A. The First Assistant told us that he did not recall when this conversation occurred, including whether it was before or after Rollins first reached out to the EOUSA General Counsel on August 10, described below. The First Assistant said that he also did not recall whether Rollins first raised the information in the *Globe* articles to him or whether he raised them with her. In either case, according to the First Assistant, he and Rollins discussed that he should seek guidance from EOUSA about what role, if any, the MA USAO should play in either a civil rights investigation of the transit officers or a public corruption investigation of Hayden and his First Assistant D.A. The First Assistant said that because the potential investigations concerned an office Rollins used to lead, he believed Rollins recognized “right away that there was going to be a recusal issue.”<sup>21</sup> The First

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<sup>21</sup> On August 6, 2021—after her nomination as U.S. Attorney—Rollins signed a “Nominee Statement” where she agreed to comply with the commitments outlined in her Ethics Agreement. Rollins’s Ethics Agreement contained the following provision:

(Cont’d.)

Assistant stated that he conveyed to Rollins that he did not think she could be involved in either potential investigation but that he hoped the MA USAO could still be involved in the civil rights matter. The First Assistant told us that during his discussion with Rollins about the *Globe* article, she did not tell him that she had been in contact with any of the reporters in relation to the story.

Rollins told us that she did not recall her conversation with the First Assistant, but that either she or the First Assistant may have circulated one or more of the *Globe* articles for discussion. Rollins told us that with respect to investigating Hayden, her opinion was that “somebody should absolutely look into the allegations” but that she was not sure whether she expressed that opinion to the First Assistant or anyone else at the time. Rollins told us that the outcome of any such inquiry was “irrelevant” to her; she just believed it was important that there be an inquiry by someone with investigative authority, which she believed was either the MA USAO or the Massachusetts Attorney General.

The First Assistant told us that his initial assessment was that he was not interested in bringing a possible *quid pro quo* case against Hayden and his First Assistant D.A. and that he was more interested in the potential civil rights case against the transit police officers. According to the First Assistant, Rollins appeared to him to be open to both potential cases and “more open to the notion that Hayden might have done something dirty.”

The First Assistant told us that after his initial discussion with Rollins about the information in the *Globe* article, he intentionally limited his communications with Rollins on that subject. The First Assistant explained that he assumed Rollins would be recused from any resulting investigations, and, for that reason, he did not want her opinions to influence how he handled the investigations going forward.

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Upon confirmation, Ms. Rollins will resign from her position as Suffolk County District Attorney. For a period of one year after her resignation, she will have a “covered relationship” under the impartiality regulation at 5 C.F.R. § 2635.502 with the Suffolk County District Attorney’s Office. Pursuant to 5 C.F.R. § 2635.502(d), Ms. Rollins will seek written authorization to participate in particular matters involving specific parties in which she knows the Suffolk County District Attorney’s Office is a party or represents a party. However, during her appointment to the position of United States Attorney, Ms. Rollins will not participate personally and substantially in any particular matter involving specific parties in which she previously participated in her capacity as Suffolk County District Attorney.

This provision of the Ethics Agreement led to Rollins being recused from numerous matters involving the Suffolk D.A.’s Office. The EOUSA General Counsel told us that he recalled discussing Rollins’s displeasure with the number of recusals “very early on” in her tenure and specifically highlighting this language in her Ethics Agreement during their conversation. Rollins told the OIG that she had “lots of ethics meetings” early in her tenure dealing with recusal issues and described these meetings as “intense” and consuming “hours of [her] time.”

On August 9, the First Assistant emailed the MA USAO's Public Corruption Unit Chief and asked him whether the possible *quid pro quo* reported in the first *Globe* article was something his unit would be interested in. The First Assistant could not recall the precise sequences of events but told us that he might have contacted the Public Corruption Unit Chief independently of Rollins because the First Assistant knew that Rollins would almost certainly be recused from any investigation of Hayden. The First Assistant stated that he wanted to know early on whether the Public Corruption Unit Chief had any interest in the allegations because, if the Unit Chief had no interest in pursuing the allegations, there would be no need to go through the recusal process.

The August 9 email led to a discussion a few days later between the Public Corruption Unit Chief and his supervisor, the Chief of the MA USAO's Criminal Division (Criminal Chief), about whether to open a public corruption case against Hayden and his First Assistant D.A. based on the information in the *Globe* articles. They both told us that during this discussion they were of the same mind that the possible *quid pro quo* reported in the *Globe* was not worth investigating. The Criminal Chief also told us that he consulted with a supervisor at the Federal Bureau of Investigation who also "didn't have an appetite" for opening an investigation.

Email communications reflect that the Criminal Chief planned to discuss this issue with the First Assistant on August 17. The Criminal Chief told us that he did not specifically recall this conversation with the First Assistant but that he would have conveyed his and the Public Corruption Unit Chief's assessment that the possible *quid pro quo* was not worth pursuing. The Criminal Chief said that he would have also conveyed to the First Assistant that they planned to reach out to DOJ's Civil Rights Division for an assessment of the potential civil rights case against the transit police officers.

The First Assistant told us that he recalled the Criminal Chief telling him that there was not much interest in investigating the possible *quid pro quo*. The First Assistant said that he believed he agreed with this initial assessment. The First Assistant told us that he did not recall discussing this assessment with Rollins. As noted above, the First Assistant said he intentionally tried to limit his discussions with Rollins given the likelihood of her recusal.

The MA USAO Executive Officer told us that Rollins raised the *Globe* stories during a morning leadership call and asked what the office was doing about it. The Executive Officer stated that she told Rollins the MA USAO was not taking any action and, in fact, could not take any action due to Department rules prohibiting overt actions in the run-up to an election. According to the Executive Officer, Rollins asked what rules the Executive Officer was referring to, and the Executive Officer replied that she did not know the details, so Rollins should ask the Public Corruption prosecutors in the office. The Executive Officer stated that she and Rollins had "some back and forth," and then Rollins said: "[W]ell, I mean, if there's something there, I mean, what do you mean? I would expect they'd be cutting subpoenas next week." The Executive Officer told us that she then explained to

Rollins that things typically did not move that fast and that also there was an important rule about not intervening in elections. The Executive Officer said that she told Rollins that Rollins could certainly send the *Globe* articles to the Public Corruption prosecutors, but the Executive Officer added that she thought the prosecutors would not take action until after the election. The Executive Officer said that she and Rollins “kind of left it at that,” and the issue did not resurface until the office received the law professor’s letter, discussed below.

## 2. August 10: Rollins Speaks with EOUSA General Counsel about the *Globe* Story and Her Potential Conflict of Interest

Late in the evening on August 10, Rollins emailed the EOUSA General Counsel a link to the August 10 *Globe* article reporting the MBTA Transit Police’s call for a special prosecutor and asked if he had time for a call the next day. Shortly after emailing the EOUSA General Counsel, Rollins forwarded the email to the First Assistant, who responded by asking Rollins whether “the recusal issue” prompted her to reach out to the General Counsel. Call detail records indicate that on August 11, the EOUSA General Counsel and Rollins had an approximately 4-minute phone call that afternoon.<sup>22</sup> This call was the first of two calls between the EOUSA General Counsel and Rollins after the *Globe* articles, according to call detail records and email communications.

Rollins told us that she generally remembered reaching out to the EOUSA General Counsel because she predicted that the issues raised in the *Globe* articles—specifically, the “questionable” behavior of the former transit police officers and the possible *quid pro quo* involving Hayden—were “going to bubble up into something really big.” Rollins told us that she had a “faint” recollection of the transit police misconduct matter from her time as Suffolk D.A. and wanted to make sure that the EOUSA General Counsel was aware of her potential conflict of interest. She said that she also wanted the EOUSA General Counsel to know that she was removing herself from any involvement, but that she did not want “this to fall through the cracks, if what is alleged actually happened.” The EOUSA General Counsel told us he did not specifically recall this initial conversation with Rollins.

Rollins also told us that she did not recall whether she and the EOUSA General Counsel specifically discussed whether she should be recused from any potential investigations resulting from the issues reported in the *Globe*. However, she said that she thought at the time that her office might do something in response to the news reporting, and she knew that there was “no way” EOUSA would let her become involved.<sup>23</sup> When we

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<sup>22</sup> Call detail records indicate that on August 11, Rollins called the MBTA Transit Police Chief, and the call lasted for 68 seconds. When we asked Rollins why she called the Chief, she told us that that she did not recall the reason, including whether she wanted to discuss his office’s call for a special prosecutor, as reported in the August 10 *Globe* article she forwarded to the EOUSA General Counsel.

<sup>23</sup> As noted above, Rollins signed an Ethics Agreement prior to becoming U.S. Attorney which, among other provisions, prohibited her from participating in matters in which the Suffolk D.A.’s Office was a party until January 2023, at the earliest.

asked why she decided to contact the EOUSA General Counsel directly, rather than through her ethics advisors as other recusal issues were handled, Rollins told us that she did not remember the reason, but “this seemed like something [she] should just go directly to” the EOUSA General Counsel to discuss.

Rollins told us that she did not recall whether she told the EOUSA General Counsel about her relationship to Arroyo. The EOUSA General Counsel told us that Rollins never mentioned to him that she had had communications with Arroyo or with any *Globe* reporters about the issues reported in the *Globe* articles.

### **3. August 16-17: Rollins Receives Letter from a Law Professor Calling for Federal Investigation into Hayden, and Rollins Consults EOUSA About Her Recusal from Such an Investigation**

On August 16, a Boston-area law school professor (Law Professor) emailed a letter directly to Rollins “requesting that [the MA USAO] commence an investigation into potential improprieties committed by prosecutors” in the Suffolk D.A.’s Office. Referencing the *Globe* reporting, the letter stated that recent media accounts “revealed troubling information that could potentially indicate public corruption and/or other illegal activity” committed by Hayden and his First Assistant D.A. The letter attached a timeline of facts reported in the *Globe* regarding the donations that the former Transit Officer and his attorney made to Hayden’s campaign and the alleged statements of Hayden’s First Assistant D.A. to the former Transit Officer’s attorney that the former Transit Officer was no longer under investigation, which the Law Professor said he had not “independently verified.” The Law Professor ended his letter to Rollins with: “Please feel free to reveal this letter to the public and/or media if you would like to do so.”

When we asked the Law Professor what prompted him to send his letter, the Law Professor stated that one focus of his scholarship is prosecutorial accountability, and he found the allegations against Hayden concerning. The Law Professor stated that he was also concerned that no other D.A. offices would seriously look into these allegations, and he, therefore, wrote to the U.S. Attorney hoping his letter would prompt an investigation to determine what actually happened. The Law Professor, who referred to Rollins as a “friend” in emails we reviewed, told us that he did not speak with Rollins about the issues raised in the letter before he sent it.

Rollins told us that she was acquainted with the Law Professor before he sent her this letter. According to Rollins, the Law Professor is a “progressive” who had written articles in defense of her and her policies when she was Suffolk D.A., and she estimated that they have contact every 3 or 4 months. The personal email communications Rollins provided us indicate that on August 15, the day before the Law Professor sent his letter requesting an investigation, the Law Professor sent Rollins an email seeking to confirm her attendance at an event on September 21, 2022, promoting his new book, which Rollins confirmed by email the same day. The emails between them did not mention the Law

Professor's intention to send her a letter requesting an investigation.<sup>24</sup> Rollins told us that she did not recall the Law Professor giving her advance notice of the letter and that she "can affirmatively say that [she] did not solicit any letter from" him. She said that she would leave open "a slim possibility" that he called her to complain, as people sometimes do, and that she told him to write her a letter, as she sometimes does, but she said she had no memory of that happening here. Call detail records of Rollins's personal cell phone, DOJ cell phones, and desk phone do not show any calls between the Law Professor and Rollins during this time period, and Rollins's attorney represented to the OIG that her personal cell phone did not contain any text or instant messages with the Law Professor during this time period.

Rollins told us that her reaction to the Law Professor's letter was that she "felt compelled" to contact the EOUSA General Counsel a second time to discuss what to do. According to Rollins, it was significant to her that someone was now asking her office to open an investigation. She said that she felt she needed help from EOUSA at this time to make sure that she did not taint any future investigation. When we asked her whether she expected the Department to recuse her from any investigation of Hayden, she said that she assumed she would be recused.

On the evening of August 16, Rollins forwarded the Law Professor's letter to the EOUSA General Counsel stating: "I just received this letter. We will not respond until you and I have a discussion. Sound good?" Rollins and the EOUSA General Counsel ultimately spoke around 2 p.m. on August 17.

The EOUSA General Counsel told us that Rollins sought his advice on recusal because she recognized the appearance of a potential conflict of interest. According to the EOUSA General Counsel, he advised her that he thought her entire office should be recused from any matter involving Hayden, and Rollins agreed.

According to Rollins, she told the EOUSA General Counsel: "I don't like being recused from things, but...if you think I need to be, I understand that." Rollins also stated that the EOUSA General Counsel asked her to have her First Assistant send his office a written request for an office-wide recusal to begin the recusal process.

The Executive Officer told the OIG that at some point in August, after receiving the Law Professor's letter but before the MA USAO received a formal recusal memorandum, Rollins asked the Executive Officer if the Executive Officer had received any media inquiries about the Law Professor's letter. According to the Executive Officer, she told Rollins that there had been no media inquiries, and Rollins expressed surprise at that fact.

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<sup>24</sup> Subsequent to agreeing to participate in the Law Professor's book event, and while the OIG investigation was ongoing, Rollins sought ethics advice about her attendance at the book event and ultimately did not attend after ethics advisers in the MA USAO expressed concerns.



#### 4. August 17-18: Discussions Between MA USAO and EOUSA about Recusal from a Potential Hayden Investigation

Following Rollins's phone call with the EOUSA General Counsel, Rollins asked the MA USAO First Assistant to begin the formal recusal process on the Hayden matter. The First Assistant then reached out to EOUSA's General Counsel's Office (GCO) for further guidance on a recusal in the Hayden matter and the potential civil rights matter involving the transit police officers.

Specifically, on August 17 at 5:34 p.m., the First Assistant emailed the EOUSA General Counsel seeking guidance on the recusal process and attached the Law Professor's letter to his email, stating:

Hope all is well. I understand US Attorney Rollins discussed with you the attached letter requesting an investigation of corruption allegations that have been reported in the media involving the current Suffolk County District Attorney. [Rollins] asked me to follow up with you to seek guidance on implementing the office-wide recusal you have recommended for the allegations raised in [the Law Professor's] letter. I would also like to get your advice on how we should handle the separate matter of any inquiry into the underlying traffic stop by the MBTA Officer that precipitated the alleged events discussed in [the Law Professor's] letter. Our office was taking preliminary steps to determine whether the events involving the traffic stop might give rise to a constitutional claim against [the former Transit Officer]. My working assumption was that US Attorney Rollins would be recused from any investigation of the MBTA officer matter since the incident happened in 2021 when [Rollins] was the Suffolk County District Attorney, but that our office as a whole would not be recused from this matter. This is, as you know, how we are handling other matters from which US Attorney Rollins is recused (and I am not recused also). Happy to discuss live if that is easier. Thanks.

The following morning, the EOUSA General Counsel forwarded the First Assistant's email to an EOUSA Assistant General Counsel (AGC). In that email, the EOUSA General Counsel described the First Assistant's request for a U.S. Attorney-only recusal on the transit police misconduct matter as "fairly straightforward since [Rollins's] ethics pledge and agreement require her recusal" and noted that Rollins "understands and agrees to this [U.S. Attorney] only recusal." The EOUSA General Counsel then directed the AGC to the First Assistant's email and the Law Professor's letter for information on the other matter. The EOUSA General Counsel added: "If you need any other facts you can pull them up easily since this is apparently a big deal in Boston right now."

The AGC emailed the First Assistant on August 18 at 1:06 p.m. stating that the "standard response time for Recusal matters is 5-10 business days" but to please let him

know “if there is an urgent matter [he] should be aware of.” The First Assistant replied to the AGC on Friday, August 19, at 8:16 a.m. stating that this matter was not urgent and asked the AGC if he needed any additional information. The AGC responded at 8:41 a.m.:

The only question I have at this time is whether there is a current investigation into the Suffolk County DA’s office and/or the Acting DA and First DA. Just so you know, I have a few residual matters from my previous duty day that I am trying to complete, but I will turn to these recusals as soon as I am finished. That said, it will be next week before I have a chance to focus on them.

The AGC told us that he had a subsequent telephone conversation with the First Assistant on August 23, and the AGC’s recollection was that he was told the MA USAO did not have an investigation open at that time. The AGC told us that he advised the First Assistant on this August 23 call that GCO was planning to submit a request to the Office of the Deputy Attorney General for an office-wide recusal on the potential Hayden investigation and a U.S. Attorney-only recusal on the potential civil rights investigation.

#### **5. Rollins Seeks to Have MA USAO Send a Response Letter to the Law Professor**

In addition to beginning the recusal process, Rollins wanted the office to send a response letter to the Law Professor. According to the MA USAO First Assistant, Rollins stated that it was the professional thing to do because, as public servants, they had a duty to respond to the letter.

When we asked Rollins whether she remembered any discussions with her team about whether to respond in some fashion to the Law Professor, she said that she “may have said that.” She told us that she did not remember what happened in this instance but that generally she believes it is important for her office to respond to letters, even if only to say “thank you for your letter.”

The First Assistant told us that although he was aware that Rollins knew the Law Professor, he did not know the Law Professor, and he was concerned that any MA USAO response to the Law Professor could make its way to the media and “be used to further an agenda that may not be what [the MA USAO would] want.” In particular, the First Assistant stated that he did not think the MA USAO should respond to the letter because any response could be used to suggest that the MA USAO was looking into the allegations against Hayden. The First Assistant stated that he ultimately advised Rollins to “backburner” any potential Law Professor response until the MA USAO—in consultation with EOUSA—determined what role, if any, the MA USAO would have in a potential Hayden investigation.

Separately, the Public Corruption Unit Chief and Criminal Chief discussed the Law Professor’s letter, and, according to the Public Corruption Unit Chief, he told the Criminal

Chief that he had no intention of responding to the letter. The Public Corruption Unit Chief told us that he believed at the time that it would be “foolish” to engage with someone who appeared to want his letter publicized because the Public Corruption Unit Chief had been trained as a prosecutor not to take actions to influence an election. The Criminal Chief told us that he had no specific recollection of a conversation about whether to respond to the Law Professor’s letter, but that his advice would have been not to send a response at all or, at most, to send a non-substantive acknowledgement letter.

The First Assistant told us that after it became clear that the MA USAO would be recused from any potential Hayden investigation, Rollins told him again that she wanted to respond to the Law Professor’s letter and began to tell the First Assistant what she wanted in the response. The First Assistant stated that Rollins “really want[ed] a response to go to” the Law Professor and described Rollins as “pushing [him] a little bit” on the issue. According to the First Assistant, the language Rollins proposed “created the impression that there was an investigation” into Hayden. The First Assistant stated that Rollins also wanted the letter to state that she (Rollins) had sought a recusal. The First Assistant told us that he immediately told Rollins that she had been recused, and that he would handle the issue in consultation with others.

Rollins told us that she did not recall any conversations in which she advocated sharing with the Law Professor that she sought recusal, but that, if she had said that, “it would have been based on wanting there to be information that something was happening” to convey to the Law Professor that he did not need to talk to her about it anymore.

The MA USAO Executive Officer told us that she also had a discussion with Rollins about whether the MA USAO should respond to the letter. The Executive Officer said that she told Rollins that she (the Executive Officer) believed no response was necessary. According to the Executive Officer, Rollins stated that she knew the Law Professor and believed the office should send a response. The Executive Officer stated that she recalled speaking about this potential response letter with Rollins “off and on” and maybe also speaking about it with the First Assistant. The Executive Officer told us that the First Assistant eventually took the lead in responding to the Law Professor’s letter.

The First Assistant consulted with officials in EOUSA’s GCO about a response to the Law Professor, and GCO ultimately approved his proposed response. That response, which the First Assistant sent to the Law Professor on September 9, after the primary election, stated: “Thank you for your August 16, 2022, letter to U.S. Attorney Rachael Rollins.

Someone from the Department of Justice will be in touch with you if we need additional information.”<sup>25</sup>

**6. August 17-19: Rollins and Arroyo Exchange Encrypted Messages about the Law Professor’s Letter and an Impending Negative *Globe* Article about Sexual Assault Allegations Against Arroyo**

Between August 17 and 19, Rollins had multiple communications with Arroyo by phone and by encrypted messaging that included references to the Law Professor’s letter and a soon to be published story in the *Globe* concerning sexual assault allegations against Arroyo. On August 17 at 11:56 p.m., Arroyo called Rollins, and they spoke for over 35 minutes. We asked Rollins when she first discussed the Law Professor’s letter with Arroyo, noting that Arroyo references the letter in an encrypted message with Rollins 2 days later, which we describe below. Rollins replied: “I don’t know if I, I don’t, as I sit here today, recall discussing the letter with Arroyo.” Rollins later stated while she did not recall if she discussed the letter with Arroyo, she “never gave Ricardo Arroyo a copy of that letter.”

On August 19, Rollins and Arroyo began communicating with each other by encrypted messaging rather than text messaging.<sup>26</sup> Rollins told us that Arroyo was the one who made this change, and Rollins stated that she did not recall Arroyo commenting on the reason for the change. Using this new platform, on August 19, Rollins and Arroyo exchanged the following encrypted messages:

12:43 p.m., Arroyo: “[The Law Professor] sent the request to globe.”

12:43 p.m., Arroyo: “And globe asked if there was any indication us attorneys office would take it up.”

12:43 p.m., Arroyo: “FYI.”

12:43 p.m., Arroyo: “They’re interested.”

7:20 p.m., Rollins: [Unidentifiable emoji].

7:21 p.m., Rollins: “Any movement for you?”

7:21 p.m., Arroyo: “We are still pushing.”

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<sup>25</sup> This response was in accordance with Justice Manual § 1-7.410, which states, in part: “Receipt of a request to open an investigation may be publicly acknowledged, but care should be taken to avoid implying that the referral will lead to an investigation. There is a distinction between reviewing a request and opening an investigation.”

<sup>26</sup> The encrypted messaging service they used is an app for smart phones that allows users to send messages, images, audio, or video over the internet. The service is very similar to text messaging. The encrypted messaging service advertises itself as a way to “message privately” and adds: “Your privacy is our priority.” After the initial encrypted message from Arroyo, Rollins received a message from the encrypted messaging service that stated: “Messages and calls are end-to-end encrypted. No one outside of this chat, not even [this service], can read or listen to them. Tap to learn more.”

8:02 p.m., Arroyo: "They're in hold right now."

8:02 p.m., Arroyo: "Call me when youre [sic] alone I can update you."<sup>27</sup>

Based on this exchange and other messages, Arroyo's statement that "They're in hold right now" appears to be referring to the impending *Globe* story about closed sexual assault investigations involving Arroyo. As noted earlier in Section II.A, on August 23, the *Globe* reported that Arroyo had twice been investigated by the Boston Police Department for sexual assault, once in 2005 and again in 2007.<sup>28</sup>

When we asked Rollins whether, in her conversations with Arroyo leading up to this encrypted message exchange, she had talked to him about the fact that her office may open an investigation into Hayden, she responded: "I don't believe that I said that." She added that she did not believe that it was "novel" to think that the U.S. Attorney might look into it.

#### **7. August 19 and 20: Rollins and *Globe* Reporter Exchange Text Messages about Law Professor's Letter and Rollins Urges Reporter to "KEEP DIGGING"**

After Rollins's call with Arroyo on August 17, and minutes before their August 19 message exchange above, the *Globe* Reporter reached out to Rollins asking about the Law Professor's letter and whether the MA USAO intended to open an investigation. Rollins told the *Globe* Reporter that her office may be issuing a public statement about that.

Specifically, on August 19 at 12:01 p.m., the *Globe* Reporter sent a text message to Rollins stating:

I have a letter [the Law Professor] sent you earlier this week about the handling of the transit police officers case. [The Law Professor] was calling for you to launch an investigation. I'll reach out to [the MA USAO Executive Officer], but just curious if you're going to.<sup>29</sup>

Rollins responded the following day at 2:43 p.m.:

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<sup>27</sup> Call detail records do not reflect that Rollins called Arroyo close in time to this message exchange, as he requested.

<sup>28</sup> See "[Suffolk DA candidate Ricardo Arroyo was twice investigated in possible sexual assaults. He says he was never informed](https://www.bostonglobe.com/2022/08/23/metro/suffolk-da-candidate-ricardo-arroyo-was-twice-investigated-possible-sexual-assaults-he-says-he-was-never-informed/)," *The Boston Globe*, August 23, 2022, [bostonglobe.com/2022/08/23/metro/suffolk-da-candidate-ricardo-arroyo-was-twice-investigated-possible-sexual-assaults-he-says-he-was-never-informed/#:~:text=In%20the%202005%20case%2C%20the,according%20to%20the%20police%20records](https://www.bostonglobe.com/2022/08/23/metro/suffolk-da-candidate-ricardo-arroyo-was-twice-investigated-possible-sexual-assaults-he-says-he-was-never-informed/#:~:text=In%20the%202005%20case%2C%20the,according%20to%20the%20police%20records) (accessed April, 5, 2023). Among other things, the story notes Arroyo stated that he had never been told about the allegations until "last week."

<sup>29</sup> The Law Professor told the OIG that he shared his letter to Rollins with the *Globe* as an "FYI." The Law Professor stated that he has a close relationship with a number of *Globe* reporters, including this particular *Globe* Reporter. According to the Law Professor, the *Globe* was "not interested" in the letter at the time because no investigation or other steps had been taken.

I think we may be issuing a brief statement about that next week. I will let you know.

We asked Rollins about what she meant when she told the *Globe* Reporter the MA USAO “may be issuing a brief statement about that next week.” Rollins replied:

We may be issuing a statement about receiving a public letter, now that the *Globe* knows...about a letter that was sent that I didn't give [the *Globe* Reporter]. I will let you know, is what I'm assuming that I'm talking about.

But I didn't tell [the *Globe* Reporter] about the [the Law Professor's] letter.

Rollins also stated that she did not know whether the MA USAO had started working on some kind of public statement when she told the *Globe* Reporter that the MA USAO “may be issuing a brief statement about that next week.”

In the same text chain on August 19, Rollins offered the *Globe* Reporter additional negative information about the Suffolk D.A.'s Office and encouraged him to “keep digging”:

On a separate note, [Hayden's First Assistant D.A.] defended violent or corrupt police. [Hayden's First Assistant D.A.] calls defense atty and says no interest in pursuing [the former Transit Officer] case. ENTIRE Special Prosecution Team leaves (who handles all of the police corruption cases). THE ENTIRE TEAM LEAVES, they do NOT replace anyone in that dedicated, important Unit until you start sniffing around....

KEEP DIGGING....

(Emphasis in original.)

Rollins then sent the *Globe* Reporter another text message offering him further questions he should ask Hayden:

If they claim they had no idea, ASK HAYDEN IF HE MET WITH ME BEFORE TAKING OFFICE. If he read any of the binders we had created for him? If he did any exit interviews with staff that were FLEEING in droves?

He didn't. You can't be WILLFULLY BLIND AND CLAIM YOU NEVER SAW SOMETHING....

(Emphasis in original.)

We asked Rollins if she provided this additional information to the *Globe* Reporter with an expectation that he would write another negative story about Hayden. Rollins responded:

But I wasn't trying to have articles written. I'm just saying, if they are really looking into whether or not there was a *quid pro quo* happening, and people

were looking into this or not, I promise you, like, this is the level when [a different *Globe* reporter] was writing articles about me, that we were getting public records requests for millions of things. It just seemed odd that there was not an inquiry into these things, and that there are ways that people can find out, true or not, whether people were doing it. That's what I did when I responded to him.

**8. August 22: Arroyo Asks Rollins about Potential Federal Criminal Investigation into Hayden in Light of Upcoming Negative *Globe* Story about Arroyo and Rollins Responds, "I'm working on something"**

On August 22, Rollins and Arroyo exchanged numerous encrypted messages about his campaign strategy and the forthcoming *Globe* story about Arroyo having previously been under investigation for allegations of sexual assault. Rollins gave Arroyo feedback on his draft answers to the *Globe* Reporter's questions and told Arroyo in a text message: "Ask [the *Globe* Reporter] to call me about the sexual assault suspect question. I will answer off the record." Arroyo replied to Rollins that he would tell the *Globe* Reporter to contact Rollins, and Rollins then suggested that Arroyo tell the *Globe* Reporter to contact "some previous DAs" as well.

Also on August 22, Rollins sent an encrypted message to Arroyo that included a recent op-ed piece in which a Massachusetts State Senator endorsed Kevin Hayden for Suffolk D.A. Rollins wrote to Arroyo: "Who is writing something like this for you?" Arroyo's initial reply did not answer Rollins's question and, instead, asked Rollins whether her office would be announcing an investigation of Hayden. As shown below, Rollins responded by advising Arroyo that he needed the Law Professor to release his letter publicly and that she was "working on something":

8:57 p.m., Arroyo: "Are y'all announcing an investigation into [the former Transit Officer] situation with Hayden?"

8:57 p.m., Arroyo: "Would be the best thing I can have happen at this moment."

9:02 p.m., Rollins: "You need [the Law Professor] to release his letter."

9:06 p.m., Arroyo: "Rachael you know what I am dealing with right now with the globe."

9:06 p.m., Arroyo: "Im [sic] not currently calling electeds to write opeds."

9:07 p.m., Arroyo: "Im [sic] literally fighting a punch meant to end my career."

9:08 p.m., Rollins: "Understood. Keep fighting and campaigning. I'm working on something."

We asked Rollins why she told Arroyo that he needed the Law Professor to release his letter, which led to the following exchange:

OIG ATTORNEY: So, my question to you again is, why did you tell Arroyo on August 22nd that he needs [the Law Professor] to release his letter?

MS. ROLLINS: So, he is asking me, I'm sorry, before that, are you announcing an investigation into [the former Transit Officer]? I don't answer that, right? Would be the best thing I can have happen at this moment; I don't answer that. I say this is not the same as [the State Senator], blah-blah-blah. When are they announcing an endorsement or *Globe* or what have you?

And for me, he has mentioned the [Law Professor's] letter to me, that I haven't responded to. And this is six days after I received the [Law Professor's] letter, and I think three days after he has mentioned the [Law Professor's] letter, but I don't, I think, for me, I never released the [Law Professor's] letter. Nor would I.

OIG ATTORNEY: And so my question to you, my question is why did you tell Mr. Arroyo that he needs [the Law Professor] to release his letter?

MS. ROLLINS: If - because I'm not—.

OIG ATTORNEY: To help his campaign and to hurt Mr. Hayden's campaign—.

MS. ROLLINS: No, not—.

OIG ATTORNEY: —by exposing that somebody has asked for a DOJ investigation.

MS. ROLLINS: No. Actually, no.

OIG ATTORNEY: Then why, explain—.

MS. ROLLINS: Yeah. Yeah.

OIG ATTORNEY: —because this is important. Explain to us why it's not that.

MS. ROLLINS: I am not going to ever say to Ricardo Arroyo that I am investigating Kevin Hayden, right? I'm not going to do that. And I also had no interest in releasing the [Law Professor's] letter, but if Arroyo knows about the [Law Professor's] letter, [the Law Professor] gave him the letter or somehow he has a copy of that.

My point was simply, I'm not doing what you're asking. You have something that has asked our office to do something. You should release it. That's why I said it there, by not answering the other questions.

OIG ATTORNEY: No, but my question is why did you do that?



MS. ROLLINS: Because I wasn't answering his other questions. I think the [Law Professor's] letter lays out that the U.S. Attorney's Office has been asked to do something....

We also asked Rollins about her text message to Arroyo that stated: "Understood. Keep fighting and campaigning. I'm working on something." We specifically asked Rollins what she was "working on." Rollins replied: "I'm not sure. Like, I think it's innocuous, like, generally speaking, but it's not a specific, I'm indicting somebody." Rollins later reiterated:

I am telling you that nothing I did regarding a letter, that I didn't ask to be written to me, happened before the election. I would never have put a finger on the scale, publicly, regarding an election involving whether it was my office or some other office at all, and I didn't ask [the Law Professor] to write me a letter. Like, I feel like these things happen to me, right?... They occur and then I can't undo that they are there, but I'm not releasing [the Law Professor's] letter. I didn't give [the Law Professor's] letter to the media or do anything like that. So, nothing happened before the election.

**9. August 23: The *Globe* Publishes a Story about Prior Sexual Assault Allegations Against Arroyo and Rollins Proposes Arroyo Respond by Stating that Hayden is Likely the Subject of Multiple Criminal Investigations**

On August 23, the *Globe* published a story about prior sexual assault allegations against Arroyo.<sup>30</sup> Shortly thereafter, Arroyo sent an encrypted message to Rollins with a draft statement rebutting the allegations. Arroyo asked Rollins for her feedback on the statement.

Rollins proposed numerous, substantive edits to the draft statement, including adding the following language that referenced multiple criminal investigations likely being underway against Hayden:

The extremely recent and very real tactics and unethical actions of this Acting DA and his leadership team have been well documented and substantiated, by law enforcement, criminal defense attorneys and [the Massachusetts Office of Campaign & Political Finance]. Multiple investigations into the Acting DA's likely criminal behavior—from mere months ago—are likely

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<sup>30</sup> See "[Suffolk DA candidate Ricardo Arroyo was twice investigated in possible sexual assaults. He says he was never informed](https://www.bostonglobe.com/2022/08/23/metro/suffolk-da-candidate-ricardo-arroyo-was-twice-investigated-possible-sexual-assaults-he-says-he-was-never-informed/)," *The Boston Globe*, August 23, 2022, [bostonglobe.com/2022/08/23/metro/suffolk-da-candidate-ricardo-arroyo-was-twice-investigated-possible-sexual-assaults-he-says-he-was-never-informed/#:~:text=In%20the%202005%20case%2C%20the,according%20to%20the%20police%20records](https://www.bostonglobe.com/2022/08/23/metro/suffolk-da-candidate-ricardo-arroyo-was-twice-investigated-possible-sexual-assaults-he-says-he-was-never-informed/#:~:text=In%20the%202005%20case%2C%20the,according%20to%20the%20police%20records) (accessed April 5, 2023).

underway. I am confident that the voters will see his attempted smear campaign as exactly what it is—a desperate attempt by a man about to lose his job.

**10. August 24-29: Discussions between MA USAO and EOUSA about MA USAO Recusals**

Between August 24 and August 29, the MA USAO First Assistant had multiple communications with EOUSA regarding finalizing the recusals related to the Suffolk D.A. matters. On August 24 at 2:33 p.m., the EOUSA AGC who was handling the MA USAO recusals emailed the First Assistant asking if there was “a USAO case number for the civil rights investigation of” the former Transit Officer. The First Assistant responded to the AGC the following day stating that he was “waiting to hear back on this.” The First Assistant eventually sent the case number to the AGC on Monday, August 29, and asked the AGC if he had “[a]ny sense of timing on when this gets finalized?” The AGC responded at 11:11 a.m.: “I hope to have these completed and back from the [Associate Deputy Attorney General] by the middle of the week.”

As we discuss below, EOUSA sent the recusals to MA USAO later that same week, on Wednesday, August 31, and Thursday, September 1.

**11. August 28-30: Arroyo asks Rollins for Update on Potential Hayden Investigation and the *Globe* Runs Another Story About the Sexual Assault Allegations Against Arroyo**

On Sunday, August 28, Arroyo asked Rollins for an update on a potential federal investigation of Hayden, sending her an encrypted message stating: “Whats [sic] going on with the investigation into him?” and “Is that moving?” Rollins did not respond to these messages.

On the evening of August 30, one week before the primary election, the *Globe* published another article about the sexual assault allegations against Arroyo, describing the allegations made by one of Arroyo’s alleged victims.<sup>31</sup> Shortly before the story was released, Arroyo called Rollins at 6:10 p.m., and the call went to voicemail. Rollins then sent an encrypted message to Arroyo at 6:24 p.m., stating: “What’s up? In meetings. Can’t talk.” Arroyo told Rollins that the media was about to report that a woman who had alleged that Arroyo had sexually assaulted her was standing by her complaint and also claimed to have an email from Arroyo about the incident. Rollins responded by expressing surprise about

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<sup>31</sup> See “[Woman who accused Suffolk DA candidate Ricardo Arroyo of sexual assault breaks silence: The lies.... It makes me sick](https://www.bostonglobe.com/2022/08/30/metro/woman-who-accused-suffolk-da-candidate-ricardo-arroyo-sexual-assault-breaks-silence-lies-it-makes-me-sick/),” *The Boston Globe*, August 30, 2022, [bostonglobe.com/2022/08/30/metro/woman-who-accused-suffolk-da-candidate-ricardo-arroyo-sexual-assault-breaks-silence-lies-it-makes-me-sick/](https://www.bostonglobe.com/2022/08/30/metro/woman-who-accused-suffolk-da-candidate-ricardo-arroyo-sexual-assault-breaks-silence-lies-it-makes-me-sick/) (accessed April 5, 2023).

the information.<sup>32</sup> The day after the *Globe's* article, on August 31, the *Globe* reported that a number of Massachusetts public officials had withdrawn their prior endorsements of Arroyo.<sup>33</sup>

**D. Days Before the Primary, EOUSA Provides Recusal Memoranda to MA USAO and Rollins Contacts the *Boston Herald* Reporter Who Later Authors the September 11 Article about a Possible DOJ investigation of Hayden**

In this section, we describe the memoranda the MA USAO received on August 31 and September 1, 2022, formally recusing the entire MA USAO from any investigation of Hayden and his First Assistant D.A. and formally recusing Rollins only from any civil rights investigation of the former Transit Officer. We then describe how Rollins reached out to a *Boston Herald* reporter on August 31 and September 1 requesting an off-the-record discussion. The reporter was the author of the September 11 story published in the *Herald* that quoted from the EOUSA recusal memorandum, discussed the possibility of a federal investigation of Hayden, and cited a “federal law-enforcement source,” which Rollins later ultimately admitted to the OIG was a reference to her. Shortly after Rollins spoke with the reporter on September 2, the reporter contacted the Law Professor seeking information from the Law Professor about his August 16 letter to Rollins and a potential DOJ investigation of Hayden. We also describe the reporter’s efforts on September 3 to obtain confirmation or comment from the Suffolk D.A.’s Office and the MA USAO regarding the existence of a DOJ investigation into the Suffolk D.A. Office’s alleged decision not to prosecute the two transit police officers. After having made these inquiries to the MA USAO and Suffolk D.A.’s Office, the *Herald* did not run a story before the primary election about any such investigation.

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<sup>32</sup> On September 2 at 6:18 p.m., Arroyo sent an encrypted message to Rollins that included a link to a local television interview in which Arroyo alleged that Hayden’s driver was the person who leaked the sexual assault allegations against Arroyo. Rollins replied at 9:37 p.m.: “Unreal.” Arroyo responded 2 minutes later by sending Rollins a link to his Twitter account. At 11:25 p.m., Rollins sent an encrypted message to Arroyo with a link to a Massachusetts General Law provision that allows a majority of the Massachusetts Supreme Judicial Court Justices to remove officers, including a District Attorney, from their positions. Arroyo immediately responded: “Yea I’m filing a complaint.”

<sup>33</sup> See “[Wu, Warren, Markey, Pressley, and others pull their support of Arroyo in Suffolk DA’s race](https://www.bostonglobe.com/2022/08/31/metro/suffolk-das-race-wu-pulls-her-support-arroyo/#:~:text=%E2%80%9CThe%20events%20of%20the%20past,longer%20endorsing%20in%20this%20race.%E2%80%9D),” *The Boston Globe*, August 31, 2022, [bostonglobe.com/2022/08/31/metro/suffolk-das-race-wu-pulls-her-support-arroyo/#:~:text=%E2%80%9CThe%20events%20of%20the%20past,longer%20endorsing%20in%20this%20race.%E2%80%9D](https://www.bostonglobe.com/2022/08/31/metro/suffolk-das-race-wu-pulls-her-support-arroyo/#:~:text=%E2%80%9CThe%20events%20of%20the%20past,longer%20endorsing%20in%20this%20race.%E2%80%9D) (accessed April 5, 2023).

1. **August 31-September 1: MA USAO Receives Recusal Memos from the Office of the Deputy Attorney General Regarding the Hayden-Related Investigations**

The MA USAO received two recusal memoranda from EOUSA regarding the information contained in the August 6, 8, and 10 *Globe* articles.<sup>34</sup> First, on August 31, Rollins and her First Assistant received a recusal memorandum from EOUSA informing them that Associate Deputy Attorney General (ADAG) Bradley Weinsheimer had approved the recusal of only Rollins, not the entire MA USAO, “from the civil rights investigation/matter involving” the former Transit Officer. The memorandum stated that the MA USAO would handle the matter, and the First Assistant would supervise it as Acting U.S. Attorney.

Second, on September 1, Rollins and her First Assistant received a formal recusal memorandum (Recusal Memorandum) from EOUSA informing them that ADAG Weinsheimer had approved “the recusal of the entire United States Attorney’s Office for the District of Massachusetts from the investigation and possible prosecution of Suffolk County, Massachusetts District Attorney and First Assistant District Attorney.” According to the Recusal Memorandum, the matter would be handled by another U.S. Attorney’s Office in New England (New England USAO). The email forwarding the Recusal Memorandum was addressed to the U.S. Attorney for the New England USAO, the New England USAO First Assistant, Rollins, and the MA USAO First Assistant, with copies sent to Weinsheimer, the EOUSA General Counsel, two GCO supervisors, and the MA USAO Ethics Advisor. Shortly thereafter, the MA USAO Ethics Advisor forwarded the email to the Criminal Chief, his then Deputy Criminal Chief (now co-Criminal Chief), and the Public Corruption Unit Chief.

The MA USAO First Assistant estimated that he knew the formal recusal was coming “a couple days” before receiving the Recusal Memorandum. The Criminal Chief involved in the earlier discussions about whether to initiate an investigation into the possible *quid pro quo* and whether the MA USAO should respond to the Law Professor’s letter told us that he learned from the First Assistant that there was going to be an office-wide recusal “even before it was formal.” The Criminal Chief said that he was not sure how long before but that the First Assistant kept him “in the loop” on his discussions with GCO. As noted previously, the EOUSA AGC handling the recusals emailed the First Assistant on Monday, August 29, that he hoped to have the recusals completed “by the middle of the week.” The

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<sup>34</sup> The EOUSA General Counsel told the OIG that a recusal memorandum is considered a non-public, sensitive DOJ document in instances where, as here, the case is uncharged or the existence of an investigation is unknown. After the case has been charged or the investigation has been publicly confirmed, the General Counsel stated that EOUSA instructs U.S. Attorney’s Offices that the recusal memorandum is intended to be a public document, suitable for filing in court to properly reflect why a U.S. Attorney’s Office from a different district is now handling a case on behalf of a recused office. The General Counsel also added that the U.S. Attorney’s Office handling the matter should normally make the decision about when, if at all, the recusal memorandum becomes public.

First Assistant told us that he would have passed this information on to Rollins as soon as he was told. We asked Rollins if she was updated on the status of the recusal process between her second phone call with the EOUSA General Counsel on August 17 and the receipt of the Recusal Memorandum on September 1. Rollins replied: “Not that I remember.”

Despite the office-wide recusal on what the Recusal Memorandum referred to as “the investigation and possible prosecution” of Hayden and his First Assistant D.A., the MA USAO did not have an investigation open at the time, and, according to the Criminal Chief, the Office’s Public Corruption Unit had not taken any steps towards opening such an investigation. When we asked the Criminal Chief why a formal recusal was sought under these circumstances, he told us that he did not know why or who made the decision to seek recusal. He explained that, in his experience, normal MA USAO practice was to initiate the recusal process only in instances where the office planned to open an investigation. He said he could not explain why normal practice was not followed in this instance, but that he thought that the Law Professor’s letter may have played a role.

The First Assistant told us that he helped initiate the approval process (as Rollins and the EOUSA General Counsel discussed) because he thought it was important to obtain GCO’s advice on who could be involved in decisions about whether to respond to the Law Professor’s letter and whether ultimately to pursue an investigation or not.

**2. August 31-September 3: Rollins Speaks, at Her Request, with the *Herald* Reporter and the *Herald* then Contacts the Law Professor, MA USAO, and the Suffolk D.A.’s Office about a Possible Criminal Investigation of Hayden**

On August 31, Rollins initiated what became an off-the-record discussion on September 2 with a *Boston Herald* reporter (*Herald* Reporter), the same reporter who, as noted previously, authored the September 11 *Herald* article that cited a federal law enforcement source and stated that Rollins and the MA USAO were recused from a potential DOJ investigation of Hayden and his First Assistant D.A. concerning the information appearing in the August 6 *Globe* article. Rollins ultimately admitted during an OIG interview that she was the federal law enforcement source cited in the September 11 article. As we discuss below, less than an hour after the *Herald* Reporter spoke with Rollins on September 2, the *Herald* Reporter contacted the Law Professor to discuss his letter to Rollins regarding a possible Hayden prosecution, with the *Herald* Reporter telling the Law Professor that he “heard there might be some movement on that.” The following day, as we also describe below, the *Herald* contacted both the MA USAO and Suffolk D.A.’s Office seeking comment about information that the *Herald* had received regarding a possible prosecution of Hayden. Both the MA USAO and Suffolk D.A. Office’s spokesperson responded to the *Herald* by, among other things, questioning the timing of the allegation given that the primary election was in 3 days. The *Herald* did not run the story before the

primary election but, as we detail later, did publish it on September 11 after Rollins provided the *Herald* with the Recusal Memorandum.

**a. Rollins's Text Messages and Off-the-Record Discussion with the *Herald* Reporter**

On August 31 at 2:15 p.m., Rollins sent a text message to the *Herald* Reporter stating: "Quick call?" The *Herald* Reporter responded that he was busy at the moment but had time for a call later. Rollins then sent a text asking him to call when he was free and added: "All off the record." When the *Herald* Reporter did not call her, Rollins sent another text message to the *Herald* Reporter on September 1 at 9:45 p.m. asking for a "[q]uick call." Call detail records of Rollins's personal cell phone show that the *Herald* Reporter called Rollins shortly thereafter, and the call went to voicemail. Rollins called the *Herald* Reporter the following day, September 2, at 7:43 p.m., and their call lasted for almost 17 minutes.<sup>35</sup>

As described more fully in Section II.G.2, when we first asked Rollins on December 6, 2022, whether she had any communications with the *Herald* Reporter about his September 11, 2022 article before it was published, she testified: "I don't believe so, no." She also denied being the federal law enforcement source cited in the article and told us that she did not have any suspicion as to who the source was. After we described the call detail records we obtained, showing that she spoke to the *Herald* Reporter on September 2 for approximately 17 minutes and, as we discuss later, on September 9 for approximately 15 minutes, Rollins testified at different times that she could not recall their conversations or that she "did not believe" she discussed a possible DOJ investigation of Hayden with the *Herald* Reporter. Then, when we asked Rollins whether she provided the *Herald* Reporter with a copy of the Recusal Memorandum, Rollins asked for a break from the interview and declined afterward to answer further questions about the *Herald* article until she had the opportunity to review her records. One week before we asked Rollins about the *Herald* story on December 6, the OIG advised Rollins's attorney that we planned to ask Rollins questions about the Recusal Memorandum that was quoted in the *Herald* story, and we provided him with a copy of the September 11 *Herald* article and access to review the Recusal Memorandum.

During a continuation of the interview on December 15, 2022, when she produced to the OIG her text messages with the *Herald* Reporter detailing their communications, Rollins admitted that she was, in fact, the federal law enforcement source referenced in his

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<sup>35</sup> Rollins also called the *Globe* Associate Editor on September 1, and they spoke for over 6 minutes beginning at 11:02 a.m. Rollins told us that she did not recall why she reached out to the *Globe* Associate Editor on this date and said that her call to him may have been a "butt dial" or she may have called him about something unrelated to the matters she eventually discussed with the *Herald* Reporter. When we asked Rollins whether she pitched a story to the *Globe* Associate Editor about a potential DOJ investigation of Hayden before she connected with the *Herald* Reporter, she told us: "I don't think so. I don't believe I did. But I need to know what happened [on] September 1st. Was there an article from, I don't, I don't believe I did."

September 11 article, but Rollins told us that she still did not recall why she texted the *Herald* Reporter on August 31 and September 1 seeking a conversation with him “off the record” and that she still did not recall their conversation on September 2. She told us during another continuation of her interview on January 24, 2023, that she only recalled talking to the *Herald* Reporter about the Suffolk D.A. matters after the primary election took place on September 6.

**b. The *Herald's* Requests for Comment on a Potential Hayden Investigation Shortly After the *Herald* Reporter Talks to Rollins on September 2**

On Friday, September 2, at 8:40 p.m.—approximately 40 minutes after the call between Rollins and the *Herald* Reporter ended—the *Herald* Reporter sent a direct message on Twitter to the Law Professor introducing himself and stating:

I understand you reached out to the DOJ about the Hayden/transit police issue, and I've heard there might be some movement on that. Would you be able to give me a call on Saturday (tomorrow)?...<sup>36</sup>

The Law Professor told the OIG that, in response to this message, he spoke with the *Herald* Reporter on Saturday, September 3, but he said he did not recall the specifics of what they discussed. He told us that he recalled sending the *Herald* Reporter a copy of his August 16 letter following the call. The Law Professor also told us that he knew who the *Herald* Reporter was and followed him on Twitter, but the Law Professor stated that he did not believe he had ever communicated with the *Herald* Reporter prior to this contact.

When we asked Rollins whether she suggested to the *Herald* Reporter (or the Law Professor) that the two should talk, Rollins told us: “No. I don’t have any recollection of doing that.”

On September 3, at 12:05 p.m., Department call detail records reflect that the *Herald* Reporter called the MA USAO Executive Officer. According to the Executive Officer, the *Herald* Reporter asked about the Law Professor’s letter and stated that he had a law enforcement source who said the MA USAO or DOJ was investigating Hayden.<sup>37</sup> As we discuss below, Rollins admitted to the OIG that she was the federal law enforcement source referenced in the *Herald* Reporter’s article that was published in the *Herald* on September 11.

According to the Executive Officer, she told the *Herald* Reporter that she could not confirm or deny the existence of any investigation, and she counseled the *Herald* Reporter

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<sup>36</sup> The Law Professor voluntarily produced this message to the OIG.

<sup>37</sup> The Executive Officer had recalled that this discussion happened a week earlier, but call records reflect it occurred on September 3.

to use his common sense and be careful that his source was not trying to influence the election. According to the Executive Officer, the *Herald* Reporter responded with words to the effect of: "I'm glad I called.... I feel like you talked me off the ledge."

Shortly thereafter, on September 3, at 12:21 p.m., a different *Herald* reporter emailed the Chief of Communications at the Suffolk D.A.'s Office and stated, in part:

...I'm following up on information that there will be an investigation into the Suffolk District Attorney's office over the DA's decision not to prosecute two Transit Police officers who filed false police reports in a traffic stop. I was looking for a response from the DA's office regarding the investigation, which involves a claim that one of the officer's attorneys, a donor to Kevin Hayden, prompted the DA not to prosecute.<sup>38</sup>

In response, the Suffolk D.A.'s Office told the reporter that the office had not made a prosecutorial decision in the matter, the investigation into the transit police officers was open and active, and suggested that the *Herald* "vet [their] sources thoroughly because this has the ring of campaign season silliness."

### **3. The *Herald* Does Not Run a Story Prior to the Primary Election about a Possible Investigation of Hayden**

After having made these inquiries to the MA USAO and Suffolk D.A.'s Office, the *Herald* did not run a story before the primary election about an investigation into Hayden or the Suffolk D.A.'s Office regarding the transit police stop. As we discuss below, when the *Herald* Reporter reached out to the Suffolk D.A.'s Office on Friday, September 9, 3 days after the election, to follow up on this allegation, he noted in his email that the *Herald* "ultimately decided to hold" the story that it had reached out about the prior weekend.

#### **E. Arroyo Loses Primary Election and Rollins tells Arroyo that Hayden "Will regret the day he did this to you. Watch."**

As noted previously, on September 6, Hayden defeated Arroyo in the Democratic primary race for Suffolk D.A. The Associated Press called the race for Hayden shortly before midnight. Beginning at 11:22 p.m. that evening, Arroyo sent Rollins a series of encrypted messages updating Rollins on the status of the vote counting and expressing pessimism about his chances for victory. At 11:24 p.m., Arroyo messaged: "Your legacy work deserved better, the county deserved better, and I wish we were able to deliver it."

Rollins responded at 11:25 p.m.:

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<sup>38</sup> The OIG obtained this email from the Suffolk D.A.'s Office.



This was just dirty and unethical. Such a piece of shit (illegal) move they did by leaking victims [sic] records.

They are not above the law. He will regret the day he did this to you. Watch.

Arroyo responded: "I hope so," "I really need it for my heart," "Because this was literally illegal af... [a]nd harmful af." To which Rollins responded at 11:27 p.m.:

And I am proud and grateful that you put your hat in the race. Keep your head up high. You know your truth.

And you can file ethics complaints and demand investigations until you get your answers. The truth always comes out.

We asked Rollins whether her statements—"He will regret the day he did this to you. Watch."—were references to the article that the *Herald* ultimately published on September 11, and Rollins told us that she was not referring to that. She said that she was referring to her statement to Arroyo 2 minutes later that "[t]he truth always comes out."

#### **F. Days After the Primary, Rollins Discloses the DOJ Recusal Memorandum to the *Boston Herald* as Evidence that DOJ is Taking Steps Toward Investigating Hayden**

As described below, five days after the primary election, on September 11, 2022, the *Herald*, quoting a federal law enforcement source, reported that the MA USAO sought and received a recusal from a possible federal investigation of allegations of political corruption involving Hayden and his principal deputy.<sup>39</sup> According to the article, the federal law enforcement source told the *Herald* that the potential investigation centered around information that first appeared in the August 6, 2022 article in the *Globe* suggesting that Hayden and his deputy may have decided not to pursue the police misconduct case against the transit police officers in exchange for \$225 in political donations from the former Transit Officer and his attorney.<sup>40</sup> The *Herald* article quoted from the September 1, 2022 Recusal Memorandum, stating:

THIS IS FORMAL NOTICE that Bradley Weinsheimer, Associate Deputy Attorney General (ADAG), has approved the recusal of the entire United States Attorney's Office for the District of Massachusetts from the investigation and possible prosecution of Suffolk County, Massachusetts District Attorney and First Assistant District Attorney.

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<sup>39</sup> "[Rachael Rollins recused as feds eye Suffolk DA Kevin Hayden in MBTA Transit Police case](https://www.bostonherald.com/2022/09/11/rachael-rollins-recused-as-feds-eye-suffolk-da-kevin-hayden-in-mbta-transit-police-case/)," *Boston Herald*, September 11, 2022, [bostonherald.com/2022/09/11/rachael-rollins-recused-as-feds-eye-suffolk-da-kevin-hayden-in-mbta-transit-police-case/](https://www.bostonherald.com/2022/09/11/rachael-rollins-recused-as-feds-eye-suffolk-da-kevin-hayden-in-mbta-transit-police-case/) (accessed March 2, 2023).

<sup>40</sup> "[It was you! Traffic spat turned police coverup leads to questions for DA Hayden](https://www.bostonglobe.com/2022/08/06/metro/it-was-you-traffic-spat-turned-police-coverup-leads-questions-da-hayden/)," *The Boston Globe*, August 6, 2022, [bostonglobe.com/2022/08/06/metro/it-was-you-traffic-spat-turned-police-coverup-leads-questions-da-hayden/](https://www.bostonglobe.com/2022/08/06/metro/it-was-you-traffic-spat-turned-police-coverup-leads-questions-da-hayden/) (accessed February 3, 2023).

The article stated that a nearby United States Attorney's Office was likely to handle the investigation. The article also reported that "these moves toward a review" were prompted, in part, by the Law Professor's letter requesting a federal investigation.

In the discussion that follows, we describe Rollins's disclosures to the *Herald* after the primary election, including the circumstances leading up to Rollins's texting the *Herald* Reporter photos of the Recusal Memorandum before he published his article. We also describe the *Herald's* contacts with the Suffolk D.A.'s Office and the MA USAO seeking comment a second time on a potential DOJ investigation. We then provide the substance of the September 11 *Herald* article in its entirety, as well as describe Rollins's communications with her leadership team pretending not to know how the article was able to quote from the Recusal Memorandum. Before these topics, we briefly describe Rollins's contact on September 7 with the *Globe* Associate Editor, in which she forwarded someone else's public comment stating that the *Globe* was responsible for Arroyo's election loss.

**1. September 7: Rollins Sends the *Globe* Associate Editor an MBTA Transit Police Twitter Post Blaming *The Boston Globe* for Arroyo's Defeat**

On September 7 at 10:35 a.m., Rollins sent a text message to the *Globe* Associate Editor and asked if he had time for a quick call. They spoke on the phone for over 5 minutes beginning at 10:46 a.m. Almost immediately after the conversation concluded, at 10:53 a.m., Rollins sent by text message to the *Globe* Associate Editor a Twitter screenshot that included a comment from the official account of the MBTA Transit Police responding to a post that noted Hayden had declared victory in the primary election:

...let's keep it real... The Boston Globe defeated Arroyo not Hayden. Hayden is totally inept and lacks the integrity to serve as DA. Interestingly your paper NEVER challenged Hayden on his lying re: the Transit Police case. Hayden tried to dump the matter & got caught.

**2. September 9: Rollins Sends Photos of the EOUSA Recusal Memorandum to the *Herald* Reporter and asks the Reporter to Keep the Source of the Leak Anonymous "for Fear of Discipline"**

In what appears to be their first communication since the September 2 phone call, the *Herald* Reporter sent a text message to Rollins on September 9 at 1:17 p.m. asking: "Got time for a quick call today?" Rollins called the *Herald* Reporter at 2:35 p.m., and they spoke for over 15 minutes.

Later that afternoon, Rollins texted the *Herald* Reporter photos of the Recusal Memorandum, provided him information about the Law Professor's letter and internal DOJ deliberations, and asked him not to attribute the information to her. We provide below their entire September 9 text chain:

5:56 p.m., *Herald* Reporter: "Hiya. You able to send that?"<sup>41</sup>

6:05 p.m., Rollins: "Off the record. Not attributed to me. Prefer you say source within DOJ with information who preferred to stay anonymous for fear of discipline or something like that. Also you CANNOT leak the document."

[Rollins then texted the *Herald* Reporter full-length photos of the first and second pages of the September 1 Recusal Memorandum.]

6:07 p.m., Rollins: "Would be even better if you could say likely not handled by Rachael or the District of Mass so it may be sent to New England USA office nearby."

6:11 p.m., *Herald* Reporter: "Thank you very much. Is it ok if I quote directly from this 'document obtained by the herald?'"

6:14 p.m., Rollins: "As long as you can keep confidential where you got it and will never release it if someone makes a public records request. First paragraph on the second page gives you what you need. Says DA and First Assistant."

6:14 p.m., Rollins: "If not, please no."

6:16 p.m., *Herald* Reporter: "Absolutely. No one needs to know where this came from, and no one can records request the newspaper."

6:16 p.m., Rollins: [Thumbs-up emoji.]

6:16 p.m., *Herald* Reporter: "Exactly, I'll be looking just to say document says prosecution of DA and first assistant."

6:17 p.m., Rollins: "Probably better to say investigating and possible prosecution."

6:18 p.m. *Herald* Reporter: "Yes exactly that's what I mean to write."

As discussed previously and described in more detail in Section II.G.2., Rollins denied being the *Herald* Reporter's federal law enforcement source during her continued interview on December 6, 2022. Rollins only admitted to being the source during subsequent testimony on December 15, 2022, after she produced the text messages above, which definitively showed that Rollins had indeed been a source for the reporter and had disclosed to him the Recusal Memorandum quoted in the story. On December 15, Rollins told us that she shared this information with the *Herald* Reporter because the *Herald* Reporter had come to her with what he said was information from another source

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<sup>41</sup> At around this same time on September 9—at 5:59 p.m. and 6:00 p.m., respectively—Rollins received two encrypted messages from Arroyo. The first consisted of a link to an interview of Kevin Hayden on a local news show. The second stated: "I really need this man to not get away with the harm he's caused." Rollins did not respond to Arroyo's messages.

that DOJ was not looking into the possible *quid pro quo* involving Hayden. According to Rollins:

The way [the *Herald* Reporter] was talking to me, he had information that I was relatively confident was a person from DOJ that he was speaking to, that was not me. He happened to be speaking to me. I'm from DOJ, but he was relating information to me, saying I am going to be writing a story, essentially, with all of this press about this, that DOJ has declined to look into this matter. I told him that is not factual at all, and we had a discussion about that.

Ultimately, I don't know whether in that conversation or possibly another one, I don't recall as I sit here today whether that was one discussion or more than one discussion, I said I am actually aware of the fact that, I don't know what the outcome is going to be, but I will not be involved because I used to run that office. I don't know Kevin Hayden. We never overlapped. But it's not factually accurate that there isn't going to at least be an inquiry or an investigation.

Ultimately, [the *Herald* Reporter] said, is there, you appear to be, like, certain of that. How? I said, the process is that you get a document. And for me, whether a good decision or not, I said, I have a document that is saying that there is going, there is at least, that refutes what you are telling me you are hearing, that somebody is looking into this. It will not be me, but somebody will.

I don't know whether the outcome, what the outcome will be, but you, it is not accurate to say the Department of Justice doesn't care about *quid pro quos*, isn't looking into police misconduct, etc. Potential police misconduct. And those were the circumstances surrounding this.

Rollins told us that she shared this information with the *Herald* Reporter because, as described in more detail in Section II.G.2, she believed it was important for the community and to the Department that she correct what she believed was inaccurate information before it was published.

When we asked Rollins about the specific statements she made in her text messages to the *Herald* Reporter, she told us that she asked the *Herald* Reporter not to attribute the information in his article to her because: "I didn't need to be quoted about it. It didn't need to be about me. It was more about the Department is going to do the right thing and look into it." She said that she suggested the language about the source "preferred to stay anonymous for fear of discipline, or something like that" to mirror language she had seen in other articles with leaked information, but that she "was not in fear of being disciplined" at the time. When we asked her why she told the *Herald* Reporter

that it was “ok” to quote from the Recusal Memorandum but not “leak the document,” she told us: “Yeah, I think I, I don’t know. I don’t, I don’t have an answer to that.”

As described later in Section IV.A., our investigation found that Rollins had twice before provided non-public DOJ documents to reporters, including the same *Herald* Reporter in one instance. In these two other instances, which occurred in May and June 2022, Rollins sent a DOJ document to the reporter in the same manner she sent the Recusal Memorandum to the *Herald* Reporter on September 9—by texting photos of the physical document from her personal cell phone, rather than by forwarding the document from her work email. At the conclusion of her interview on January 24, 2023, and in the context of these earlier disclosures, we asked Rollins why she would send the reporters photos of the physical documents, rather than forward the documents from her work email. Rollins told us that this method was the most private way of providing the documents. We asked Rollins why she did not simply forward the documents to the reporters using her DOJ email account. Rollins replied: “I mean, well, I guess I could, but right, it would be retained somewhere and it would be public, right? So, I was trying to send it in a way that was consistent with me asking for it to be confidential.” She also stated: “...if I’m trying to sort of covertly send this to him, I wouldn’t overtly send it from my work email.” She added: “I didn’t, if I was trying to hide that I was sending this to him, I wouldn’t send it from my work email. That’s the reason I chose that.”

### **3. September 9: The *Herald* Reporter Emails the Suffolk D.A.’s Office for Comment About a Possible DOJ Investigation, Citing a “Federal Law Enforcement Source”**

Shortly after the 15-minute call between Rollins and the *Herald* Reporter on September 9 ended at about 2:50 pm, and before Rollins texted the *Herald* Reporter photos of the Recusal Memorandum later that day, the *Herald* Reporter contacted the Suffolk D.A.’s Office. The *Herald* Reporter referred to a federal law enforcement source and asked the Suffolk D.A.’s Office for comment about a possible DOJ investigation of Hayden and his First Assistant D.A. The *Herald* Reporter further noted that he expected to get more specifics about the possible investigation later that day. Specifically, the *Herald* Reporter’s 3:17 p.m. email to the Chief of Communications at the Suffolk D.A.’s Office stated:

According to a federal law enforcement source, the DOJ is looking into investigating the [Suffolk D.A.’s Office] around the transit-police investigation. I’m getting more specifics later today, but I wanted to put this on your radar before it got too late on Friday so you’d have the chance to respond. I believe one of my coworkers put this to you last weekend for a story we ultimately decided to hold—I’m essentially asking about the same thing. Is there anything the DA wants to say about this?

After a follow-up question from the press office, the *Herald* Reporter stated: "Let me clarify and get back to you. But 'moving toward investigating' the allegations in the Globe piece is most likely the most accurate way of putting it."

**4. September 11: Shortly Before Publishing the Article, the *Herald* Reporter Seeks Additional Comment from MA USAO and the Suffolk D.A.'s Office about a DOJ Investigation into the Suffolk D.A.'s Office, and Rollins Provides the Reporter with Additional Information**

On September 11, at 11:35 a.m., shortly before the *Herald's* publication of the article, the *Herald* Reporter emailed the MA USAO Executive Officer seeking comment from the MA USAO:

Got a bit more on how central DOJ has approved an office-wide recusal on an investigation into the Suffolk DA's office. I know that you guys can't talk about ongoing investigations, but I'm just covering my bases to see if there's anything else I should know.

The Executive Officer stated that she and the *Herald* Reporter spoke on the phone shortly after this email. Call detail records show that they spoke for over 4 minutes beginning at 12:12 p.m. According to the Executive Officer, the *Herald* Reporter stated that his source now said there is an investigation and that the MA USAO is recused from it. The Executive Officer stated that the *Herald* Reporter then read language directly from the Recusal Memorandum. The Executive Officer told us that she did not comment. The Executive Officer also told us that she did not tell anyone at the MA USAO about the *Herald* Reporter's call given the MA USAO's recusal from the matter.

The *Herald* Reporter also emailed the Chief of Communications at the Suffolk D.A.'s Office at 11:38 a.m., stating:

Finally got more info: Central DOJ has approved a recusal of Rollins' office 'from the investigation and possible prosecution of Suffolk County, Massachusetts District Attorney and First Assistant District Attorney,' per a memo obtained by the Herald. The quote: "THIS IS FORMAL NOTICE that Bradley Weinsheimer, Associate Deputy Attorney General (ADAG), has approved the recusal of the entire United States Attorney's Office for the District of Massachusetts from the investigation and possible prosecution of Suffolk County, Massachusetts District Attorney and First Assistant District Attorney.' Would either Kevin [Hayden] or [the First Assistant D.A.] want to comment on this? Obviously, I'll make it clear that investigations often don't lead to charge, that this isn't evidence of wrongdoing or illegal action, etc.

In response to a question from the D.A.'s press office, the *Herald* Reporter clarified at 3:54 p.m. that he "was told [the] memo issued this past week" and he did not know when it was requested, but he was "seeking that info."

The *Herald* Reporter then contacted Rollins, and the two exchanged the following text messages:

3:43 p.m., *Herald* Reporter: "What is the date that memo was issued?"

4:12 p.m., Rollins: "9/1/22."

At 4:13 p.m., the *Herald* Reporter emailed the D.A.'s office again stating: "Correction from me on timing: memo issued [S]ept 1."

The *Herald* Reporter then contacted Rollins again, and the two exchanged the following text messages:

4:13 p.m., *Herald* Reporter: "Thanks. Do you know offhand when it was requested?"

4:16 p.m., Rollins: "OFF THE RECORD. Immediately after I read the first globe article. I reached out to DOJ. Then I received a letter from a law professor demanding that I conduct an investigation into Kevin Hayden and his first assistant. I think DOJ was fearful of weighing in and impacting the election. And of course, it would have and did."

4:44 p.m., *Herald* Reporter: "Gotcha. Thanks."

Rollins told us that she did not recall why she gave the *Herald* Reporter this additional information about her conversations with "DOJ" and the Law Professor's letter in response to the *Herald* Reporter's question about the date she sought recusal. She told us, however, that she believed the information she gave him showed: "[W]hen we read something that happens, we take it seriously, and we move quickly." Rollins said that her last sentence to the *Herald* Reporter about DOJ being fearful of impacting the election and that "it would have and did" was "speculation on [her] part" as to why "it took weeks for [the Recusal Memorandum] to be issued." She said that by stating "it would have and did" she meant that the story did not come out before the primary election, and Hayden won by as much as he did.

##### **5. September 11: The *Herald* Publishes an Article About a Possible DOJ Investigation of Hayden, Cites to a Federal Law Enforcement Source, and Quotes from the EOUSA Recusal Memorandum**

On September 11 at 7:32 p.m., the *Boston Herald* published its article by the *Herald* Reporter entitled, "Rachael Rollins recused as feds eye Suffolk DA Kevin Hayden in MBTA Transit Police case."<sup>42</sup> The article stated in its entirety:

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<sup>42</sup> "[Rachael Rollins recused as feds eye Suffolk DA Kevin Hayden in MBTA Transit Police case](https://www.bostonherald.com/2022/09/11/rachael-rollins-recused-as-feds-eye-suffolk-da-kevin-hayden-in-mbta-transit-police-case/)," *Boston Herald*, September 11, 2022, [bostonherald.com/2022/09/11/rachael-rollins-recused-as-feds-eye-suffolk-da-kevin-hayden-in-mbta-transit-police-case/](https://www.bostonherald.com/2022/09/11/rachael-rollins-recused-as-feds-eye-suffolk-da-kevin-hayden-in-mbta-transit-police-case/) (accessed March 2, 2023).

U.S. Attorney Rachael Rollins' office has sought and received a recusal from a possible federal review of Suffolk DA Kevin Hayden's actions and those of his top deputy in a case involving MBTA Transit Police, according to a memo obtained by the Herald.

"THIS IS FORMAL NOTICE that Bradley Weinsheimer, Associate Deputy Attorney General (ADAG), has approved the recusal of the entire United States Attorney's Office for the District of Massachusetts from the investigation and possible prosecution of Suffolk County, Massachusetts District Attorney and First Assistant District Attorney," the central office of the Department of Justice wrote in a memo disseminated Sept. 1.

A federal law-enforcement source said this centers around the Boston Globe story that made claims and suggestions that Hayden and his top deputy...broomed an investigation into allegedly false reports written by MBTA Transit Police officers.

"We have received no information whatsoever regarding any external inquiry into this investigation," Hayden's office said in a short statement Sunday night.

Hayden has repeatedly insisted he and his office did not act inappropriately, and that they continue to investigate the incident in question.

The memo approves Rollins, who was Hayden's predecessor as Suffolk DA before she was appointed U.S. Attorney for Massachusetts, to recuse herself—and to recuse the whole office. A nearby U.S. attorney's office is likely to handle the case completely.

A spokeswoman for Rollins' office declined to comment. It's DOJ policy never to confirm or deny the existence of an investigation.

The Globe story on Hayden dropped last month amid the final days of a nasty DA primary race. Hayden has insisted nothing untoward happened and that he continues to investigate the allegations, which the Transit Police department itself sought prosecution for.

This issue became somewhat overshadowed in the waning days of the DA's race when the Globe ran another piece on old sexual-assault investigations against Hayden's opponent, City Councilor Ricardo Arroyo, who himself maintained he'd done nothing wrong and tried to lay the leak of the protected documents at Hayden's feet.

Hayden won last week's primary and is not facing an opponent in the general election.

[The Law Professor], who focuses on prosecutorial misconduct, sent a letter to Rollins' office shortly after the Globe report on the Transit Police situation dropped, calling for the feds to look into it.



He wrote in the Aug. 16 letter to Rollins—which a source said is part of what initiated these moves toward a review—that “these allegations strike me as matters of grave public concern. I kindly request that you conduct an appropriate investigation into these and related actions.”

[The Law Professor] on Sunday told the Herald, “No one should be above the law, including prosecutors. No one knows where this will lead, but I’m glad they’re taking a look.

As we describe earlier and in greater detail below, when we first asked Rollins during an OIG interview on December 6, 2022, whether she was the federal law enforcement source for this *Herald* article, she denied that was the case. However, during the OIG’s continuation of the interview on December 15, 2022, after Rollins produced the text messages she exchanged with the *Herald* Reporter, Rollins testified that she believed that she is the federal law enforcement source referenced in the article and that, while the story did not quote her exact words, she conveyed to the *Herald* Reporter that the Recusal Memorandum centers around the information in the *Globe* about Hayden and his First Assistant D.A. not pursuing the case against the former Transit Officer and another transit officer in exchange for \$225 in campaign donations. She testified that she also conveyed to the *Herald* Reporter that the Law Professor’s letter initiated “these moves towards a review.”

The MA USAO Criminal Chief and Public Corruption Unit Chief told us that they were “shocked” when they read the DOJ information that had been made public in the *Herald* article. In particular, the Criminal Chief stated:

It was obvious from the text of the article that someone within DOJ had provided the recusal notice to someone outside of DOJ. And it’s obvious[ly] an internal and confidential document.... I would be shocked if any similar notice were leaked, but here, where we had the leak concerning a candidate for public office, who by that point, the primary had passed, and frankly...there was no mystery who was going to win the general. But nevertheless, the fact that it dealt with a candidate for public office made it even more disturbing and shocking.

The Criminal Chief added:

It hurts the integrity of our office and the Department of Justice, and law enforcement generally. I think anyone reading this article in the *Herald* could assume: A) that...somebody at DOJ is leaking confidential information and that hurts our integrity, and B) that they’re doing it for a partisan purpose and that hurts our integrity even more.

The Criminal Chief told us that the leak was “a cause of great stress” because it was “a huge deal,” and nearly everyone in his division knew about it, and he was not certain at the time how to handle it from a management perspective.

6. **September 11: Rollins Texts MA USAO Leadership a Link to the Article and Adds “Wtf!?” and “How are they quoting things?”; Rollins Does Not Inform Them She Was the Source of the Information**

Within minutes of the *Herald* article first appearing online on the evening of September 11, Rollins sent Arroyo a link to the article. Arroyo responded:

September 11, 8:13 p.m., Arroyo: “Thrilled.”

September 11, 8:13 p.m., Arroyo: “Absolutely thrilled.”

We asked Rollins why she sent the *Herald* article to Arroyo. Rollins stated:

It’s a matter of public record at that point. It had been written about, and I am recused from it, but that somebody is going to do an investigation into what I believe, whether Ricardo [Arroyo] was a friend of mine or not, a *quid pro quo* happened, and I believed that it needed to be looked into.

But I didn’t give him, you know, any information beyond what was...reported in the *Herald* article.

Also within minutes, Rollins sent a text message from her personal phone to the MA USAO First Assistant, the Executive Officer, and another staff member with a link to the *Herald* article and the questions, “Wtf!?” and “When was the office contacted about this? And why wasn’t I called? How are they quoting things?”

At 8:31 p.m. that evening, the First Assistant and Rollins spoke on the phone for over 12 minutes. According to the First Assistant, Rollins was upset with the Executive Officer and asked the First Assistant why she (Rollins) had not been told that the MA USAO had been asked for comment about the *Herald* article. The First Assistant stated that he told Rollins that it was because she was recused from the matter. According to the First Assistant, Rollins responded that she was not recused from things that were in the public record and that public commentary about the office was different than knowing the details of an ongoing case. The First Assistant told us that in his discussion with Rollins about the *Herald* article, Rollins never mentioned that she had communicated with the *Herald* Reporter about the article before it was published.

During her OIG interview, Rollins told us that she did not recall this conversation with the First Assistant and she offered no explanation for why she did not tell her leadership team that she was the *Herald* Reporter’s source for the article:

OIG ATTORNEY: Did you tell any of those three individuals or anyone else in your office that you had spoken to [the *Herald* Reporter] about the recusal memo and this investigation?

MS. ROLLINS: I don't believe I had told them about that, no.

OIG ATTORNEY: And why did you not tell them about it?

MS. ROLLINS: I just didn't.

OIG ATTORNEY: All right. And then after this came out, I mean, did you tell them after the fact, oh, yeah, I talked to [the *Herald* Reporter] on this. Like, I gave him the memo.

MS. ROLLINS: I didn't. No.

OIG ATTORNEY: Why not?

MS. ROLLINS: I just didn't.

OIG ATTORNEY: Did, we see that you talked to [the First Assistant]. So, he texts you back at 8:20 and says, call when you can. At 8:31 p.m., you all speak for about 12 1/2 minutes. Do you recall that conversation at all?

MS. ROLLINS: I don't recall the specifics of it, no.

OIG ATTORNEY: Did you tell him in that conversation that you gave the memo to [the *Herald* Reporter]?

MS. ROLLINS: I didn't, no.

OIG ATTORNEY: And why not?

MS. ROLLINS: I just didn't.

Rollins told us that she did not believe that she needed to tell her team about off-the-record conversations she had with reporters. She also said she could see how implying that she did not know how the *Herald* Reporter had quoted statements from the Recusal Memorandum "could easily be looked at as being disingenuous" with her team. Rollins further stated: "I can admit that the fourth sentence in this text [message]...that was me not wanting anyone to know that I had had the conversation, and I just, that's the statement I will give."

**G. Rollins's Explanations for her Contacts with the *Globe* and *Herald*, including her Explanation for Disclosing Sensitive, Non-Public DOJ Information to the *Herald* and For Initially Denying During her OIG Testimony Under Oath that She Had Done So**

In this section, we describe Rollins's explanation for her contacts with reporters at the *Globe* and the *Herald*. This section includes Rollins's acknowledgement during her OIG interviews on December 15, 2022, and January 24, 2023, that she provided background information to the *Globe* Reporter on both Hayden and the transit police misconduct investigation, despite her December 6, 2022 OIG testimony that suggested she first learned about the *Globe*'s interest in the transit police misconduct investigation from media reporting. We also discuss in greater detail her OIG testimony on December 15 and January 24, when Rollins admitted that she was the federal law enforcement source referenced in the September 11 *Herald* story and how she shared non-public Department information with the *Herald* Reporter. We also include Rollins's explanation for why, when

the OIG first questioned her under oath on these topics on December 6, she denied being the *Herald* Reporter's source for his September 11 article, stated that she did not know or have any suspicion about who the source was, and declined to answer whether she gave the *Herald* Reporter the Recusal Memorandum.

**1. Rollins's Explanation for Her Contacts with *The Boston Globe* and for her OIG Testimony Suggesting She Did Not Know About the *Globe's* Interest in the Transit Police Misconduct Matter Prior to the Articles' Publication**

On December 15, 2022, Rollins testified that she spoke to the *Globe* Reporter on background for his August 6, 8, and 10, 2022 articles because:

I don't want to be, sort of, quoted on this...because...I can't be quoted any longer as Rachael, right? Like, I don't want to be looked at as the U.S. Attorney, arguing with Kevin Hayden to say, like, are you kidding me? So, I sat on these cases, or you didn't get a case file or something like that.

We asked Rollins if she had any concerns about talking to a reporter, within 5 or 6 weeks of the election, on background about someone running for elected office. Rollins replied:

I didn't...and honestly, it was my office, right? It would be one thing if I was sticking my big nose into something, like, you know, I'm from a different state and demanding to look into something happening in another state, hypothetically, right? But no.

This was, there is no one that could speak more to what the policies were of the Suffolk D.A.'s Office than me because I ran for the office, and I had implemented many of the policies, so honestly, it's about truth, right? Like, I don't care what the outcome is, but don't say you didn't have files or, like, imply that somehow we were ripping up documents or taking them with us.

That, to me, I won't make a comment about that as the U.S. Attorney, but I want to make sure the story is accurate.

We also spoke at length with Rollins on multiple dates about when she first became aware: (1) that the *Globe* was looking into Hayden's handling of the investigation of the former Transit Officer, the officer involved in the allegedly unconstitutional stop that was a focus of the August 6 article; and (2) the possible *quid pro quo* fact pattern involving Hayden and his First Assistant D.A. that was detailed in the August 6 article. We initially asked Rollins on December 6 if she could provide an overview of the steps that led to the MA USAO's recusal from a potential Hayden investigation, noting that it appeared that the issue first arose after the *Globe* published some articles in early August. At that time, the OIG had obtained the call detail records of Rollins's personal cell phone showing the calls (described above) between Rollins and the *Globe* Associate Editor and between Rollins and the *Globe* Reporter, but we were not aware at the time of Rollins's text messages with the

*Globe* Reporter (or Arroyo).<sup>43</sup> Rollins responded on December 6 by suggesting that she did not know that a *Globe* article about the transit police misconduct matter was forthcoming:

For sure. And so, without, like, knowing exact dates...so, every morning, I wake up and read the *Globe* and the *Herald* and several other articles, but absolutely the *Globe* and the *Herald*. When I started seeing something about an incident, a questionable stop by a transit police officer, I immediately said, I remember that stop. Or being, being talked, told about that when I was the D.A. That's number one. But it was public in the, either *Herald* or the *Globe*, that had been writing about it. I think it was the *Globe* article.

We were unable to ask Rollins additional questions on December 6 about her contacts with the *Globe* Reporter and *The Boston Globe* because Rollins declined to answer any further question on that topic until she had the opportunity to review her records.

In a continuation of that interview on December 15, we began by highlighting Rollins's phone calls with the *Globe* Reporter prior to the August 6 article being published. As noted above in Section II.B.1. and B.2., Rollins stated that she and the *Globe* Reporter discussed a number of matters relating to her tenure as D.A. We asked Rollins if she spoke to the *Globe* Reporter about the transit police misconduct matter. At that time, Rollins had not yet provided the OIG with her text messages with the *Globe* Reporter. Rollins replied:

I may have, but as I sit here today, I think I learned...that we [the Suffolk D.A.'s Office under her tenure] had issued a search warrant in that case, from the *Globe*, right? So, I didn't have any independent knowledge, and I think I may have remembered, but only from the *Globe*, like, being sort of jarred as a result of, or, you know, reminded from reading that about, like, I had a vague recollection of some interaction, you know, with some officer that was troubling, that maybe...my First Assistant as D.A. had mentioned something about a T investigation.

But I think when I spoke to [the *Globe* Reporter], it was more about, well, if according to the *Globe*, we had a search warrant issued, did we present anything to the grand jury? Like, he had more information than I did, but I said these are the type of questions you should be asking, if you're asking for documents. That's how you get the information you need.

I didn't have the information, but I was able to explain to him. I don't think [the *Globe* Reporter] is a lawyer, like, hey, there is, you know, when you go before the grand jury, you have to get a slot of time. You don't just walk in

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<sup>43</sup> On December 15, 2022, Rollins produced relevant text messages on her personal cell phone to the OIG with respect to the *Herald* Reporter only. Rollins produced other relevant text and encrypted messages on her personal cell phone, including those with the *Globe* Reporter, Arroyo, and others, to the OIG on January 21 and 23, 2023.

there and say, I have three witnesses. I'm going in. You have to request the time.

Maybe if you ask, did Hayden's administration request any grand jury time? If he did, then he is telling the truth. If he didn't, maybe he isn't. I don't know.

The OIG interview of Rollins on December 15 was also truncated because of Rollins's and her attorney's schedules. Prior to the continuation of Rollins's interview on January 24, 2023, Rollins reviewed and produced to the OIG her text messages with the *Globe* Reporter. As noted above, these messages showed that Rollins and the *Globe* Reporter had discussed the transit police misconduct investigation prior to the August 6 article being published. On January 24, Rollins stated:

I speak to [the *Globe* Reporter], who is talking to me about, I think, like, historical things about the D.A.'s Office. I didn't have as many, I did not have a clear memory about the allegedly unconstitutional stop. That happened while I was D.A. but didn't really percolate up to me, and I think he was giving me information about that....

We also asked Rollins on January 24 when she first learned that the *Globe* was looking into the transit police misconduct investigation, including whether she brought the transit police misconduct matter to the *Globe* Reporter's attention or whether the *Globe* Reporter raised it with her first. Rollins told us that she did not bring the transit police misconduct matter to the *Globe* Reporter's attention and that she had a vague recollection of him raising it with her over the phone. Rollins stated: "It was brought to my attention by the *Globe*. And if I inartfully said an article, I meant [the *Globe* Reporter], which I associate with the article because he had to do a lot of research before he wrote it." Rollins later added if she said she "didn't know about it until the *Globe* told" her, "it could be [the *Globe* Reporter] calling [her] and asking [her]. It could be an email or it could be reading an article."

Finally, Rollins told us on December 6, and reaffirmed on December 15, that she did not learn about the possible *quid pro quo* involving Hayden until she read the *Globe* articles. Because a text message she received from Arroyo on August 2 (described previously) about her impending call with the *Globe* Reporter the next day stated, in part, that "this...feels like pay for play and corruption cover-up as we speak," we asked Rollins on January 24 whether this was a reference to the possible *quid pro quo* involving Hayden before it was reported in the *Globe* on August 6. Rollins told us that she did not remember seeing Arroyo's "pay to play" reference in his text and did not respond to it. She told us that she believed the "cover up" noted by Arroyo was a reference to the transit police officers' alleged cover up. She also said, again, that she "recall[ed] learning about the *quid pro quo* when [she] read the *Globe* article."

2. Rollins's Explanations for Disclosing Sensitive, Non-Public DOJ Information to the *Herald* and For Initially Denying During her OIG Testimony Under Oath that She Had Done So

During her OIG testimony on December 15, 2022, and January 24, 2023, Rollins told us that she shared non-public Department information with the *Herald* Reporter because the *Herald* Reporter had come to her with inaccurate information from another source that DOJ was not looking into the possible *quid pro quo* involving Hayden. Rollins told us that in sharing the information with the *Herald* Reporter, she was trying to prevent the publication of a news story that she believed would have been "detrimental to DOJ." According to Rollins:

...I felt like making sure that there was not a story that there was nobody that was ever going to look into this, and this is well-reported in the *Globe* about the alleged *quid pro quo* and the payment and the affidavit, you know, and these aren't just, like, random questions. These are, like, documents that were filed in court.

So, it seemed pretty potentially egregious, and I didn't want there to be an article out there, just left to say, the Department of Justice isn't looking, has decided not to look into this, and my experience to that date had been that would have been the last discussion because even if it did go to [the New England USAO], and she opted, [the New England U.S. Attorney] opted not to prosecute, [the New England U.S. Attorney] would never issue something saying that, or I didn't have control over [the New England U.S. Attorney], nor would I ever try to.

Rollins further told us:

[T]he Department of Justice makes no statement about whether or not they are investigating something, let's say, hypothetically. They investigate it thoroughly. They decide not to prosecute it. They then don't confirm or deny when they get a call. They don't say, oh, we investigated it and we didn't find anything. So, there is just silence....

[But] when we investigate things like color of law violations and determine not to go forward, I think it's important that we say to the community, we did look into this....

[That was] where I was coming from when this was happening.

Although she acknowledged that she was referring (above) to sharing information with the community "months down the line, after an investigation was done," she said that she had these thoughts in mind when she spoke with the *Herald* Reporter.

With respect to why she sent the *Herald* Reporter photos of the Recusal Memorandum itself, Rollins told us on December 15 that she believed the *Herald* Reporter

had two competing sources—someone telling him that the Department was not investigating the possible *quid pro quo* and her telling him that that information was not true—and she sent him documentation of the recusal to prove to the *Herald* Reporter that there was “going to be at least an inquiry.”

OIG ATTORNEY: You were breaking the tie between two sources by giving him documentation?

MS. ROLLINS: That is a better way to characterize it. Whether right or wrong, that's what I was thinking when it happened, and my intent was truly that we would have looked, we being the Department of Justice, I think terrible in an article that was going to come out, and at least here, the public knows we are looking into it.

[The public] does not know what we're going to find, but it is not going to be an article that says, DOJ sources determined no investigation, which is what I believed, when I spoke to [the *Herald* Reporter], was going to happen.

She further stated that in correcting the information the *Herald* Reporter said he had from another source: “What I was hopeful for was that there would be a story that said...at least the Department of Justice is potentially looking into the allegations raised by the *Globe*.”

As described previously, despite the office-wide recusal on what the Recusal Memorandum referred to as “the investigation and possible prosecution” of Hayden and his First Assistant D.A., the MA USAO did not have an investigation open at the time, and the Public Corruption Unit was not taking steps towards opening any such investigation. Rollins told us on December 15 that when she made her disclosures to the *Herald* Reporter, she did not know whether the MA USAO Public Corruption Unit was “looking into this or not,” but she said that she knew that she had initiated a potential DOJ inquiry by reaching out to the EOUSA General Counsel right after the *Globe* story broke.

We asked Rollins on December 15 and January 24 whether, when she made her disclosures to the *Herald* Reporter, she considered Department policy that protects the confidentiality of non-public, sensitive information. Although she agreed that “the fact that [DOJ] was] inquiring might not have been public,” she said that she did not think about that fact when she made her disclosures, and she did not believe at the time that she was violating Department policy. She further stated that the MA USAO “press office is in, like, near constant communication and giving documents to [the] press all the time on background and etc., so [she] didn't see it as a problem.” However, Rollins also told us: “I was sure it was something that I didn't want to talk about publicly, right?... So, I think that clearly means that I knew that there was likely something not, like, positive about me doing this.” Further, as noted previously, part of her explanation for why she made her disclosures to the *Herald* Reporter was that she knew the Department would not make a statement about whether they were investigating Hayden or, later, if they opted not to prosecute, that they had investigated him.



During her testimony on December 15 and January 24, Rollins also asserted that the information she shared with the *Herald* Reporter was not, in her view, particularly “extraordinary” or sensitive:

MS. ROLLINS: ...But, you know, I also do want to say that when an article comes out, claiming that you engaged in a *quid pro quo*, I don't think it's extraordinary to find out that there is an investigation happening, right? Like, that is how all of our investigations occur, through the [Attorney General] or the U.S. Attorney's Office. Like, you just said, Public Integrity is reading the *Globe*, and they open investigations all the time.

OIG ATTORNEY: But it is kind of extraordinary to have that investigation confirmed by a federal law enforcement official in the newspaper, isn't it?

MS. ROLLINS: I don't necessarily believe that.... [I]t happens all the time. Like, literally, all the time. So, I don't think it's usual, but I don't think it's extraordinary.

Rollins also stated that because the Recusal Memorandum did not have a classification or law enforcement sensitive marking or some other notation protecting it from disclosure, she thought sharing it with the *Herald* Reporter “was not a significant issue” at the time. However, Rollins stopped short of stating that the absence of markings excused her disclosure of non-public case information:

OIG ATTORNEY: Are you saying that...your case documents, anything in the U.S. Attorney's Office right now relating to a covert case, that if it doesn't have a marking, then it's free game to make public?

MS. ROLLINS: I'm not saying that. What I'm saying is this document itself is not top secret, secret, there is no demarcation whatsoever.... This is an email that I received about me that is recusing me and saying there is going to be an inquiry into something. That is what I'm saying. I'm not saying I would do it again. I'm simply saying this is...not, there is no demarcation on this that turning it over in any way, shape, or form is, on its face, precluded. That's what I'm saying.

And that if it is sensitive or law enforcement sensitive, or any, you know, privileged, confidential, top secret, secret, I have to be in [a secure location] when I read it, there is nothing indicating that whatsoever.

I'm not saying it was right. Please do not hear me as fighting for that. I'm simply saying, this is not a defiant act of marked as something and who cares, I'm doing this. This is a document about me that I turned over and foolishly or not, to defend that we were actually doing something, when I was told and lied to or not, that there were sources saying we were doing nothing.

And that is what DOJ does, is we don't comment on investigations, confirm or deny, and if we don't do anything, we're just silent, and we never do anything, or we pop up three years later and say, we were looking into this the whole time, as we're being disparaged and accused of doing nothing by certain communities. Like, that is what this was about for me.

When we asked Rollins on December 15 why she would disclose information about a potential investigation from which she had been recused, Rollins stated that she did not think the information she shared was “law enforcement sensitive or confidential or privileged” and that she did not believe that being recused meant that she could not acknowledge that she was recused. When we asked her whether she advised the New England U.S. Attorney of her disclosures, Rollins told us: “I don’t think I did.” Rollins said that she did not think she needed to alert the New England USAO because the *Herald* article “didn’t break the case.” She said: “I think the *Globe* broke the case about the *quid pro quo* that I had no idea about [until after I saw it published in the *Globe* article].” When we asked her whether she considered at the time that her disclosures could impede any future investigation by the New England USAO, Rollins said: “I wasn’t thinking about that, and maybe I should have been.” Rollins said that she thought she “was helping” by making clear that, in fact, somebody was looking into the possible *quid pro quo*.

Given that Hayden was a candidate in the upcoming election for Suffolk D.A. at the time of her disclosures, we asked Rollins whether she considered that fact when she made her disclosures to the *Herald* Reporter. As discussed later in our analysis, on May 25 and August 8, 2022, Rollins received DOJ-wide reminders of the Department’s policy requiring that DOJ officials be mindful of election year sensitivities when making public statements or taking other actions near the time of a primary or general election and to consult with the Public Integrity Section of the Criminal Division (PIN) when such issues exist.<sup>44</sup> Rollins told us during her December 15 testimony that because her conversation and text messages with the *Herald* Reporter on September 9 took place after the primary election, in her mind the election was over because Hayden was running uncontested in the general election. She said she did not consider at the time whether public disclosure of a DOJ investigation could place pressure on Hayden to withdraw his candidacy.<sup>45</sup>

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<sup>44</sup> The PIN Chief told the OIG that Rollins did not consult with PIN regarding the information she provided to the *Herald* during August and September 2022. As discussed in our analysis, Department policy also prohibits federal prosecutors from timing any action, including investigative steps, criminal charges, or statements, for the purpose of affecting any election, or for the purpose of giving advantage or disadvantage to any candidate or political party. Justice Manual § 9-85.500.

<sup>45</sup> After the primary election and before the general election, Rollins continued to provide *Globe* reporters with information about Hayden. On September 14, 2022, Rollins sent a text message that was “OFF THE RECORD” (emphasis in original) to the *Globe* Reporter that stated, in part: “If Kevin Hayden is allowed to just say, we never stopped looking into any of the cases DA Rollins opened and you guys take his word as Gospel, where are the indictments in these two cases? What is the status? Can’t have it both ways.” On

(Cont’d.)

When we asked Rollins about her first call with the *Herald* Reporter on September 2—an off-the-record conversation she requested and which took place before the primary election—Rollins testified on December 15 that she did not recall whether they spoke about a potential DOJ investigation on that call and that she wanted to review what else may have been in the news at that time to figure out what they may have discussed. She said that they could have talked about a university of common interest between them, but that they likely also talked about something work-related, and “it very well may have been about this.”

During subsequent OIG testimony on January 24, 2023, Rollins stated that she did not believe she told the *Herald* Reporter about a potential DOJ investigation of Hayden before the primary election:

OIG ATTORNEY: No, our question to you is whether, before you had that conversation with [the *Herald* Reporter] about him telling you, “I have a source that says you're not investigating,” our question to you is was that conversation with [the *Herald* Reporter] preceded by an earlier conversation with [the *Herald* Reporter] where you told him that you were, that DOJ was either investigating or may investigate?

MS. ROLLINS: I don't believe that is the sequence of events, right?...

I don't know what we talked about on this day [September 2], and I can tell you, my recollection is the reason I sent him something, and it was after the election, right, as because I was told by him, whether I was lied to or not, I sent it, because I wanted him to know that DOJ is at least inquiring into this thing.

And for me, none of that happened before the election. I would not want to feel as if I was turning something over or saying there is an investigation. People can speculate or not. [The Law Professor] can send his letter, but I was not speaking or telling the press or giving them a document about an investigation before the election, which was September 6th, I believe.

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September 21, 2022, Rollins sent another “OFF THE RECORD” (emphasis in original) text message to the *Globe* Reporter informing him that the “Head of Conviction Integrity Unit at Suffolk just tendered her resignation today” and stating that Rollins had created that unit.

On September 27, 2022, Rollins spoke on the phone for almost 36 minutes with a different *Globe* reporter. Later the same day, Rollins texted the reporter links to the September 11 article in the *Herald* about the potential DOJ investigation of Hayden and an article in the *Globe* the next day reporting the same information. Rollins told us that she did not recall her phone conversation with this reporter or why she sent the reporter links to these articles. On October 6, 2022, the *Globe* published a story authored by this reporter that questioned whether Hayden would keep his campaign promises. See [“A series of mixed signals’: After Rollins, progressives question new DA’s commitment,”](https://www.bostonglobe.com/2022/10/06/metro/series-mixed-signals-after-rollins-progressives-question-new-das-commitment/) *The Boston Globe*, October 6, 2022, [bostonglobe.com/2022/10/06/metro/series-mixed-signals-after-rollins-progressives-question-new-das-commitment/](https://www.bostonglobe.com/2022/10/06/metro/series-mixed-signals-after-rollins-progressives-question-new-das-commitment/) (accessed April 6, 2023).

Based on her text messages with Arroyo, we asked Rollins whether her disclosures to the *Herald* Reporter that DOJ was looking into the possible *quid pro quo* was retribution for the wrongs she believed Hayden had committed before the primary election. Rollins testified on January 24 that “political payback” was not her intention and stated further:

...[A]ll I'm saying is I believed when I read things that I had nothing to do with, a *quid pro quo*, I did what I thought was right. I notified [the EOUSA General Counsel] immediately. I then had conversations with him again when I got the [Law Professor's] letter, and the reason, right or wrong, that I gave [the Recusal Memorandum] to [the *Herald* Reporter], I'm telling you, [the *Herald* Reporter] told me that he had a source that said we weren't doing anything, and I didn't think that was positive for DOJ.

Rollins also testified on December 15: “All I wanted was the truth to come out. I don't know or care...what the outcome [of an inquiry] is going to be about Kevin Hayden.”

Finally, we asked Rollins why, when the OIG first questioned her under oath on these topics on December 6, 2022, she denied being the *Herald* Reporter's source for his September 11 article, stated that she did not know or have any suspicion about who the source was, and declined to answer whether she gave the *Herald* Reporter the Recusal Memorandum.<sup>46</sup> Specifically, on December 6, Rollins testified as follows:

OIG ATTORNEY: Yeah. Any communications with [the *Herald* Reporter] about this article before it was published?

MS. ROLLINS: I don't believe so.

\* \* \*

OIG ATTORNEY: And, you know, it's after the notice of recusal and says, a federal law enforcement source suggests this came up because of the *Globe* stories. Were you that federal law enforcement source that [the *Herald* Reporter] cites?

MS. ROLLINS: No, no, no. No. And for me, you know, like, there are leaks that have happened in our office many, many times that I have spoken to regarding [the MA USAO Executive Officer], regarding this investigation, that we got a call, for example, from the [Associated Press] that said federal sources, law enforcement sources, but I have definitely talked to [the *Herald*

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<sup>46</sup> On November 30, one week prior to her continued interview on December 6, the OIG informed Rollins's counsel that the OIG intended to question Rollins about the September 11 article in the *Herald* on December 6, and the OIG provided Rollins's counsel with a copy of the September 11 article and access to the Recusal Memorandum. We also stated at the start of the continued interview that we planned to cover these topics.

Reporter] about many, many matters as D.A., and possibly even about this, as well.

OIG ATTORNEY: About the recusal?

MS. ROLLINS: About, after an article—

OIG ATTORNEY: Okay.

MS. ROLLINS: —might have appeared, I could have potentially or [the *Herald* Reporter] might call or text me about certain things. There are times where I am nonresponsive at all.

OIG ATTORNEY: Yeah.

MS. ROLLINS: And other times I might say, no, I have absolutely no comment.

OIG ATTORNEY: Do you know or have any suspicion about who the source was for this article?

MS. ROLLINS: I don't have any....

After these questions and answers, we described the call detail records we obtained and asked Rollins about the voicemail [the *Herald* Reporter] left for her on September 1 and the phone conversations they had on September 2 for approximately 17 minutes and again on September 9 for approximately 15 minutes. In response, Rollins testified that she did not recall what the *Herald* Reporter said in his voicemail or what they discussed over the phone. She then provided the following testimony:

OIG ATTORNEY: Are you, can you answer for us, did you tell [the *Herald* Reporter] that DOJ was moving towards a review or investigation of the Hayden allegations?

MS. ROLLINS: I did not do anything that would result in me feeling like I violated this at all. Now, whether [the *Herald* Reporter] had, you know, I will go back and look through my material, but I would want to make sure I was aware of what was happening around this time before I speak any more about the 17 and 15 minute calls.

Like, I want to know what day [a family event occurred].... I don't know whether that could account for some of these calls, and I also want to see what speaking events that I had, so I can better tell you whether I spoke about generally this, because I don't think this precludes me from talking, I apologize.

OIG ATTORNEY: The recusal memo.

MS. ROLLINS: This is, this was the recusal memo that I was given. Sorry. September 1st.

...

MS. ROLLINS: I was going to say, so, there is, like, there are oftentimes where, for example, if I am recused from something, that doesn't mean I can never talk about the D.A.'s office again, right? Or that I can never talk about the transit police again. Or that I can't say, I actually have a specific recollection of this incident, in and of itself, because—.

OIG ATTORNEY: That wasn't my question. My question was whether you can tell us, whether you did or did not talk to [the *Herald* Reporter] about DOJ moving towards an investigation or review of the Hayden allegations? Not, that's separate from what I heard you talk about before, about process, that the DA can't investigate itself.

What I'm asking is specific about DOJ and DOJ moving towards an investigation or review of the Hayden allegations—did or did you not discuss that with [the *Herald* Reporter]?

MS. ROLLINS: Not, I don't believe that I did, and certainly not from me, if, and I want to make sure I'm looking at one or two other things before I answer any questions to you, but it would be, let's take it away from this. I get calls all the time from the media, saying, we're being told the following. Do you have any comment on that? Or if somebody is telling us this, is that something that DOJ would do or is that consistent with what you have seen in the nine months that you have been the U.S. Attorney, right?

I don't see that, that, I want to look at what was happening in this time before I answer anything else about [the *Herald* Reporter], but for me, well, let me say that, before I answer anything else.

A few moments later, when we asked Rollins whether she provided the *Herald* Reporter with a copy of the Recusal Memorandum, Rollins asked for a break from the interview and, after the break, declined to answer further questions about the *Herald* leak and related topics until she had the opportunity to review her records.

As discussed previously, when the interview resumed on December 15, 2022, Rollins acknowledged being the federal law enforcement source for the *Herald* article. She further testified that she had denied being the *Herald's* source on December 6, and had declined to answer the question whether she gave the *Herald* Reporter the Recusal Memorandum, because she was not fully prepared to answer our questions on December 6, and she had difficulty recalling her conversations with the *Herald* Reporter. The OIG had advised Rollins's attorney on November 30 that we planned to ask Rollins questions on December 6 about the Recusal Memorandum that had been shared with the *Herald*, and the OIG provided Rollins's counsel with a copy of the September 11 *Herald* article and access to the Recusal Memorandum. We also stated at the beginning of her December 6 interview that we planned to ask Rollins questions about MA USAO's recusal from any investigation into Hayden and the Recusal Memorandum shared with the *Herald*. Rollins told us on

December 15 that she was nevertheless surprised when, on December 6, we asked her questions about the *Herald* article and her communications with the *Herald* Reporter:

[T]he first time I heard about [the *Herald* Reporter] or these articles...was when you mentioned it in the middle of, you know, a several hour interview. So, I, rather than stopping you then, which I should have, and said, what? I was trying to think throughout because this was sort of out of left field for me. That is not an excuse.

I'm just saying I was trying to think of all of my interactions with [the *Herald* Reporter], and I didn't know that was something we were going to be talking about during the interview. So, moving forward, if that happens again, I will stop and not say anything, and then, you know, I apologize for not doing that.

#### H. OIG Analysis

Based upon the facts described above, the OIG concluded that U.S. Attorney Rachael Rollins used her position as U.S. Attorney in an effort to influence the outcome of a partisan political election, namely the September 6, 2022 Democratic primary election that would select her likely successor as Suffolk D.A. We further found that Rollins took an active part in Ricardo Arroyo's primary campaign for the Suffolk D.A. position in an effort to help Arroyo defeat Interim D.A. Kevin Hayden. We concluded that, despite her assertion otherwise, Rollins was very much trying to put her "finger on [the] scale" in the race for D.A., a race that certain local media reports suggested was a referendum on the policies and programs Rollins instituted during her own tenure as Suffolk D.A.—with Arroyo being seen as someone who was more supportive of, and likely to continue, her policies than Hayden. Even Arroyo, moments after he lost the primary election to Hayden, sent a message to Rollins stating that her "legacy work deserved better."

Additionally, we determined that days after Hayden prevailed in the September 6 primary election, Rollins sought to damage Hayden's reputation by leaking to the *Herald* Reporter non-public and sensitive DOJ information that suggested the possibility of a federal criminal investigation into Hayden, a matter from which Rollins was recused. Finally, we concluded that Rollins lacked candor during her OIG interview when discussing her communications with the *Globe* Reporter and with the *Herald* Reporter, and falsely testified under oath when she initially denied that she was the federal law enforcement source who provided non-public, sensitive DOJ information to the *Herald* Reporter about a possible Hayden criminal investigation. Rollins only admitted to being the source during subsequent testimony after Rollins produced, in response to the OIG's requests, relevant text messages, which definitively showed that Rollins had indeed been a source for the reporter.

Documentary evidence demonstrated extensive campaign-related communications between Rollins and Arroyo in the weeks leading up to the primary election on September

6. The evidence shows that Rollins worked to advance Arroyo's candidacy by giving him advice and direction on actions he should take and statements he should make to promote himself or damage Hayden. For example, before the *Globe* published a story on August 23 reporting that Arroyo had twice been accused of serious crimes in 2005 and 2007, Rollins assisted Arroyo in his attempts to address questions from the *Globe*, told Arroyo to have the *Globe* Reporter call her, and then, shortly after the story published, substantively edited Arroyo's draft public statement about the allegations.

However, the evidence reflected that Rollins did far more than provide campaign advice and direction to Arroyo. In the weeks before the primary election, Rollins secretly fed negative information about Hayden to the *Globe*, some of which the *Globe* featured in an August 6, 2022 article critical of Hayden's handling of a MBTA transit police misconduct case that began under Rollins's tenure as D.A. and the understaffing of a special unit that was responsible for handling police misconduct cases. Among other things, Rollins also encouraged the *Globe* Reporter to keep digging for negative information about Hayden's management of the Suffolk D.A.'s Office and suggested where he could look to potentially find it. Further, the evidence shows that before and after the *Globe* articles about Hayden in early August, Rollins and Arroyo updated each other about separate conversations they were having with the *Globe*.

The evidence demonstrated that by the middle of August, Rollins brought her efforts to advance Arroyo's candidacy to the MA USAO, when she used her position as U.S. Attorney, and information available to her as U.S. Attorney, in an ultimately unsuccessful effort to create the impression publicly, before the primary election, that DOJ was or would be investigating Hayden for public corruption. The evidence shows that, the same day Rollins received from the Law Professor his August 16 letter requesting that the MA USAO investigate the information in the August 6 *Globe* article (suggesting that Hayden and his First Assistant D.A. may have closed down the transit police misconduct case in exchange for \$225 in campaign donations), Rollins went to EOUSA to obtain an office-wide recusal from the matter and then pushed her First Assistant U.S. Attorney to send the Law Professor an acknowledgment letter that would have disclosed her recusal from the matter and created the impression that DOJ was investigating Hayden. We believe her effort to convince her First Assistant to send such a letter is likely what Rollins was referring to when she told the *Globe* Reporter on August 19 that the MA USAO "may be issuing a brief statement" in the coming week about such an investigation. It was also likely at least one of the things she was referring to when she told Arroyo on August 22 that she was "working on something." Indeed, among her suggested edits to Arroyo's draft statement in response to the *Globe's* August 23 story about the serious criminal allegations against Arroyo, Rollins told Arroyo to assert that Hayden was likely under investigation for "likely criminal behavior."

After the First Assistant U.S. Attorney "backburner[ed]" her idea for an acknowledgement letter, Rollins took a more direct route toward publicizing a potential



DOJ investigation of Hayden by disclosing non-public DOJ information directly to the *Herald* Reporter. Rollins's first disclosure of information to the *Herald* occurred on September 2, 2022, 4 days before the primary election and nearly contemporaneously with her receipt of the Recusal Memorandum. Although Rollins testified that she did not recall why she texted the *Herald* Reporter on August 31, the same day that several public officials withdrew their endorsements of Arroyo, and, again, on September 1 requesting a discussion "off the record," or what they talked about when they ultimately spoke on September 2, the evidence demonstrated that she conveyed to the *Herald* Reporter that DOJ was, or potentially would be, investigating Hayden concerning the possible *quid pro quo* reported in the *Globe*, and that the Law Professor had contacted her office about the matter. We drew this conclusion for several reasons. Within 40 minutes of Rollins's phone conversation with the *Herald* Reporter on the evening of September 2, the *Herald* Reporter contacted the Law Professor—the two of whom, according to the Law Professor, had never had any prior contact—and told the Law Professor that he (the *Herald* Reporter) was aware that the Law Professor reached out to DOJ "about the Hayden/transit issue" and that he had heard that there "might be some movement on that." Additionally, the next day, September 3, the *Herald* reached out to MA USAO and the Suffolk D.A.'s Office for comment on the existence of an investigation, advising the D.A.'s Office that the *Herald* had "information that there will be an investigation" into the decision not to prosecute the transit police officers and advising the MA USAO Executive Officer that it had a law enforcement source who said that DOJ was investigating Hayden. Rollins admitted to the OIG that she was the federal law enforcement source for the *Herald* article on September 11, which discussed a possible DOJ investigation into Hayden.

Both the Suffolk D.A.'s Office and MA USAO, in their pre-primary election communications with the *Herald*, encouraged the *Herald* to consider the motives of a source who was leaking information just days before an election, and the *Herald* ultimately did not run a story prior to the primary election about a possible DOJ investigation into Hayden. On election night, following Hayden's defeat of Arroyo, Rollins sent an encrypted message to Arroyo that ominously concluded: "They are not above the law. He will regret the day he did this to you. Watch."

Three days later, on September 9, Rollins was contacted by the *Herald* Reporter and later that same day texted the *Herald* Reporter photos of the September 1 Recusal Memorandum itself as evidence that DOJ was indeed "looking into this." She also disclosed to the *Herald* Reporter that she had "reached out to DOJ" immediately after reading the August 6 *Globe* article, that a letter from the Law Professor "demanding" an investigation into Hayden and his First Assistant D.A. initiated the "moves toward a review," and that "DOJ was fearful of weighing in and impacting the election." Rollins told us that she took these actions and made these statements because the *Herald* Reporter had said to her that he had a source stating that DOJ had "declined to look into this matter" and she believed it was important for the Department to correct inaccurate information before it was published.

Although Rollins tried during her OIG interviews to minimize the significance of her active support for Arroyo's campaign and her disclosures to the *Globe* and the *Herald* of derogatory information about Arroyo's opponent in close proximity to the election—including non-public information about a potential DOJ investigation of him—her actions were extraordinary for any DOJ employee to have taken, let alone a U.S. Attorney. Indeed, as we describe below, we concluded that Rollins's conduct not only violated numerous DOJ policies but also was fundamentally inconsistent with the Standards of Ethical Conduct for Employees of the Executive Branch.

Moreover, the evidence clearly shows that Rollins knew at the time of her disclosures that what she was doing was wrong. For example, after texting the *Herald* Reporter the Recusal Memorandum, Rollins asked the *Herald* Reporter to say in the story that the source "preferred to stay anonymous for fear of discipline or something like that." Additionally, Rollins admitted during her OIG interview that her practice of sending documents to reporters by text message on her personal phone, as opposed to sending the documents from her DOJ email account, was because she wanted to hide the fact that she was doing so. Further, Rollins told us that one of the reasons she shared non-public DOJ information with the *Herald* Reporter was that she knew that the Department generally does not make public statements that they are investigating a matter or advise the public afterward that an investigation was conducted (unless public charges are brought).

We did not find credible Rollins's explanation that she disclosed non-public information to the *Herald* to serve the Department's and the general community's interests. Rollins secretly provided the information to a reporter, requesting assurance that she would not be identified as the source, without consulting the U.S. Attorney's Office responsible for the matter, and then misled her own staff about the disclosures. It is hard to imagine how the interests of either the Department or the public could have been served in this manner. And, in any case, Rollins was recused from the matter and, therefore, not authorized to decide what was good for the Department or the public. Indeed, given Rollins's clear conflict of interest and political motivation for her actions, had she told the *Herald* that it could name her as the source of the information, the Department's and MA USAO's credibility would have been seriously harmed, not advanced.

We found instead that Rollins's communications with Arroyo and with reporters overwhelmingly demonstrate that Rollins's actions were motivated by her desire—well documented in her own text and encrypted messages—to help Arroyo defeat Hayden in the primary election and preserve her own legacy as D.A., and, when that effort failed, damage Hayden's reputation. Indeed, within minutes of the *Herald* article first appearing online on the evening of September 11, Rollins sent Arroyo a link to the article, and Arroyo responded that he was "[a]bsolutely thrilled."

That a U.S. Attorney would release sensitive, non-public DOJ information and in other ways use her position to harm a candidate in a local election, amounted to a serious

violation of public trust. The fact that Rollins did not appear to grasp the seriousness of her actions during her OIG interview and, in particular, asserted that her disclosures to the *Herald* were not “extraordinary” or “a significant issue” were equally concerning and was a view not shared by career prosecutors in the MA USAO.

Moreover, as described below, we concluded that Rollins knowingly and willfully made a false statement of material fact under oath when she testified on December 6 that she was not the federal law enforcement source cited in the *Herald* article and that she did know who the source was. We further concluded that she lacked candor when she answered questions during her OIG interview about her communications with the *Herald* Reporter before the primary election and when she described how she first learned of the *Globe’s* interest in the transit police misconduct case.

In the sections that follow, we analyze Rollins’s conduct in the context of applicable government ethics rules, Department policy, and law. Based upon the foregoing, we determined that Rollins: (1) used her position as U.S. Attorney, and used non-public DOJ information available to her by virtue of her position as U.S. Attorney, in an effort to influence the outcome of an election, in violation of Sections 2635.702 and 2635.703 of the Standards of Ethical Conduct for Employees of the Executive Branch, as well as Department policy and the obligations under the Ethics Agreement she signed after her nomination as U.S. Attorney; (2) knowingly and willfully made a false statement of material fact during her OIG interview, in violation of 18 U.S.C. § 1001; (3) lacked candor during her OIG interview, in violation of 28 C.F.R. § 45.13; and (4) actively participated in a partisan political campaign, in violation of Department policy that further restricts the political activity of noncareer officials, including U.S. Attorneys. Furthermore, we believe that Rollins’s actions fell far short of the standards of professionalism, judgment, and impartiality that the Department should expect of a U.S. Attorney.

**1. Rollins Used her Position as U.S. Attorney, and Non-Public DOJ information Available to her as U.S. Attorney, in an Attempt to Influence the Suffolk D.A. Election in Violation of Government Ethics Standards, Department Policy, and the Terms of her Ethics Agreement**

**a. Government Ethics Standards Violations**

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct) recognize that public service is a public trust and require that executive branch employees place loyalty to the Constitution, laws, and ethical principles above private gain. See 5 C.F.R. § 2635.101. Section 2635.702 specifically states that executive branch employees shall not use their public office for their own private gain or for the gain of friends, relatives, or persons with whom they are affiliated in a nongovernmental capacity. This prohibition includes, but is not limited to, an employee using her government position in a manner that is intended to induce another person, including a subordinate, to provide a benefit to the employee, her friends, relatives, or persons with

whom she is affiliated in a nongovernmental capacity. 5 C.F.R. § 2635.702(a). Section 2635.703 prohibits employees from allowing the improper use of non-public information to further their “own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.” This section defines non-public information as “information that the employee gains by reason of Federal employment and that [she] knows or reasonably should know has not been made available to the general public,” including information the employee “knows or reasonably should know...[h]as not actually been disseminated to the general public and is not authorized to be made available to the public on request.” 5 C.F.R. § 2635.703(b). These provisions, as with all Standards of Ethical Conduct, are intended to help ensure public confidence in the integrity of the federal government. See 5 C.F.R. § 2635.101(a).

For the reasons described above, we concluded that Rollins used her position as U.S. Attorney, and non-public DOJ information available to her as U.S. Attorney, to further Arroyo’s private interest in winning the primary election and her own private interest in preserving her legacy as D.A. through Hayden’s defeat, in violation of Sections 2635.702 and 2635.703. She did so by, among other things, disclosing to a news reporter non-public DOJ information she possessed by virtue of her position as U.S. Attorney in order to disadvantage Hayden, Arroyo’s opponent in the primary election, and damage Hayden’s reputation, in violation of Section 2635.703. Rollins also used her position as U.S. Attorney for her own personal gain and the gain of Arroyo, in violation of Section 2635.702, by using the DOJ recusal process to create the impression that DOJ was or would be investigating Hayden. Although seeking recusal in a matter involving her former office was warranted, we found that Rollins’s attempt to use the recusal in a response letter to the Law Professor and her later disclosure of the Recusal Memorandum to the *Herald* indicates that Rollins used the recusal as a basis to say that DOJ was initiating steps towards an investigation. Further, even though Rollins was ultimately unsuccessful in convincing the First Assistant U.S. Attorney to issue a revealing letter before the primary election, we concluded that Rollins nevertheless used her position as U.S. Attorney to advocate for the letter with the intent of inducing her subordinate to provide a benefit to Arroyo and herself, within the meaning of Section 2635.702(a).

Accordingly, we concluded that Rollins used her position as U.S. Attorney, and used non-public DOJ information available to her by virtue of her position as U.S. Attorney, in an effort to influence the outcome of an election for her benefit and that of Arroyo’s, in violation of Sections 2635.702 and 2635.703.

#### **b. Department Policy Violations**

We concluded that Rollins’s improper use of DOJ information also violated Department policy in two respects. First, Rollins did not comply with the Department’s admonishment that law enforcement officers and prosecutors must not time any action in any matter for the purpose of affecting an election. Justice Manual § 9-85.500, entitled “Actions that May Have an Impact on an Election,” specifically provides:

Federal prosecutors and agents may never select the timing of any action, including investigative steps, criminal charge, or statements, for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party. Such a purpose is inconsistent with the Department's mission and with the Principles of Federal Prosecution. *See* § 9-27.260. Any action likely to raise an issue or the perception of an issue under this provision requires consultation with the Public Integrity Section, and such action shall not be taken if the Public Integrity Section advises that further consultation is required with the Deputy Attorney General or Attorney General.<sup>47</sup>

As discussed previously, we found that Rollins made her initial disclosures of DOJ information to the *Herald* on September 2 to disadvantage Hayden in the primary election. Her additional disclosures to the *Herald* on September 9 to damage Hayden's reputation occurred while he was a candidate for D.A. in the general election. We concluded this conduct violated Justice Manual § 9-85.500.

Second, Rollins violated Department policy that instructs employees to "presume that non-public, sensitive information obtained in connection with work is protected from disclosure" and cautions that "disclosure of such information to anyone...is prohibited and could lead to disciplinary action." Justice Manual § 1-7.100. This policy exists because:

Much of DOJ's work involves non-public, sensitive matters. Disseminating non-public, sensitive information about DOJ matters could violate federal laws, employee non-disclosure agreements, and individual privacy rights; put a witness or law enforcement officer in danger; jeopardize an investigation or case; prejudice the rights of a defendant; or unfairly damage the reputation of a person.<sup>48</sup>

Further, the Department's longstanding policy and practice is not to confirm or deny the existence of an ongoing investigation, except in very limited circumstances, or imply that the receipt of a request or referral will lead to an investigation. *See* Justice Manual § 1-

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<sup>47</sup> It has been the Department's practice, during election years, to have the Attorney General issue an "Election Year Sensitivities" memorandum to all DOJ employees. *See, e.g.*, Merrick Garland, Memorandum for All Department of Justice Employees, Election Year Sensitivities (May 25, 2022); William Barr, Attorney General, Memorandum for All Department of Justice Employees, Election Year Sensitivities (May 15, 2020); Loretta Lynch, Attorney General, Memorandum to All Department Employees, Election Year Sensitivities (April 11, 2016); Eric Holder, Attorney General, Memorandum to All Department Employees, Election Year Sensitivities (March 9, 2012); Michael Mukasey, Attorney General, Memorandum to All Department Employees, Election Year Sensitivities (March 5, 2008). These memoranda contained the same admonition as in Justice Manual § 9-85.500 that law enforcement officers and prosecutors must not time any action in any matter for the purpose of affecting an election. Rollins received Attorney General Garland's "Election Year Sensitivities" memorandum on May 25, 2022, and an update from EOUSA about the memorandum on August 8, 2022.

<sup>48</sup> Justice Manual § 1-7.100.

7.400 and 1-7.410.<sup>49</sup> Moreover, because she was recused from the matter, Rollins was not authorized to make an exception to the Department’s policy and practice.

As described previously, we found that Rollins intentionally disclosed sensitive, non-public DOJ information to a reporter—including texting the reporter photos of the September 1 Recusal Memorandum from the Office of the Deputy Attorney General—to create the impression that Hayden was or would be under DOJ investigation. The information she disclosed was particularly sensitive given that the matter involved a candidate in a primary and general election. However, even without this added sensitivity, we believe the importance of protecting the Department’s internal discussions and actions before deciding whether to open a public corruption investigation of a sitting district attorney and his first assistant was without question. Accordingly, we concluded that Rollins violated Department policy, codified in Justice Manual § 1-7.100, by disclosing non-public, sensitive information to a reporter without authorization.

### c. Ethics Agreement Violation

We also concluded that Rollins’s use of DOJ information in a matter involving the Suffolk D.A.’s Office during her communications with the *Herald* Reporter violated her obligations under the Ethics Agreement she signed on August 6, 2021, after she was nominated to serve as the U.S. Attorney for the District of Massachusetts. Rollins’s Ethics Agreement contained the following provision:

Upon confirmation, Ms. Rollins will resign from her position as Suffolk County District Attorney. For a period of one year after her resignation, she will have a “covered relationship” under the impartiality regulation at 5 C.F.R. § 2635.502 with the Suffolk County District Attorney’s Office.<sup>50</sup> Pursuant to 5 C.F.R. § 2635.502(d), Ms. Rollins will seek written authorization to participate in particular matters involving specific parties in which she knows the Suffolk County District Attorney’s Office is a party or represents a party. However, during her appointment to the position of United States Attorney, Ms. Rollins

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<sup>49</sup> The Department’s policies on confidentiality were covered during new U.S. Attorney orientation, which Rollins attended in March 2022.

<sup>50</sup> In interpreting Section 2635.502, the Office of Government Ethics has stated that this regulation “establishes a mechanism for an employee to determine whether ‘appearances’ require his disqualification from an assignment and to seek authorization from an ‘agency designee’ before he does participate.” See U.S. Office of Government Ethics, Opinion 97 x 8, “Letter to a United States Senator dated April 22, 1997. Section 2635.502(a) covers a situation where an appearance of impartiality may exist due to a personal relationship between the employee and a specific party involved in a particular matter. “Particular matter involving specific parties” is defined to include “any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties.” See 5 C.F.R. § 2640.102(l). This definition also states: “The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties.” *Id.*

will not participate personally and substantially in any particular matter involving specific parties in which she previously participated in her capacity as Suffolk County District Attorney.

After being confirmed as U.S. Attorney on January 10, 2022, Rollins was prohibited, pursuant to this agreement, from participating in “particular matters involving specific parties” in which the Suffolk D.A.’s Office was a party until at least January 11, 2023, and she agreed to take the measures necessary to resolve any actual or potential conflicts in such matters, including abiding by a recusal. Rollins acknowledged this limitation in her testimony to the OIG when she stated that she contacted EOUSA about a recusal because she expected to be recused from any investigation of Hayden, and she did not want to taint any such investigation.

However, after the Department formally recused Rollins from any potential investigation into Hayden and his First Assistant D.A., Rollins did not abide by that recusal. Instead, Rollins chose to communicate with and provide sensitive, non-public DOJ information concerning a potential Hayden investigation to the *Herald* Reporter in early September 2022, as detailed above. The potential investigation from which Rollins was recused clearly falls within the terms of her Ethics Agreement, as it involved an accusation of illegality against Hayden and his First Assistant D.A. We, therefore, concluded that Rollins violated the ethical obligations she agreed to abide by in her Ethics Agreement.

## **2. Rollins Violated 18 U.S.C. § 1001 by Knowingly and Willfully Making False Statements to the OIG**

Section 1001(a) of Title 18 prohibits anyone from knowingly and willfully making a material false statement in any matter within the jurisdiction of the executive (or legislative or judicial) branch of the federal government. 18 U.S.C. § 1001(a). This prohibition requires that the false statement be made “knowingly and willfully.” An act is done “knowingly” if it is done purposely and voluntarily, as opposed to mistakenly or accidentally.<sup>51</sup> In other words, the person knew he or she made a false statement.<sup>52</sup> An act done “willfully” requires proof “that the defendant acted not merely ‘voluntarily,’ but with a ‘bad purpose,’ that is, with knowledge that his conduct was, in some general sense, ‘unlawful.’”<sup>53</sup>

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<sup>51</sup> *United States v. Whab*, 355 F.3d 155, 159 (2d Cir. 2004).

<sup>52</sup> See *United States v. Smith*, 831 F.3d 1207, 1222 n.27 (9th Cir. 2017) (listing elements); *Bryan v. United States*, 524 U.S. 184, 193 (1998) (noting that the term “knowing” in requires proof of “factual knowledge as distinguished from knowledge of the law,” quoting *Boyce Motor Lines v. United States*, 342 U.S. 337, 345 [1952] [Jackson, J., dissenting]).

<sup>53</sup> *United States v. Starnes*, 583 F.3d 196, 210 (3d Cir. 2009) (citations omitted); see also *Whab*, 355 F.3d at 160 (finding no plain error in the district court’s failure to require more specific knowledge of illegality than that the defendant was aware of “the generally unlawful nature of his actions”); *United States v. Moore*, 612 F.3d 698, 703-04 (D.C. Cir. 2010) (Kavanaugh, J., concurring)(expressing that “willfully” under section 1001 “require[s] proof that the defendant was aware that the conduct was unlawful”).

The prohibition also requires that a false statement be “material.” A false statement is “material” if the statement has a natural tendency to influence, or is capable of influencing, a discrete decision or any other function of the agency to which it is addressed.<sup>54</sup> The statute is viewed as seeking to protect both the operation and the integrity of the government, and “covers all matters confided to the authority of an agency or department.”<sup>55</sup> It is irrelevant if the government was not actually deceived or influenced by the false statement or did not suffer any loss or impairment to its operations.<sup>56</sup>

As noted previously, Rollins admitted during her December 15, 2022 OIG interview that she sent the Recusal Memorandum to the *Herald* Reporter and was the “federal law enforcement source” cited in the *Herald* Reporter’s September 11 article. This testimony directly contradicted Rollins’s December 6, 2022 OIG testimony, under oath, in which she denied being the federal law enforcement source.

As described in Section II.G.2 above, one week before the December 6 interview, on November 30, the OIG advised Rollins’s attorney that we planned to ask Rollins questions on December 6 about the Recusal Memorandum shared with the *Herald* and, at her attorney’s request, we provided him with a copy of the September 11 *Herald* article and access to review the Recusal Memorandum. We also stated at the beginning of her December 6 interview that we planned to ask Rollins questions about MA USAO’s recusal from any investigation into Hayden and the Recusal Memorandum shared with the *Herald*. On December 6, Rollins testified as follows regarding the *Herald* article, her contacts with the *Herald* Reporter, and the disclosure of the Recusal Memorandum:

OIG ATTORNEY: ...Any communications with [the *Herald* Reporter] about this article before it was published?

MS. ROLLINS: I don't believe so.

And then shortly thereafter:

OIG ATTORNEY: ...after the notice of recusal [the *Boston Herald* article] says a federal law enforcement source suggests this came up because of the *Globe* stories. **Were you that federal law enforcement source that [the *Herald* Reporter] cites?**

**MS. ROLLINS: No, no, no. No.** And for me, you know, like, there are leaks that have happened in our office many, many times that I have spoken to regarding [the MA USAO Executive Officer], regarding this investigation, that we got a call, for example, from the [Associated Press] that said federal sources, law enforcement sources, but I have definitely talked to [the *Herald*

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<sup>54</sup> See *United States v. Gaudin*, 515 U.S. 506, 509 (1995); *Moore*, 612 F.3d at 701.

<sup>55</sup> *United States v. Rodgers*, 466 U.S. 475, 479 (1984).

<sup>56</sup> See *United States v. Notarantonio*, 758 F.2d 777, 787 (1st Cir. 1985).



Reporter] about many, many matters as D.A., and possibly even about this, as well.

OIG ATTORNEY: About the recusal?

MS. ROLLINS: About, after an article—

OIG ATTORNEY: Okay.

MS. ROLLINS: —might have appeared, I could have potentially or [the *Herald* Reporter] might call or text me about certain things. There are times where I am nonresponsive at all.

OIG ATTORNEY: Yeah.

MS. ROLLINS: And other times I might say, no, I have absolutely no comment.

OIG ATTORNEY: **Do you know or have any suspicion about who the source was for this article?**

**MS. ROLLINS: I don't have any....**

(Emphasis added.) After this exchange, we described to Rollins the call detail records of Rollins's personal cell phone showing that she had phone conversations with the *Herald* Reporter on September 2 for approximately 17 minutes and again on September 9 for approximately 15 minutes.<sup>57</sup> In response, Rollins testified that she did not recall what she and the *Herald* Reporter discussed over the phone. This response led to the following exchange:

OIG ATTORNEY: ...My question was whether you can tell us, whether you did or did not talk to [the *Herald* Reporter] about DOJ moving towards an investigation or review of the Hayden allegations? Not, that's separate from what I heard you talk about before, about process, that the DA can't investigate itself.

**What I'm asking is specific about DOJ and DOJ moving towards an investigation or review of the Hayden allegations; did or did you not discuss that with [the *Herald* Reporter]?**

**MS. ROLLINS: Not, I don't believe that I did, and certainly not from me, if, and I want to make sure I'm looking at one or two other things before I answer any questions to you, but it would be, let's take it away from this. I get calls all the time from the media, saying, we're being told the following. Do you have any comment on that? Or if somebody is telling us this, is that something that DOJ would do or is that consistent with what you have seen in the nine months that you have been the U.S. Attorney, right?**

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<sup>57</sup> When the OIG interviewed Rollins on December 6, we did not have, and were not aware of, Rollins's text messages with the *Herald* Reporter, described previously.

I don't see that, that, I want to look at what was happening in this time, before I answer anything else about [the *Herald* Reporter], but for me, well, let me say that, before I answer anything else.

(Emphasis added.) A few moments later, when we asked Rollins whether she provided the *Herald* Reporter with a copy of the Recusal Memorandum, Rollins asked for a break from the interview and, after the break, declined to answer further questions about the *Herald* leak and related topics until she had the opportunity to review her records.

Prior to the resumption of Rollins's interview on December 15, 2022, Rollins responded to the OIG's request for relevant communications stored on her personal cell phone by providing the OIG with text messages showing her communications with the *Herald* Reporter in advance of the *Herald* Reporter's September 11 article and showing that Rollins had provided the Recusal Memorandum to the *Herald* Reporter. During the December 15 interview, Rollins admitted being the federal law enforcement source referenced in the September 11 article. She further testified that she denied being the *Herald* source on December 6, and declined to answer the question whether she gave the *Herald* Reporter the Recusal Memorandum, because she was not fully prepared to answer our questions on December 6, and she had difficulty recalling her conversations with the *Herald* Reporter and whether she had shown or sent him the Recusal Memorandum. According to Rollins's December 15 testimony:

[T]he first time I heard about [the *Herald* Reporter] or these articles...was when you mentioned it in the middle of, you know, a several-hour interview. So, I, rather than stopping you then, which I should have, and said, what? I was trying to think throughout, because this was sort of out of left field for me. That is not an excuse.

I'm just saying I was trying to think of all of my interactions with [the *Herald* Reporter], and I didn't know that was something we were going to be talking about during the interview. So, moving forward, if that happens again, I will stop and not say anything, and then, you know, I apologize for not doing that.

The OIG found that Rollins violated Section 1001(a) by making false statements under oath when, during her December 6, 2022 OIG interview, she asserted that she was not the federal law enforcement source referenced in the *Herald* Reporter's September 11 article and had no suspicions about who was the source for the article.<sup>58</sup> First, these statements were false. Rollins admitted during her December 15 OIG interview that she was the source. Second, this information was material to the OIG investigation because one of the allegations we investigated was whether Rollins was the source of the unauthorized disclosures to the *Herald*, in violation of Department policy and her ethical

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<sup>58</sup> On December 16, 2022, pursuant to the Inspector General Act, 5 U.S.C. § 404(d), the OIG referred the false statements allegation to the Department for a prosecutive decision. On January 6, 2023, the Department informed the OIG that it declined prosecution.

obligations. Investigating violations of Department policy and ethical rules is a core part of the OIG's mission and, as described previously, Rollins's disclosures to the *Herald* Reporter violated multiple DOJ policies, the government ethics standards, and her Ethics Agreement. Rollins's denials would, therefore, be capable of influencing the OIG's investigation into a matter confided to the authority of the OIG.

Lastly, we find that Rollins knowingly and willfully made these false statements. In her December 15 OIG interview, Rollins claimed that she was "surprised" when the OIG raised the topic of her communications with the *Herald* Reporter and, therefore, during the interview she was "trying to think of all of [her] interactions" with the *Herald* Reporter. Notwithstanding her level of surprise, we do not credit Rollins's testimony about the reasons for her answers on December 6. We did not find credible that Rollins could have forgotten that she was the *Herald* Reporter's source and had no suspicion as to who the *Herald* Reporter's source was. The OIG interview with Rollins was voluntary, and Rollins was free to decline to answer any question, as evidenced by her decision to decline to answer further questions about the *Herald* leak and related topics until she had the opportunity to review her records. Instead of declining to answer the question, Rollins chose to knowingly deny she was the federal law enforcement source.

Moreover, Rollins's contemporaneous text messages with the *Herald* Reporter show that she knew that her communications with the *Herald* Reporter were inappropriate and wrong. Specifically, in one text message on September 9, Rollins requested that the *Herald* Reporter source the information she provided to someone "within DOJ with information who preferred to stay anonymous for fear of discipline or something like that." In addition, as noted previously, Rollins told us that her practice of sending documents to reporters by text message on her personal phone, as opposed to sending the documents from her DOJ email account, was because she wanted to hide that she was doing so. Given that Rollins clearly recognized the impropriety of providing this information to the *Herald* Reporter, we found that she willfully made the false denial to the OIG for the purpose of concealing her actions. Ultimately, we found that Rollins violated Section 1001(a) by knowingly and willfully making materially false statements to the OIG.

### **3. Rollins Lacked Candor During Her OIG Interview Concerning Her Communications with Two Reporters**

In addition to the specific false statements to the OIG described in the preceding section, we found that Rollins lacked candor during her interview with the OIG concerning her communications with two reporters. Department policy states that "Department employees have a duty to, and shall, cooperate fully with the Office of the Inspector General."<sup>59</sup> A fundamental component of "cooperat[ing] fully" is testifying truthfully and completely when interviewed by OIG investigators. Although the Department, unlike many

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<sup>59</sup> 28 C.F.R. § 45.13; see also Justice Manual 1-4.200 (all Department employees have an obligation to cooperate with OIG misconduct investigations in accordance with 28 C.F.R. § 45.13).

of the Department's law enforcement components, does not have standards of conduct or a policy that defines "lack of candor," the Merit Systems Protection Board (MSPB), in comparing "lack of candor" to the separate and distinct charge of "falsification," has defined lack of candor as follows:

Falsification involves an affirmative misrepresentation, and requires intent to deceive. *Naekel v. Dep't of Transp.*, 782 F.2d 975, 977 (Fed. Cir. 1986). Lack of candor, however, is a broader and more flexible concept whose contours and elements depend upon the particular context and conduct involved. It may involve a failure to disclose something that, in the circumstances, should have been disclosed in order to make the given statement accurate and complete. It would be comparable to the distinction in the Federal securities laws governing securities registration statements between 'an untrue statement of a material fact' and the failure 'to state a material fact...necessary to make the statements therein not misleading.'<sup>60</sup>

In another case, the MSPB has stated that two elements are necessary to prove a "lack of candor" charge: "(1) that the employee gave incorrect or incomplete information; and (2) that he did so knowingly."<sup>61</sup>

We found that Rollins's testimony to the OIG was often incomplete and misleading, and sometimes contradicted by other evidence. We detail below Rollins's lack of candor when describing her communications with two reporters about matters relating to Suffolk D.A. Kevin Hayden.

**a. Rollins Lacked Candor when Describing her Communications with a *Boston Globe* Reporter**

We found that Rollins lacked candor during her OIG interview when she described how she learned of *The Boston Globe's* interest in the transit police misconduct investigation. We also found that she lacked candor when we subsequently asked her about her communications with the *Globe* Reporter.

Prior to learning that the OIG had obtained records from her personal cell phone showing calls with the *Globe* Reporter who co-authored the August 6, 8 and 10, 2022 articles, described previously, Rollins testified on December 6 that she first learned about the *Globe's* interest in the transit police misconduct investigation from reading about it in the news. We were unable to ask Rollins additional questions on December 6 about her contacts with the *Globe* Reporter because Rollins declined to answer any further question on that topic until she had the opportunity to review her records. When confronted with

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<sup>60</sup> *Ludlum v. Dep't of Justice*, 278 F.3d 1280, 1284 (Fed.Cir.2002). See also *Gootee v. Veterans Admin.*, 36 M.S.P.R. 526, 529-30 (1988); *Soc. Sec. Admin. v. Steverson*, 111 M.S.P.R. 649, 655-56 (2009).

<sup>61</sup> *Fargnoli v. Dep't of Commerce*, 123 M.S.P.R. 330, 338 (2016).

her phone records on December 15—but prior to Rollins providing her text messages with the *Globe* Reporter to the OIG on January 21, 2023—Rollins testified that she “may have” discussed the transit police misconduct investigation with the *Globe* Reporter, but only in the sense of telling the *Globe* Reporter where to look for information relating to the investigation. Rollins again suggested, however, that she had been “jarred” by “reading that about” the transit police misconduct investigation in the *Globe*. Prior to her January 24 testimony, Rollins produced to the OIG text messages with the *Globe* Reporter showing they had communicated substantively about the transit police misconduct investigation prior to publication of the August 6 article. On January 24, Rollins testified she had a “vague recollection” of discussing the transit police misconduct investigation with the *Globe* Reporter and said she had spoken “inartfully” before if she suggested that she had first read about the transit police misconduct investigation in the news.

Rollins’s December 6 testimony to the OIG that she first learned about the *Globe*’s interest in the transit police misconduct investigation from reading about it in the news was not true. Rollins knew that the *Globe* had an interest in the investigation before the August 6 article because she and the *Globe* Reporter discussed the case in the weeks prior to the publication of the August 6 article. We did not find it plausible that Rollins could have forgotten her communications with the *Globe* Reporter when she answered our questions during her interview. Rollins’s contacts with the *Globe* Reporter prior to publication of the August 6 article were significant and detailed and part of her efforts to advance Arroyo’s candidacy. These contacts included two 43-minute phone calls and numerous text messages, some explicitly about the transit police misconduct investigation. In an August 1 text message to the *Globe* Reporter, Rollins wrote: “WHERE IS THE INVESTIGATION INTO THE T generally (for the complete shitshow that it is), and the cover-up by the police officers??? Ask if the Officer cover up was referred to us by the T. If it was, that makes it even worse that he isn’t going forward.” In an August 3 text message, Rollins wrote that as “the elected DA” she “had ZERO incentive to drag out investigations into corrupt police officers.” Moreover, we found it improbable that Rollins would forget her communications with the *Globe* on this story given that the August 6 article garnered significant attention in the Boston area, leading to two follow-up articles in the *Globe* on August 8 and August 10 and to conversations between Rollins and her office about whether DOJ should open a civil rights investigation into the allegations against the transit police officers and a separate public corruption investigation of Hayden into the possible *quid pro quo*. Because we found that Rollins did not forget her communications with the *Globe* Reporter, we concluded that Rollins lacked candor when she testified to the OIG on December 6 about how she learned about the *Globe*’s interest in the transit police misconduct investigation.

For similar reasons, we concluded that Rollins knowingly provided incomplete and misleading information in her December 15 interview when the OIG presented her with phone records showing she communicated with the *Globe* Reporter prior to the publication of the first article. Recognizing that we were likely to call into question her

assertion that her only knowledge of the *Globe's* interest in the transit police misconduct investigation was from reading it in the news, she admitted only that she “may have” discussed the transit police misconduct investigation with the *Globe* Reporter. This statement was incomplete and misleading because she did not tell the OIG of her substantial communications with the *Globe* Reporter about the transit police misconduct investigation prior to the first article. Again, we did not find it credible that she forgot about these communications. Despite providing the OIG with her text messages with the *Globe* Reporter on January 21, Rollins knowingly continued to minimize her contacts with the *Globe* Reporter, providing incomplete information during her testimony on January 24 by claiming she only had a “vague recollection” of discussing the transit police misconduct investigation with the *Globe* Reporter. In addition, due to the extensive nature of these communications, we did not credit Rollins’s January 24 testimony that she had spoken “inartfully” or simply made a mistake in her prior testimony.

Moreover, we found Rollins’s testimony on these points was made purposefully and knowingly because Rollins’s text messages with the *Globe* Reporter show that she did not want anyone to know the extent of her communications with the *Globe* Reporter or that she was feeding the *Globe* negative information about Hayden’s handling of the transit police misconduct investigation, among other matters. As described earlier in this report, Rollins and the *Globe* Reporter exchanged text messages on August 3 in which Rollins explained to the *Globe* Reporter that she misled her MA USAO Executive Officer into thinking that she (Rollins) and the *Globe* Reporter only “spoke for a second” before Rollins referred the *Globe* Reporter to the Executive Officer for comment for the August 6 article.

For all these reasons, we concluded that Rollins’s testimony about her communications with the *Globe* Reporter lacked candor because she at first provided knowingly false testimony and subsequently provided knowingly incomplete and misleading testimony.

**b. Rollins Lacked Candor when Describing her Communications with a *Herald* Reporter**

We concluded that Rollins also lacked candor when she answered questions during her OIG interview about her communications with the *Herald* Reporter before the primary election. During her December 6, 2022 OIG interview, Rollins initially denied having any contacts with the *Herald* Reporter relating to the *Herald* article that was published on September 11, 2022. Once the OIG informed Rollins that we had records from her personal cell phone showing phone calls with the *Herald* Reporter, Rollins testified that she did not recall what they discussed over the phone. Immediately before we continued her interview on December 15, 2022, Rollins provided the OIG with copies of her text messages with the *Herald* Reporter, including text messages that Rollins sent to the *Herald* Reporter on August 31 and September 1 seeking a conversation with him “off the record.” She also provided numerous text messages she exchanged with the *Herald* Reporter on September 9, including Rollins sending him a copy of the Recusal Memorandum. After providing and

reviewing these text messages, Rollins told the OIG on December 15 that she still did not recall her September 2 conversation with the *Herald* Reporter. On December 15, Rollins also testified that she did not recall why she texted the *Herald* Reporter on August 31 and September 1 seeking a conversation and that she wanted to review what else may have been in the news at that time to figure out what they may have discussed. On January 24, Rollins testified that she did not believe she told the *Herald* Reporter about a potential DOJ investigation of Hayden before the primary election. When we asked Rollins whether she suggested to the *Herald* Reporter (or the Law Professor) that the two should talk, Rollins told us: “No. I don’t have any recollection of doing that.”

As discussed previously, we found that Rollins and the *Herald* Reporter did discuss the Hayden investigation on September 2. The *Herald* Reporter contacted the Law Professor 40 minutes after he and Rollins ended their call on September 2—a call Rollins requested—and told the Law Professor that he understood the Law Professor “reached out to the DOJ about the Hayden/transit police issue” and that the *Herald* Reporter had “heard there might be some movement on that.” According to the Law Professor, he had never communicated with the *Herald* Reporter prior to this contact. In addition to contacting the Law Professor, the *Herald* also contacted both the MA USAO and the Suffolk D.A. the following day for comment about an investigation into Hayden.

We found incredible Rollins’s testimony on December 6, December 15, and January 24 that she was unable to recall both why she reached out to the *Herald* Reporter initially and even the general content of their September 2 conversation. Rollins and the *Herald* Reporter spoke for almost 17 minutes that day, and Rollins told the *Herald* Reporter that it was “[a]ll off the record.” We believe it is highly unlikely that Rollins could recall details about her conversation with the *Herald* Reporter on September 9, but not even general details from their conversation on September 2 or why she initiated contact with him in the first place. Instead, we found her asserted lack of recollection to be self-serving, because any admission from Rollins that she discussed a Hayden investigation with the *Herald* Reporter on September 2 would undercut her assertion that she took no action to disclose that information until after the primary election. We believe that Rollins made a calculated decision to maintain her claim that she had no memory of her initial contacts with the *Herald* Reporter because—unlike the September 9 conversation—there were no text messages about what they discussed on the September 2 call.

Accordingly, we concluded that Rollins lacked candor when she testified to the OIG on December 6, December 15, and January 24, that she did not recall the reason she reached out to the *Herald* Reporter on August 31 and September 1, 2022, or whether they discussed a potential DOJ investigation of Hayden on September 2, 2022.

#### 4. Rollins Violated Department Policy that Restricts the Political Activities of all Non-Career Department Employees

The Department has a long-standing policy that applies the “further restrictions” of the Hatch Act, 5 U.S.C. §§ 7321–7326, a law that limits certain political activities of federal employees, to DOJ political appointees, including U.S. Attorneys. The Department has adopted this policy for political appointees even though the Hatch Act itself does not include, in its definition of further restricted employees, DOJ political appointees, including U.S. Attorneys.<sup>62</sup> Further restricted employees are prohibited from taking “an active part in political management or political campaigns.” 5 U.S.C. § 7323(b)(2). Thus, Rollins, as a U.S. Attorney, was subject to this prohibition pursuant to Department policy.

A June 10, 2020 memorandum from the DOJ Assistant Attorney General for Administration, entitled “Restrictions on Political Activities,” informed all non-career Department employees, including U.S. Attorneys, that they are subject to the restrictions that govern “further restricted” employees under the Hatch Act.<sup>63</sup> The memorandum stated that the purpose of the Department’s policy is to “ensure there is not an appearance that electoral politics plays any part in the Department’s day-to-day operations.” The memorandum states that non-career employees, including U.S. Attorneys, are prohibited from “advising a partisan political party or group on political strategies, areas of the law and policies.”

To reinforce these restrictions, at the new U.S. Attorney orientation that Rollins attended, the EOUSA General Counsel emphasized that all new U.S. Attorneys are considered “further restricted” for Hatch Act purposes and strongly recommended that they read OSC’s Hatch Act poster of permitted and prohibited activities for federal

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<sup>62</sup> Although the Hatch Act does not include most DOJ employees as “further restricted,” other provisions of the Hatch Act are applicable to the conduct of DOJ employees, some of which are relevant to Rollins’s conduct in this matter. As noted previously, the U.S. Office of Special Counsel (OSC) has exclusive jurisdiction to conduct investigations into any allegation concerning prohibited political activities under the Hatch Act and to seek disciplinary action against employees who violate the Hatch Act’s restrictions. 5 C.F.R. § 734.102(a). OSC is conducting a parallel Hatch Act investigation of Rollins, and, therefore, the analysis in this section is limited to Rollins’s compliance with the Department’s policy that adopts the “further restricted” provisions of the Hatch Act for non-career Department employees.

<sup>63</sup> The “Restrictions on Political Activity” memorandum was updated and re-issued on August 30, 2022, after the *Boston Herald* article referencing Rollins’s attendance at the DNC fundraiser, discussed in Section II. See Acting Assistant Attorney General, Memorandum for All Department of Justice Non-Career Employees, “Restrictions on Political Activities,” (August 30, 2022). This updated memorandum prohibits any passive attendance by any non-career Department employee at any partisan fundraiser, while earlier versions of the memorandum permitted passive attendance at a partisan fundraiser with the “prior approval of the Deputy Attorney General” or their designee. The Department’s policy on passive attendance is discussed later in this report, in our discussion of Rollins’s attendance at a Democratic party fundraiser.



employees who are further restricted.<sup>64</sup> The poster, available on OSC's website and also made available on EOUSA's intranet site, notes in pertinent part:

Generally, federal employees who are considered 'further restricted' are prohibited from taking an active part in partisan political management or partisan political campaigns. Specifically, these employees may not engage in 'political activity' on behalf of a political party or partisan political group (collectively referred to as 'partisan groups') or candidate in a partisan election. Political activity refers to any activity directed at the success or failure of a partisan group or candidate in a partisan election.<sup>65</sup>

We found that, in the weeks leading up to the September 6 primary election, Rollins was in regular contact with Arroyo, a partisan candidate in a partisan election, and acted as an advisor for his campaign for Suffolk D.A. Specifically, we found that Rollins provided advice to Arroyo on numerous issues, as part of an effort to advance Arroyo's partisan candidacy. In communications the OIG reviewed, Rollins repeatedly flagged issues that she believed would be important in the campaign, and she provided Arroyo with advice or direction on these issues, including traffic stops, abortion, mandatory life sentences for juveniles, and national election trends, among others. Rollins also provided Arroyo with strategic communications advice, including which demographics and stakeholders to target to advance his campaign, and how to respond to serious criminal allegations directed at Arroyo, including by editing a press statement issued by the Arroyo campaign. Additionally, Rollins discussed coordinating public appearances with Arroyo to assist his campaign. In a July 10 text message to Arroyo, Rollins stated, in part: "Make sure you let me know about stuff that I can show up at. And we can 'happen' to be there together." Later, on July 31, Rollins and Arroyo exchanged text messages about their attendance at the Puerto Rican Festival Parade, and text messages indicate they met at the parade.

Moreover, as discussed previously, on different occasions in the weeks before the primary election, Rollins secretly fed negative information about Hayden to *The Boston Globe*, some of which the *Globe* featured in its August 6, 2022 article critical of Hayden's handling of a transit police misconduct case that began under Rollins's tenure as D.A. and the understaffing of a special unit responsible for handling police misconduct cases. The evidence shows that before and after this article, Rollins and Arroyo updated each other about separate conversations they were having with the *Globe*, which we believe shows

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<sup>64</sup> Rollins attended new U.S. Attorney orientation on March 15-18, 2022. She also received ethics training from the MA USAO Ethics Advisor on her first day present in the office, during which the MA USAO Ethics Advisor informed Rollins that U.S. Attorneys are considered "further restricted" for Hatch Act purposes.

<sup>65</sup> [Hatch Act and Further Restricted Employees poster](https://osc.gov/Documents/Outreach%20and%20Training/Posters/The%20Hatch%20Act%20and%20Further%20Restricted%20Employees%20Poster.pdf), available at [osc.gov/Documents/Outreach%20and%20Training/Posters/The%20Hatch%20Act%20and%20Further%20Restricted%20Employees%20Poster.pdf](https://osc.gov/Documents/Outreach%20and%20Training/Posters/The%20Hatch%20Act%20and%20Further%20Restricted%20Employees%20Poster.pdf) (accessed April 21, 2023).

that they had coordinated their respective communications with the *Globe* on this and other issues.

Further, we believe the evidence shows that Rollins made efforts to publicize a DOJ investigation of Hayden in concert with Arroyo's expression to her privately that he was hoping such an investigation would be publicly announced because it would aid his partisan candidacy. For example, on August 22, Arroyo told Rollins that a public announcement of such an investigation "[w]ould be the best thing" that could happen for him at that moment. Later in the same message exchange, Rollins told Arroyo: "Understood. Keep fighting and campaigning. I'm working on something." Then, on August 28, Arroyo asked Rollins for an update on a potential federal investigation into Hayden, sending her a message stating: "Whats [sic] going on with the investigation into him?" and "Is that moving?" Rollins did not respond to his message, but 3 days later she reached out to the *Herald* Reporter, and again the next day, requesting an off-the-record discussion that led to Rollins's improper disclosure of a potential Hayden investigation.

Based on the above, we found that Rollins took an active part in Arroyo's partisan political campaign in violation of Department policy that further restricts the political activity of noncareer officials, including U.S. Attorneys. In the months leading up to the contested primary for Suffolk D.A., Rollins took an active role functionally as a campaign advisor for Arroyo, providing him guidance and direction on sensitive issues to advance his campaign. As noted, as a further restricted employee under Department policy, Rollins was not permitted to engage in political activity on behalf of a candidate in a partisan election. The applicable Hatch Act regulations define political activity as any activity directed at the success or failure of a partisan group or candidate in a partisan election. 5 C.F.R. § 734.101. This definition of political activity does not distinguish between elections at the federal, state, or local level, and the regulation defines a partisan election as "a primary, special, runoff, or general election." 5 C.F.R. § 734.101. The fact that Rollins's extensive campaign advice and support to Arroyo was non-public and only came to light through this investigation is of no moment—further restricted employees are prohibited from taking an "active part" in a partisan campaign and from advising partisan candidates for office, lines that Rollins crossed repeatedly throughout the partisan election for District Attorney.<sup>66</sup>

As noted previously, we did not find credible Rollins's testimony that she "wasn't putting [her] finger on [the] scale" to advance Arroyo's candidacy. Indeed, the July 10 text message above in which Rollins states that she and Arroyo can "happen" to be at public events together indicates that Rollins's motive was to assist Arroyo by privately coordinating joint public appearances and to avoid restrictions on her publicly endorsing or officially coordinating campaign appearances with him. Rollins's various other explanations for her communications with Arroyo during the campaign also do not change

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<sup>66</sup> See 5 U.S.C. § 7323(b)(2) and the Department's June 10, 2020 Memorandum to all Non-Career Employees, "Restrictions on Political Activities."

our analysis. Rollins stated that Arroyo was a “friend,” that she was providing him information “in her personal capacity,” and that the information she provided to him was not “top secret.” However, the Department’s policy that prohibits non-career officials from taking an active part in a campaign does not exempt communications with friends, those done in a personal capacity, or those that are not “top secret.” Indeed, after being asked whether her communications with Arroyo might violate her obligations under the Hatch Act and DOJ policy, Rollins stated: “I’m not saying these communications are appropriate.” She added that when she read through all of her communications with Arroyo, it was “a very sobering moment.”

Rollins’s conduct in support of Arroyo’s partisan candidacy directly contradicts the important purpose of the Department’s long-standing policy: to ensure there is not an appearance that electoral politics plays any part in the Department’s day-to-day operations. By acting as a partisan in support of a particular candidate, a U.S. Attorney undermines the public’s confidence that the U.S. Attorney will always administer justice based on the facts and the law, and not to achieve partisan objectives.

### **III. Rollins’s Attendance at a July 14, 2022 Democratic Party Fundraiser Without Required Approval**

On Thursday afternoon, July 14, 2022, driven in a government vehicle by a subordinate employee of the Massachusetts U.S. Attorney’s Office (MA USAO), Rollins appeared at a private home in Andover, Massachusetts, where a Democratic Party fundraiser was being held featuring First Lady Dr. Jill Biden. After the news media raised questions about whether Rollins’s presence at the fundraiser violated the Hatch Act, 5 U.S.C. §§ 7321–7326, a federal statute that, as noted previously, limits the political activities of federal employees of the Executive Branch, Rollins posted a tweet suggesting that she had “approval” to be there. Separate from the Hatch Act, at the time of the events described below, DOJ policy required that non-career employees, which include U.S. Attorneys, obtain prior approval from the appropriate official, which for noncareer employees of a U.S. Attorney’s Office was the Deputy Attorney General or her designee, before passively participating in a partisan fundraising or campaign event.<sup>67</sup>

In the sections that follow, after a discussion of the Department’s policies on partisan political activities, we describe the invitation that the MA USAO’s Community Outreach Coordinator received for her and Rollins to attend the July 14, 2022 Democratic Party fundraiser and Rollins’s expression of interest in attending. We describe a proposal

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<sup>67</sup> See Assistant Attorney General for Administration, U.S. Department of Justice, Memorandum for all Department of Justice Non-career Employees, Restrictions of Political Activities, June 10, 2020. As noted earlier, the U.S. Office of Special Counsel (OSC) has exclusive jurisdiction to conduct investigations into alleged violations of the Hatch Act and to seek disciplinary action against employees who violate the Hatch Act’s restrictions. 5 C.F.R. § 734.102(a). OSC is conducting a parallel Hatch Act investigation of Rollins, and, therefore, our discussion and analysis in this section is limited to Rollins’s actions that implicate DOJ policies.

that the MA USAO Ethics Advisor presented to the General Counsel's Office (GCO) of the Executive Office for United States Attorneys (EOUSA) for Rollins to have a brief "meet and greet" with Dr. Biden, alone, outside the location of the fundraiser, instead of attending the fundraiser itself, and GCO's ethics advice that GCO did not "see an issue" with the proposed plan. We then describe the discussions with Rollins about the parameters of the proposed meet and greet and the separate discussions with the Community Outreach Coordinator about her role during the meet and greet as Rollins's driver and the use of a government car. We also describe communications that MA USAO personnel had with the Democratic National Committee before the event. We then provide descriptions of what happened from Rollins, the Community Outreach Coordinator, and one of the hosts of the fundraiser, once Rollins and the Community Outreach Coordinator arrived at the location of the fundraiser.

Finally, we provide our analysis of whether Rollins complied with Department policies and procedures governing attendance at partisan political events. As described below, our investigation revealed that Rollins attended the fundraising event without approval from the Deputy Attorney General, or her designee, as required by Department policy, and her attendance was contrary to the ethics advice she received before the event that gave permission for Rollins to meet and greet with Dr. Biden separately from the fundraiser but did not include approval from the Office of the Deputy Attorney General (ODAG) to attend the fundraiser itself.

#### **A. Department Policies and Training for New U.S. Attorneys on Engaging in Partisan Political Activities**

In general, the political activities of Department employees are governed by the provisions of the Hatch Act, 5 U.S.C. §§ 7321–7326, over which the Office of Special Counsel (OSC) has exclusive jurisdiction.<sup>68</sup>

In addition to the Hatch Act restrictions, the Department has adopted its own policies to further regulate the actions of DOJ political appointees, including U.S. Attorneys. At the time of the Andover event, a June 10, 2020 memorandum from the Assistant Attorney General for Administration, entitled "Restrictions on Political Activities," included the following requirement related to "Attendance at Partisan Political Events":

Passive participation in a personal capacity at a partisan event is allowed and means merely attending a fund-raising or campaign event;.... Passive participation, with or without gift acceptance in connection with a partisan event, **requires prior approval from the Deputy Attorney General or his designee, or the Associate Attorney General or her designee,** depending

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<sup>68</sup> 5 C.F.R. § 734.102(a).

upon the office to which the employee's component reports. Please contact your ethics official for advice.<sup>69</sup>

(Emphasis in original.)

Rollins received training on the political activity restrictions placed on U.S. Attorneys from several sources. On her first day in the office, the MA USAO Ethics Advisor and Deputy Ethics Advisor provided Rollins with ethics training. As part of that training, the MA USAO Ethics Advisor gave Rollins printed copies of a PowerPoint presentation, which the Ethics Advisor went through slide-by-slide with Rollins for about an hour, and told Rollins to read the PowerPoint and several other ethics documents that the Ethics Advisor provided with the PowerPoint slides. During this training, the MA USAO Ethics Advisor discussed with Rollins, while going over the PowerPoint slides, that as a U.S. Attorney, Rollins is a further restricted employee under Department policy for purposes of the Hatch Act. The training also covered U. S. Attorneys' attendance at political events. The relevant PowerPoint slide, entitled "Attendance at Political Events," states:

All Presidentially Appointed [U.S. Attorneys] must obtain [Deputy Attorney General] approval prior to attending any political event involving any elected official, including a fundraising or campaign event, a convention, or to accept a gift of free or discounted attendance at a political event. Active participation in such events is prohibited for all appointed [U.S. Attorneys], but passive participation is permitted with prior approval from the [Deputy Attorney General].

In addition, one of the documents the MA USAO Ethics Advisor provided to Rollins and told her to read was an older version of the June 10, 2020 memorandum referenced above, entitled "Restrictions on Political Activities," which also states: "Passive participation and gift acceptance in connection with a partisan event **requires prior approval from the Deputy Attorney General or his designee, or the Associate Attorney General or his designee.**" (Emphasis in original.) Other slides in the PowerPoint presentation cautioned that U.S. Attorneys should consider "appearance issues in connection with attending political events" and specifically ask the question whether it will "appear that [the U.S. Attorney is] acting impartially and not for the benefit of any political campaign in performing [his or her] official duties?"

In addition, from March 15-18, 2022, Rollins attended an orientation program for new U.S. Attorneys held in Washington, D.C. The EOUSA General Counsel told us that

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<sup>69</sup> On August 30, 2022, the Attorney General issued a memorandum for Department non-career employees, entitled "New Restrictions on Political Activities by Non-Career Employees," informing them that "[a]lthough longstanding Department policy has permitted non-career appointees to attend partisan political events, e.g., fundraisers and campaign events, in their personal capacities if they participated passively and obtained prior approval, under the new policy, non-career appointees may not participate in any partisan political event in any capacity. This restriction applies to both public and non-public partisan political events."

during that orientation, he provided a presentation on March 17 that informed the new U.S. Attorneys that they are further restricted employees for purposes of the Hatch Act. The General Counsel said that he “strongly recommended” that the new U.S. Attorneys read the OSC’s Hatch Act poster of permitted and prohibited activities for federal employees who are further restricted, available on OSC’s website, and the General Counsel stated that he told attendees the poster and other related materials would also be made available on an EOUSA intranet site specifically set up as part of the orientation program. The General Counsel also told us he made it “clear that any attendance at an event involving political activity or fundraising had to be approved by the Associate Deputy Attorney General” through contacting his office. Associate Deputy Attorney General Bradley Weinsheimer told the OIG that during a separate part of this new U.S. Attorney orientation, he told the participants that they “need to keep politics out of the office.” Specifically, he explained to the new U.S. Attorneys that although many of them may have been involved in politics and may have been offered their positions due to politics, they now “have to leave politics aside” because the Department must ensure that nothing they do is “perceived as being partisan in any way.” In addition, he “mentioned fundraising, and the need to stay away from anything that deals with [political] fundraising for the same kinds of reasons.”

During her OIG interview, Rollins acknowledged receiving training regarding her ethics obligations as U.S. Attorney from her ethics advisors. When we asked whether she knew in July of 2022 that she was further restricted under the Hatch Act by Department policy, Rollins responded: “I don’t know if I did. I knew I had Hatch Act restrictions.” Although Rollins said she did not have a specific memory of reading the “Restrictions on Political Activities” document that describes the approval necessary for passive participation at partisan political events, she told the OIG that when she received documents from DOJ, she “usually read them.” We read to Rollins the language from the “Restrictions on Political Activities” document regarding passive participation in connection with a partisan event requiring approval from the Deputy Attorney General or his designee and asked Rollins whether she was aware of this obligation in July 2022. Rollins responded: “Not specifically.” We also asked Rollins whether, regardless of the advice she may receive from ethics advisors, she had an independent obligation to determine her ethical obligations. She responded: “I do have an independent obligation.”

#### **B. MA USAO Community Outreach Coordinator Receives Fundraiser Invitation, and Rollins Expresses Interest in Attending**

On July 7, 2022, the MA USAO Community Outreach Coordinator received an invitation for her and Rollins to attend a Democratic Party fundraiser featuring First Lady Dr. Jill Biden on the afternoon of Thursday, July 14, 2022, at a private home in Andover, Massachusetts.<sup>70</sup> They were invited by one of the hosts of the event who had worked with

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<sup>70</sup> See Appendix 1.

the Community Outreach Coordinator for many years in a community engagement program in the Boston area. The Community Outreach Coordinator told us that although she had received invitations in the past for community events and dinners as part of her official duties, she had never previously received an invitation for her or the U.S. Attorney to attend a partisan political fundraiser. She said that her initial reaction to the invitation was that she wanted to decline because Rollins had a tight schedule on July 14 and because she was concerned about the perception of attending a political event as the MA USAO Community Outreach Coordinator. She said that she decided she would consult the MA USAO Ethics Advisor and follow whatever ethics advice she was given.

Shortly thereafter, the Community Outreach Coordinator advised a MA USAO Public Affairs Specialist about the fundraiser invitation, which led to internal discussions about how to respond. Because the Community Outreach Coordinator's supervisor, the MA USAO Executive Officer, was on leave at the time, these initial discussions took place between the Public Affairs Specialist and the MA USAO Law Enforcement Coordinator, both of whom worked directly for the Executive Officer. The Public Affairs Specialist and Law Enforcement Coordinator told us that they did not recall the office ever receiving an invitation to a political fundraiser, and that under usual circumstances they would have simply declined or disregarded the invitation. However, they said that Rollins made clear early in her tenure that she wanted to see every invitation. The Law Enforcement Coordinator told us that because of this directive, they agreed that they should come up with "creative solutions" because they anticipated that once they informed Rollins, she would likely want to go to the event. According to the Law Enforcement Coordinator:

[N]ormally, if we had received an invitation that was anything political, we, with any other U.S. Attorney, we wouldn't have even presented it to the U.S. Attorney. For example, with our previous...Acting U.S. Attorney...he wouldn't have even wanted to see it. Same with [the former U.S. Attorney].

So this is kind of like new territory for us, that we have a U.S. Attorney that is interested in attending these types of events. And so, we were working through how to manage that as professionals....

And...we knew that going to a political fundraiser was a concern; that there were potentials for violation of the Hatch Act. We knew that there were potentials of the media seeing her there. Perception, public perception was an issue that we talked about.

So...we had concerns as public affairs professionals for her to go. But we knew that she would likely want to attend. And by creative solutions, I mean how can we satisfy her interest in going without her actually going?

After this discussion, the Law Enforcement Coordinator took the lead in seeking ethics advice and advising Rollins of the invitation. On the morning of July 11, the Law Enforcement Coordinator sent an email to the MA USAO Ethics Advisor stating: "I have one

of those questions that I can't believe I need to ask. Can you give me a call as soon as possible?" Later that morning, the two discussed the fundraiser invitation, and the MA USAO Ethics Advisor decided that she would seek advice from EOUSA's GCO. The two also decided that while GCO's advice was pending, the Law Enforcement Coordinator would tell Rollins about the invitation at a regularly scheduled meeting that afternoon to determine whether Rollins wanted to go to the event. They decided that if Rollins expressed a desire to go to the event, the Law Enforcement Coordinator would propose that instead of attending the political fundraiser, Rollins could do a separate meet and greet with Dr. Biden outside the event. She said that they devised this proposal with the expectation that Rollins would not be granted permission from the Department to attend the fundraiser itself.

Rollins's calendar shows a 1:30 p.m. meeting on Monday, July 11, between Rollins, the MA USAO First Assistant, and the Law Enforcement Coordinator. The Law Enforcement Coordinator told us that she presented Rollins with a printed copy of the fundraiser invitation at this meeting and told Rollins that Rollins had been invited to a Democratic Party fundraiser where she would have the opportunity to meet Dr. Biden. She said that she told Rollins "very clearly...multiple times" that staff's recommendation was that Rollins not attend the event, but that if Rollins felt strongly about going, then staff believed she could meet with Dr. Biden briefly before Dr. Biden went inside the home where the fundraiser was being held. According to the Law Enforcement Coordinator, Rollins stated in this meeting that she was interested in meeting Dr. Biden.

After the meeting, at 2:03 p.m., the Law Enforcement Coordinator emailed the following to the MA USAO Ethics Advisor: "Rachael wants to go—on her own—to meet with Dr. Jill Biden outside of the event (before it starts). She will just be saying hi and will not go in." A few minutes later, at 2:24 p.m., the Law Enforcement Coordinator sent the following email to the Executive Officer:

I know you're on vacation this week, but I wanted to make sure you were brought up to speed on an invitation [Rollins] received to attend a fundraiser for Dr. Jill Biden with the [Democratic National Committee]. I told [Rollins] today that she received the invitation, but we advised her not to attend. We suggested that if she really wanted to greet [Dr. Biden], that she could do so by walking the 10 minutes through the Secret Service barricade to say hi to [Dr. Biden] outside of the event. We told her that she should not go in. She agreed to this plan, and acknowledged that she should not go in. I asked [the MA USAO Ethics Advisor] to check with GCO...to make sure this plan was ok.



Minutes later, at 2:34 p.m., the Community Outreach Coordinator sent an email to Rollins's Executive Assistant: "[Rollins] is planning to stop in and meet [Dr. Biden] before the event begins at 4:45, not staying for the event."<sup>71</sup>

The First Assistant told us that he did not recall whether these details were discussed during the 1:30 p.m. meeting on July 11, though he said it was possible they were. The First Assistant told us that he also did not recall whether he ever spoke to Rollins about what she planned to do at the fundraiser location before she left for the event. He said that he was more focused on the importance of getting ethics clearance through GCO and that once he was informed that the ethics process was underway, he believed they were "in good position on this event."

Rollins told us that she did not recall the Law Enforcement Coordinator notifying her of the fundraiser invitation. Rollins told us that she instead remembered someone on her staff, probably the Executive Officer, asking her whether she would be interested in meeting Dr. Biden and that she responded to the effect of: "[I]f that works with my schedule, that would be great." Rollins said she was not sure when this conversation occurred. According to Rollins, when she was first informed of this opportunity to meet Dr. Biden, she was not told that the proposed meeting was in connection with a political fundraiser, and she was never shown the actual fundraiser invitation. Rollins said that she did not learn that the opportunity to meet Dr. Biden was in connection with a Democratic Party fundraiser until sometime after her office had received ethics advice, described below.

Rollins told us that once she learned that the event was a political fundraiser, she did not have any concerns because she assumed that if her leadership team was bringing the invitation to her attention, they had appropriately vetted it and had obtained the necessary approvals. Rollins told us that because she relied upon her staff to vet the invitation and obtain the necessary approvals, she did not independently evaluate whether the proposed plan violated Department policy, the Hatch Act, or created any appearance issues. According to Rollins:

I would never think the office would bring me something that I couldn't do, to my attention. If it was precluded or wrong in any way possible, why would the person that reports to me be saying, we have this opportunity for you. Are you interested?

Further, she said that she understood at that time that she would be receiving "some restrictions on what [she] could do or couldn't do" while she was at the event.

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<sup>71</sup> The Community Outreach Coordinator told us that she did not recall how she learned this information. The Law Enforcement Coordinator told us that the Community Outreach Coordinator also attended the 1:30 p.m. meeting with Rollins, but the Community Outreach Coordinator said she did not recall doing so.

On July 11, at 2:48 p.m., the Community Outreach Coordinator sent a second email to Rollins's Executive Assistant, as well as the Law Enforcement Coordinator, stating that she was going to drive Rollins to the Dr. Biden event in Andover on July 14 beginning at 4:00 p.m., and afterwards Rollins would participate (in her capacity as U.S. Attorney) in an unrelated community outreach meeting from the car by video conference on her way to another unrelated meeting later that day in Melrose, Massachusetts. According to the Community Outreach Coordinator, no one had to tell her that she was driving Rollins on July 14 because she typically drove Rollins to outside engagements; however, she said that she later received confirmation that she would be driving Rollins to Andover from the Executive Officer (after the Executive Officer became involved).

On the evening of July 11, the Community Outreach Coordinator attempted unsuccessfully to R.S.V.P. to the political fundraiser using a link in the invitation to a Democratic Party website called "fundraising.democrats.org." The Community Outreach Coordinator told us that one of the fundraising hosts advised her that she needed to register for the fundraiser in order to obtain the address of the home where the fundraiser was being held. The online registration form requested a monetary contribution in the amount of \$5,000, \$10,000, or \$36,500. The Community Outreach Coordinator and Rollins told us that they did not make a monetary contribution in connection with this fundraiser, and Rollins said she did not know what the contribution levels were to attend the fundraiser. Our review of the Federal Election Commission's individual contributions database did not show any itemized contributions from either the Community Outreach Coordinator or Rollins to the DNC for the relevant time period.

### **C. MA USAO Ethics Advisor Obtains Ethics Advice from EOUSA's GCO Regarding Meet and Greet with Dr. Biden**

As the initial discussions were taking place in the MA USAO, the MA USAO Ethics Advisor sent the following email to GCO at 12:20 p.m. on July 11 requesting ethics advice:

U.S. Attorney Rachael Rollins and [the Community] Outreach Coordinator...(also a government employee but less restricted) were invited to a fundraiser where First Lady Dr. Jill Biden will be in attendance (see attached). It's this Thursday, July 14, at 4:00pm. We would like to know if USA Rollins and/or [the Community Outreach Coordinator] may attend. If USA Rollins is not permitted to attend the fundraiser, would she be permitted to set up a separate brief meet-and-greet with Dr. Biden while she is in town?

Less than 2 hours later, the GCO Duty Attorney responded with questions for the MA USAO Ethics Advisor seeking to determine what roles Rollins and the Community Outreach Coordinator would have at the fundraiser, who invited them and why, whether MA USAO had an actual or apparent conflict of interest with the event hosts, and who was paying for their attendance. Internal email communications between the GCO Duty Attorney, her supervisor, and the EOUSA General Counsel show that GCO wanted this information

because they anticipated that ODAG approval would be necessary for Rollins to attend the fundraiser, in accordance with Department policy.

After the MA USAO Ethics Advisor received the email update from the Law Enforcement Coordinator (at 2:03 p.m.) described above, i.e., that Rollins wanted to go to the event on her own to meet Dr. Biden “outside the event (before it starts)” and “will not go in,” the Ethics Advisor advised GCO that “Rollins will not attend the fundraiser” and instead “would like to meet with Dr. Jill Biden outside the event before it starts. [The Community Outreach Coordinator] will not attend.” In response to the GCO Duty Attorney’s request for additional details about the meet and greet, the MA USAO Ethics Advisor informed her:

[M]y understanding at this point is that USA Rollins wants to meet with Dr. Jill Biden outside the location of the event, which is somewhere in Andover, MA. It would just be a brief meet-and-greet outdoors, and then the [U.S. Attorney] would leave. I am not sure who the First Lady might have with her, but the [U.S. Attorney] would go alone. [The Community Outreach Coordinator] will not attend that meeting or the fundraiser.

The GCO Duty Attorney’s supervisor told us that her interpretation of the information from the MA USAO Ethics Advisor was that Rollins would be meeting Dr. Biden at a completely different location from the fundraiser, whereas the EOUSA General Counsel told us he interpreted the email to mean in a private setting away from the fundraiser but not necessarily at a different location.<sup>72</sup> However, they both told us that, based on the information from the MA USAO Ethics Advisor, they envisioned that Rollins would meet briefly with Dr. Biden in a way that was not connected to the political fundraiser and, therefore, would not require ODAG approval or be inappropriate. The GCO Duty Attorney’s supervisor and the General Counsel explained, by analogy, that GCO typically would not preclude a U.S. Attorney from participating in a brief meet and greet with the President, for example, in an appropriate setting.

Accordingly, on the morning of July 12, with concurrence from the EOUSA General Counsel and her supervisor, the GCO Duty Attorney sent the following guidance to the MA USAO Ethics Advisor:

Thank you for clarifying that USA Rollins will not be attending the fundraiser, providing remarks of any kind, or discussing policy or legislation on July 14. We do not see an issue with USA Rollins simply meeting with the First Lady individually in a meet and greet type situation and then leaving after the meet and greet.

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<sup>72</sup> The EOUSA General Counsel said that he did not realize at the time that the fundraiser was at a private home; he had thought that the fundraiser was at a more public location like a hotel where they could meet privately in a hotel conference room or back entrance.

The EOUSA General Counsel and the GCO supervisor told us that the “key” facts from MA USAO underlying this guidance were that Rollins would not be attending the fundraiser and that the meeting with Dr. Biden would be located away from where the fundraiser was taking place. They further told us that because they understood that the brief meeting with Dr. Biden would not be connected to the political fundraiser, they did not see a potential appearance problem with the proposed meet and greet. However, the EOUSA General Counsel told us that, in hindsight, GCO’s guidance to the MA USAO Ethics Advisor could have been clearer about the location of the meet and greet by explicitly stating that the meeting should take place out of view from where the fundraiser was being held.

On July 13, the Executive Officer forwarded GCO’s advice to Rollins and the First Assistant. The forwarding email included the following note from the Law Enforcement Coordinator:

As we expected, she has been advised not to “attend the fundraiser, provide remarks of any kind, or discuss policy or legislation on July 14.” She is allowed to meet the First Lady and then leave.

At the bottom of the email chain was the email that included the information the MA USAO Ethics Advisor provided to GCO the day before, i.e., Rollins would meet with Dr. Biden “outside the location of the event” in a “brief meet-and-greet outdoors,” and Rollins would go “alone” without the Community Outreach Coordinator.

#### **D. Discussions With Rollins About the Parameters of the Meet and Greet**

On July 12, the Executive Officer returned to the office and took over the arrangements for Rollins to meet with Dr. Biden. The Executive Officer told us that the previous day, the Law Enforcement Coordinator explained to her that the proposed plan was for Rollins to wait outside the home where the fundraiser was going to be held and meet Dr. Biden once she arrived. The Executive Officer told us that she had two reactions to this plan. The first was that she thought the idea of the U.S. Attorney waiting on the front lawn of someone’s home for Dr. Biden to arrive was “ridiculous,” and she expected that the ethics advice from GCO would come back as a “hard no” because, in her experience, anything tied to a partisan fundraiser or politics was usually a “hard no.” The other was that she was concerned about how she was going to ensure that the meet and greet take place outside the home when the Secret Service would be in control of security for Dr. Biden. While she waited to hear back on the ethics advice, the Executive Officer sought further details from the Community Outreach Coordinator and the hosts of the fundraiser to determine whether a meeting outside the home would even be possible.

The Executive Officer told us that early on July 12 she had her first conversation with Rollins about the invitation. She said that she believed she probably had not learned GCO’s ethics advice before she had this initial discussion with Rollins, and she did not have the details yet about how this proposed plan was going to work “on the ground.” The Executive

Officer said that she therefore tried to “slow roll” her conversation with Rollins by discussing the schedule for July 14 and figuring out how they could coordinate the meet and greet with other events Rollins had on her calendar that evening. The Executive Officer said that during this discussion, Rollins was clear that she wanted to fit the meet and greet into her schedule. As noted previously, Rollins told us that she responded, when her staff advised her about the invitation, with words to the effect of: “[I]f that works with my schedule, that would be great.”

The Executive Officer told us that after this conversation, she learned that GCO provided its ethics advice to MA USAO, and she recalled being surprised that GCO would permit Rollins to do the proposed meet and greet. She said that “a fundraiser for the DNC seems like [something] you shouldn’t go near...with a 10-foot pole.” However, she said she also understood that it was “a limited approval” in that GCO was agreeing to the concept of a meet and greet outside the event. When the OIG asked the Executive Officer whether, given her concerns about the proposed plan, she recommended to Rollins that Rollins not go to the meet and greet, the Executive Officer told us that she did not do so because by the time she (the Executive Officer) had become involved, the plan to go was already in motion, and once the ethics advice came in from GCO, she focused her attention on trying to make the event happen consistent with GCO’s advice. The Executive Officer also told us that she “learned that you don’t tell [Rollins] no” and that she instead has tried to find other ways to make something work, to the extent she can, or to advise Rollins the best she can “and move on.”

Both the Executive Officer and Rollins recalled one or more conversations between them during which the Executive Officer explained to Rollins the parameters of what Rollins could and could not do when she arrived at the fundraiser location, and their testimony was similar except with respect to whether Rollins was permitted to go inside the home where the fundraiser was being held. According to the Executive Officer, she explained to Rollins that the plan was for Rollins to have a brief meeting with Dr. Biden outside the home before Dr. Biden went into the fundraiser and then Rollins was to leave quickly for work-related meetings she had immediately after. The Executive Officer said that they had conversations about not going inside and instead meeting Dr. Biden on the front lawn.

According to Rollins, the Executive Officer told her she could not speak at or attend the fundraiser, she could not discuss legislation, and she had to arrive at the Andover home before the fundraiser began to have a “very brief” encounter with Dr. Biden and then leave. Rollins told the OIG that “it had been made very clear” to her that she should not attend the fundraiser. However, according to Rollins, no one told her that she should not go inside the home and should instead meet with Dr. Biden outside. As noted above, Rollins told us she did not recall being advised during a July 11 meeting with the Law Enforcement Coordinator that the plan was for Rollins to not go inside the home and instead wait outside for Dr. Biden to arrive. Rollins also told us that she did not recall reading or being aware of an email at the bottom of the email chain that was forwarded to

her on July 13 containing GCO's final advice and, below that, the MA USAO Ethics Advisor's representations to GCO.<sup>73</sup> Rollins told us that she was frustrated that her staff did not tell her before the event that she had received the email, which she would have expected them to do. She said that because she receives "so many emails a day" and does not have enough time to read them, she has made "very clear" to her staff to review her emails and point out the urgent ones. According to Rollins, had they done so in this instance, she would have read the email and followed the parameters of GCO's advice, stating: "If I had been told something, I would have complied."

#### **E. Discussions With and About the Community Outreach Coordinator's Role During the Meet and Greet and Use of a Government Car**

Rollins had two events related to her U.S. Attorney duties already on her schedule for the evening of July 14 when she decided to go to Andover beforehand to meet Dr. Biden. To ensure that Rollins stayed on schedule, the plan was for the Community Outreach Coordinator to drive Rollins to Andover for the meet and greet and then drive Rollins immediately after to a community and law enforcement meeting in Melrose.<sup>74</sup> While the Community Outreach Coordinator drove Rollins to Melrose, the plan was for Rollins to participate in another community meeting by video conference from the car.

According to both the Executive Officer and the Community Outreach Coordinator, the two discussed that the Rollins's meet and greet with Dr. Biden had to be quick and take place before the fundraiser started for scheduling reasons and to ensure that Rollins did not attend the fundraiser. The Executive Officer told us that she also explained to the Community Outreach Coordinator that the meet and greet needed to take place outside the home to keep on schedule and also to avoid any ethics issues. However, the Community Outreach Coordinator told us she did not recall the Executive Officer advising her that the meeting had to take place outside the home, although she said it was possible that the Executive Officer did. The Community Outreach Coordinator told us that she did not recall any conversations before the event about the meeting taking place outdoors.

As previously described, the MA USAO Ethics Advisor advised GCO on July 11, based on information provided to the Ethics Advisor by the Law Enforcement Coordinator, that the Community Outreach Coordinator would not be attending the fundraiser or the meet and greet with Dr. Biden. The Community Outreach Coordinator told us that no one communicated to her that she was not to go to the fundraiser or the meet and greet.

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<sup>73</sup> Rollins left open the possibility that she may have opened the email before the event and read the top portion only that did not include the MA USAO Ethics Advisor's representations to GCO; however, Rollins said that her recollection was that she did not become aware of the email chain until after she met Dr. Biden.

<sup>74</sup> As U.S. Attorney, Rollins did not have a security detail to drive her to official outside engagements, a source of concern for Rollins who told us she had a security detail when she was D.A. and could catch up on work from the car. The Executive Officer told us that because Rollins no longer had a security detail, Rollins frequently used the Community Outreach Coordinator to drive her to outside engagements.

Unlike Rollins, none of the emails between the MA USAO Ethics Advisor and GCO were forwarded to the Community Outreach Coordinator before the event. In addition, the Community Outreach Coordinator and the Executive Officer told us that they did not have any conversations about what the Community Outreach Coordinator should be doing while Rollins met with Dr. Biden. Similarly, the Executive Officer and Rollins told us that they did not recall any conversations about Rollins going to meet Dr. Biden without the Community Outreach Coordinator. Further, the Executive Officer told us that the presumption or expectation when the Community Outreach Coordinator drove Rollins to outside engagements was that she would accompany Rollins wherever Rollins went, and the Executive Officer said she expected the same in this instance “to make sure it was done right and that she moved it along and that it was organized. [They] wouldn’t just leave [Rollins alone] on the front lawn.”

Sometime after the MA USAO Ethics Advisor advised GCO that the Community Outreach Coordinator would not be attending the fundraiser or the meet and greet, the Ethics Advisor learned that the Community Outreach Coordinator intended to go to the political fundraiser (contrary to the original plan). The MA USAO Ethics Advisor told us that she did not recall who advised her of this plan, and she allowed for the possibility that she misunderstood what she had been told. In any case, believing that the Community Outreach Coordinator had decided to attend the fundraiser, on July 12, the MA USAO Ethics Advisor sent an email to the Community Outreach Coordinator stating that she wanted to make sure the Community Outreach Coordinator was aware of the ethics rules that might apply. Specifically, the email stated:

First, you are a “less restricted employee” under the Hatch Act, so it’s fine for you to attend a fundraiser so long as you don’t: use your official title, invite other government employees, solicit/accept/receive donations or contributions for a partisan political party or candidate, and don’t engage in political activity while on duty or during working hours. See <https://osc.gov/Services/Pages/HatchAct-Federal.aspx#tabGroup12>.

Second, you should be aware of the gift rules. The hosts of the fundraiser are a prohibited source, so anything beyond “modest items of food and refreshments” could run afoul of the rules. See <https://usnet.usa.doj.gov/staffs/GCO/Ethics%20HandbookGifts%20and%20Entertainment/QP%20Outside%20Gifts.pdf>.

Please let me know if you have questions.

The same day, the Community Outreach Coordinator attempted unsuccessfully to reach the MA USAO Ethics Advisor by phone and instead sent her an email stating: “Just wanted to let you know I was not planning to attend, just driving [Rollins]. RSVP [to the fundraiser] is required to get on the property.” The MA USAO Ethics Advisor forwarded this response to the Executive Officer and separately replied to the Community Outreach Coordinator: “Ok sounds good. A-ok with ethics then!”

The MA USAO Ethics Advisor told us that she interpreted “just driving” to mean that the Community Outreach Coordinator was going to sit in the car and wait while Rollins met with Dr. Biden. She said that this arrangement “seemed fine” at the time and consistent with GCO’s advice. The Community Outreach Coordinator told us, however, that she did not plan to sit with the car and instead expected to accompany Rollins to make sure they stayed on schedule, as was their “regular, standard practice.”

On July 14, the Community Outreach Coordinator submitted a request to use a government car to drive Rollins to the fundraiser location in Andover and then to Rollins’s meeting in Melrose. Rollins approved the request. According to Rollins, the Executive Officer, and the Community Outreach Coordinator, they did not discuss the use of the government car before Rollins and the Community Outreach Coordinator left for Andover, and the Executive Officer told us that it did not occur to her at the time that Rollins would use a government car. However, they also told us that when the Community Outreach Coordinator drove Rollins to outside engagements, she routinely used a government car.

Rollins told us that she had no concerns with bringing a government car to the location of a political fundraiser because she had two work-related meetings to attend immediately afterward, the first of which had to be accomplished by video conference while on the way to the second. She said that she would not have been able to make the second work meeting without having someone drive her in the government car. She said that if she was only going to Andover, she would have driven herself in her own car. She said she did not consider skipping the Andover event to avoid traveling there in a government car.

The MA USAO Ethics Advisor told us that she did not know which car the Community Outreach Coordinator typically used to drive Rollins to engagements, and she did not think about which car Rollins would use to travel to Andover. Although she said that she would never have guessed that Rollins would take the government car, the MA USAO Ethics Advisor also told us that the use of the government car may have been permissible assuming that Rollins was going to meet Dr. Biden in an official capacity separate from the political fundraiser. Nevertheless, the MA USAO Ethics Advisor said that if she had known in advance, she would have wanted to consider further whether the event was “really an official capacity event” and also consider the appearance of driving a government vehicle to a political fundraiser.

#### **F. MA USAO Communications with the Democratic National Committee Before the Event**

The Executive Officer told us that in the lead up to the Andover event, she was “desperately trying to find someone in the First Lady’s camp to make sure that things ran smoothly.” At some point prior to the Andover event, the Executive Officer said she received a phone call from an official with the Democratic National Committee (DNC



Official). The Executive Officer told us that she was in her car when she received the call. According to the Executive Officer:

...I didn't know who he was. He was slightly nervous and said, I am so—he kept apologizing to me—I'm so sorry I'm calling you. I'm with the Democratic National Committee in Washington. And I apologize that I'm calling you, but I was told I could.... I knew why he was calling, but it was clear that the two of us weren't real comfortable talking to each other....

But I said, well, what's up? And he said, well, I'm calling because I, you know, Rachael is going—Rachael Rollins—is going to the event on the 14th with Jill Biden, in her personal capacity. And I said, well, wait a minute, who told you it was her personal capacity? So, well that's my understanding. And I didn't say this out loud to him, but I thought, I don't even know how she would do that in her personal capacity, but so, I said, well, okay. I said...I've been looking to find somebody who has details on this event. I need to understand what's happening. She's been told she can wait outside. I don't know if anyone knows that. How will we make that happen? Will the First Lady's people know that she's on the front lawn and to stop and talk to her? And whatever.

And he said, well, I don't have all those details. My guy on the ground in Massachusetts does. And he said, oh, by the way, I'm very good friends with Rachael. And I said, well, okay, whatever, but I need to know who I can talk to. He said, well, the guy on the ground is the finance guy from the DNC, and I said, well, I don't really want to talk to him, frankly.

So, he said, well, let me see what we can do about finding someone [who] can explain it to you. And he said, I just want to make sure we don't—he said something along the lines of, I want to make sure we don't have a Hatch Act violation. I said, well, you and me both. And I said, frankly, I was a little wide-eyed when I found out she wanted, would be interested in going to this, because by now I knew she wanted to go. And he said, me too. Meaning that he was surprised she wanted to go, as well. And so, I said, well, I'm concerned about the logistics, so if we can get somebody to reach out to me so we can go over logistics, I would appreciate it, and we hung up.

The DNC Official told the OIG that he had heard from someone at the DNC that Rollins was going to the event in Andover on July 14 and then spoke with someone from MA USAO before the event about Rollins's attendance. Given that the DNC Official told us this individual was the only person other than Rollins with whom he spoke from MA USAO about the event, and we found no evidence to the contrary, we believe the DNC Official was referencing the conversation with the Executive Officer. According to the DNC Official, the DNC typically does not invite government officials to fundraisers or political events, and that the political staff organizing such events request that hosts make them aware of any

such invites. According to the DNC Official, if the hosts of the event decide to invite a government official, the DNC ultimately leaves that decision up to the hosts.

The DNC Official told us that the DNC staff person who told him Rollins was going to attend asked him for point-of-contact (POC) information for Rollins's scheduler. The DNC Official said that he had known Rollins since her time as Suffolk D.A. and would speak to her occasionally at events. The DNC Official said that he called Rollins to ask for the POC information of her scheduler but did not speak to Rollins until she called him back a few hours later. Call detail records indicate that the DNC Official first called Rollins on July 12 at 4:58 p.m., but the call lasted only 2 seconds, suggesting it went to voicemail. Call detail records further reflect that Rollins called the DNC Official back the same day at 8:59 p.m., and the call lasted 77 seconds. According to the DNC Official, in between these two phone calls, he obtained information for the person he was told was Rollins's scheduler from a DNC staff member and called and spoke to that person. The DNC Official said that he did not recall the name of the person with whom he spoke or much about this conversation, except that the person confirmed that she was Rollins's scheduler, and, consequently, he passed her information on to a DNC staff person involved in organizing the fundraiser. The DNC Official told us that he did not recall expressing surprise to the MA USAO person that Rollins wanted to attend the event or discussing the logistics of Rollins meeting Dr. Biden. He also said he did not recall discussing the Hatch Act or whether Rollins would be attending in her personal or official capacity.

The DNC Official told us, and the call detail records confirm, that his subsequent call with Rollins was very brief. According to the DNC Official, he asked Rollins to confirm that he had the correct POC for purposes of scheduling political events, and Rollins said that he did. The DNC Official said that he did not remember discussing the Hatch Act or any logistics for the event with Rollins and that they "definitely" did not discuss whether Rollins would be attending the event in her official or personal capacity.

Rollins told us that the DNC Official did not provide any logistical information for the event, and she did not remember them discussing the Hatch Act or whether she would be attending in her official or personal capacity. She said that she only remembered that the DNC Official told her that he heard she was going to be going to the event, he hoped things were going well for her as U.S. Attorney, and that "it should be a great opportunity." She said that she also knew that the DNC Official had spoken to the Executive Officer, but she was not sure whether the DNC Official or the Executive Officer gave her that information.

The next morning, July 13, at 6:48 a.m., Rollins sent the following text message to the Executive Officer and members of the Executive Officer's team:

Because we changed Malden [and the Melrose meeting] to a [video conference] that is much smaller, I CAN GO TO THE DR JILL BIDEN EVENT!!!

PLEASE MAKE SURE EVERYONE KNOWS THAT IS NOW A YES.

[The DNC Official] from the National Democratic Party called me yesterday to confirm.

[Executive Officer], do we have a contact? I don't want to park 6 miles away and walk in....

(Emphasis in original.) In response, the Public Affairs Specialist attempted to clarify that the meeting in Melrose (which included officials from Melrose and neighboring Malden) that was scheduled to occur late on July 14 (after the Andover event) was going to be in person, rather than by video conference, but Rollins reiterated that the meeting could be accomplished by video conference and asked for better communication on planning issues. Rollins texted the group:

Your team needs to speak to each other before you call Malden and [Melrose]. Speak to [the Executive Officer]—who told the DNC that I am going to the Biden event. It is about my calendar AS A WHOLE. Not just this event.

Come up with some potential solutions, present them to me and then I can decide what I would like to do with my time that day.

(Emphasis in original.)

Later that same morning, the Executive Officer asked the Community Outreach Coordinator to follow up with the event hosts to determine the logistics for Rollins's meet and greet. At the time, they had not received basic information such as the address of the Andover home or the time Rollins needed to be there. Text messages show that the Community Outreach Coordinator eventually obtained the address from one of the hosts, and the hosts helped connect her with someone the Community Outreach Coordinator believed was associated with the DNC. According to the Community Outreach Coordinator, this DNC representative took some basic personal information from her and told her that everyone would be rapid tested for COVID-19 before the event such that they should "probably" arrive no later than 4:10 p.m. "or so." The Community Outreach Coordinator told us that they did not discuss any other logistics for the meeting with Dr. Biden, other than making sure Rollins arrived in time to get tested and the need to drop Rollins off near the house and then park outside the security perimeter. Afterward, the Community Outreach Coordinator gave the DNC representative's phone number to Rollins's Executive Assistant, and the Executive Assistant called him to provide Rollins's basic personal information for his records.

The Executive Officer told us that she eventually talked to the DNC representative as well. According to the Executive Officer, she received a call from the DNC representative who "stressed" to her that Rollins could not be late for the COVID-19 rapid test. She said that this issue was the only point he made to her on the call—that Rollins could not be late. The Executive Officer said that she told him that she understood but that Rollins was "going

to be outside.” According to the Executive Officer, he responded along the lines of “yes, yes, yes” but then rushed off the phone.

The Executive Officer told us that in the end, she did not feel “super comfortable” that she had all the details “nailed down” for Rollins’s meet and greet with Dr. Biden, but she believed that she had done the best she could do to make sure everyone understood the parameters and hoped that Rollins and the Community Outreach Coordinator could “pull it off.” The Community Outreach Coordinator told us that she also felt that she did not know all the details about how the meet and greet was going to happen, but she said she knew that it was going to be “in and out” and that “they were not attending...the event.” She explained that her mindset at the time was: “We’re going to go in, she meets her, and then we’re going to leave. On to the next event.”

#### **G. Rollins and the Community Outreach Coordinator go to the Andover Event and Meet Dr. Biden**

According to the Community Outreach Coordinator, on July 14, she and Rollins left the MA USAO in downtown Boston for Andover at approximately 3:35-3:40 p.m. in a government car. She said that they were running late and, with traffic, did not arrive at the Andover home until around 4:30 p.m., after the requested time of 4:10 p.m. However, she said Dr. Biden’s motorcade was also running late. Except where otherwise indicated below, Rollins and the Community Outreach Coordinator gave similar descriptions of what happened once they arrived in Andover.

As they pulled up to the home, there was a long line of cars already parked along the street. The Community Outreach Coordinator told Rollins that she would try to get them as close as she could to the house, drop Rollins off, park the car, and then walk over to join Rollins. Rollins told us that she had assumed that the Community Outreach Coordinator would be joining her, even before the Community Outreach Coordinator told her so, because the Community Outreach Coordinator was the one who had a relationship with the family hosting the event. The security for the event allowed them to drive near the home, where Rollins got out of the car, and the Community Outreach Coordinator turned around to park at the end of the long line of cars. According to Rollins, after she got out of the car, officers directed her to the COVID-19 testing area on the property.

According to Rollins, as she was walking towards the house, a woman she did not recognize jumped out from between two cars, called Rollins by the wrong name, and asked her whether she was worried about a Hatch Act violation. Rollins said she told the woman that she was not the person the woman thought she was and responded, “No,” to being worried about a Hatch Act violation. She then continued walking up to the house. Although a photo of her walking up to the house appeared later that day in a *Boston Herald* story about her attendance at the Andover event, Rollins did not recall noticing

anyone taking photos of her at the time.<sup>75</sup> The Community Outreach Coordinator was parking the car at the time and did not witness this encounter.

Rollins and the Community Outreach Coordinator took COVID-19 tests under a tent on the property. Rollins finished first and waited for the Community Outreach Coordinator's results to come back before the two walked inside the home together. According to the Community Outreach Coordinator, no one else was outside being tested at the time they were under the tent, and her impression was that the fundraiser guests were already inside the home.

When they walked inside the home, Rollins and the Community Outreach Coordinator were led into a large living room where the fundraiser guests had gathered. The Community Outreach Coordinator estimated that possibly 30 to 35 people were present. Rollins estimated 20 to 25 people but said she did not count. The Community Outreach Coordinator told us that she recognized three or four people from community outreach events, as well as the hosts of the event and the hosts' adult family members and children. Rollins was introduced to the hosts and family members and exchanged "typical pleasantries" and casual conversation. The Community Outreach Coordinator estimated that they were in the living room talking to the hosts and guests for 10 minutes at most before Dr. Biden arrived, and Rollins estimated 5 to 10 minutes.

The Community Outreach Coordinator told us that she spoke to one of the hosts and told them that Rollins was just going to meet Dr. Biden and leave, and the host responded that she would make sure they were at the front of the line. The Community Outreach Coordinator told us that this conversation was the first time she heard there was going to be a receiving line to meet Dr. Biden.

As Dr. Biden arrived, the people inside the home were asked to form a line, which Rollins described as a "conveyor belt" or "cattle line" to meet Dr. Biden. Rollins and the Community Outreach Coordinator were brought to the front of the line. They and the fundraiser guests were provided name cards. Rollins's name card incorrectly identified her title as "District Attorney." The people in the line were led one by one to a different room to meet Dr. Biden individually, with Rollins being the first or second person to walk through. Rollins told us that when she was led into the room, she was announced as "District Attorney Rachael Rollins," and Rollins corrected, "I'm the United States Attorney." According to Rollins, she shook Dr. Biden's hand, they turned towards a photographer who took a photo, and then Rollins walked out of the room. Rollins estimated the entire exchange lasted 7 to 10 seconds. She told us that it did not appear "in any way" that Dr. Biden knew Rollins would be there or even who Rollins was. After Rollins, the Community Outreach Coordinator was led into the room, met Dr. Biden, shook her hand, took a photo, and

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<sup>75</sup> "[Rachael Rollins Attends Democratic National Committee Fundraiser with Jill Biden: 'Questionable Judgment,'](https://www.bostonherald.com/2022/07/14/rachael-rollins-attends-democratic-national-committee-fundraiser-with-jill-biden-questionable-judgment/)" *Boston Herald*, July 14, 2022, [bostonherald.com/2022/07/14/rachael-rollins-attends-democratic-national-committee-fundraiser-with-jill-biden-questionable-judgment/](https://www.bostonherald.com/2022/07/14/rachael-rollins-attends-democratic-national-committee-fundraiser-with-jill-biden-questionable-judgment/) (accessed March 19, 2023).

walked out. Rollins and the Community Outreach Coordinator told us they did not receive the photos of them with Dr. Biden.

After meeting Dr. Biden, Rollins and the Community Outreach Coordinator returned to the same living room where they originally started and stayed there for what they estimated to be a few minutes to say goodbye to the hosts. Rollins ran into U.S. Senator Edward Markey, whom she knows personally. Rollins and the Community Outreach Coordinator stated that Senator Markey was the only elected official they saw at the event. Rollins and Markey posed for several photos in the living room, first with each other and then including the event hosts and other guests at the fundraiser.

The Community Outreach Coordinator took seven photos inside the home using her government cell phone. The last photo was taken at 5:01 p.m. The Community Outreach Coordinator told us that she did not know whether others also took photos of Rollins at the event. Rollins told us that she takes photos all the time at outside events and did not specifically recall posing for these photos.

Rollins and the Community Outreach Coordinator estimated that they left the Andover home at approximately 5:00 p.m. Rollins said that they left before any speeches or remarks were made and estimated that they were inside the house “under 20 minutes total.”

The OIG spoke with one of the hosts of the event who gave us a description of what Rollins and the Community Outreach Coordinator did inside the home that was substantially similar to the descriptions we obtained from Rollins and the Community Outreach Coordinator, except that he roughly estimated that they arrived between 4:45 and 5:00 p.m. and that they were inside the house for about 10 to 15 minutes. The host told us that he has a photo taken inside the home with Rollins and Senator Markey, a photo he believed was taken with his own phone.

Following the event, Rollins was driven by the Community Outreach Coordinator to the community and law enforcement meeting in Melrose, and then back to the MA USAO. The Community Outreach Coordinator did not use any paid leave for the time she spent driving to Andover or the time she spent in Andover, and she submitted a request for compensation time covering 5:00 p.m. to 8:00 p.m., which the Executive Officer approved, for the time the Community Outreach Coordinator worked after the Andover event to drive Rollins to her meeting in Melrose and back to the MA USAO around 8:00 p.m.

#### **H. *Boston Herald* Story about Rollins Going to Andover Fundraiser and Rollins’s Tweet in Response That She “Had Approval To Meet” Dr. Biden**

On July 14, 2022, at 7:27 p.m., the *Herald* reported that Rollins attended a DNC fundraiser with Dr. Jill Biden. The story included photos of Rollins walking up to the home and of the government car parked on the street, as well as Rollins’s comment, to a woman

who shouted a question to her outside the Andover home, that she was not worried about a possible Hatch Act violation.<sup>76</sup>

The following morning, at 8:28 a.m., Rollins posted a tweet to her personal Twitter account “DA Rachael Rollins” stating:

I wasn’t asked for a comment before this ran. It’s almost as if the Herald didn’t want to know I had approval to meet Dr. Biden & left early to speak at 2 community events last night. [emoji] Alas, back to keeping Boston & MA Part 1 crime ↓ Nice Try though.

Within minutes of posting the tweet, Rollins used her personal cell phone to text her tweet to the MA USAO First Assistant and the Executive Officer along with the following direction: “I do not want anything happening regarding DOJ without speaking to me first. Nothing. Not ethics, not Comms [Office of Public Affairs]. Thanks.”<sup>77</sup>

Rollins told us that she did not consult with anyone in the Department before she posted this tweet. She said she used her Twitter account because she was rebutting an article that made statements about her personally, and she wanted it known that she “had approval to be there” and that she went to two community events afterward.

In addition, Rollins told us that, following the story, she blocked the reporter who wrote the *Herald* article from her Twitter account. She told us that she did not have any concerns about blocking a reporter from her Twitter account because she considered the account to be personal.<sup>78</sup>

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<sup>76</sup> “Rachael Rollins attends Democratic National Committee fundraiser with Jill Biden: ‘Questionable Judgment,’” *Boston Herald*.

<sup>77</sup> Rollins told us that she sent this direction because she wanted to avoid factual inaccuracies in any correspondence about what happened with respect to the Andover event that she would later have to “claw back.” Rollins said that she had seen the public inquiries about what had happened, and she did not want to be in a situation where she learned after the fact that her office provided inaccurate information in response to inquiries, placing her in the position of looking “defensive” when correcting the errors. Rollins also told us that she wanted to make sure the information was “right” the first time. She said she had no intention of stifling communication, only to ensure that what was being communicated was “factual.”

<sup>78</sup> We had concerns about whether Rollins’s occasional use of her personal social media account for MA USAO and DOJ-related business was consistent with DOJ policy and whether her blocking of the *Herald* reporter also implicated the First Amendment. Rollins told us she had no concerns with using her personal Twitter account for DOJ-related posts as the U.S. Attorney. Specifically, she told the OIG: “I have a First Amendment right to state what I believe are things that are important, and I’m not going to be silenced about that just because I happen to be the United States Attorney for the District of Massachusetts.”

However, guidance issued by the Department in 2014, while acknowledging the First Amendment rights of its employees, noted court decisions holding that the government may restrict employee speech in certain circumstances and that the line between public and personal is often blurred when employees use their personal social media pages to comment on matters related to their work or the work of the Department.

(Cont’d.)

Rollins told us that she believed her public tweet was “factual and true” and that she had “approval” to go to the location of the fundraiser to meet Dr. Biden. According to Rollins, someone on her staff, probably the Executive Officer, told her before the event that she had been “cleared” to meet Dr. Biden. Rollins said that she did not know at the time where the clearance came from. She said, however, that when she was told that she could go to the event with certain limitations, she “assumed” that her staff had received all necessary approvals.

According to Rollins, after she saw the public reports about her presence at the fundraiser, she went through all of her email communications and, through this process, read the email that had been forwarded to her on July 13 containing GCO’s advice. Rollins told us that she believed she had complied with GCO’s advice by not attending the fundraiser, not speaking publicly, and not discussing legislation or policy.

With respect to not attending the fundraiser, she stated her view that the fundraiser did not start until after she left the Andover home because no one had called the event to order. Rollins stated: “...I have been to hundreds [of fundraisers], and they start usually with a human saying, ‘We’re going to get started now...let’s all come on in here.’” Rollins

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Deputy Attorney General James M. Cole, Memorandum for All Department Employees, “Guidance on the Personal Use of Social Media by Department Employees,” (March 24, 2014). The guidance went on to provide that, “absent express supervisory approval, employees should not engage in official Department business on personal social media pages.” Rollins’s use of her personal Twitter account to comment on MA USAO and DOJ business appears to be inconsistent with this DOJ guidance.

In addition, although we did not analyze the extent to which Rollins used her social media account for DOJ-related business, Rollins’s decision to block a *Herald* reporter from accessing her social media account that she used at least on occasion for MA USAO and DOJ-related business—including following the reporter’s coverage of her activities at the Andover fundraiser, activities that raised significant questions regarding her conduct as U.S. Attorney and compliance with DOJ policies and the Hatch Act—could have resulted in a First Amendment challenge to her action. See, e.g., *Radcliff v. Garnier*, 41 F.4th 1158 (9th Cir. 2022), *cert. granted*, 2023 WL 3046119 (finding that two public school officials violated the First Amendment by deleting comments of constituents and blocking the constituents from their social media pages because they represented themselves to be acting in their official capacities on their social media pages and posted about matters directly related to their official duties); *Lindke v. Freed*, 37 F.4th 1199 (6th Cir. 2022), *cert. granted*, 2023 WL 3046121 (finding that a local city official did not violate the First Amendment by deleting comments of a private citizen and eventually blocking the private citizen from his social media page because the city official operated his Facebook page in his personal capacity, not his official capacity); *Knight First Amend. Inst. at Columbia Univ. v. Trump*, 928 F.3d 226 (2d Cir. 2019), *vacated as moot following presidential transition by* 141 S.Ct. 1220 (2021) (finding President’s blocking of certain individuals from accessing his social media account violated First Amendment because social media account was used extensively for government-related business); *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019) (finding that a public official violated the First Amendment by blocking a constituent from the official’s social media page because it served an official function); *Campbell v. Reisch*, 986 F.3d 822 (8th Cir. 2021) (finding that a public official did not violate the First Amendment by blocking a constituent from the official’s social media page because it was primarily used for campaign-related, not official government, purposes).



further stated that no one told her that permission to meet Dr. Biden was based on a representation that she would meet Dr. Biden outdoors or outside the fundraising event.

The EOUSA General Counsel and the GCO supervisor told us that GCO did not grant “approval” for the actions Rollins took on July 14, as suggested in Rollins’s tweet. They said that they were surprised when they learned what happened in Andover, which they said was not consistent with their advice or how they envisioned the meet and greet when they gave their advice. In particular, they said that they would interpret Rollins’s actions as having attended the fundraiser. The EOUSA General Counsel told us that he found it problematic that Rollins did not have a “one-on-one” with Dr. Biden “away from everything else going on in the fundraiser.” He further stated:

What concerns me the most is her mingling with other guests, that she had a nametag, that she seemed to be an official participant in the fundraiser as a result of that, that it was done in the presence of everyone else and not outside the event, as was described to us, and as I think we based our opinion on. Even though we didn't write it in [GCO's email to the MA USAO Ethics Advisor on July 12] that it would be outside the event, it was because we'd been told in the facts by [the MA USAO] that it would be outside the event. But [the description of what happened described above] bears no resemblance with what I had in my mind as to what the event would be and how she would conduct a meet and greet.

According to the EOUSA General Counsel, the meet and greet was “too closely intertwined with the fundraiser itself” and looked “part and parcel of the whole fundraising event, not at all what [he] had envisioned.” The EOUSA General Counsel told us that had he known all the facts in advance, he would have presented the issue to ODAG for a decision because the facts implicated DOJ policy on passive attendance at a political fundraiser requiring ODAG approval.

Associate Deputy Attorney General (ADAG) Brad Weinsheimer, who was responsible in July 2022 for making decisions on whether U.S. Attorneys and other non-career DOJ employees may passively attend a partisan political fundraiser (before Attorney General Garland changed DOJ policy in August 2022 to prohibit passive attendance), told us that he would not have approved Rollins or any other U.S. Attorney passively attending this fundraising event. Weinsheimer explained that the Department tries “very much to make sure that partisan politics has nothing to do with the decisions [we make] and our business and, more importantly, that it's perceived as having nothing to do with our business and the decisions that we make.” He said that, in his experience, his office had previously approved passive attendance in very limited circumstances, usually involving a non-career employee passively attending a partisan event in his or her personal capacity in support of a spouse who was a local elected official. He said that because U.S. Attorneys are always in their official capacities, there would have had to have been a “really unique set of

circumstances”—which he did not think were present here—before he would have approved a U.S. Attorney passively attending a partisan political fundraiser.

Weinsheimer told us that he would not have viewed a meet and greet between a U.S. Attorney and Dr. Biden as inappropriate if it “wasn’t in any way related to partisan political activity or a fundraiser,” though he would have wanted the opportunity to alert his office that it was happening. However, he stated that his conclusion from the facts described above was that Rollins attended a partisan fundraising event in an official capacity, without ODAG approval, in violation of Department policy.

## I. **OIG Analysis**

The morning after the *Herald* reported that Rollins attended a DNC fundraiser, Rollins posted a tweet asserting that she had approval to do what she did at the Andover event. Our investigation determined that she did not have approval to do what she did at the event—to go inside the host’s house during the fundraiser to meet Dr. Biden. Rather, Rollins had been given ethics advice from GCO to have a separate and brief meet and greet with Dr. Biden outside and away from the fundraiser and to then leave the area of the event after the meet and greet. Rollins’s actions were not consistent with this ethics advice. The evidence shows that Rollins attended the partisan political fundraiser and, by doing so without obtaining the approval of the Deputy Attorney General or her designee, Rollins violated Department policy. Her attendance was also contrary to the advice Rollins said “had been made very clear” to her by the MA USAO Executive Officer before the event that she not attend the fundraiser.

We concluded that Rollins attended the fundraiser based on several uncontested facts. According to Rollins’s own account, after arriving at the host’s home, she did everything the other guests at the fundraiser did in order to meet Dr. Biden: Rollins went inside the home where the other guests had already gathered, engaged in casual conversation with some of the guests, waited for Dr. Biden to arrive, and then joined the receiving line with the other guests to meet Dr. Biden, which Rollins described as a “conveyor belt” or “cattle line.” Like the other guests, Rollins was given a name card, led into another room to meet Dr. Biden for a few seconds and take a photo, and then led back into the room from where she started. Rollins mingled for a few additional minutes with the hosts and Senator Markey, and posed with guests and Senator Markey for several photos before leaving the event.

These uncontested facts show that Rollins did not attend a meet and greet with Dr. Biden that was separate from the fundraiser. We do not believe Rollins could have reasonably thought otherwise. As reflected in the invitation to the fundraiser (Appendix 1), the ability to meet Dr. Biden and have a photo with her was the main attraction of the event. Rollins’s interaction with Dr. Biden was identical to those of the other fundraiser guests whose primary purpose for being at the event was to get in line and meet Dr. Biden. Accordingly, we concluded that Rollins violated Department policy by attending a partisan

political fundraiser without obtaining approval from the Deputy Attorney General or her designee.<sup>79</sup>

Rollins contended that her actions did not amount to attending the fundraiser because she left the host's home before "a human [said], 'We're going to get started now...let's all come on in here.'" We disagree and do not believe that, in order for a DOJ employee to be considered to have attended a fundraiser, there must have been some formality to start the event. Although each situation will turn on the precise facts, we think it patently clear that in this case, where the fundraiser invitation advertised the event as an opportunity to meet Dr. Biden, that the fundraiser began no later than when Dr. Biden arrived and when the guests, including Rollins, lined up together to meet and get a picture with her.

Rollins also told us that she believed she had complied with what she understood was the ethics advice. The facts, however, do not support Rollins's claim. GCO's ethics advice regarding Rollins's meeting with Dr. Biden was based on the circumstances that were presented to GCO by the MA USAO—namely, that the meeting would occur outside the event before Dr. Biden went inside and then Rollins would leave. The facts show that this representation to GCO was based on a plan that the MA USAO Law Enforcement Coordinator and Ethics Advisor arrived at together, and that the Law Enforcement Coordinator said Rollins agreed to during a meeting just days before the event. This understanding is reflected in emails that the Law Enforcement Coordinator sent to the MA USAO Ethics Advisor and the Executive Officer almost immediately after the Law Enforcement Coordinator's meeting with Rollins. The Executive Officer told us that she too discussed with Rollins shortly before the event that the plan was for Rollins to meet with Dr. Biden briefly outside the home, before Dr. Biden went inside, and that Rollins would leave immediately thereafter. This understanding is further reflected in the email that MA USAO sent to the GCO seeking guidance and is included in the email chain that Rollins received prior to the event with GCO's final guidance and advice.<sup>80</sup>

Rollins, however, told us that she did not read the email chain that included the GCO's guidance until after the Andover event when news stories raised concerns about her actions. Rollins also said she did not recall discussing in advance the plan for her attendance at the event with the Law Enforcement Coordinator and, while she did recall discussing the plan with the Executive Officer beforehand, she denied that the Executive Officer told her that the plan was for Rollins to meet Dr. Biden outside the home and that Rollins was not supposed to go inside. Rollins expressed frustration to us that her staff did

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<sup>79</sup> As noted previously, ADAG Weinsheimer, the designee responsible for making this decision, told us that he would not have approved Rollins or any other U.S. Attorney passively attending this fundraising event.

<sup>80</sup> Although we believe GCO's final guidance could have more explicitly set forth the information from MA USAO upon which GCO's guidance was based, the email chain that Rollins's received made clear that GCO's advice was based upon the plan we determined Rollins had agreed to—have a brief meet-and-greet outdoors with Dr. Biden that was separate from the fundraiser and then leave.

not advise her, given the volume of emails she receives each day, to read the email that included the GCO's advice before the event. She further stated that she would have complied with whatever the advice was if she had been clearly told about it beforehand.

We found Rollins's efforts to blame her staff for her own ethics failures deeply disturbing. As an initial matter, in addition to staff sending Rollins the email chain that contained the GCO's advice, the evidence shows that Rollins was advised on multiple occasions by her staff in advance of the Andover event that the plan was for her to meet Dr. Biden outside the home where the Andover event was occurring. Two members of her staff told us about clear and unambiguous conversations they separately had with Rollins about the event, in which conversations they told Rollins that Rollins would meet with Dr. Biden outside the event and not go inside the home. One of those staff members sent emails almost immediately after her meeting with Rollins describing the agreed-upon plan—emails that were sent before any controversy arose regarding Rollins's actions. While Rollins told us she did not recall being told in either conversation that she was to meet Dr. Biden outside the house and that she was not to go inside the house, we found both senior staff members credible in their recollections of their conversations with Rollins, and we know of no reason why the staff member who immediately summarized her conversation with Rollins in emails to other MA USAO senior staff, prior to any controversy arising, would have been motivated to fabricate the discussion in those contemporaneous emails.

Further, we have reason to question Rollins's claim that she would have followed whatever ethics advice she had been given by her staff, if only they had given her clear advice prior to the Andover event. As we describe in this report concerning other allegations of ethics and policy violations by Rollins, we found multiple instances in which Rollins either ignored the advice she had received from her staff or took certain actions that violated ethics or policy, or showed poor judgment, without first consulting her staff or ethics advisor.

Lastly, senior DOJ officials, including Senate-confirmed U.S. Attorneys, are expected to hold themselves to high ethical standards and exercise their own sound judgment. As the chief federal law enforcement officer in her District, the obligation to ensure that she complied with DOJ ethics rules and policies was ultimately Rollins's obligation, and not her staff's.<sup>81</sup> Thus, even assuming Rollins did not recall her separate conversations with the Law Enforcement Coordinator or the Executive Officer about meeting with Dr. Biden outside the event and not going inside the house, and even assuming she did not read the email chain that she was sent before the event that contained similar representations, Rollins should have recognized that going inside a home where a partisan political fundraiser was occurring potentially implicated significant DOJ policies, in addition to the

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<sup>81</sup> As noted previously, during her OIG interview, Rollins acknowledged her own independent obligation to comply with ethics rules.

Hatch Act. The Department repeatedly cautions U.S. Attorneys about participating in partisan politics and avoiding the appearance that politics play any role in their decision-making. For Rollins, this guidance began on her first day in the office when her ethics advisors cautioned her to consider appearance issues before attending political events. Indeed, one of the PowerPoint slides she was shown and given shortly after she was sworn in specifically noted the obligation to obtain Deputy Attorney General, or designee, approval before attending a partisan political fundraiser. Then, 2 months later, Rollins and other new U.S. Attorneys were specifically cautioned by DOJ during new U.S. Attorney orientation that although many of them may have been involved in politics in their prior lives, they now “have to leave politics aside” to ensure that nothing the Department does is “perceived as being partisan in any way.” Despite having received this training, Rollins failed to take appropriate steps before the event, including reading the email she received that included GCO’s advice, to ensure that she fully complied with DOJ ethics rules and policies. We therefore concluded that Rollins did not fulfill her independent obligation to ensure that she complied with DOJ ethics rules and policies.

#### **IV. Additional Allegations of Ethics and Policy Violations by Rollins**

##### **A. Rollins Discloses Non-Public DOJ Letters About Potential Civil Rights Matters to the Media**

In the sections that follow, we describe how, on two separate occasions, Rollins provided reporters with non-public DOJ letters about ongoing DOJ civil rights matters. We also describe the relevant DOJ policies and our analysis and findings.

##### **1. May 2022: Rollins Provides Non-Public DOJ Letter to *Boston Herald* Reporter about a Federal Civil Rights Matter**

On May 17, 2022, the *Boston Herald* published an article entitled, “Rachael Rollins opening up federal investigation into Quincy Long Island bridge opposition.”<sup>82</sup> The article reported on a letter that Rollins sent to the Mayor of Quincy, Massachusetts, on May 12 informing the Mayor that the MA USAO was opening a civil rights investigation concerning Quincy’s opposition to the rebuilding of a local bridge.

The OIG found that on May 17, shortly before the *Herald* story was published, Rollins texted photos of the 2-page May 12 letter, from Rollins to the Mayor, to the *Herald* Reporter (the same *Herald* Reporter discussed in Section II) from her personal cell phone. Rollins also texted the reporter, immediately prior to sending the letter, the following statement: “DISCLOSURE CANNOT BE ATTRIBUTED TO ME.” (Emphasis in original.) This letter informed the Mayor that the MA USAO was “initiating an investigation of the City of

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<sup>82</sup> [“Rachael Rollins opening up federal investigation into Quincy Long Island Bridge opposition,”](https://www.bostonherald.com/2022/05/17/rachael-rollins-opening-up-federal-investigation-into-quincy-long-island-bridge-opposition/) *Boston Herald*, May 17, 2022, bostonherald.com/2022/05/17/rachael-rollins-opening-up-federal-investigation-into-quincy-long-island-bridge-opposition/ (accessed February 27, 2023).

Quincy for compliance with the requirements of Title II of the Americans with Disabilities Act of 1990.” Rollins’s text messages appear to have been unprompted, as call detail records show no phone calls between Rollins and the *Herald* Reporter during this period, and her previous text messages with the *Herald* Reporter were over a month earlier and unrelated to Quincy. After sending photos of the letter, Rollins and the *Herald* Reporter exchanged the following text messages:

*Herald* Reporter: “Oh interesting, thank you. Can this be a ‘letter obtained by the Herald.’”

Rollins: “Absolutely. Don’t say I never gave you anything.”

*Herald* Reporter: “Oh I would never say that!”

In explaining her reason for disclosing a non-public letter concerning a DOJ investigation, Rollins told the OIG that she believed the Quincy bridge issue was something that should have been looked into years ago, and she “wanted there to be public attention on the matter.” She also told us that she wanted the public to know that the MA USAO was “inquiring as to what was happening in Quincy.” According to Rollins, she viewed it as “a matter of public concern” and sent the letter to the *Herald* Reporter because she “thought it was important that it was written about.” Rollins stated that she did not want the disclosure attributed to her because “the letter spoke for itself,” and she “didn’t need to add anything else to it.” Rollins stated that she did not believe she told anyone in her office that she sent the letter to the *Herald* Reporter, adding that she “just didn’t think [she] needed to” tell anyone.

## 2. June 2022: Rollins Discloses Non-Public DOJ Letter to *The Boston Globe* Associate Editor about a Federal Civil Rights Matter

On June 3, 2022, *The Boston Globe* published an article entitled, “US Attorney Rachael Rollins opens probe of racism in Everett city government.”<sup>83</sup> The article reported on a non-public letter that Rollins had sent to the Mayor of Everett the prior day, informing the Mayor that MA USAO, according to the article, “has launched an investigation of possible civil rights violations in city government.”

The OIG investigation found that on the morning of June 3, prior to the story being published, Rollins sent a text message from her personal cell phone to the *Globe* Associate Editor (the same *Globe* Associate Editor discussed in Section II) asking if he had time for a quick call. The two ultimately spoke on the phone that afternoon for almost 5 minutes, before publication of the news story. Prior to their call and shortly after her initial text message, Rollins sent another text message from her personal cell phone to the *Globe*

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<sup>83</sup> [“US Attorney Rachael Rollins opens probe of racism in Everett city government,”](https://www.bostonglobe.com/2022/06/03/metro/us-attorney-rachael-rollins-open-probe-racism-everett-city-government/) *The Boston Globe*, June 3, 2022, bostonglobe.com/2022/06/03/metro/us-attorney-rachael-rollins-open-probe-racism-everett-city-government/ (accessed February 27, 2023).

Associate Editor stating: “Confidential. Off the Record. Not attributed to me. Thanks.” Rollins then sent the *Globe* Associate Editor photos of a 4-page non-public June 2 letter from Rollins to the Everett Mayor. This letter gave notice to the Mayor that the MA USAO was making a request for information from the City of Everett in connection with a potential investigation under Title VII of the Civil Rights Act of 1964. As with the communications with the *Herald* Reporter regarding Quincy discussed above, Rollins’s text messages to the *Globe* Associate Editor appear to have been unprompted, as Rollins does not appear to have communicated with the Associate Editor for the 3 weeks prior and her previous text messages with the Associate Editor were not related to Everett. After sending the photos, Rollins and the *Globe* Associate Editor exchanged the following text messages on June 3:

*Globe* Associate Editor: “Got it. Thanks.”

*Globe* Associate Editor: “Great tip!”

*Globe* Associate Editor: [Includes a link to a *Globe* story the Associate Editor just published, entitled, “US Attorney Rachael Rollins opens probe of racism in Everett city government.”]

Rollins: “You know I got you.”

According to Rollins, she sent the *Globe* Associate Editor the letter to let the community know that the MA USAO was looking into these public allegations against Everett. Rollins stated that the Department’s general policy to “never say a word” about investigations can make it seem like “no one cares.” Rollins added that she wanted the community to know that the Department was “inquiring and not just reading these articles and going on with [its] business.” Later in the interview, Rollins stated that she “was not thinking” of the Department’s policy that protects the confidentiality of non-public, sensitive information when she sent the letter to the *Globe* Associate Editor. Rollins stated that she did not tell anyone in her office about her communications with the *Globe* Associate Editor, and added that, as the U.S. Attorney, she did not think she needed to “ask for permission to speak to people.”

Rollins’s decision not to inform her staff about her disclosure of the letter resulted in the spokesperson for MA USAO telling the *Everett Independent*, in declining its request for a copy of the letter following the *Globe* story: “[W]e have not provided the letter to the media.”<sup>84</sup>

We asked Rollins why she chose to send this information to the reporters by text message on her personal phone rather than just emailing them from her government

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<sup>84</sup> [“U.S. Attorney Looking Into Allegations of Discriminatory Conduct Here,”](https://www.everettindependent.com/2022/06/08/u-s-attorney-looking-into-allegations-of-discriminatory-conduct-here/) *Everett Independent*, June 8, 2022, everettindependent.com/2022/06/08/u-s-attorney-looking-into-allegations-of-discriminatory-conduct-here/ (accessed March 28, 2023).

email account. Rollins stated that if she wanted to send something “off the record” then she would not send it using her work email because it would be a “public record” and “retained somewhere.” Rollins continued: “[I]f I’m trying to sort of covertly send this to [the reporter], I wouldn’t overtly send it from my work email.”

### 3. OIG Analysis

The Department’s Confidentiality and Media Contacts Policy (Media Contacts Policy) is contained in Section 1-7.000 et seq. of the Justice Manual. The Media Contacts Policy, which applies to all DOJ personnel, “governs the protection and release of information that DOJ personnel obtain in the course of their work” and reflects a considered balancing of individual and public interests and the government’s ability to administer justice and promote public safety. The policy applies to criminal, civil, and administrative matters. Under Section 1-7.310 of the Media Contacts Policy, each U.S. Attorney is responsible for matters involving the local media in their district and is required to “exercise discretion and sound judgment” consistent with the policy, with respect to news media contacts. Section 1-7.400 of the Media Contacts Policy concerns the disclosure of information regarding ongoing investigations, and it provides, as relevant here, that: 1) any such disclosure must be approved in advance by the U.S. Attorney; 2) “DOJ generally will not confirm the existence of or otherwise comment about ongoing investigations; and 3) “comments about or confirmation of an ongoing investigation may be necessary” when “the community needs to be reassured that the appropriate law enforcement agency is investigating a matter, or where release of information is necessary to protect the public safety.”

The letters described in this section, which Rollins sent to the *Herald* Reporter and to the *Globe* Associate Editor, contained information that Rollins obtained in the course of her work and that related to ongoing, non-public DOJ civil rights matters, one an open investigation and the other a preliminary inquiry. As such, the Department’s Media Contacts Policy governed the disclosure of information relating to these matters. Rollins testified that she believed the communities of Quincy and Everett needed to be reassured that the Department was investigating the civil rights matters referenced in the letters. As described above, the Media Contacts Policy grants a U.S. Attorney in such a circumstance the discretion to disclose information about an investigation—such as through a press release or press conference—provided the U.S. Attorney acts with “sound judgment” consistent with the Media Contacts Policy.

We concluded that Rollins failed to act in this manner and that she violated the DOJ Media Contacts Policy by disclosing information about ongoing DOJ matters in off-the-record and not-for-attribution texts, using her personal cell phone. While Department policy authorized Rollins, as U.S. Attorney, to disclose to the public the existence of investigations if she determined that doing so was necessary to reassure the public, we think it obvious that reassuring the public that DOJ is investigating a matter necessarily involves the Department doing so overtly, not by sending a letter to the subject of an investigation or preliminary inquiry and then secretly disclosing the letter to the news



media using a personal cell phone in an effort to avoid creating a federal record and with a demand that the disclosure not be attributed to the U.S. Attorney.<sup>85</sup> Further, disclosing DOJ investigative information in this manner, rather than reassuring the public, has the potential to have precisely the opposite effect—for example, by undermining the public’s confidence in a U.S. Attorney’s Office where an unnamed employee is disclosing non-public investigative information to the media and by possibly raising questions about the legitimacy of the leaked information, the motivation of the unnamed source of the leaked information, and whether the unnamed source selectively released information. For all of these reasons, we found that Rollins’s actions violated the DOJ Media Contacts Policy.

**B. Rollins Solicits and Accepts 30 Free Boston Celtics Tickets to Give to Youth Basketball Teams in Connection with a MA USAO Project Safe Neighborhoods Event**

In these sections, we describe how Rollins, during her attendance at a Project Safe Neighborhoods event in which MA USAO participated, promised a youth basketball group tickets to a Boston Celtics game and how Rollins contacted the Celtics to acquire those tickets. We also describe how Rollins attended the game with a friend after accepting two tickets from the Celtics. In addition, we describe how Rollins utilized a MA USAO subordinate employee to help organize the event. Lastly, we describe the relevant ethics regulations and DOJ policies, and our findings and analysis.

**1. Rollins Offers Boston Celtics Tickets to the Championship Teams in a Project Safe Neighborhoods Youth Basketball Tournament and MA USAO Obtains Ethics Advice**

On February 17, 2022, Rollins spoke to a youth basketball group participating in a number of all-star games and competitions in Springfield, Massachusetts. The youth were part of a Project Safe Neighborhoods youth outreach program in which the MA USAO participated. The first speaker at the event was a local Sheriff, and he promised to pay for a pizza party for the winning teams. Rollins spoke next and—without telling anyone on her staff in advance—stated that she would give the winning team tickets to a Celtics game. Rollins told us that she announced to the crowd: “I’m going to see if I can get the championship team tickets to a Celtics game. My significant other works for the Celtics. We will see what we can do. Play a great game.” The MA USAO First Assistant also attended the event, and he told the OIG that, after the event, Rollins told him that her fiancé works with the Celtics and something to the effect of “they have a ton of tickets for games for kids, and [it] wouldn’t be that big a deal to get the tickets.”

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<sup>85</sup> Indeed, by making the disclosure in this way, for the reasons explained in greater detail in Section IV.F., we found that Rollins violated both the Federal Records Act and the U.S. Attorneys’ Information Systems Rules of Behavior.

Rollins stated that she did not realize that there were multiple championship teams when she offered the tickets and assumed she would only need to provide tickets for one winning team. Rollins stated that at some point after the event, the MA USAO's Project Safe Childhood Program Specialist—the person who was coordinating the youth outreach program for the MA USAO—contacted Rollins and told her that there were multiple championship teams. Rollins told us that she expressed her shock at the number of tickets needed and told the Program Specialist that she would see what she (Rollins) could do. Rollins said that she sought no ethics advice on this issue, “this was something [she] saw as absolutely no problem,” and she believed it was in line with DOJ's desire to create partnerships with the community.

The Program Specialist told us that she was immediately concerned that the promise of tickets might violate federal ethics rules. The day after the event, the Program Specialist contacted the MA USAO Ethics Advisor with her concerns. The MA USAO Ethics Advisor stated that she, in turn, contacted EOUSA's GCO for guidance. In an email summarizing her communications with the MA USAO Ethics Advisor, the GCO attorney assigned to the matter wrote that she confirmed with the Ethics Advisor “that the tickets could not be provided by the Department or the [MA USAO] or in any official capacity, and that [U.S. Attorney] Rollins should make clear to any ticket recipients that she was providing the tickets in her personal capacity only.” According to the GCO attorney, the MA USAO Ethics Advisor later stated that she had “confirmed that [Rollins] intended to provide any tickets in her personal capacity.” The MA USAO Ethics Advisor provided the EOUSA guidance to the MA USAO Executive Officer and then both the Ethics Advisor and the Executive Officer instructed the Program Specialist to refer any inquiries about the Celtics game directly to Rollins.

The Executive Officer told us that she “explained this [advice] in detail to” Rollins and made it clear to Rollins that Rollins alone, and no one on the MA USAO staff, would need to handle the arrangements. The Executive Officer explained to Rollins that a “secretary” at the MA USAO was “going to connect everybody and step away.” The Program Specialist had the same understanding based on one or more conversations with the MA USAO Ethics Advisor: that the office would “introduce” the “points of contact at the Celtics and...the organizers of the [local] Safe Neighborhood Initiative.” After that, the office would “have nothing else to do with this.”

The First Assistant told us that he communicated with Rollins about the Celtics game at some point, possibly the evening of the game or in the days following. According to the First Assistant, Rollins was “frustrated with the lack of clarity” about the logistics for the event as Rollins was “on her own for this event.” The First Assistant believed he learned from Rollins that the ethics advice she received is the reason she had to handle the event on her own. For that reason, the First Assistant stated that he believed Rollins was aware of the ethics advice for the event.

However, Rollins told us that she was not aware that her staff had sought ethics advice on the Celtics ticket issue, or that the ethics advice was that the tickets had to be given in Rollins's personal capacity and that Rollins should personally handle the arrangements. Rollins pointed out that her ethics team was involved in a separate issue related to the game (but unrelated to the acquisition of the tickets) and provided guidance on that issue. Rollins continued: "I am assuming that the experts...in ethics, the people who train me about what I'm supposed to know, are going to alert me to any potential problems that there might be with this. And what was interesting was ethics didn't alert me to any of those...issues." After the OIG represented to Rollins that her staff had sought ethics advice about this issue and the Executive Officer described the ethics advice from GCO to her in person, Rollins described it as "a breakdown in communication" and stated that she would instruct her staff:

[M]oving forward, it is your responsibility not to shoot me an email and think you have done your job, because I get 75 emails and none of them are easy.... Walk in and talk to me and tell me what I need to know immediately, or call me and say, check your email right now. That is what I need to happen, sort of, to make sure that I am not doing stuff that makes me have to [be interviewed by the OIG].

## **2. Rollins Contacts the Celtics to Obtain Free Tickets for the Youth Basketball Group in the Project Safe Neighborhoods Event; the Celtics Provide 30 Free Tickets with a Total Face Value of \$2,485**

Rollins told us that she has extensive ties to the Celtics, noting that she worked as an intern with the Celtics in the 1990s, a close family member was previously in charge of Community Engagement with the Celtics, and her fiancé provides executive protection services to the team. Rollins stated that she knows the Celtics's Senior Vice President (Senior VP) of Community Engagement and decided to call him about the tickets shortly after the event in Springfield. Rollins said she asked the Senior VP if the Celtics would provide tickets to a group of at-risk youth who were part of a Project Safe Neighborhoods initiative. According to Rollins, the Senior VP responded with words to the effect of: "[L]et me see what I can do or...we will be back in touch. Sounds great, or something like that." The Senior VP told the OIG that Rollins's request was "pretty routine."

Rollins and the Senior VP told us that Rollins did not introduce herself as the "U.S. Attorney" on the call, but both Rollins and the Senior VP acknowledged that the Senior VP knew who she was from various community contacts over the years. The Senior VP told us that the fact that Rollins was the U.S. Attorney was not relevant to their conversation and was not "the prism" through which he viewed their call. The Senior VP stated that he was more focused on evaluating the youth basketball group and how they fit into the Celtics's mission of community engagement.

On February 23, Rollins sent a text message from her personal phone to the Senior VP and included the Program Specialist on the text chain. Rollins stated:

Great speaking with you yesterday. On this text is [the Program Specialist] who is our office's Project Safe Childhood Program Coordinator. She has created an AMAZING program...for middle and high school students. The winners of the All-Star basketball game: 5-6 grade and 7-8 grade teams won (the High School Team lost to the Coaches) would love to come to a Celtics game. The program will pay to get them to the game and drive them, but the players and chaperones would love some tickets.

These kids are exceptional and unfortunately don't always have many positive things going for them. These tickets from Community Engagement would be a wonderful and positive opportunity.

There are about 10 kiddos on each team. And there will likely be a few chaperones for each team. 2-3 maybe.

Hopefully you can make this work.

As always, we appreciate everything you are doing in the Community and bringing Basketball and positivity to children and neighborhoods.

Rachael Rollins

The Program Specialist responded to Rollins and the Senior VP explaining the Safe Neighborhoods Initiative. The Senior VP responded with admiration for the program and then added that the Celtics were "happy and feel privileged to be able to help." The Program Specialist told us that later that day, Rollins called and instructed her to facilitate a conversation between the local group and the Celtics to find a date with enough tickets for the entire group.<sup>86</sup>

On February 24, the Program Specialist emailed the Executive Officer and the MA USAO Ethics Advisor expressing discomfort with the situation. The Program Specialist stated: "Rachael called me yesterday and asked me to facilitate. I am happy to facilitate this but am now in an awkward position and feel this is a situation senior management should resolve. Please advise." On February 25, the Program Specialist messaged Rollins that the Celtics and the local group had been connected and that the Celtics would be providing 30 tickets total (20 for kids and 10 for chaperones). Rollins responded by questioning why 10 chaperones were necessary and wanting to know who the chaperones

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<sup>86</sup> On February 23, the Program Specialist sent an email to the Senior VP asking if he needed any additional information about the local group. The Senior VP replied the following day, copying another Celtics employee, and informed the other Celtics employee that he was "looking for 30 tickets to an upcoming game" and included information about the preferred timing and location of the tickets.

would be. Rollins added: “If I am facilitating/paying for this, I deserve to know. [The Local Group leader] doesn’t get to run with this and submit a receipt.”

Ultimately, the Celtics provided the local group with 30 tickets to the game on Sunday, April 3, 2022. These tickets were in the Rafters 14 section and had face values of \$80 (for 13 of the tickets) and \$85 (for the remaining 17 tickets). Rollins confirmed to the OIG that she did not pay for these tickets.

### **3. The Celtics Offer and Rollins Accepts Two Free Tickets to the Game**

On Saturday, April 2—the day before the Celtics game—Rollins emailed the Celtics Senior VP asking for logistical details about the local group’s visit and added: “If you have coordinated all this with someone else, can you forward me that email? I would love to be able to see them and take a picture.” The Senior VP responded with the requested information and also asked Rollins: “Are you coming to the game? Do you need tix?” Rollins replied: “I would love a ticket for the game. Just to be able to walk up during halftime to go see the kids to say hello and take a few pictures.” The Senior VP replied: “We will get you in one way or another. Working on tix. But plan on coming!”

A Celtics staffer transferred two tickets to Rollins’s personal email address later that evening. Rollins acknowledged receipt, stating: “Amazing! Yes. Received. Thank you!!!” Rollins was given two tickets in Row 12 of Loge 11 with a face value of \$350 each.

### **4. Rollins Goes to the Celtics Game With a Friend Using the Tickets and Takes a Photograph with the Youth Basketball Group; Rollins Posts the Photograph on Twitter**

Rollins told us that she did not plan to use the tickets that the Celtics had given her. Rollins stated that she had plans to go to lunch with a friend that day and wanted to meet the local group outside of the arena for a photo before the game began. Rollins stated that she only used the tickets to enter the arena with her friend when she “couldn’t get in touch with the chaperone” of the local group.<sup>87</sup> Rollins stated that she sought out the group at the game because she “wanted to get a photo of 30 kids...attending this event” and wanted to tell them that she was “really happy” they were there. We asked Rollins why she accepted the tickets from the Celtics if she did not plan to use them. Rollins replied:

So, tickets are emailed to you, right? And you can either accept them or not accept them, right? And so, for me, all I can tell you is had I met the chaperone outside, it would have been an email that I never would have

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<sup>87</sup> Tip-off was 1 p.m. for the game on April 3. Rollins called the head chaperone of the local group at 11:40 a.m., and the call lasted for 46 seconds. Rollins called the head chaperone again at 1:14 p.m. and 1:46 p.m., with the calls lasting for 3 seconds and 8 seconds respectively. We identified no other phone calls between Rollins and the head chaperone on April 3.

opened or accepted. I couldn't get in touch with the chaperone and was frantically trying to do so, so I couldn't take the photo I wanted outside and that's why I went in.

Rollins added that the tickets were of no interest to her and noted that her fiancé receives two tickets to every Celtics home game, so she has easy access to Celtics tickets. Rollins noted that her fiancé was out of town on April 3; otherwise, Rollins stated that she would have just had her fiancé meet her at the entrance to the arena and escort her inside to see the local group.

In the middle of the game on April 3, at 1:59 p.m., Rollins sent the following email to the Program Specialist:

Hey, [i]n the future, this has to be far better organized. I have been calling the "head chaperone" all day. He hasn't picked up, answered, or returned a single call or text. And this event was not on my calendar.

These youth are only here because I offered and set up this opportunity. The fact that we aren't meeting to take a photo or have a conversation while they are enjoying this experience I provided for them is a significant lack of an opportunity.

The office rallied together [on an unrelated issue with the game]. Show that same energy when we are interacting with the community. Particularly when it is something I use my capital for to benefit the community.

The Program Specialist sent an email to the First Assistant and MA USAO Ethics Advisor objecting to Rollins's criticism, stating that she found Rollins's email "very upsetting." In the email, the Program Specialist wrote that Rollins "does not seem to understand that this was her giving tickets in a personal capacity, not USAO or DOJ," noting that the Program Specialist's "limited" role was supposed to involve connecting the local group and the Celtics and asking the First Assistant and the MA USAO Ethics Advisor to raise this issue with Rollins. The First Assistant told us that he spoke with Rollins about her email to the Program Specialist but was more focused on the tone of Rollins's email to the Program Specialist than the underlying ethics issue. While the First Assistant said he could not recall the precise details of the conversation, the First Assistant stated that he would have told Rollins that it was inappropriate to talk to subordinate employees in this manner.

That afternoon, Rollins posted a tweet that included a photo of herself with the entire local group.<sup>88</sup> The photo reflects that it was taken inside of the arena. Rollins told the OIG that, after she was unable to connect with the head chaperone, she and her friend entered the arena using the tickets the Celtics provided, walked to where the local group

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<sup>88</sup> [DA Rachael Rollins on Twitter.com](https://twitter.com/DARollins/status/1510694154531131394?cxt=HHwWhMCy0YuViPcpAAAA), April 3, 2022, [twitter.com/DARollins/status/1510694154531131394?cxt=HHwWhMCy0YuViPcpAAAA](https://twitter.com/DARollins/status/1510694154531131394?cxt=HHwWhMCy0YuViPcpAAAA) (accessed February 7, 2023).

was seated, and took a photo with the group. Rollins added: "I don't believe I even entered the seats that we were given" and stated that she "did not watch the game."

We asked Rollins why she wanted a photo with the group and why she decided to post it on Twitter. Rollins responded:

Because every touch we have with the community matters and...we are offering opportunities to kids that they have never had before in their lives.... It was a positive encounter that I wanted the office to be aware of and was proud that we had made it happen.

Rollins added: "...I definitely wanted to, and I will be very honest, after all of the craziness of going from 5 to 30 players, to have a photo of that, so that our office could get the credit, sort of, essentially of giving an opportunity to these kids that they had never had before[.]"

Later that evening, Rollins emailed that same picture to the Celtics Senior VP and stated:

The youth...had a BLAST!!! Thank you so much for your hospitality and kindness. Many of these young men had never been to Boston, let alone a Celtics game. They were super psyched. Added bonus—they got to see a big win. None of it would have happened without you and the great work you are doing leading Community Engagement with the Celtics. Big respect and forever grateful.

## **5. Relevant Ethics Regulations and Policies**

### **a. Prohibition on Soliciting or Accepting Gifts Given Because of Official Position**

Section 2635.202 of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct) provides that, with certain exceptions, federal employees "may not, directly or indirectly" solicit or accept a gift "given because of the employee's official position."<sup>89</sup> "Gifts" include any "favor[s]...entertainment...or other item[s] having monetary value," including gifts provided "in-kind," with certain exclusions not relevant here.<sup>90</sup>

"A gift is given because of the employee's official position if the gift...would not have been given had the employee not held the status, authority, or duties associated with the employee's Federal position."<sup>91</sup> "Whether a particular gift is given because of [the

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<sup>89</sup> 5 C.F.R. §§ 2635.202(a and b).

<sup>90</sup> 5 C.F.R. § 2635.203(b).

<sup>91</sup> 5 C.F.R. § 2635.203(e).

employee's] official position is determined based on all relevant circumstances, including the content of [the] solicitation."<sup>92</sup> There is generally a "strong inference" that "a gift is given based on [an employee's] official position...if the solicitation directly ties [the employee's] intended use of donations to [her] federal job."<sup>93</sup> "Similar concerns arise if [an employee] highlight[s] [her] federal position in the solicitation."<sup>94</sup>

Section 2635.204 provides certain exceptions to the general prohibitions in Section 2635.202, including for "[g]ifts based on a personal relationship."<sup>95</sup> An employee may accept a gift if it is given "under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history and nature of the relationship and whether the family member or friend personally pays for the gift."<sup>96</sup>

The Standards of Ethical Conduct also advise that it is "never inappropriate and frequently prudent for an employee to decline a gift if acceptance would cause a reasonable person to question the employee's integrity or impartiality."<sup>97</sup>

#### **b. Policies on Improper Use of a Subordinate's Time**

Section 2635.705(b) of the Standards of Ethical Conduct states that a federal employee "shall not...direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation."<sup>98</sup>

### **6. OIG Analysis**

We found that Rollins violated the Standards of Ethical Conduct in three ways: (1) by soliciting 30 tickets for the youth basketball players for use by her in connection with her official position as U.S. Attorney; (2) by accepting, for herself, two tickets that the Celtics provided her due to her official position; and (3) by improperly using the Program Specialist's time to coordinate the Celtics event even after Rollins was informed that she could not use any office resources for this event.

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<sup>92</sup> OGE Legal Advisory LA-20-07 (Oct. 6, 2020).

<sup>93</sup> Id.

<sup>94</sup> Id.

<sup>95</sup> 5 C.F.R. § 2635.204(b).

<sup>96</sup> Id.

<sup>97</sup> 5 C.F.R. § 2635.204.

<sup>98</sup> 5 C.F.R. § 2635.705(b).



- a. **Rollins Solicitation of 30 Celtics Tickets Violated Ethics Rules because Her Intended Use of the Tickets Was Tied Directly to her Position as U.S. Attorney**
  - 1) **Rollins Violated Section 2635.202(a)(2) of the Standards of Ethical Conduct**

We found that Rollins violated Section 2635.202(a)(2) of the Standards of Ethical Conduct by soliciting 30 tickets from the Celtics that she intended to use, and did use, in connection with her official position as U.S. Attorney. Rollins announced to the youth teams that she would try to obtain Celtics tickets while giving a speech in her official capacity as U.S. Attorney, not in her personal capacity (e.g., as a youth basketball coach). Rollins was at this event, giving this speech, because of her duties as U.S. Attorney. Indeed, in explaining why she sought no ethics advice on this issue, Rollins defended herself by stating that she believed this situation was in line with DOJ's desire to create partnerships with the community, suggesting she viewed her offer as related to her job as U.S. Attorney.

Furthermore, Rollins's "solicitation directly tie[d]" her "intended use of [the gift] to [her] federal job."<sup>99</sup> In Rollins's initial text message connecting the Senior VP and the MA USAO Program Specialist, Rollins highlighted that the local group was part of a MA USAO Project Safe Childhood program and told the Senior VP: "**we** appreciate everything [the Celtics] are doing in the Community." (Emphasis added.) This text was part of Rollins's solicitation because the Celtics did not agree to provide the tickets until after both Rollins's initial call and the follow-up text. This text tied Rollins's solicitation to her position by noting that she planned to use the tickets to benefit youth players who participated in a community engagement program that her office co-sponsored.

Looking at "all relevant circumstances" confirms that Rollins solicited the gift because of her official position.<sup>100</sup> Rollins tasked staff to help facilitate the event on multiple occasions, indicating Rollins at least partly viewed this event as official business. In addition, Rollins's email to the Program Specialist on the day of the Celtics game also demonstrates that she viewed the event as official Department business. Rollins chastised the Program Specialist, telling her that: "In the future, this has to be far better organized" and that the MA USAO should "[s]how that same energy when **we** are interacting with the community." (Emphasis added.) Rollins further noted that the event had been "a significant lack of an opportunity," presumably referring to an opportunity for the office rather than for herself in her personal capacity.

In short, if Rollins did not have the "duties" associated with her role as U.S. Attorney, she would not have (a) been present for the Project Safe Neighborhoods event that MA

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<sup>99</sup> OGE Legal Advisory LA-20-07 (Oct. 6, 2020).

<sup>100</sup> See OGE Legal Advisory LA-20-07 (Oct. 6, 2020).

USAO was participating in at which she promised tickets to the youth players, (b) contacted the Celtics by phone and by text to solicit the tickets, (c) involved her staff in executing the event, or (d) chastised her staff for, in her view, not meeting her expectations. Because Rollins would not have solicited the tickets but for her official position, she violated the gift prohibition under Section 2635.202(a)(2).

**2) Rollins Cannot Claim She Solicited the 30 Tickets Based on a Personal Relationship under 5 C.F.R. § 2635.204(b)**

As described above, a gift is exempt from the prohibitions in Section 2635.202(a) and (b) if it is “based on a personal relationship,” which is a gift given “under circumstances which make it clear that the gift is motivated...by a family relationship or personal friendship rather than the position of the employee.”<sup>101</sup> “Relevant factors” in determining whether a gift is based on a personal relationship “include the history and nature of the relationship and whether the [gift giver] personally pays for the gift.”<sup>102</sup> Here, Rollins did not have a significant personal friendship with the Senior VP; they simply knew each other from various community contacts. Furthermore, the Senior VP did not personally pay for the gift; the Celtics provided it as part of their community engagement efforts.

We acknowledge that Rollins has a long personal history with the Celtics, from her internship with the Celtics in the 1990s to her fiancé’s current position working with the Celtics organization. We also note that, according to the Senior VP, Rollins’s position was not “the prism” through which he viewed her ticket request. In addition, we recognize that the Celtics’ Community Engagement office routinely provides tickets to groups such as the one here. These facts, however, are insufficient to establish that Rollins solicited the 30 Celtics tickets based on a personal relationship (a) given that the Senior VP did not pay for the tickets, and he and Rollins were not close friends and (b) in light of all the circumstances discussed in Section IV.B.6.a.1., above.

Therefore, Rollins’s conduct does not fall into the Section 2635.204 exception for a “gift[] based on a personal relationship.”

**b. Rollins Violated Section 2635(b)(2) of the Standards of Ethical Conduct by Accepting Two Tickets to a Celtics Game**

Rollins also violated Section 2635.202(b)(2) of the Standards of Ethical Conduct, which prohibits employees from accepting “a gift given because of the employee’s official position,” by accepting the gift of two Celtics tickets for her use. As noted above, a gift is

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<sup>101</sup> 5 C.F.R. § 2635.204(b).

<sup>102</sup> *Id.*

given because of someone's official position if it would not have been given but for the "status, authority, or duties associated with" their position.<sup>103</sup>

"All relevant circumstances" surrounding the ticket transfer show that Rollins was given the tickets because of her role as U.S. Attorney.<sup>104</sup> When the Senior VP for the Celtics offered Rollins two tickets, Rollins responded that she would like to be able to "see the kids to say hello and take a few pictures." A Celtics staffer then sent Rollins the tickets. This exchange shows that Rollins was given the two tickets based on her "duties" as a U.S. Attorney—which included appearing at the Celtics game to engage in youth outreach on behalf of her office. Thus, the two tickets were given based on her official position.

For the same reasons discussed above, Rollins's conduct does not fall into the exception under Section 2635.204 for "[g]ifts based on a personal relationship." As noted, Rollins and the Senior VP were not personal friends; they simply knew each other from various community events. Further, the Senior VP did not personally pay for the tickets.

**c. Rollins Violated Ethics Rules by Improperly Using a Subordinate's Time**

By requiring the Program Specialist to help coordinate the Celtics event, Rollins violated Section 2635.705(b) of the Standards of Ethical Conduct, which forbids federal employees from "direct[ing], coerc[ing], or request[ing] a subordinate to use official time to perform activities other than those required in the performance of official duties." We found the Executive Officer to be credible when she told us that she explained the ethics advice "in detail" to Rollins and made it clear to Rollins that Rollins alone, and no one on the MA USAO staff, would need to handle the arrangements. The First Assistant's testimony corroborated the Executive Officer's account as he recalled that Rollins was "frustrated with the lack of clarity" about the logistics for the event as Rollins was "on her own for this event."

Because we believed the Executive Officer's and the First Assistant's testimony, we did not find credible Rollins's claim that she was not aware that her staff had sought ethics advice on the Celtics ticket issue, that that advice was that the tickets must be given in Rollins's personal capacity, and that Rollins should personally handle the arrangements. Rather, we found that Rollins had been told that she could not involve MA USAO staff in coordinating the Celtics event.

Despite having been told this information, Rollins implicitly and explicitly directed the Program Specialist to help coordinate the event. Rollins not only copied the Program Specialist on a text with the Senior VP to introduce the Program Specialist to the Senior VP, but she also instructed the Program Specialist to facilitate a conversation between the local

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<sup>103</sup> Section 2635.203(e).

<sup>104</sup> See OGE Legal Advisory LA-20-07 (Oct. 6, 2020).

group and the Celtics to find a date with enough tickets for the entire group. Based on the ethics advice from the GCO, staff at the MA USAO were not permitted to assist with the Celtics logistics beyond connecting the local group and the team, so the Program Specialist's work on this event was not "required in the performance of official duties" and, in fact, was prohibited. Accordingly, Rollins violated Section 2635.705(b) by directing the Program Specialist to coordinate a date for the group, which the Program Specialist did despite her misgivings about doing so. We also found it troubling that Rollins would reprimand an employee for not performing additional work that Rollins had been told the employee should not perform because of ethics concerns.

### **C. Rollins Accepts Non-Federal Payment of Travel Expenses on Two Separate Occasions**

In this section, we describe how Rollins accepted non-federal payment of travel expenses on two separate occasions. We also describe the applicable Federal Travel Regulations, DOJ policy, and the relevant ethics regulations. Lastly, we describe our analysis.

#### **1. Rollins Participates in an Invitation-Only Summit in California and a California-based Sports and Entertainment Agency Pays for Her Travel, Lodging, and Meals**

From June 22 to June 24, 2022, Rollins traveled to California to participate in an invitation-only summit in Ojai, California. The summit was an initiative of a California-based sports and entertainment agency (L.A. Agency). The L.A. Agency paid for Rollins's transportation and lodging for the trip, including: (1) roundtrip airfare from Boston to Los Angeles at a cost of \$507.99, including seating in business class to Los Angeles and seating in first class on the return trip to Boston; (2) two nights at a luxury resort at a cost of \$696.10; and (3) a car service to and from the airport in Boston and from the airport in Los Angeles, totaling \$697.02 in charges. Rollins told the OIG that the L.A. agency also provided meals for those attending the summit; the OIG did not seek to determine the cost of those meals as part of this investigation.

A Hollywood Reporter article about the summit described it as an "in-person gathering" that had been "in the works for months."<sup>105</sup> The article continued:

From Wednesday's welcome dinner through the conclusion of the general sessions at the end of the day on Thursday, [the summit] had been an intimate, invite-only retreat for the 200 executives, creatives and thought

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<sup>105</sup> ["Supreme Court Rulings Rocked—and Rallied—the 2022 CAA Amplify Summit,"](https://www.hollywoodreporter.com/business/business-news/caa-amplify-2022-1235172028/) *The Hollywood Reporter*, June 25, 2022, [hollywoodreporter.com/business/business-news/caa-amplify-2022-1235172028/](https://www.hollywoodreporter.com/business/business-news/caa-amplify-2022-1235172028/) (accessed February 8, 2023).

leaders to learn about social and business-relevant issues both urgent and timeless and to find communion among allies.

Rollins told us that the L.A. Agency invited her to the summit to participate in a panel discussion with two other individuals. Rollins stated that the panel discussion centered on “civil rights generally, and running for office, and the importance of civic engagement generally.” According to Rollins, she first participated in a summit associated with the L.A. Agency in 2019, shortly after she was elected Suffolk D.A. Rollins stated she also participated in virtual summits for the L.A. Agency in 2020 and 2021.

Rollins told us that she did not seek any type of ethics advice or review as to the appropriateness of having a non-federal entity pay for her travel expenses to attend this event. Rollins stated she believed at the time that the relevant policies and regulations contained an exemption for “preexisting documented relationships,” which Rollins said meant that because she had a “previous relationship” with the L.A. Agency for “many years prior to becoming the U.S. Attorney,” she was not required to seek any type of ethics approval for the trip. Rollins further stated that she saw no ethical issue with the L.A. Agency paying her expenses given her experience approving outside speaking requests for Assistant U.S. Attorneys (AUSA) in her office. Rollins referred to the form she signs approving an AUSA’s outside speaking request and told the OIG: “[T]he last question [on the form], right above my signature, is have you ever spoken here before? Which to me is the same language as prior engagement.” However, we noted that this form, which only began to be used in the MA USAO *after* Rollins’s return from this summit, also specifically asks AUSAs to provide details if outside sources are providing reimbursement for travel or expenses.

We found that MA USAO executive staff were unaware of Rollins’s participation in the summit until after her return from California. Prior to the trip, Rollins only told her First Assistant and her Executive Assistant on Saturday, June 18, that she would be in California from Wednesday through Friday of the upcoming week but did not tell them she was attending a summit or would be on a panel there. The First Assistant, Executive Assistant, and Executive Officer told us they were unaware of Rollins’s attendance at the summit, and the First Assistant told us that he was under the impression that Rollins was going to California to attend a family event. Rollins told us that she had originally planned to attend both the summit and a family event in the Los Angeles area; however, Rollins said the family event ended up not happening.

MA USAO executive staff first learned that Rollins had attended the summit and spoken on a panel when they saw the Hollywood Reporter article mentioned above that was published on June 25. The article mentioned a U.S. Supreme Court decision about New York’s firearms law that was “referenced by Massachusetts’ U.S. [A]ttorney Rachael Rollins during a panel conversation.”

The First Assistant told us that he approached Rollins after seeing this article, which he said surprised him, and asked if she had received ethics clearance to speak on the panel. Rollins told the First Assistant that she had not consulted with ethics and explained that she had participated in a similar summit previously when she was D.A. The First Assistant said he expressed concern to Rollins that her prior participation might not matter and became even more concerned when Rollins told him that the L.A. Agency had paid for her travel. The First Assistant said he tried to convince Rollins to reimburse the L.A. Agency for her travel expenses, but that Rollins replied that she saw no reason to pay anything back given her prior relationship with the L.A. Agency. Following the Andover event on July 14 (discussed in Section III, above), the First Assistant said he again approached Rollins about the California trip and asked Rollins if she had reimbursed the L.A. Agency for the travel expenses. Rollins told him that she had not.

After the OIG questioned Rollins about this trip, Rollins began working with EOUSA on the reimbursement process. On January 19, 2023, Rollins wrote a check for \$2,307.66 to the L.A. Agency. Rollins then submitted paperwork to the MA USAO and EOUSA to be reimbursed by DOJ for the trip as official travel. The OIG understands that EOUSA is considering Rollins's request to be reimbursed by DOJ for this trip as official DOJ travel.

## **2. Rollins Participates in a Convention in New York City and a New York-based Entertainment Agency Pays for Her Lodging**

On Saturday, July 23, about one week after the Andover event and shortly after her First Assistant expressed concern about her California trip, Rollins attended a social justice convention in New York City and accepted lodging reimbursement without seeking prior ethics approval or advice. The convention was closely affiliated with a New York-based entertainment agency (NY Agency).<sup>106</sup>

Rollins told us that the NY Agency offered to pay for airfare and accommodations for her and a guest to attend the convention. Rollins stated she declined the offer of airfare and opted to drive herself to New York instead. Rollins accepted the offered lodging, however, and the NY Agency paid a total of \$686.22 for her to stay 2 nights in New York City. Rollins told us that she accepted no other payment or reimbursement from the NY Agency and paid for her own food and beverages.

The convention was described as “a first of its kind event designed to advance justice through thoughtful, diverse, collaborative learning and exchange,” and promotional material noted that the day would “feature a diverse array of speakers, panel discussions, networking opportunities, and exposure opportunities for participating social justice

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<sup>106</sup> In the promotional material, the convention host described itself as “a charitable organization that works across disciplines to raise awareness around key social justice issues and the need for criminal justice reform.” It stated its goals as “amplifying critical issues, leveraging support for on-the-ground advocacy and social justice organizations, and advancing just legislation and policies.”

organizations across the nation.” Rollins participated in a panel discussion at the convention entitled, “Transitions In and Out of the System.” In the official event program, Rollins was listed as “Rachael Rollins, U.S. Attorney for District of Massachusetts.”

The OIG reviewed a video of the panel discussion published online. The panel in which Rollins participated was introduced by the moderator as, “Parole, probation and reentry, and what a better system would look like.” As the panelists were each introduced, the video screen behind the stage listed the panelists’ names. Rollins was identified on the screen as “US Attorney for the Massachusetts District Rachel [sic] Rollins” and was the only panelist with her title listed. During the panel discussion, Rollins referenced her position and stated that mass incarceration was not just a state and local problem, noting that “the federal system needs work too.” While discussing how the system could be improved, Rollins stated that “parole on the federal side is way too long” and also referenced reforms initiated by Attorney General Merrick Garland.

We asked Rollins about her invitation to the convention. Rollins told us that she “bumped into” a businessman at an event in Boston in the spring of 2022, who told her she would be “great as a panelist” at this New York convention.<sup>107</sup> Rollins stated the businessman then contacted the NY Agency to recommend her as a speaker. According to Rollins, the businessman’s recommendation led to discussions between Rollins and the NY Agency, and the NY Agency ultimately invited her to participate in a panel at the convention.<sup>108</sup>

Rollins told us that she did not seek ethics approval or advice prior to her participation in the convention. According to Rollins, she believed that she “did not need clearance” because, “even stronger than the” California summit referenced above, she “had a very significant and documented preexisting relationship with” the businessman who recommended her to the NY Agency and whom she described as “the conduit by which this opportunity occurred.”<sup>109</sup> We asked Rollins if she informed her staff that she would be participating in the convention. Rollins stated that she informed the MA USAO First Assistant that she would be in New York for the weekend, but she did not know if the First Assistant knew she would be speaking on a panel.

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<sup>107</sup> Rollins described the businessman as a longtime acquaintance with whom she shared an interest in criminal justice reform issues.

<sup>108</sup> On July 7, the NY Agency emailed Rollins requesting her to approve a draft press release for the convention. The press release began: “Today, the [convention host] announced the first wave of speakers at its inaugural social justice summit on July 23.” The press release then listed eight of the speakers for the event, including “U.S. Attorney for the District of Massachusetts Rachael Rollins.” Rollins responded the same day: “Looks great to me.”

<sup>109</sup> The businessman is not mentioned in the convention’s event program and does not appear to be affiliated with the convention host. According to Rollins, the businessman did not attend the convention.

The First Assistant told us that he knew Rollins was traveling to New York but did not know in advance that she was either attending a conference or speaking at one. The First Assistant told us that he did not recall when he learned that Rollins had attended a conference in New York. However, at some point after the trip, the First Assistant stated that Rollins told him about one of the speakers she had heard while in New York. According to the First Assistant, Rollins also told him that she paid her own expenses for the trip. Rollins told us that she did not recall whether she told him that or not.

When we asked the First Assistant during his OIG interview whether he knew Rollins had participated on a panel during the convention, he expressed surprise that she was on a panel. He told us that, although he knew she was travelling to New York, he did not think he had been aware of the fact that she spoke at the New York event before his OIG interview.

As with the California trip detailed above, after the OIG asked Rollins about this trip, Rollins began working with EOUSA on the reimbursement process for the lodging expenses. On January 19, 2023, Rollins wrote a check for \$686.22 to the NY Agency. Rollins then submitted paperwork to the MA USAO and EOUSA to be reimbursed by DOJ for the trip as official travel. We understand that EOUSA is considering Rollins's request to be reimbursed by DOJ for this trip as official DOJ travel.

### 3. OIG Analysis

We concluded that, even if EOUSA determines that these trips constituted official travel, Rollins nonetheless violated the Federal Travel Regulations by accepting payment of certain travel expenses by non-federal entities without prior approval.

Federal law authorizes an agency to accept "travel and related expenses" paid by a "non-Federal source[]" if the employee is attending a "meeting or similar function relating to the official duties of the employee."<sup>110</sup> However, the Federal Travel Regulations provide that approval of non-Federal payment of expenses must occur before the employee's travel begins.<sup>111</sup> In addition, the regulations state that an agency may only accept non-Federal payments for an employee's travel expenses if: (a) the agency has "issued the employee...a travel authorization before the travel begins," (b) the agency has "determined that the travel is in the interest of the Government," (c) "the travel relates to the employee's

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<sup>110</sup> 31 U.S.C. § 1353. An employee attends an event in her official capacity when she participates "to further the mission of [her] agency as a necessary and customary part of [her] work activities." Federal Travel Regulation; Clarification of Payment in Kind for Speaking at Meeting and Similar Functions, 84 Fed. Reg. 19895 (May 7, 2019).

<sup>111</sup> 41 C.F.R. § 304-1.2. ("[Y]ou [i.e., an employee] may accept payment of travel expenses from a non-Federal source on behalf of your agency, but not on behalf of yourself, when specifically authorized to do so by your agency and only for official travel to a meeting."); 41 C.F.R. § 304-3.3 ("Except as provided in § 304-3.13 of this part, [which applies only when a non-Federal source offers to pay travel expenses after the travel begins,] your agency must approve acceptance of such payment in advance of your travel.").



official duties,” and (d) “[t]he non-Federal source is not disqualified due to a conflict of interest.”<sup>112</sup>

In determining whether acceptance of payment should be authorized, the agency’s approving official must ensure that accepting payment would not “cause a reasonable person with knowledge of the [relevant] facts...to question the integrity of agency programs or operations.”<sup>113</sup> The regulations require agencies to consider the following factors in this situation: (1) the identity of the non-federal source who has offered to pay the expenses; (2) the meeting’s purpose; (3) the identity of other expected participants; (3) the “[n]ature and sensitivity of any matter pending at the agency which may affect the interest of the non-Federal source”; (4) the “[s]ignificance of the employee’s role in any such matter”; and (5) the “[m]onetary value and character of the travel benefits offered by the non-Federal source.” 41 C.F.R. § 304-5.3.

Accordingly, if EOUSA determines that Rollins’s participation on each panel was in her official capacity, then Rollins could have accepted travel-related expenses from the non-federal sources on behalf of the Department if she had obtained the necessary Department approval in advance of her travel pursuant to the process set forth in the Federal Travel Regulations. However, such approval is not automatic. It can only be approved by the Department following a DOJ official’s determination, after consideration of the factors set forth in 41 C.F.R. § 304-5.3, that it would be appropriate to do so.

For U.S. Attorneys, requests for the payment of travel expenses by non-federal sources must be approved by the EOUSA Director in advance—U.S. Attorneys are not authorized to approve such non-federal payment themselves.<sup>114</sup> In both instances at issue here, if EOUSA considers these trips to be official travel, given that Rollins failed to obtain such approval before “performing travel paid by a non-Federal source,” she violated the Federal Travel Regulations.<sup>115</sup>

However, if EOUSA were to determine that Rollins’s trips to California and New York did not constitute official travel, then the Federal Travel Regulations do not apply, Rollins request for DOJ reimbursement would not be allowed, and Rollins’s acceptance of travel-related expenses may have violated the Standards of Ethical Conduct concerning the acceptance of gifts. See 5 C.F.R. § 2635.202(b)(2) (prohibiting acceptance of a gift given because of the employee's official position). As described above regarding Rollins’s

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<sup>112</sup> 41 C.F.R. § 304-5.1.

<sup>113</sup> 41 C.F.R. § 304-5.3.

<sup>114</sup> Department policy requires DOJ employees to obtain such approval from the employee’s ethics official and component head prior to travel. See [justice.gov/jmd/travel](https://www.justice.gov/jmd/travel) (accessed April 13, 2023). Under DOJ Order 1200.1, the component head for U.S. Attorneys and employees of U.S. Attorney’s Offices is the EOUSA Director. See [justice.gov/jmd/hr-order-doj-12001-part-11-ethics](https://www.justice.gov/jmd/hr-order-doj-12001-part-11-ethics) (accessed April 15, 2023).

<sup>115</sup> 41 C.F.R. § 304-3.12.

acceptance of free Boston Celtics tickets in connection with her official position as U.S. Attorney, Section 2635.202(b)(2) of the Standards of Ethical Conduct provides that, with certain limited exceptions, federal employees may not accept a gift—such as transportation and lodging—that is “given because of the employee’s official position.” Because EOUSA is currently assessing whether Rollins’s travel should be considered official DOJ travel, we have not conducted a gift rules analysis concerning her travel reimbursement.

Nonetheless, we observe that regardless of what EOUSA determines with respect to the official nature of Rollins’s trips to California and New York, the potential regulatory and ethical violations implicated by Rollins’s conduct could have been easily avoided had Rollins advised her staff of both the true purpose of her travel and her intention to accept non-federal payment for certain expenses and sought ethics advice.

#### **D. Rollins Calls a Local Radio Show and Discusses a MA USAO Case from Which She Is Recused**

In these sections, we describe how Rollins called a live local radio show and discussed a MA USAO case from which she is recused. We also describe the terms of Rollins’s Ethics Agreement, and our findings and analysis.

##### **1. Comments Rollins Made During Local Radio Show**

On December 19, 2022, Rollins called a live local radio show hosted by a longtime radio host (Radio Host), who is also a *Boston Herald* columnist, and discussed the upcoming federal sentencing of defendant Ernest Johnson. Johnson was a co-conspirator in a drug trafficking organization, led by Vincent Caruso, that the MA USAO was prosecuting, and Johnson pleaded guilty in May 2022 to being a felon in possession of a firearm and ammunition. Pursuant to the terms of Rollins’s Ethics Agreement, Rollins was recused from the prosecution of Caruso and his co-defendants, including Johnson, because of her prior work as Suffolk D.A.<sup>116</sup>

About 2 weeks before Rollins called the radio show, on December 6, 2022, the MA USAO filed a sentencing memorandum in *United States v. Ernest Johnson (a/k/a “Yo Pesci”)*, which was submitted to the court by the MA USAO First Assistant and not U.S. Attorney Rachael Rollins due to Rollins’s recusal.<sup>117</sup> Shortly thereafter, on December 17, 2022, the

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<sup>116</sup> As discussed earlier in this report, Rollins signed an Ethics Agreement prior to becoming U.S. Attorney which, among other provisions, stated that Rollins would “not participate personally and substantially in any particular matter involving specific parties in which she previously participated in her capacity as Suffolk County District Attorney.” The MA USAO, in consultation with EOUSA’s General Counsel’s Office, determined that the drug trafficking conspiracy involving Caruso and his co-defendants was one such matter.

<sup>117</sup> Similarly, the MA USAO’s May 20, 2022 press release announcing Johnson’s guilty plea referenced the First Assistant and not Rollins.

Radio Host published a column discussing various criminal issues in Massachusetts, including the Johnson sentencing memorandum filed by MA USAO.<sup>118</sup> The Radio Host critiqued Rollins in his column, suggesting that she ran for Suffolk D.A. on a “platform of coddling” criminals, but that maybe she was “beginning to recognize the folly” of that approach. The Radio Host continued:

In her office’s sentencing memo on drug dealer Yo Pesci (now postponed until February)...[s]he asked for a 10-year sentence for [Pesci].

“Just punishment must significantly escalate from the relatively light sentences he has received in the past for his troubling crimes. It’s clear that the prior sentences only emboldened the Defendant and his conduct.”

Ya think? Is it possible Rachael Rollins is finally waking up? Nah, probably not.

Two days later, Rollins called the radio show, told the Radio Host on the air that she had read his article, and stated that: “[W]e are definitely making sure that individuals that are terrorizing communities are held as long as we can.” After stating that she understood the Radio Host’s frustration, Rollins stated: “[W]e are committed to trying to work on that in the U.S. Attorney’s Office.”

The Radio Host then mentioned Johnson specifically and the fact that the MA USAO had recommended Johnson receive a 10-year sentence. The Radio Host added: “Your office, Rachael Rollins, said that obviously the lenient sentencing has not taught him any lesson and it’s time to teach him a lesson. And now, I mean, I just quoted what your office said.”

Rollins responded:

Yeah, that’s me. I know, I’m sure you’re saying, is this the same Rachael Rollins? But I do think this is somebody who has been terrorizing neighborhoods and has been given many opportunities and it isn’t working. So now he’s hopefully looking at at least 10 years.

Rollins later talked specifically about Johnson, calling him by his alias and referencing his internet persona. Rollins stated: “I can very comfortably say that I stand firmly behind what our office is doing right now with respect to this individual.” Rollins concluded her remarks about Johnson by stating:

[W]e will remove people from the ability...to have liberty if they are engaging in this behavior. And you know, I work every day with federal agents and

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<sup>118</sup> [“Will The Last American Leaving Massachusetts Please Turn Out The Lights?”](https://www.bostonherald.com/2022/12/17/howie-carr-will-the-last-american-leaving-massachusetts-please-turn-out-the-lights/) *Boston Herald*, December 17, 2022, bostonherald.com/2022/12/17/howie-carr-will-the-last-american-leaving-massachusetts-please-turn-out-the-lights/ (accessed March 3, 2023).

state and local agents, and it's a different ballgame...at the U.S. Attorney's Office. When the feds come, it should mean something. And it's going to start or continue to mean something under...this administration as well.

When questioned by the OIG about making public comments concerning a case from which she was recused, Rollins told us that she was not aware that she was recused from the Johnson case when she called the radio show. Rollins stated—and the OIG confirmed—that Rollins's recusal list, which the Office of the Deputy Attorney General authorized, does not contain Johnson's name; rather it contains the MA USAO case number and the name of Vincent Caruso—the leader of the drug trafficking organization—and another co-conspirator. Rollins stated that she saw neither the sentencing memorandum nor the press release mentioned above. Rollins also stated that the names Ernest Johnson and Yo Pesci were unfamiliar to her at the time she called the radio show. Rollins told us that since this incident she has requested a complete recusal list with the name of each individual to ensure that she is aware of each of her recusals.

We asked Rollins why she decided to call the radio show. Rollins stated: "...I just sort of called in because I thought it was them trying to sort of imply that we weren't going to take these type of things seriously." According to Rollins:

I don't know anything about Yo Pesci, aside from what I read in the [Radio Host's] article. I didn't give any information.... I don't have any information about it. But I was just saying, the office, we are...working really hard on all things trafficking. I'm proud of what we're doing, and, yes, we are going to be asking for big sentences, and then hung up.

Rollins said that she called the radio show "many times" when she was D.A. According to Rollins, she made a spontaneous decision to call the radio show while she was driving her car. Rollins stated that she decided to call in to "say Merry Christmas and say something great about what the office [was] doing." Rollins stated that MA USAO staff had no advance notice that she would call the show. Rollins told the OIG that, going forward, she does not plan to "call in to anywhere without speaking to [the MA USAO Executive Officer, who oversees Public Affairs]" first.

## **2. OIG Analysis**

We did not find that Rollins's call to the live radio show and commenting on the upcoming sentencing of Johnson was a knowing violation of the provisions of her Ethics Agreement. Nonetheless, we found that her decision to do so in a case that she admittedly knew nothing about was, at a minimum, poor judgment.

As noted previously, Rollins signed an Ethics Agreement on August 6, 2021, after she was nominated to serve as the U.S. Attorney. Rollins's Ethics Agreement included the following provision: "[D]uring her appointment to the position of United States Attorney, Ms. Rollins will not participate personally and substantially in any particular matter

involving specific parties in which she previously participated in her capacity as Suffolk County District Attorney.” As discussed above, ethics officials determined that the case involving Johnson was one such matter, and Rollins was therefore recused from participating in the case. Despite this recusal, Rollins called a live radio show to publicly comment on Johnson, the case against him, and the MA USAO’s sentencing recommendation.

Rollins told the OIG that she was not aware she was recused from the Johnson case when she called the radio show. Rollins correctly noted that Johnson’s name was not on her recusal list, and Rollins also stated that she was unaware that both the MA USAO sentencing memorandum and press release were issued under the First Assistant’s name and not Rollins’s. We therefore concluded that there was insufficient evidence to establish that Rollins knowingly violated the ethical obligations she agreed to abide by in her Ethics Agreement.

Nevertheless, we found that Rollins’s explanation that she was unfamiliar with both Johnson and his criminal case only underscores her poor decision-making and judgment in this situation: Rollins impulsively decided to call a live radio show to publicly discuss a case pending sentencing that, in her own words, she did not “know anything about...aside from what [she] read in the [Radio Host’s] article.” Moreover, and as the article noted, Johnson’s case was pending sentencing before a Massachusetts federal district court at the time of her comments. As an officer of the court, Rollins should have appreciated that her extrajudicial comments to the media about an upcoming sentencing that her office was handling implicated, and potentially violated, the federal district court’s local rules.<sup>119</sup> We therefore concluded that Rollins’s actions, at a minimum, demonstrated poor judgment.

#### **E. Rollins Participates with Elected Officials from One Political Party in a Press Conference Regarding a Draft Supreme Court Opinion in the *Dobbs* Case**

At 11:00 a.m. on May 3, 2022, Rollins participated in a press conference in Boston with federal, state, and local elected Democratic officials and abortion rights activists responding to a draft majority opinion in the U.S. Supreme Court case of *Dobbs v. Jackson Women’s Health Organization* that was published online the previous evening.<sup>120</sup> Rollins stated that after the *Dobbs* draft opinion was leaked “her phone was blowing up” about it. Rollins told us that she believed Boston Mayor Michelle Wu “reached out” to her to ask if Rollins was going to attend the press conference, as did some Boston City Councilors and

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<sup>119</sup> See Rule 83.2.1(f), Local Rules for the District of Massachusetts (effective June 17, 2022) (“After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.”)

<sup>120</sup> “[Supreme Court has voted to overturn abortion rights, draft opinion shows](https://www.politico.com/news/2022/05/02/supreme-court-abortion-draft-opinion-00029473),” *Politico*, May 2, 2022, politico.com/news/2022/05/02/supreme-court-abortion-draft-opinion-00029473 (accessed March 7, 2023).

someone from the Massachusetts Attorney General's Office. Rollins stated that she did not know who else would be at the press conference, but she assumed that both Boston City Councilors and Massachusetts state elected officials would be present.

We asked Rollins why she decided to speak at the press conference, and Rollins replied:

I believed it was really important for our Commonwealth to know, not about the leaked opinion, but I really mean this, about what our Department of Justice in the last six months and under Attorney General Merrick Garland has done for women, for the rule of law, and to stand up when they believe that there were unconstitutional things happening.

#### **1. MA USAO First Assistant Advises Rollins not to Attend the Press Conference and to Seek Approval from Main Justice**

The MA USAO First Assistant told us that he found out early in the morning of May 3 that Rollins was planning to participate in the press conference that day, although he did not specifically recall how he learned about it. The First Assistant stated that he "was very opposed" to Rollins's attendance and thought her participation was "dangerous and not appropriate." According to the First Assistant, he had multiple concerns about Rollins's participation, including: (1) the fact that it was a leaked draft opinion; (2) "it's not what the U.S. Attorney does"; (3) the Department was a party to the case and had argued it in the Supreme Court; and (4) if anyone from the Department were to speak about the case, it should be the "people involved in the case."

Call detail records show that the First Assistant attempted to reach Rollins by phone twice around 8:30 a.m. Rollins called him back at 8:37 a.m., and they spoke for almost 11 minutes. The First Assistant stated that he advised Rollins that she should not attend the event and he believed it was "a bad idea, period." According to the First Assistant, Rollins disagreed and "was respectful," but she told him she was "going to do this." The First Assistant continued:

...I remember that [Rollins] was upset about the [*Dobbs*] decision, and the implications of the decision, and the urgency of the moment, and the need to use her voice. These are not her words, but this is the gist of the conversation. The need to speak out...when confronted with this type of legal development.

The First Assistant stated that he counseled Rollins to reach out to the Director of the Department's Office of Public Affairs (OPA) at Main Justice to get approval to attend the press conference. According to the First Assistant, in general, he told Rollins that she "should not go to [the press conference] unless [she obtained] approval from Main Justice."

As we discuss later, Rollins told us that she recalled speaking with the First Assistant before the press conference but said she could not specifically recall the First Assistant's advice about her attendance.

The MA USAO Executive Officer told us that she first learned that Rollins was planning to participate in the press conference from the First Assistant who called her early that morning "upset" that Rollins was going to the event. The Executive Officer said that she also received a call from a news reporter asking about Rollins attending the event, and the Executive Officer said she went in search of the media advisory for the event to get more details about what was happening.

## 2. Rollins Calls OPA Director

That morning at 9:05 a.m., Rollins sent a text message to the OPA Director asking if he had "a minute to chat." Rollins told us she reached out to the OPA Director because her "phone was blowing up about this issue," and she wanted to know "if there was any guidance regarding" how to respond to this issue. Phone records show that Rollins and the OPA Director spoke for over 4 minutes beginning at 10:00 a.m. Rollins stated that the OPA Director "made clear" to her that "no one" was discussing the leaked opinion and that they "didn't even know if that [draft opinion] was real" at that point. Rollins stated that the OPA Director also "made clear" that "nobody is going to be saying a word about a leaked document, unless it is the Attorney General himself." Ultimately, Rollins told us that she reached out to the OPA Director for information about what she would be able to say, not because she sought permission from the OPA Director to attend the press conference.

The OPA Director told us that he believes he knew before his call with Rollins, possibly because the MA USAO Executive Officer may have already advised OPA, that Rollins had already committed to attend the press conference before reaching out to OPA. According to the OPA Director, he did not approve Rollins's participation; however, he also did not try to talk Rollins out of participating. He said that the media advisory had already gone out, and she was expected to be there, so he provided Rollins with information about what the Department had said publicly about the protection of reproductive rights.

After their phone conversation, at 10:17 a.m., Rollins sent the following text message to the OPA Director:

To be clear, I will not say a word or speculate about the leaked opinion. I want to: 1. direct people to the [Attorney General]'s September 9, 2021 press release suing Texas over Senate Bill 8 and its contents; 2. say DOJ prosecutes people under the [Freedom of Access to Clinic Entrances Act of 1994 (FACE Act)]; and 3. remind people that the Solicitor General argued (eloquently and passionately) on behalf of Jackson Women's Health Organization. Is that ok?

The OPA Director did not respond to this text message.

Rollins told the OIG that she did not seek or receive any ethics clearance to speak at the press conference.

### **3. Media Advisory Regarding the Press Conference and the First Assistant Speaks with Rollins Shortly Before the Press Conference**

At 9:54 a.m. on May 3, 2022, the City of Boston issued a media advisory entitled, "Mayor Wu, U.S. Attorney Rollins, House Speaker Mariano, Senate President Spilka, and Reproductive Rights Advocates to Host Press Conference on Future of Abortion Protections in Massachusetts." The advisory stated:

Mayor Michelle Wu, U.S. Attorney Rachael Rollins, House Speaker Ron Mariano, Senate President Karen Spilka, [and three advocacy organizations] will host a press conference TODAY, May 3, 2022 at 11 a.m. on the steps of the Massachusetts State House to discuss the future of abortion protections. The press conference comes after a United States Supreme Court draft majority opinion on *Dobbs v. Jackson Women's Health Organization* was made public last night. The opinion would overturn the 1973 *Roe v. Wade* decision that guaranteed federal constitutional abortion protections.

Rollins told us that she never saw this media advisory prior to the press conference.

The MA USAO Executive Officer told us that she received the media advisory from the media on May 3 after reporters began calling the MA USAO with questions about Rollins's planned attendance at the event.

After the media advisory was released, the First Assistant and the Executive Officer exchanged the following text messages:

9:58 a.m., First Assistant: "Can u keep your eye out for a media advisory about the event. Michelle Wu is organizing I think."

9:59 a.m., Executive Officer: "We have been checking. However Reuters just called asking questions about a press conference with Rollins. Trying to get our hands on the advisory."

10:02 a.m., Executive Officer: "We have it. Do you want me to forward it to you."

10:02 a.m., First Assistant: "Yes. Please."

10:03 a.m., Executive Officer: "How is she attending a press conference without telling me. Someone is going to call about this let me know how to handle."

10:04 a.m., Executive Officer: "It's at 11:00."

10:04 a.m., Executive Officer: "I think we stay away from the event."



10:10 a.m., First Assistant: "I agree. DOJ is a party to this case. We argued at the Supreme Court. Isn't that another huge issue. It is a pending matter."

10:11 a.m., Executive Officer: "I don't see how she weighs in but [Attorney General] Garland does not."

10:11 a.m., First Assistant: "Do you want to text her and say you saw the advisory and this is a bad idea. She has not responded to any of my texts for the last hour."

10:11 a.m., Executive Officer: "Yes email or text."

10:12 a.m., First Assistant: "Text."

10:12 a.m., Executive Officer: "Ok."

At 10:12 a.m., the MA USAO Executive Officer sent the following text message to Rollins: "Hey just saw a media advisory—are you doing a press conference." Rollins did not respond to the Executive Officer's text message until 12:05 p.m., when she sent the Executive Officer an audio recording of her remarks at the press conference.

The First Assistant called Rollins at 10:19 a.m. and at 10:35 a.m., and the calls went to voicemail both times. Rollins called the First Assistant back at 10:58 a.m., and they spoke for almost 7 minutes. The First Assistant stated that—since Rollins had already advised him that she would attend the press conference—he "strongly advised" Rollins not to comment on the leaked opinion and also warned her about "be[ing] up there on stage" with the other attendees. The First Assistant also stated that, in response to questions from Rollins, he may have provided her some information about the FACE Act and other information in the public record.<sup>121</sup> In this conversation, the First Assistant stated that Rollins told him she was going to arrive late to the press conference, would make her comments, and then walk away.

Rollins told us that she generally recalled speaking with the First Assistant at some point before the press conference but said she could not specifically recall the First Assistant's ultimate advice about her attendance at the press conference. However, Rollins stated that the First Assistant expressed concerns about who else would be attending the press conference, the propriety of commenting on a leaked opinion, and what Rollins characterized as the MA USAO's "reflexive response" of not commenting on matters. On the first two points, Rollins stated that she decided that she would not go "to the entire event" and would not "stand with" the elected officials, and also that she would not comment on the leaked opinion.

However, with regard to the First Assistant's third point—the MA USAO's general response of not commenting on matters—Rollins stated one of the reasons she took the

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<sup>121</sup> The FACE Act prohibits violent, threatening, damaging, and obstructive conduct intended to injure, intimidate, or interfere with the right to seek, obtain, or provide reproductive health services. 18 U.S.C. § 248.

job as U.S. Attorney was so that she would be able to “speak on things that impact huge swaths of the community” and not just issues that impact “privileged, wealthy people.” Rollins described the First Assistant as much more cautious and risk averse than she and stated that: “[the First Assistant] is more what this office has always been. I am more what this office is going to be.”

Rollins stated that she ultimately listened to the First Assistant and tempered her remarks; however, she stated that she was proud of what she said at the press conference, and she thinks “it helped in the narrative.”

#### 4. Rollins’s Remarks at the Press Conference

Rollins introduced herself as the “United States Attorney for the District of Massachusetts” and began her remarks by acknowledging the Massachusetts State Senate President, the Massachusetts Speaker of the House, the Boston Mayor, and generally all of the legislators, city councilors, and advocates in attendance. Rollins then stated:

My only role here today—I’m not going to speculate until we have an actual opinion by the United States Supreme Court—is to tell you what the Department of Justice has done regarding abortion issues. Not what they promised to do, but what they have actually done to date regarding abortion.

On September 9, 2021, U.S. Attorney Merrick Garland issued a press release announcing that the Department of Justice had filed a lawsuit to prevent the State of Texas from enforcing Senate Bill 8, which essentially banned abortion at approximately six weeks in nearly all cases. So no exceptions for pregnancies that result from rape, sexual abuse, incest, or for pregnancies involving a fetal defect incompatible with life after birth. So our Attorney General has already sued Texas back in September of 2021.

The FBI, which reports up through the Department of Justice, has made clear that any abortion-related extremism, which is an act of domestic terrorism, will be met with investigations and prosecutions. So the FACE Act—the Freedom of Access to Clinical Entrances Act—is in effect and will be enforced by the FBI and federal agencies, as well as the U.S. Attorney’s Office.

And then last, but not least, in the case that we are here today about, *Dobbs v. Jackson*. The United States Solicitor General, which is the fourth highest person in our United States Department of Justice, argued on December 1, 2021. That is a public document—you can see all of the arguments made by our Department of Justice. But I think it is really important that we understand not only on the local level what our mayors are going to do, on the state level what our leadership is going to do—and Congresswoman, apologies, I did not, I know there was a Congresswoman here, so I apologize—but at the federal level what people are going to do there.

And this is a civics lesson for people that are no longer taught civics. The legislative branch makes laws, the executive branch carries out laws, and the judicial branch evaluates those laws. And when we are lockstep together, I believe we can make sure that there is equality for all.

Rollins concluded her remarks by introducing the next speaker at the event. Rollins spoke for approximately 3 minutes in total.

Congresswoman Katherine Clark, a Democrat from Massachusetts, also attended the press conference, and, as noted above, Rollins commented on her presence during her remarks. Rollins told us that she did not know that Congresswoman Clark would be in attendance prior to the event. Rollins stated that while she knew various state and local officials would likely be in attendance, she “did not believe at all that there would be federal members of Congress there.”

We asked Rollins if she had any general concerns about appearing at a press conference with elected officials. Rollins replied:

I didn't, because I knew I was, I would argue my opening statement was a declaration of, I'm not here to talk about that. My only role as your chief federal law enforcement officer is to let you know what your Department of Justice, what your government is doing, your federal government is doing for this, right?

Rollins also stated that she decided not to stand with the other elected officials at the podium, instead staying off to the side and only approaching the podium when it was her turn to speak. According to Rollins, immediately after she gave her remarks, she left the event.

Public reporting of the event identified Rollins among “top Democrats,” “Democratic leaders,” “fellow Democrats,” and “Bay State Dems” who participated in the press conference.<sup>122</sup> News articles indicate that speakers other than Rollins used election-related speech at times, urging people to “use their votes to make sure that equality and justice for all is not just a saying...” and “...this November, in these races, everything is on the line.”<sup>123</sup> One news article reported that “[s]peakers warned of potential far-reaching ramifications

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<sup>122</sup> “Leaked Supreme Court draft underscores significance of 2020 ROE act in Mass.,” *New Bedford Light* (May 3, 2022); “After draft opinion leak, political leaders and advocates ask: Could Massachusetts do even more to protect abortion rights?” *The Boston Globe* (May 3, 2022); “Leaked Supreme Court draft”; “Massachusetts Dems: ‘Everything is on the line’ in light of Roe Supreme Court News,” *Boston Herald* (May 3, 2022).

<sup>123</sup> “Leaked Supreme Court draft”; “Everything is on the line.”

from the ruling and called for people to get involved this year in races up and down the ballot.”<sup>124</sup>

The EOUSA General Counsel stated that this event could be deemed a “political event” because of “the presence of a number of political figures” and that this press conference was the type of event he “specifically mentioned” during U.S. Attorney orientation. The General Counsel stated that he counseled U.S. Attorneys that their attendance at this type of political event should be approved by the Associate Deputy Attorney General (ADAG) responsible for approving attendance or participation at partisan political events. At a minimum, the General Counsel stated that he would expect a U.S. Attorney to consult with their ethics advisor about the event.

ADAG Brad Weinsheimer stated that if he had been asked for advice, he would have suggested that, given the presence of elected officials and special interest groups, “the likelihood of this being perceived as a partisan event was extraordinarily high” and would be the sort of thing that a U.S. Attorney should avoid.

## 5. OIG Analysis

Department policy governing media contacts states that U.S. Attorneys are responsible for all matters involving the local media, but they “must coordinate their news media contacts with OPA in cases that transcend their district or are of national importance.”<sup>125</sup> We concluded that Rollins’s conversation with the OPA Director prior to her remarks at the press conference satisfied her obligation under this policy.

Additionally, Department policy governs contacts with Members of Congress in “order to promote the rule of law and to ensure that the Department’s actions are free from the appearance of political influence.”<sup>126</sup> One aspect of this policy concerns official events with Members of Congress and requires coordination with the Department’s Office of Legislative Affairs (OLA) before Department personnel may “participate in their official capacity in events with Members of Congress.”<sup>127</sup> Department policy states: “Please be aware that the Department has a long-standing policy that most personnel may not participate in media events with congressional members or staff.”<sup>128</sup> Although Rollins did not coordinate with OLA before the press conference, we concluded that Rollins did not knowingly violate this policy because Rollins did not know in advance that a Member of Congress would be present at the event. The media advisory for the event did not identify Congresswoman Clark as one of the attendees, and we credit Rollins’s testimony,

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<sup>124</sup> “Leaked Supreme Court draft.”

<sup>125</sup> Justice Manual § 1-7.310.

<sup>126</sup> Justice Manual § 1-8.100.

<sup>127</sup> Justice Manual § 1-8.400.

<sup>128</sup> *Id.*

supported by an audio recording of her remarks, that she did not notice Clark until shortly before she (Rollins) finished speaking.

We also considered, in light of the EOUSA General Counsel's statement that the *Dobbs*-related press conference could be deemed a "political event" because of "the presence of a number of political figures" and that this press conference was the type of event he "specifically mentioned" during U.S. Attorney orientation, whether Rollins's participation in the event potentially implicated the Department's policy on passive participation in a partisan political event, which requires prior approval of the Deputy Attorney General or her designee. We noted, however, that the policy specifically speaks to attending fundraising and campaign events, and this press conference was not advertised as such. Further, Rollins did not passively participate in the press conference in her personal capacity. Rather, Rollins gave remarks during the event in her official capacity as the U.S. Attorney. Thus, we concluded that the policy did not necessarily apply in this circumstance, and we found no other DOJ policy that applied to a DOJ official's active participation in an event that was neither a campaign nor fundraising event, yet could possibly be deemed to be a partisan political event given its circumstances.

Nevertheless, we found that Rollins exercised poor judgment by participating as the U.S. Attorney in an event that concerned a highly charged political issue and that included elected officials from one political party. Rollins did so despite the training she received as a new U.S. Attorney, when senior DOJ officials told her and her colleagues that the Department requires U.S. Attorneys to be non-political and non-partisan in all respects and appearances. Rollins also did not abide by the sound advice she received from her executive staff, who warned her that she should not attend the event because of its partisan and political nature. Predictably, given the context of the event—a press conference with numerous elected officials from one political party concerning a highly charged political issue—a number of speakers (other than Rollins) encouraged the public to "use their votes" to affect the November 2022 midterm congressional elections. Press reports later that day described the event in partisan terms, with both *The Boston Globe* and the *Boston Herald* stories noting Rollins's attendance and referring to her and the other officials as "fellow Democrats," "Democratic leaders," and "Bay State Dems."

As with many of the issues detailed in this report, we found that Rollins lacked an appreciation of the importance of the Department and its U.S. Attorneys being completely removed and separate from partisan politics, including any appearance of being involved in partisan politics. Even when questioned by the OIG, months after the event, Rollins expressed no concerns about participating with elected officials from one political party in a press conference about a highly charged political issue even though news outlets subsequently referred to the speakers, including Rollins, as "top Democrats," "Democratic leaders," "fellow Democrats," and "Bay State Dems." To the contrary, Rollins noted what she characterized as her First Assistant's overly cautious approach to events like this one and asserted that her approach was going to be "more what this office is going to be." We

believe that Rollins's actions in this matter and others discussed in this report reflect a lack of appreciation for the long-standing policies and norms of the Department that required her, as a U.S. Attorney, to assiduously avoid acting as, or appearing to act as, a partisan official.

## **F. Rollins's Use of Her Personal Cell Phone to Conduct DOJ-Related Business**

### **1. Factual Findings**

On January 10, 2022, the date Rollins was sworn in as U.S. Attorney, she signed, as part of her orientation, the U.S. Attorneys' Information Systems Rules of Behavior (Rules of Behavior), which states that with the exception of non-governmental Internet connections, "[p]ersonally-owned (non-governmental) hardware and software may not be used for work purposes." Also on that date, the EOUSA Assistant Director of the Records and Information Management Staff (EOUSA Assistant Director) sent Rollins an email advising her of her federal records management requirements. The email provided the definition of a federal record contained in 44 U.S.C. § 3301 (described below) and referenced the Rules of Behavior form that Rollins signed during orientation. The EOUSA Assistant Director's email also attached a document entitled "Records and Information Management, Entrance Briefing for United States Attorneys" that includes a page entitled "Non-official Electronic Messaging Accounts." This page contains the text of 44 U.S.C. §§ 2911(a) and (c)(1), which provides, in part, that an "employee of an executive agency may not create or send a record using a non-official electronic messaging account" unless the employee copies an official electronic messaging account of the employee or forwards a complete copy of the record to an official electronic messaging account of the employee not later than 20 days after the transmission of the record.<sup>129</sup> Section 2911 of Title 44 was a 2014 amendment to the Federal Records Act. See Pub. L. 113-187, 128 Stat. 2003 (Nov. 26, 2014).

Also on January 10, 2022, Rollins signed a document entitled "Acknowledgement of Duty to Preserve Federal Records," which explained that Rollins's duty to preserve federal records applied to electronically-stored information. Further, on March 17, 2022, following the new U.S. Attorney orientation that Rollins attended, the EOUSA Assistant Director re-sent Rollins the January 10 email described above and its attachments detailing her federal records management requirements with a note that stated: "As promised, please find the attached materials that were mentioned in today's orientation. If you have any questions or concerns, feel free to reach out to me anytime."

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<sup>129</sup> The page addressing 44 U.S.C. § 2911 contained in the "Records and Information Management, Entrance Briefing for United States Attorneys" incorrectly states that 44 U.S.C. § 2911(a) requires the employee *both* to copy an official electronic messaging account of the employee "and" forward a copy of the record to an official electronic messaging account of the employee not later than 20 days after the transmission of the record.

Several members of the MA USAO staff told the OIG that Rollins often communicated with her staff through text messages that Rollins sent from her personal cell phone. Our review found that from January 10, 2022, when she was sworn in as U.S. Attorney, through September 15, 2022, Rollins used her DOJ-issued cell phone to exchange less than 30 text messages with her MA USAO staff. By contrast, within that same time period, the OIG found that Rollins used her personal cell phone to exchange thousands of text messages with several members of her MA USAO staff. As an example, we reviewed all of Rollins's text messages, from January 10, 2022, through September 15, 2022, with the MA USAO Executive Officer, including text messages solely between Rollins and the Executive Officer, and group text messages that included the Executive Officer and other members of the MA USAO.<sup>130</sup> We found that Rollins, using her personal cell phone, exchanged over 1,700 text messages either with the Executive Officer or in group texts in which the Executive Officer was included.

Rollins's use of her personal cell phone for work was not limited to her communication with her staff. For example, we found that Rollins often used her personal cell phone to communicate via text messages with the FBI Boston Field Office Special Agent in Charge (SAC). We found that Rollins used her personal cell phone to exchange 146 text messages with the SAC between January 17, 2022, and October 4, 2022.

However, despite receiving information regarding federal records management, we found that many of the text messages Rollins sent to her staff from her personal cell phone contained substantive discussions and decisions about Department matters or information used to conduct or facilitate agency business. For instance, in a text message on June 27, 2022, Rollins alerted her staff that she had decided that the office could file a motion to dismiss in a MA USAO litigation matter. In another text message on June 9, 2022, Rollins told a member of her staff that she had decided that "moving forward," for foreign travel requests, she wanted a summary of who was requesting it, why, and who would cover the cost. Another example is a text message Rollins sent on July 28, 2022, in which Rollins told her staff that she had decided that she wanted a quote from her included in a press release. Moreover, except in two instances of text messages Rollins exchanged with a member of the media that Rollins sent to her DOJ email account, we did not find evidence during our investigation that Rollins copied her work cell phone or work email on text messages she sent from her personal cell phone or evidence that she forwarded work-related text messages she sent on her personal cell phone to her work cell phone or work email.

When we first asked Rollins if it was her typical practice to communicate with MA USAO staff using her personal cell phone, Rollins responded: "It's not often that I'm texting

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<sup>130</sup> The other MA USAO staff in these text message chains included the Criminal Division Co-Chiefs, the Civil Division Chief, the Securities & Financial Fraud Chief, the National Security Unit Chief, the Civil Rights Unit Chief, the Counsel to the U.S. Attorney, and others.

from my personal phone, but it's the easiest way sometimes when people will say, you know, we need to get in touch with Rachael, and usually it's a quick call or something like that." Rollins later added that her DOJ-issued devices "have been horrible" since she began her tenure, and it was "easier" for her "at times to respond from" her personal cell phone. Rollins also stated that "when it comes to, like, logistics, not substance, there are times where" she uses her personal cell phone "[m]ostly because it is either cumbersome or [not] practical or available" for her to text from her DOJ-issued cell phone. When we raised with Rollins our concern that her substantive text messages regarding government business sent from her personal phone were federal records that were not being preserved, she responded by asking the OIG whether she could make calls from her personal phone and then discussed at length the logistics of making phone calls and the difficulties she has had with her work cell phone. Rollins later told us that she would "rarely" discuss cases using text messaging on her personal cell phone. Rollins also stated during her OIG interview that she intended to change her practice "moving forward" and would communicate with MA USAO staff using her DOJ-issued phone.

During the first day of her OIG interview, Rollins told us that she did not specifically know the Department's policy on personal use of cell phones to conduct government business. On a subsequent day of her interview, Rollins told us that she recalled being advised during her onboarding as a U.S. Attorney that emails and other electronic communications need to be preserved because they could constitute federal records. When we asked whether she has a "practice of forwarding" communications, whether text or email, that occur on her personal cell phone to her government account to make sure they are preserved, she responded that "many times" if she receives an email to her personal email account related to her job, she will send a screenshot of the email to a member of her staff, but she said that she did not recall doing so with the text message then under discussion.

As discussed earlier in this report, Rollins also sent text messages regarding MA USAO matters to reporters from her personal cell phone that we found no record of in her work cell phone or work email. On May 17, Rollins texted the *Herald* Reporter from her personal cell phone photos of the 2-page non-public May 12 letter from Rollins to the City of Quincy Mayor, informing the Mayor that the MA USAO was "initiating an investigation of the City of Quincy for compliance with the requirements of Title II of the Americans with Disabilities Act of 1990." Rollins also texted the reporter, immediately prior to sending the letter, the following statement: "DISCLOSURE CANNOT BE ATTRIBUTED TO ME." (Emphasis in original.) On June 3, Rollins sent a text message from her personal cell phone to the *Globe* Associate Editor stating: "Confidential. Off the Record. Not attributed to me. Thanks." Rollins then texted the *Globe* Associate Editor photos of a 4-page non-public June 2 letter from Rollins to the Everett Mayor, notifying the Mayor that the MA USAO was making a request for information from the City of Everett in connection with a potential investigation under Title VII of the Civil Rights Act of 1964. As noted above, in each of these



instances, Rollins told us that she sent the information to ensure that the public knew that DOJ was pursuing the matters.

## 2. OIG Analysis

We concluded that Rollins's handling of substantive text messages sent from her personal cell phone to her staff and to reporters violated 44 U.S.C. § 2911, and that her use of her personal cell phone's text messaging application to conduct substantive government business on multiple occasions violated the Rules of Behavior.

The statutory definition of federal records is broad, and includes:

all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.

44 U.S.C. § 3301(a)(1)(A).<sup>131</sup> This definition includes any "act of creating and recording information by agency personnel in the course of their official duties, regardless of the method(s) or the medium involved." 36 C.F.R. § 1222.10(b)(3). Working files, such as preliminary drafts or notes, are records if they were circulated or made available to other employees for official purposes and if they contain "unique information, such as substantive annotations or comments" that assist in the "understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities. 36 C.F.R. § 1222.12(c).

Rollins's text messages sent from her personal cell phone to her staff concerning substantive discussions about Department matters or information that she used to conduct or facilitate MA USAO business clearly were federal records under section 3301. Those substantive text messages communicating about ongoing MA USAO issues were made "in connection with the transaction of public business" and were "evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them." For instance, her text messages to staff about filing a motion to dismiss, preparing summaries of foreign travel, and including a quote from her in a press release were all evidence of decisions of the U.S. Attorney on behalf of the U.S. government.

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<sup>131</sup> Non-substantive text messages regarding scheduling would not generally constitute federal records.

The substantive text messages that Rollins sent from her personal cell phone to reporters on May 17 and June 3 also constituted federal records under section 3301.<sup>132</sup> Rollins sent these text messages in connection with the transaction of Department business as the U.S. Attorney. As discussed above in Section IV.A.3., Department policy authorized Rollins, as U.S. Attorney, to disclose to the public the existence of these investigations if she determined that doing so was necessary to reassure the public. Although we found that her method of doing so violated the DOJ Media Contacts Policy, her text messages to the reporters were “made...in connection with the transaction of” Department business. Moreover, as the text messages were sent from the U.S. Attorney, they also were appropriate for preservation as evidence of the functions, decisions, and procedures of the U.S. government (i.e., Rollins’s decision to alert the news media to the letters she sent to mayors concerning new investigations or inquiries).

When Rollins created and sent these federal records on her personal cell phone without preserving them in one of her official electronic messaging accounts, she violated 44 U.S.C. § 2911. Section 2911 of Title 44 states:

(a) IN GENERAL.—An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee—(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or (2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

...

(c) DEFINITIONS.—In this section: (1) ELECTRONIC MESSAGES.—The term “electronic messages” means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals. (2) ELECTRONIC MESSAGING ACCOUNT.—The term “electronic messaging account” means any account that sends electronic messages.

Although 44 U.S.C. § 2911 permits a federal employee to create and send federal records on a personal device, the statute required Rollins to take steps to preserve these records. Therefore, when Rollins used her personal cell phone’s text messaging application (i.e., a non-official electronic messaging account) to create and send substantive text messages that constituted federal records without copying one of her official electronic messaging

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<sup>132</sup> We have not included in this finding Rollins’s text messages to the *Herald* Reporter on September 9 using her personal cell phone that included pictures of the Recusal Memorandum. While those text messages contained information that Rollins obtained solely by virtue of her position as U.S. Attorney, Rollins was recused from the matter and, as a result, had no authority to act in her official DOJ capacity. Therefore, Rollins could not be considered to have been acting as U.S. Attorney when she sent the text messages, creating a question as to whether the text messages could be deemed federal records. Given the other federal records violations by Rollins that we discuss in this section, we determined that we did not need to resolve that issue in this report.

accounts or forwarding a copy of the text messages that were federal records to one of her official electronic messaging accounts within 20 days, she violated 44 U.S.C. § 2911.

When we raised our federal records concern with Rollins during her interview, she responded with complaints about her work phone being inconvenient. When we asked Rollins why she took photos of the letters to the mayors and texted them to the *Herald* Reporter and the *Globe* Associate Editor, rather than forwarding the documents from her work email, she told us: "...if I'm trying to sort of covertly send this to him, I wouldn't overtly send it from my work email." She added: "I didn't, if I was trying to hide that I was sending this to him, I wouldn't send it from my work email. That's the reason I chose that." She also told us that if she used her work email: "[I]t would be retained somewhere, and it would be public, right?" We found that Rollins's affirmative efforts to ensure that DOJ systems did not capture these communications with reporters demonstrated her intention to violate 44 U.S.C. § 2911.

Moreover, we determined that Rollins's use of her personal cell phone on multiple occasions for substantive "work purposes" separately violated the Rules of Behavior that she signed on the day she was sworn in as U.S. Attorney. The Rules of Behavior state that, with the exception of non-governmental Internet connections, "[p]ersonally-owned (non-governmental) hardware and software **may not be used for work purposes.**" (Emphasis added.) We note that, among other things, the use of a personal cell phone for substantive DOJ-related matters can present potential security vulnerability concerns, separate and apart from the federal records issue that it raises. In this case, we found that Rollins used her personal cell phone to conduct substantive and, on occasion, sensitive and non-public DOJ business. Under these circumstances, we found that Rollins violated the Rules of Behavior.

## **G. Rollins Accepts Contributions to Her District Attorney Campaign Account After Being Sworn In as U.S. Attorney**

### **1. Factual Findings**

As discussed previously, prior to becoming the U.S. Attorney, Rollins was the elected District Attorney (D.A.) for Suffolk County, Massachusetts. While Suffolk D.A., Rollins received campaign contributions to an account registered with the Massachusetts Office of Campaign and Political Finance (OCPF). That account remained active after Rollins became the U.S. Attorney, and Rollins continued to receive campaign contributions during her tenure as U.S. Attorney, which began on January 10, 2022. In all, Rollins received campaign contributions totaling \$595.40 from seven different individuals for the period of January 13, 2022, through September 21, 2022.<sup>133</sup> Many of the contributions to Rollins's account

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<sup>133</sup> By accepting these contributions, Rollins appears to have been deemed a "candidate" under Massachusetts state law. See Mass. Gen. Laws Ch. 55, § 1 (stating an individual shall be deemed a "candidate" if she has "received a contribution or made an expenditure").

appeared to be automatic, recurring monthly contributions to her campaign. Available information indicates that that none of the donors had any connection to the MA USAO.

Rollins told us that she was unaware of these contributions until the OIG brought them to her attention. Rollins stated that she has “not solicit[ed] any funds” and has “not fundraised” since becoming the U.S. Attorney. Rollins stated that, as required by Massachusetts campaign finance law, the treasurer for her account files monthly reports with OCPF. Rollins told the OIG that she received copies of these reports but had not reviewed them because she assumed no activity was occurring. According to Rollins, she “made clear” to her treasurer from the beginning of her tenure as U.S. Attorney that she (Rollins) was not allowed to do any type of fundraising once she became U.S. Attorney. Since learning of these contributions from the OIG, Rollins refunded the contributions, disabled the automatic payments to her account, and wrote individual letters to each of the seven donors explaining these actions.<sup>134</sup>

## 2. OIG Analysis

The Hatch Act states that an executive branch employee may not “knowingly solicit, accept, or receive a political contribution from any person.”<sup>135</sup> As noted above, the U.S. Office of Special Counsel (OSC) has exclusive jurisdiction to investigate Hatch Act violations.<sup>136</sup> Because the contributions described in this section potentially implicate the Hatch Act, we have referred our factual findings to OSC for its review.

## V. Conclusion

We found Rollins’s conduct described throughout this report violated federal regulations, numerous DOJ policies, her Ethics Agreement, and applicable law, and fell far short of the standards of professionalism and judgment that the Department should expect of any employee, much less a U.S. Attorney.

We have provided a copy of this report to the Office of the Deputy Attorney General, the Executive Office for United States Attorneys, and the Professional Misconduct Review Unit for any action they deem appropriate.

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<sup>134</sup> Rollins provided the OIG with copies of the checks and letters she sent to each individual refunding their contributions.

<sup>135</sup> 5 U.S.C. § 7323(a)(2).

<sup>136</sup> 5 C.F.R. § 734.102(a).

# Appendix 1: A Reception with Dr. Jill Biden Flyer



The Democratic Party  
**AND**



cordially invite you to

## A RECEPTION WITH DR. JILL BIDEN



In support of the Democratic Grassroots Victory Fund

**THURSDAY, JULY 14, 2022**  
**TIME TO BE ANNOUNCED**  
**ANDOVER, MASSACHUSETTS**  
**ADDRESS UPON R.S.V.P.**



**RSVP**

*Space is limited and all attendees will be required to comply with COVID-19 protocols in order to participate in the event.*

For any questions, please contact [REDACTED] at  
[REDACTED]@dnc.org or (202) 993-[REDACTED].

CONTRIBUTIONS OR GIFTS TO THE DEMOCRATIC GRASSROOTS VICTORY FUND ARE NOT TAX DEDUCTIBLE.

PAID FOR BY THE DEMOCRATIC GRASSROOTS VICTORY FUND, A JOINT FUNDRAISING COMMITTEE AUTHORIZED BY THE DEMOCRATIC NATIONAL COMMITTEE AND THE STATE DEMOCRATIC PARTIES IN: AL, AK, AZ, AR, CA, CO, CT, DC, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WY, WI, AND WY. 430 S. CAPITOL ST. SE, WASHINGTON, D.C. 20003. NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE.

Contributions or gifts to the Democratic Grassroots Victory Fund are not tax deductible. Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation, and name of employer of individuals whose contributions exceed \$200 in a calendar year. The Democratic Grassroots Victory Fund does not accept contributions from registered foreign agents or minors under the age of 18. Federal law prohibits the acceptance of corporate or labor union contributions. The Democratic Grassroots Victory Fund is able to accept up to \$875,000 from an individual donor and up to \$405,000 from a non-candidate committee in a calendar year. The first \$36,500/\$35,000 from a person/multi-candidate commit (PAC) will be allocated to the DNC. The next \$510,000/\$255,000 from a person/PAC will be split equally among the following state Democratic parties up to \$10,000/\$5,000 per party: AL, AK, AZ, AR, CA, CO, CT, DC, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WY, WI, and WY. Any additional funds will be allocated to the DNC, subject to applicable contribution limits. Contributions will be used in connection with federal elections. A contributor may designate their contribution for a particular participant. The allocation formula set forth above may change if following it would result in an excessive contribution.