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May 12, 2023

The Honorable Henry J. Kerner  
Special Counsel  
U.S. Office of Special Counsel  
1730 M St. Suite 218  
Washington, D.C. 20036

Re: Response to “Report of Prohibited Political Activity Under the Hatch Act (OSC File No. HA-22-000173 (Rachael Rollins))”

Dear Mr. Kerner:

On behalf of United States Attorney (“USA”) for the District of Massachusetts Rachael Rollins, we submit this letter in response to the draft report of the Office of Special Counsel (“OSC”) entitled “Report of Prohibited Political Activity Under the Hatch Act (OSC File No. HA-22-000173 (Rachael Rollins))” (the “Draft Report”).

Before we address the specific issues raised by the 25-page Draft Report, we want to make three points. First, we object in the strongest possible terms to the inclusion of 115 pages of personal text messages as exhibits, including scores of private, text messages between USA Rollins and Ricardo Arroyo, a current elected member of the Boston City Council. Publishing the private text messages themselves, as opposed quoting or paraphrasing relevant portions of their contents, constitutes an unnecessary and inappropriate incursion on the privacy rights of not only USA Rollins but also Councilor Arroyo. Although we disagree with many of the conclusions that the OSC has drawn from those text messages, at least the OSC asked Ms. Rollins some limited questions about them and gave her an opportunity to explain the meaning of – and context for – certain of those private text messages. From our review of the Draft

Report, it appears that the OSC did not interview Councilor Arroyo and did not contact him during the investigation. Councilor Arroyo recently announced his re-election bid. There is no need to include so many text messages, or indeed any of them, so long as their contents are reported accurately. In contrast with the extensive set of attached text messages constituting 82% of your report (115/140 pages), the related Department of Justice, Office of the Inspector General report on the same two issues has not found it necessary to attach *any* of the text messages, presumably because of privacy and related concerns. We strongly urge the OSC to adopt the same approach. Without providing Councilor Arroyo with notice and the opportunity to be heard, it seems deeply unfair to publish scores of his private, personal text messages. Fairness dictates that, at a minimum, the text messages themselves should not be summarized in relevant part and not released publicly, and that Councilor Arroyo be provided advance notice of your report's release.

Second, although we appreciate the opportunity to comment on the Draft Report, we need to emphasize the limits on our ability to address its factual accuracy. The OSC states that it interviewed 11 witnesses, including Ms. Rollins. We were present during the OSC's interview of Ms. Rollins, but not for the interviews of the other 10 witnesses. Not only were we not present for those interviews, we had no meaningful opportunity to speak with many of those witnesses – namely, the members of Ms. Rollins's U.S. Attorney's Office staff. We were very mindful that such interviews on USA Rollins's behalf may have raised concerns among some members of her office's staff about the possibility of retaliation or retribution. Though such fears would have been misplaced, that does not mean they would not have existed. Based on that risk, Ms. Rollins and I agreed early on and made a conscious decision – in the best interests of her office – that that we would not conduct such interviews, even though that decision substantially prejudiced her ability to defend herself. Thus, we were essentially foreclosed from doing what any competent counsel would ordinarily do in other circumstances – *i.e.*, interview witnesses who had personal knowledge of the matters under investigation and whom we were certain the OSC would be interviewing.

Finally, before discussing the merits of the OSC Draft Report, we feel compelled to note the irony that the investigation into the potential violation of the Hatch Act by Ms. Rollins was publicly demanded by Senator Tom Cotton (R-AR), a strong supporter of former President Donald J. Trump. The Trump Administration was populated by several high-ranking officials who openly, routinely, and defiantly violated the Hatch Act with no consequences. *See generally*, U.S. Office of Special Counsel, *Investigation of Political Activity by Senior Trump Administration Officials During the 2020 Presidential*

*Election* (Nov. 9, 2021). Indeed, Sen. Cotton was so unfamiliar with the Hatch Act that he requested that the DOJ OIG investigate the allegations rather than the OSC.<sup>1</sup>

On behalf of Ms. Rollins, here are our comments on specific passages of the report. In citing paragraph numbers, we refer to full paragraphs on a specific page, not carryover paragraphs from a previous page.

1. P. 2, ¶ 1: “The U.S. Office of Special Counsel (OSC) has found that U.S. Attorney for the District of Massachusetts, Rachael Rollins, violated the Hatch Act ~~and, in doing so, committed an extraordinary abuse of her power as U.S. Attorney.~~ Chronologically, her first violation arose in July 2022 **when, in disregard of legal advice from her own agency,** and in violation of the Hatch Act, she attended a political party fundraiser in her official capacity. Her second violation occurred throughout August and September 2022, when she repeatedly attempted to sabotage the campaign of a political candidate by leaking nonpublic U.S. Department of Justice (DOJ) information to the media to plant a story that he was facing a DOJ investigation. ~~This latter violation, in particular, is one of the most egregious Hatch Act violations that OSC has investigated.~~<sup>1</sup>”

**Response:** We request that the OSC delete the words and phrases that are struck through above. They are unnecessarily rhetorical and hyperbolic. OSC can state its conclusions without resorting to inflammatory rhetoric. As for the statement that Ms. Rollins attended the July 2022 event “in disregard from legal advice from her own agency,” which we have highlighted, the evidence is equivocal about the legal advice that Ms. Rollins actually received. The bulk of the correspondence regarding the event did not include USA Rollins. In addition, we understand that the colleague who accompanied USA Rollins to the Andover event similarly recalled that she was not aware of any prohibition from entering the residence. Therefore, this conclusion cannot and should not be stated so starkly. This comment also applies to similar language (“She did so despite repeatedly being advised not to attend the fundraiser.”) at page 18, paragraph 3. These absolute statements do not accurately reflect the welter of conflicting and equivocal advice provided to USA Rollins about attending the event.

2. P. 4 – Timeline

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<sup>1</sup> It is no accident that Sen. Cotton requested the investigation. During USA Rollins’s highly contentious Senate confirmation process, he openly vowed to block her confirmation and waged an aggressive campaign against her, including on his website, and submitted a letter disparaging Ms. Rollins to the *Boston Herald*.

**We found this timeline, as presented, extremely difficult to follow and understand. We suggest that it be deleted from the final report, particularly in light of the fact that the relevant events are outlined in the text of the Draft Report.**

3. P. 5, ¶ 1: “Prior to the event [Ms. Rollins] was told repeatedly, both in person and by email, not to attend the fundraiser. That advice came from both her own staff and DOJ officials in Washington, DC.... The Hatch Act implications were so apparent that a reporter outside the venue asked Ms. Rollins whether she was concerned that her presence at the event might violate the Hatch Act. Ms. Rollins responded “no” and, contrary to all the advice she had received, proceeded inside the fundraiser.”

**Response: These factual conclusions are stated with far more certainty than the evidence supports. In fact, Ms. Rollins sought and received approval to attend the Andover event from her internal Ethics team and from EOUSA. The admonition that the meet-and-greet with the First Lady should take place outside the residence where the fundraising event was to take place was, to our knowledge, mentioned once at the end of a lengthy email chain. The subject line had been changed and the advice from EOUSA that was summarized at the top of the email was followed by USA Rollins. USA Rollins credibly testified that she did not see the portion at the bottom of the lengthy the email chain which contained that requirement, which is believable both because of the volume of emails she receives daily and because she had a legitimate expectation that members of her staff would highlight anything that was crucial. As we stated above, our understanding is that the colleague who accompanied USA Rollins to the event was similarly unaware of the requirement to meet the First Lady outside.**

**From its investigation, the OSC is aware that there were numerous conflicting and confusing communications about USA Rollins’s planned meet-and-greet with the First Lady. It is therefore not at all surprising that the importance, in retrospect, of whether the meet-and-greet should happen inside or outside the residence in determining whether a Hatch Act violation occurred might well have been lost on Ms. Rollins, as it also would be to anyone not steeped in the specifics of the Hatch Act. And as for the *Boston Herald* reporter yelling to USA Rollins that her presence might constitute such a violation, there was no reason for USA Rollins to attach any significance to that at all in the absence of some evidence that the reporter was knowledgeable about the Hatch Act. Also, when the reporter saw USA Rollins, she called her Ayana (presumably thinking she was Congresswoman Ayana Pressley, an elected official to whom the Hatch Act doesn’t apply). Therefore, it is unsurprising that Ms. Rollins interpreted the reporter’s question as low-level harassment rather than a definitive pronouncement from someone with Hatch Act expertise.**

4. P. 5, ¶ 2: “Ms. Rollins claimed that she did not attend the fundraiser but instead went to an event related to a U.S. Attorney’s Office for the District of Massachusetts outreach program, the BRIDGES program. But there was no BRIDGES event in Andover that day.”

**Response:** These assertions badly misconstrue what Ms. Rollins said. In fact, she said her colleague *knew the hosts of the event* because of their association with BRIDGES, not that the event itself was a BRIDGES event. She acknowledged that she spoke to someone associated with the DNC about the event; there was no mystery that the actual event was a fundraiser. USA Rollins intended to meet the First Lady *before* the fundraiser began and did so. USA Rollins was the first in line to say a quick hello and the first to leave as others) were still entering. Her understanding was the event was scheduled to start at 5 pm and USA Rollins left the residence at 5 pm. USA Rollins left the residence before any of the events normally associated with a fundraiser – call to order, speeches, requests for contributions, etc. – had begun. Attendees were driving up the road to the event as USA Rollins and her colleague were walking out and driving away.

5. P. 5, ¶ 3: “Ms. Rollins’s abuse of her power within the federal justice system to achieve a political goal epitomizes the type of ‘political justice’ that Congress intended to prohibit.”

**Response:** This sentence is unnecessarily hyperbolic and rhetorical. The OSC’s position is that USA Rollins’s actions violated the Hatch Act. That position can be stated plainly and clearly without resort to hyperbole or inflammatory rhetoric.

6. P. 7, ¶ 2: “In July she violated 5 U.S.C. §§ 7323(a)(1), 7324(a)(1), and 7324(a)(4) by attending a Democratic National Committee fundraiser in her official capacity and traveling to and from that fundraiser in a government vehicle. Ms. Rollins’s unabashed willingness to use DOJ resources, information, and her official authority as a U.S. Attorney in furtherance of partisan political goals is directly contrary to both the letter and spirit of the Hatch Act.”

**Response:** The evidence is clear that the USAO brought to Ms. Rollins’s attention an opportunity to meet the First Lady. USA Rollins was present at the residence where the fundraiser later took place for a total of approximately 20 minutes – including taking a rapid COVID test outside and receiving her results – and that she left before the program began. She was there for the sole purpose of a brief meet-and-greet with the First Lady. Ms. Rollins pledged no money, encouraged no one else to pledge money or make cash contributions, stayed for no speeches, and left immediately after she shook hands with the First Lady and posed for a couple of

photographs. USA Rollins believed she was following the specific guidance spelled out at the top of the email she had received from DOJ personnel precisely so that she would *not* violate the Hatch Act.

As for the use of the government vehicle, on leaving the residence, USA Rollins conducted government business with three different towns within her jurisdiction – one by phone, one by Zoom and one in person. There is no question that her use of the government vehicle to do government business is entirely proper. The fact that she used the same vehicle as she needed to conduct the subsequent pieces of government business for a brief stop between her day and evening of government business does not make its use improper.<sup>2</sup> Indeed, the advice Ms. Rollins received from DOJ strongly suggested that if the meet-and-greet had in fact taken place outdoors, no one would have thought she had violated the Hatch Act. In addition, the OSC's phrase about her "unabashed willingness" to, among other things, "use her official authority as U.S. Attorney in furtherance of partisan political goals" completely loses sight of the fact she *is* the U.S. Attorney. She cannot shed her identity. Finally, the conclusion about her abusing her official authority would be supported if she had approved promotional materials for the fundraising event that featured the fact that she would attend. No such promotional materials exist, nor would Ms. Rollins have approved them.

7. P. 9, ¶ 1: "Ms. Rollins actively supported Mr. Arroyo in his campaign for Suffolk County DA,..."

**Response:** The phrase "actively supported" suggests that Ms. Rollins publicly endorsed Mr. Arroyo or contributed money to his campaign. As the OSC knows, she did neither.

8. P. 10, ¶ 2: "Ms. Rollins was so involved in the Suffolk County DA election that she began to view some of her official engagements as U.S. Attorney through the lens of whether they would help Mr. Arroyo's or hurt Mr. Hayden's campaigns.... In an apparent effort to give Mr. Arroyo similar exposure, Ms. Rollins messaged him and wrote, "Make sure you let me know about stuff that I can show up at. And we can 'happen' to be there together."

**Response:** There is no evidence that Ms. Rollins ever made arrangements to show up at an event where Arroyo was appearing. Her suggestion that she might do so was designed to provide encouragement to a close friend, not to state her actual

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<sup>2</sup> The OSC repeats these allegations at page 19, final paragraph. Our response applies equally to that formulation of the conclusion.

**future intentions. This comment also applies to the OSC Draft Report further pressing the point at page 11, paragraph 2.**

9. P. 15, ¶ 3: “Notably, in leaking information about the potential investigation of Mr. Hayden, Ms. Rollins chose news outlets for whom she had previously served as a source. In May 2022 she leaked a nonpublic DOJ letter to the *Herald* describing a DOJ investigation, which resulted in the *Herald* publishing an article that same day. In June 2022 she similarly leaked a nonpublic DOJ letter to the *Globe* describing a separate DOJ investigation, which again resulted in an article that same day.”

**Response:** In fact, Ms. Rollins would have been well within her rights as the U.S. Attorney to make public information about these two investigations. Department of Justice, *Justice Manual* 1-7.400(C) (noting, that “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, comments about or confirmation of an ongoing investigation may be necessary...”). Thus, the fact that Ms. Rollins provided information about these two investigations that she initiated to the media is not as sinister as the OSC Draft Report suggests. It was well within her rights as U.S. Attorney and reflects what she always pledged to be as U.S. Attorney – a person who advocates on behalf of communities whose voices had never been sufficiently heard and on whose behalf the federal government has not been a consistent champion.

The letter to the mayor of Quincy was about an event that had occurred nearly eight years earlier; scores of media articles had been written about it. The communities most affected by the Quincy letter are those members of that community suffering from mental health issues, substance use disorders, and housing insecurity.

The letter to the mayor of Everett focused on extremely egregious conduct, some of which went back several years. The community in Everett, comprised of well over 50% Black and brown people, including a substantial immigrant population, needed assurances that the federal government was looking into the concerns of racial, gender, and national origin discrimination, and allegations of sexual harassment and assault.

10. P. 17, ¶ 1: “The only reason that Ms. Rollins’s disclosures about DOJ activities, including a potential investigation of Mr. Hayden, carried any weight was her authority as U.S. Attorney.”

**Response: This is simply wrong as a matter of fact. The value of the information – to the extent it had value – was intrinsic to the information, not dependent on who provided it.**

11. P. 20, ¶ 2: “And Ms. Rollins acknowledged to OSC that she received advice prior to the event that she should not attend the fundraiser. Specifically, she recalled being told “if you get there and the fundraiser has started, turn around and leave, or something like that.”

**Response: Again, USA Rollins’s understanding, shared by her USAO colleague, was that as long as she left before the formal program began, she was acting consistently with the requirements EOUSA had given her regarding the Hatch Act – i.e., she was not “attending the fundraiser.” If the inside/outside distinction was so significant, it should have been highlighted more prominently by EOUSA.**

12. P. 21, ¶ 5: “Ms. Rollins admits that she went to Andover in her official capacity...”

**Response: Ms. Rollins was the U.S. Attorney before she entered the residence, during the brief time she was in the residence, and when she left the residence. Her presence was not announced in advance of the event, nor in the presence of the attendees. Indeed, the name slip she was handed to quickly meet FLOTUS said “DA Rachel Rollins”. Both her title and her name were wrong. It is highly likely that the vast majority of the 10-15 attendees present when she first arrived were the close immediate family of the hosts. Included in that number were several children under the age of 10. The instant the First Lady arrived, USA Rollins was in and out within minutes. There was in fact no meet and greet as USA Rollins had been told. It was clear nobody had told the First Lady about the meeting. Which makes clear that USA Rollins would likely have been tazed or shot by Secret Service had she been standing on a lawn somewhere outside the home and attempted to approach the First Lady. USA Rollins was leaving as Senator Markey, a family friend of hers for decades, was just arriving and walking in and took a quick photo with him. The photos took less than a minute. People were arriving as she was leaving, and nobody had spoken yet or even gone to the podium that was set up in the main room. USA Rollins clearly left before the event began. And as said previously, the rapid COVID stations were still set up and active. Therefore, this “admission” that she attended “in her official capacity” is at best misleading and should be removed from the OSC Report.**

13. P. 21, same: “[Ms. Rollins’s] defense against the Hatch Act allegations relates entirely to the third question; she claims that she did not attend the DNC fundraiser but, instead, went to a community engagement event related to USAO-MA’s Building Respect In Diverse Groups to Enhance Sensitivity (BRIDGES) program, But that assertion is wholly contradicted by the



evidence – there simply was no BRIDGES event in Andover on July 14.  
[footnotes omitted]”

**Response:** As noted above in our comment on #4 above, this is a misstatement of Ms. Rollins’s statements about BRIDGES and its relationship to the fundraiser. The invitation came from respected members of the BRIDGES community, which is why the USAO Community Liaison was invited. It was not a BRIDGES event. She originally met the hosts at an event where many BRIDGES members were present.

14. P. 23: In consecutive paragraphs, the Draft Report asserts that “Ms. Rollins was repeatedly advised not to attend the fundraiser or go inside the venue,” and that Ms. Rollins’s USAO staff advised “Ms. Rollins to meet with Dr. Biden outside the venue and not attend the fundraiser.”

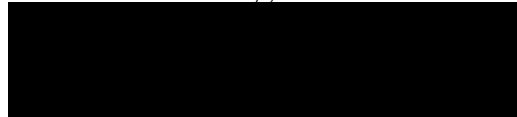
**Response:** Ms. Rollins understood that as long as she did not stay for the program at the Andover event – the speeches, and the solicitations for contributions – she was observing the requirements of the Hatch Act. She herself did not speak, nor did she discuss any legislation, which she was told via email that she could not do. As described above, the requirement that she should not enter the premises – and that this made all the difference – was either not effectively communicated to Ms. Rollins or not adequately understood by her. In fact, USA Rollins spent only 20 minutes total there – including walking up the hill, getting confronted by a Herald reporter, taking a rapid COVID test, waiting for the results, walking inside, waiting for Dr. Biden to arrive, briefly saying hello to Dr. Biden, saying hello to Senator Markey on the way out, taking pictures with him and leaving before what she considered the fundraiser – speeches, requests for contributions, and networking – began. All of that happened in 20 minutes. The fact that what USA Rollins could or could not do at the Andover residence was the subject of countless emails and conversations demonstrates the lack of clarity about what was permissible for USA Rollins to do. As the Draft Report acknowledges, the Executive Office of U.S. Attorneys approved Ms. Rollins attending the event.

P. 25, ¶ 1: “In particular, her repeated efforts to leak nonpublic DOJ information for the purpose of harming a political candidate rank among the most flagrant violations of the Hatch Act that OSC has ever investigated.”

**Response:** This piece of hyperbole should be deleted. It is inflammatory and almost surely untrue. The OSC was founded in 1939. An OSC investigator who was 25 years old in 1939, at OSC’s founding, would be 109 years old today. Only such an employee who has been employed consecutively from 1939 to the present would be capable of making a statement as definitive as this. It is enough for OSC

**to assert its conclusion in this case rather than making bold and insupportable statements such as this.**

Sincerely,



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