



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

September 5, 2024

The President
The White House
Washington, D.C. 20500

Re: OSC File No. HA-24-000104

Dear Mr. President:

Pursuant to 5 U.S.C. § 1215(b), I am forwarding to you the U.S. Office of Special Counsel's (OSC) investigative findings regarding a Hatch Act violation by Secretary of the Navy Carlos Del Toro. As explained in the accompanying Report of Prohibited Political Activity Under the Hatch Act (Report), OSC concludes that Secretary Del Toro violated the Hatch Act by advocating for and against presidential candidates while appearing in his official capacity at events on January 25, 2024. Secretary Del Toro impermissibly asserted his personal political campaign views during official agency business – a violation of the Hatch Act's prohibition against using his official authority or influence for the purpose of affecting the result of an election.¹

Included with OSC's Report is Secretary Del Toro's response, to which I offer the following points: (1) the factors that the Secretary lists are potentially relevant to determine what actions might be taken in response to his violation, but they are irrelevant to whether a violation occurred, and (2) the Secretary's refusal to take responsibility for the violation is troubling.

On the first point, the Secretary's response notes his voluntary disclosure to my agency of the underlying statements, their "spontaneous" nature, and the possibly limited American audience. OSC addresses these factors in our Report. Importantly, these circumstances (individually and collectively) do not erase a violation.² And the Secretary's response fails to

¹ See 5 U.S.C. § 7323(a)(1).

² Whether his statements were spontaneous or premeditated only bears on the penalty and not the finding of a violation. See *Special Counsel v. Briggs*, 110 M.S.P.R. 1, ¶ 10 (2008) (holding that an employee's intention to violate the Hatch Act is relevant only to the determination of a penalty, not to the question of whether the employee's conduct actually violated the Act).

substantively engage, much less contradict or otherwise explain away, the heart of OSC's finding: that the Secretary, in his official capacity and on a taxpayer-supported trip, encouraged electoral support for one presidential candidate (you) over another.

On the second point, the Secretary's refusal to acknowledge his mistake is at odds with the Department of Defense's (DoD) longstanding commitment to adhere to the Hatch Act. Secretary Del Toro's comments contradict his and Secretary of Defense Lloyd J. Austin III's previous statements, plus the letter and spirit of DoD directives, on the importance of remaining apolitical:

(i) Secretary Austin has made clear that on-the-job DoD personnel must be "apolitical." As he put it in July 2021, "it's really important to me that this department remain apolitical. And so we're going to do everything within our power to make sure our troops, our leadership both civilian and military remain focused on the task at hand and understand that they are not a part of the political apparatus there. So we will remain apolitical."³

(ii) Secretary Austin's words are backed up by multiple DoD directives emphasizing the need for all personnel to follow rules related to political activities,⁴ particularly those presidentially-appointed, Senate-confirmed officials such as Secretary Del Toro, who are subject to "a more restrictive set of restrictions."⁵

(iii) Secretary Del Toro himself plays a vital role in ensuring DoD personnel obey restrictions on political activities, including issuing a directive this past July where he affirmed that "it is more important than ever for us to remember that the DON [Department of the Navy] is an apolitical body.... Public trust and confidence depend on this."⁶

In light of the above, the Secretary's unwillingness to acknowledge a mistake is striking.

Despite my concerns with the Secretary's conduct and his response to our findings, I acknowledge that one can imagine more serious violations of the Hatch Act. I admire and appreciate his military service and continuing commitment to public service, and I am glad that

³ Secretary of Defense Lloyd J. Austin III, Joint Chiefs of Staff Chairman General Mark Milley & Pentagon Press Secretary John F. Kirby, Press Briefing (July 21, 2021), <https://www.defense.gov/News/Transcripts/Transcript/Article/2702966/secretary-of-defense-austin-and-chairman-of-the-joint-chiefs-of-staff-gen-mille/>.

⁴ See, e.g., Department of Defense, DoD Directive 1442.11, Political Activity Rules for DoD Political Appointees (2021), available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/144211p.PDF?ver=3AdkkBcLL7PaRXDB4qn1sg%3D%3D>; Department of Defense, DoD Directive 1344.10, Political Activities by Members of the Armed Forces (2008), available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/134410p.pdf>.

⁵ *Political Activities*, DEP'T OF DEF. STANDARDS OF CONDUCT OFF., <https://dodsoco.ogc.osd.mil/DoD-Personnel/Ethics-Topics-for-DoD-Personnel/Political-Activities/> (last accessed Sept. 1, 2024).

⁶ Letter from Secretary of the Navy Carlos Del Toro (July 24, 2024), https://www.mynavyhr.navy.mil/Portals/55/Messages/ALNAV/ALN2024/ALN24061.txt?ver=Gshur1JAR0_ynNu6T3Qwsg%3d%3d.

his violation appears to be an isolated episode. Ultimately, I hope the Secretary will take responsibility for his mistake. Whether he accepts a sanction voluntarily or through any action you might take pursuant to § 1215(b), I hope this matter offers an opportunity to deter violations and remind all federal employees, including high-ranking officials, of the Hatch Act's restrictions.

Respectfully,

A handwritten signature in cursive script that reads "Hampton Dellinger".

Hampton Dellinger
Special Counsel

Enclosures



U.S. OFFICE OF SPECIAL COUNSEL

Report of Prohibited Political Activity Under the Hatch Act OSC File No. HA-24-000104 (Carlos Del Toro)

August 6, 2024

This report represents the deliberative attorney work product of the U.S. Office of Special Counsel and is considered privileged and confidential. Any release of information beyond persons specifically designated by the U.S. Office of Special Counsel to have access to its contents is prohibited. All Freedom of Information Act inquiries regarding this report should be referred to OSC's FOIA Officer at (202) 804-7000.

I. INTRODUCTION

This Report of Prohibited Political Activity Under the Hatch Act (Report) contains the investigative findings of the U.S. Office of Special Counsel (OSC) in OSC File Number HA-24-000104. OSC opened this matter in response to a February 1, 2024 letter in which Secretary of the Navy Carlos Del Toro self-reported statements he made about presidential candidates during an official appearance on *BBC News Sunday*. During OSC's investigation, we learned that Secretary Del Toro engaged in similar conduct at a separate event he attended in his official capacity hours before his *BBC News Sunday* interview.

As detailed below, OSC has determined that Secretary Del Toro violated the Hatch Act.¹ Accordingly, pursuant to the authority described in 5 U.S.C. § 1215(b), OSC presents this Report for appropriate action.

II. FACTUAL FINDINGS

Carlos Del Toro was appointed by the President and confirmed by the Senate to be the Secretary of the U.S. Department of the Navy. Secretary Del Toro was sworn into office on August 9, 2021.

In January 2024, Secretary Del Toro traveled to England to seek international support for Operation Prosperity Guardian, a military operation led by the United States in response to Houthi attacks in the Red Sea. Secretary Del Toro was on official travel during this trip, and he participated in the two events discussed below in his official capacity as Secretary of the Navy.

On January 25, 2024, prior to being interviewed by *BBC News Sunday*, Secretary Del Toro gave an official speech at the Royal United Services Institute and participated in a Q&A following his remarks. The below is an excerpt from a question Secretary Del Toro received during this Q&A:

Probably every single person in this room and anyone who is listening on the Livestream is watching what's going on in Iowa, South Carolina, New Hampshire. So my question to you is, in what way would the Secretary of the Navy speech next year differ given what may happen in terms of the U.S. presidential election, because so much of what you've said today, I think a good proportion of people in this room would find reassuring, and reflects strong transatlantic bonds, which many of us buy into. However, there's a deep concern, worry, amongst many people, not necessarily everyone here, about the U.S. adopting a more isolationist approach, a weakening of the relationship with NATO, and a very selective

¹ See 5 U.S.C. § 7323(a)(1) and 5 C.F.R. § 734.302.

approach in terms of geopolitics. So not necessarily the opposite of what you've been saying, but significantly different. And that's deeply worrying.

In response, Secretary Del Toro discussed the importance of collaborating with global allies and preventing international conflict. He then made the following statements:²

But I'm quite confident it will be me who gets to deliver that speech next year. And I don't say that kidding around either. The United States and the world need the mature leadership of President Biden. I did not support the President of the United States to become president, Commander-in-Chief, because I wanted a job. I supported him personally, because he is an individual of highest character, with the intelligence and the experience and the perseverance, to do the job, that not just the U.S. demands, but that the entire world, quite frankly, embraces. He is the protector of democracy around the globe. We cannot afford to have a president who aligns himself with autocratic dictators and rulers whose interpretation of democratic principles is suspicious [at] best. And who, quite frankly, confuses presidential candidates with our former speaker of the house, for that matter.³ And so I'm confident that the American people will step up to the plate come November and support President Biden for a second term as our Commander-in-Chief, so that we can continue to work together as free democratic countries respect each other around the globe. . . .

Later that day, Secretary Del Toro participated in a one-on-one recorded interview with Laura Kuenssberg on *BBC News Sunday*.⁴ Initially, Ms. Kuenssberg asked Secretary Del Toro a series of questions about the position of the Biden Administration on recent international conflicts. Then, the following exchange occurred:⁵

Kuenssberg: *There are many different conflicts. There's a situation [in the] Middle East, there's the ongoing situation between Ukraine and Russia. It all contributes to a nervous atmosphere in many parts of the world and amongst many Western leaders. You said a few minutes ago that the world should be worried by the prospect of Donald Trump becoming president again. Why did you say [that]?*

² The following transcript was provided by Secretary Del Toro. Any spelling or typographical errors are part of the original transcript.

³ Days before this Q&A event, the media reported on a statement former President Donald J. Trump made at a campaign rally in which he appeared to confuse then-presidential candidate Nikki Haley for former Speaker of the House Nancy Pelosi in the context of discussing the January 6, 2021 attack at the U.S. Capitol.

⁴ Portions of this recorded interview aired on *BBC News Sunday* on January 28, 2024, and the broadcasted interview is available online.

⁵ The following transcript was provided by Secretary Del Toro. Any spelling or typographical errors are part of the original transcript.

Del Toro: *Well, I said that because it's my strong conviction that President Biden has provided the mature leadership, both in the United States and stabilizing our economy, which was faced by many challenges early as he took office – rebuilding that economy, and building the national security relationships with our allies and partners around the globe, so that we could all benefit together economically and otherwise. And it is my humble opinion that the United States deserves that continued leadership in the way of President Biden. And I think the world does as well, too.*

Kuenssberg: *You said that President Trump was somebody who aligned himself with autocrats and dictators, and that the world should be worried by the possibility of him coming back to the White House. What is your worry?*

Del Toro: *Oh, my worry is that, you know, we as Americans, for as long as I can remember, certainly, since I served in uniform, you've had both Republican and Democratic presidents who've always abided by the core values of our country, protecting the freedoms of Americans and other people around the globe and protecting democracy itself. And when you have someone who doesn't align to those core principles, it makes you wonder, you know, should you be supporting that individual?*

Kuenssberg: *You said he had a suspicious attitude to democracy.*

Del Toro: *Absolutely so.*

Kuenssberg: *And what might the worst outcome then be for the security of the world? Do you think America could leave NATO? What impact might that have?*

Del Toro: *Well, I can't predict what the future would bring. But it will suffer, undoubtedly.*

Kuenssberg: *But what do you mean?*

Del Toro: *It will suffer because we won't have the benefit of the mature leadership that President Biden has provided the United States and the world. You know, his depth of foreign policy experience alone, the relationships that he's built with leaders throughout the world, is truly to be respected in a significant way. And it is what has allowed him to actually enhance relationships across the globe, with our allies and partners. And so that's what I believe will make the difference moving forward.*

Kuenssberg: *In terms of public perception in the United States, though, the maturity, the age of President Biden is a worry for many voters, even some Democratic voters. Now you know him well, you work closely with him. Should people be worried about that, because American voters do worry about that.*

Del Toro: *Now, some may. But I certainly don't worry about it as someone who has actually worked with him very closely on issues of national security. And I've seen him in action, talking about the economy and many other issues related to the United States. He is as sound as anyone that I know. And I think what truly makes a difference is the experience that he brings to the table after years of working in the foreign policy arena, as well as developing the economy of the United States in a really respectable way. And so for all those reasons, that's why I support him as president [of] the United States and my commander in chief.*

Kuenssberg: *Not just because you want to carry on being naval secretary...*

Del Toro: *Absolutely not. In fact, you know, when I campaigned for him, I didn't campaign for a job. I campaigned because I thought he was the best choice to be President of the United States, and I still have that strong conviction. And it is irrelevant to my serving as Secretary of the Navy in the future.*

Days later, on February 1, 2024, Secretary Del Toro sent OSC a letter about his *BBC News Sunday* interview and stated, “My intent in the interview was to respond with a focus on national security and the importance of strong international alliances. In retrospect, I believe my response should have been delivered more broadly without reference to specific candidates.”⁶

During OSC’s investigation, Secretary Del Toro responded to questions about his appearance on *BBC News Sunday*. He noted that his interview did not air in the United States and claimed that he had not been prepared for Ms. Kuenssberg’s “spontaneous” questions about former President Donald J. Trump.⁷ He also denied making the statements about President Trump that Ms. Kuenssberg attributed to him during the interview. He explained that he never specifically referenced President Trump, and that his statements to Ms. Kuenssberg – about individuals who do not support democratic values or who align themselves with autocrats and dictators – are applicable to any presidential candidate, not just President Trump specifically. And with respect to his statements during the Q&A, about supporting President

⁶ In his letter, he did not reference the remarks he made earlier that same day during the Q&A session at the Royal United Services Institute.

⁷ OSC found no evidence that President Trump or the 2024 presidential election were identified in advance as topics to be covered during this interview.

Biden for a second term, Secretary Del Toro denied making this statement for the purpose of encouraging others to vote for a particular candidate and instead said that it was just a statement of fact about his confidence in the President.

Since assuming office, Secretary Del Toro has received ample information about the Hatch Act and has had a team of ethics officials to advise him upon request. For example, prior to his trip to England in January 2024, he had participated in at least three Hatch Act briefings, all of which covered the Act's use of official authority prohibition. OSC confirmed that during these briefings, ethics officials advised Secretary Del Toro against making comments that advocate for or against candidates while acting in an official capacity – a restriction they believed he understood, as evidenced by the fact that he self-reported making political statements during the *BBC News Sunday* interview.

III. ANALYSIS

The Hatch Act restricts the political activity of “any individual, other than the President and the Vice President, employed or holding office in... an Executive agency other than the Government Accountability Office.”⁸ Secretary Del Toro was appointed by the President and confirmed by the Senate to be the Secretary of the U.S. Department of the Navy, a federal agency within the Executive branch. He was sworn into office on August 9, 2021. Accordingly, Secretary Del Toro is a federal employee subject to the Hatch Act.⁹

Among other things, the Hatch Act prohibits a federal employee from using his official authority or influence to interfere with or affect the result of an election.¹⁰ The attendant Hatch Act regulation gives examples of the type of activity this prohibition encompasses. For example, the regulation makes clear that an employee may not use his official title or position while participating in political activity.¹¹ Political activity is defined as activity directed at the success or failure of a political party, partisan political group, or candidate for partisan political office.¹² Thus, a federal employee violates the Hatch Act if he promotes the election or defeat of candidates for partisan political office while speaking in his official capacity.

It is undisputed that Secretary Del Toro was on official travel on January 25, 2024, and that he appeared in his official capacity as Secretary of the Navy when he participated in a Q&A

⁸ 5 U.S.C. § 7322(1).

⁹ In addition to the Hatch Act, Secretary Del Toro is subject to political activity rules for U.S. Department of Defense (DoD) political appointees under DoD Directive 1442.11 and prohibited from, among other things, “engaging in activities that create the appearance of DoD association or support for any partisan political cause or issue.” OSC makes no conclusion as to whether the Secretary violated this Directive.

¹⁰ See 5 U.S.C. § 7323(a)(1).

¹¹ See 5 C.F.R. § 734.302(b)(1).

¹² See 5 C.F.R. § 734.101.

at the Royal United Services Institute and was interviewed by *BBC News Sunday*. During both events, Secretary Del Toro expressed his electoral opposition to President Trump as a candidate. Then, hours later, he reiterated the same rhetoric during his *BBC News Sunday* interview and, when asked, took the opportunity to publicly explain why the world “should be worried” about President Trump winning the 2024 presidential election and how the world would “suffer” if he returned to the White House. Also, while challenging President Trump’s commitment to the “core values” of the United States, Secretary Del Toro questioned whether people should support such an individual.

Then, immediately following this rebuke of President Trump, Secretary Del Toro promoted President Biden’s reelection. First, during the Q&A, the Secretary spoke about the American people “step[ping] up to the plate come November,” and encouraged support of President Biden for a “second term as our Commander-in-Chief.” Later, during his *BBC News Sunday* interview, the Secretary expressed his belief that both the United States and the world “deserves [the President’s] continued leadership.” And in response to a question about voter concerns about President Biden’s age, he tried to assuage such concerns, and he expressed his “strong conviction” that President Biden is still the “best choice.”

While Secretary Del Toro has explained that his statements were applicable to any presidential candidate and asserted that he did not explicitly reference President Trump at either event, his explanation is not credible. For example, while discussing the type of president “we cannot afford to have,” he described a person who “confuses presidential candidates with our former Speaker of the House” – something President Trump reportedly did just days before this Q&A event. His references to President Trump were even clearer during his *BBC News Sunday* interview – Ms. Kuenssberg explicitly asked the Secretary about President Trump, and he not only directly answered her questions but also took ownership of the statements she attributed to him, using phrases like, “Well I said that because” and “Absolutely so.”

Similarly, Secretary Del Toro’s explanation of his supportive statements about President Biden, describing them as “a statement of fact,” lacks merit. The political nature of his comments – his explicit reference to the November election, his express hope that the American people will give President Biden a second term, and his description of why the very reasons he had initially campaigned for the President still apply – speaks for itself. His statements were not mere discussions of policy differences between Presidents Biden and Trump unconnected to the upcoming November presidential election. Secretary Del Toro’s statements with overt reference to the election conveyed electoral support for one candidate and opposition to another candidate, and thus, constituted political activity. Accordingly, because he made these statements while acting in his official capacity, he violated the Hatch Act.

OSC recognizes and appreciates that Secretary Del Toro self-reported his conduct during his *BBC News Sunday* interview, but this fact alone should not absolve him. As the head of the U.S. Department of the Navy, Secretary Del Toro had direct access to the agency's ethics officials, and while participating in agency Hatch Act briefings, he was advised against engaging in the type of conduct he exhibited while acting in his official capacity. In addition, Secretary Del Toro twice engaged in prohibited conduct during his trip to England – during his appearance on *BBC News Sunday*, as he self-reported, but also during a Q&A session earlier that day. Last, the fact that Secretary Del Toro's conduct occurred abroad and that the interview originally aired internationally does not lessen the political nature of the statements he made while acting in his official capacity as Secretary of the Navy.

In sum, although the Hatch Act permits federal employees, including senior civilian DoD officials such as Secretary Del Toro, to publicly support candidates and political parties in their *personal* capacity, it prohibits employees from engaging in such activity when they are acting in their *official* capacity. Here, Secretary Del Toro violated the Hatch Act, and twice while performing his official duties chose to impermissibly discuss his personal electoral views about Presidents Biden and Trump as candidates.

IV. CONCLUSION

The Hatch Act exists to protect the civil service system and to ensure our government is serving the public in a nonpartisan fashion. The Supreme Court, in discussing Congress's intent in enacting the Hatch Act, recognized the importance of these goals and understood that "it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent."¹³ To achieve this goal, all federal employees, including high level officials like Secretary Del Toro, must be held accountable.

OSC presents this Report of Prohibited Political Activity, together with Secretary Del Toro's response, to the President for appropriate action, pursuant to the authority described in 5 U.S.C. § 1215(b).

¹³ Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers, 413 U.S. 548, 565 (1973).

Michael R. Bromwich

[REDACTED]@steptoe.com

Steptoe

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

August 26, 2024

BY EMAIL

Honorable Hampton Dellinger
Special Counsel
Office of Special Counsel
1730 M Street, Suite 218
Washington, D.C. 20036-4505

Re: Response to OSC Report HA-24-000104 re Honorable Carlo Del Toro

Dear Special Counsel Dellinger:

This response is submitted in response to the Office of Special Counsel's (OSC's) Report in OSC File Number HA-24-000104 ("OSC Report") regarding the Honorable Carlos Del Toro, United States Secretary of the Navy, issued on August 6, 2024.

After an investigation prompted solely by Secretary Del Toro's self-report of comments he made in response to questions during an interview with a British reporter in the United Kingdom on the *BBC News Sunday* television program, OSC has concluded that Secretary Del Toro violated the Hatch Act. OSC bases its findings on comments made during the BBC interview, as well as comments he made during a question-and-answer session minutes earlier, following an official speech he delivered. These comments during the questions and answer session, like the comments during the BBC interview, were brought to the attention of the OSC by Secretary Del Toro. In short, the finding of a Hatch Act violation is based not on any prepared remarks given by Secretary Del Toro, but instead on fragments of answers he gave in response to specific questions asked by members of the foreign press corps.

The Hatch Act prohibits a federal employee, including a Presidential appointee, from engaging in conduct where he “use[s] his official authority or influence for the purpose of interfering with or affecting the result of an election.”¹ The regulations under the Act repeat the language of the statute and further define the relevant prohibition as “using his or her official title while participating in political activity.”² Even though Secretary Del Toro did no more than answer questions from reporters who attended his speech and during the subsequent BBC interview, the OSC finds that his spontaneous answers that were supportive of President Biden and expressed concern about Donald Trump constituted a prohibited political activity because it “promote[d] the election or defeat of candidates for partisan political office” while conducting official business, and therefore a violation of the Hatch Act.³

OSC’s finding of a Hatch Act violation is a mechanical and inappropriate application of the rules prohibiting the involvement of federal officials in political activities. It fails to appreciate the spontaneous and unpremeditated nature of the comments and, most importantly, the setting in which his comments were made – in another country to members of the UK press corps,⁴ and without any evidence that any eligible American voter other than members of his own staff and the US Embassy staff were in attendance or ever became aware of his remarks. A determination of a Hatch Act violation should depend, at least to some extent, on the time, manner, and context in which statements are made. OSC fails to take those factors into account and make a balanced judgment regarding whether Secretary Del Toro’s comments violated the Hatch Act. We reject the OSC’s conclusion that Secretary Del Toro’s comments either individually or as a whole violated the Hatch Act.

As the OSC Report states, Secretary Del Toro was in the United Kingdom in late January 2024 in connection with Operation Prosperity Guardian, a military initiative in response to Houthi attacks on shipping in the Red Sea. On January 25, 2024, Secretary Del Toro gave a prepared speech at the Royal United Services Institute that was broad in scope and addressed a wide range of challenges facing the US and UK around the world. [Secretary Del Toro Prepared Remarks, January 25, 2024](#). OSC does not claim, nor could it, that any of Secretary Del Toro’s prepared remarks were in any way inappropriate, much less a violation of the Hatch Act.

¹ 5 U.S.C. § 7323(a)(1).

² 5 CFR § 734.302(b)(1)

³ OSC Report at 6.

⁴ According to a list of the reporters who attended Secretary Del Toro’s speech, none of the reporters who attended the speech are employed by US media outlets.

The question-and-answer session that followed Secretary Del Toro's prepared remarks was spontaneous and unscripted. As the OSC points out in its Report, Secretary Del Toro was asked a question by a member of the foreign press that referred explicitly to the Republican primaries in the United States – "what's going on in Iowa, South Carolina, New Hampshire" – and about the risk that the US might, depending on the outcome of the election, adopt an isolationist stance that would imperil the strong transatlantic bonds between the US and the UK, a possibility that the reporter characterized as "deeply worrying." (OSC Report at 2-3). As part of a lengthy answer that the OSC Report acknowledges focused primarily on the importance of collaborating with allies and preventing international conflict, Secretary Del Toro praised President Biden for his character, intelligence, and experience, among other qualities, and contrasted those traits with political figures who sympathize with dictators and who lack a full commitment to democracy. The reporter's question was framed as a specific reference to Donald Trump, although Secretary Del Toro was careful not to mention Trump by name.

Several things are worth noting about these comments. First, Secretary Del Toro was responding to a question from a member of the British press who expressed concern about the potential disruption of the geopolitical relationships established by the Biden Administration. The question specifically referred to the Republican caucuses and primaries in the United States that had just taken place, which had been won by Trump. The question implied concern about his possible election and the potential disruption of those important geopolitical relationships – and the bilateral relationship between the US and the UK. Thus, Secretary Del Toro did not raise the issue but instead gave an answer to the question, with no intention to influence the election.

Second, the core of Secretary Del Toro's answer was not about the upcoming U.S. election but instead a discussion from his unique perspective as secretary of one of the US armed services of the importance of maintaining and strengthening the relationship between the United States and the United Kingdom in dealing with issues around the world.

Third, to state the obvious, the United Kingdom is not the United States, and the expectations for the UK's political appointees are a world apart from the restrictions imposed by the Hatch Act. In the context of a speech attended exclusively by British reporters, a more measured and less responsive answer to the questions highlighted in the OSC Report would quite possibly have been taken for a lack of support for President Biden. In the UK's parliamentary system, a more measured and less supportive answer would be taken for lack of support for the government and possibly serve as grounds for dismissal from the government. We are advised that there is nothing like the Hatch Act in the UK that applies to political appointees.

The subsequent interview with the BBC's Laura Kuennsberg, which was the original predicate for the OSC investigation, raises the same concerns about the OSC finding of a Hatch Act violation. Although the OSC Report focuses on several statements made by Secretary Del Toro, it fails to note that the supportive comments for President Biden were only a part of the interview, the early portions of which focused on international affairs. And, importantly, it was not Secretary Del Toro who took the interview in the direction of addressing the implications of the upcoming election for the US's role in the world; it was the interviewer. She did so with a sequence of seven separate but related questions focused on that topic. Secretary Del Toro's answers were generally responsive but restrained. Again, one alternative would have been for Secretary Del Toro to decline to answer the questions or answer in a less responsive way. However, it is clear from the transcript that Ms. Kuennsberg is a skilled and persistent interviewer. Failing to be responsive may well have suggested to her – and the BBC audience – that Secretary Del Toro was not fully supportive of the US President. That could well have proved embarrassing on the international stage to Secretary Del Toro, President Biden, and the Biden Administration. The during-interview or after-the-fact explanation that Secretary Del Toro was simply observing the restrictions of the Hatch Act would have been unpersuasive.

It is difficult to understand how the Hatch Act's prohibition on engaging in conduct that is "for the purpose of interfering with or affecting the result of an election" applies to Secretary Del Toro's statements. His purpose was to be responsive to questions asked by foreign reporters. Again, there is no evidence that any member of the audience for any of Secretary Del Toro's statements, other than his own staff and the US Embassy staff, is eligible to vote in US elections.⁵ The determination that his statements violated the Hatch Act ignores the context in which the statements were made. Moreover, the full context of the statements is what persuaded members of his staff, including his counsel and ethics officer, that his statements did not violate the Hatch Act.

Finally, the OSC Report acknowledges that Secretary Del Toro self-reported his statements to OSC in the face of the views of his staff that he committed no Hatch Act violation, but the Report minimizes the importance of doing so. The OSC's mission relies on the voluntary observance of the Hatch Act's prohibitions and the reporting of any potential violations. The importance of self-reporting and voluntary disclosure is

⁵ Our Internet search for articles found no references to any of Secretary Del Toro's comments at either the question-and-answer session or the BBC interview.

stressed by many federal agencies, most recently by the Department of Justice,⁶ which reward voluntary self-disclosure by exercising prosecutorial or regulatory discretion not to pursue individuals or corporate entities which have voluntarily self-disclosed. Secretary Del Toro's diligent self-reporting should factor into the OSC's ultimate determination in this case.

For all the reasons described above, the OSC should withdraw its finding that Secretary Del Toro's statements violated the Hatch Act and close the matter without any referral to the President.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bromwich". The signature is fluid and cursive, with the first name "Michael" and last name "Bromwich" clearly legible.

Michael R. Bromwich

cc: Kelley Resendes, Esq.

⁶ The Department of Justice's Voluntary Self-Disclosure policy, announced in March, 2024, established principles of non-prosecution in cases where DOJ first learns of potentially unlawful conduct as the result of voluntary self-disclosure and full cooperation. <https://www.justice.gov/corporate-crime/voluntary-self-disclosure-and-monitor-selection-policies>; <https://www.justice.gov/opa/blog/criminal-divisions-voluntary-self-disclosures-pilot-program-individuals>