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July 18, 2025

Dear Acting Special Counsel and Acting Director Greer:

We write to request that you investigate possible violations of the Hatch Act, as well as misuse of official position, 5 CFR § 2635.702, by Alina Saad Habba, who previously served as Counselor to the President, and who recently was appointed Acting United States Attorney for the District of New Jersey.

The Hatch Act expressly forbids federal employees from using official authority to assist a political campaign or to influence an election.¹ Office of Government Ethics ("OGE") ethics rules also prohibit use of official position for private gain or to endorse a nongovernmental enterprise, including a political campaign.² Violations of the Hatch Act and of OGE ethics rules are not permissible in any circumstances. Hatch Act violations and ethics violations are of even greater concern for those serving in the Department of Justice which is responsible for upholding and enforcing federal law.

On March 27, 2025, Ms. Habba was interviewed by Jack Posobiec for the *Human Events Daily* show, which is a news program featured on the *Real America's Voice* network.³ Mr. Posobiec announced at the beginning of the interview that it was being conducted in the Eisenhower Executive Office Building located in the White House complex. Mr. Posobiec then introduced Ms. Habba by her official title as Counselor to the President. The interviewer next asked Ms. Habba about the recent announcement by President Trump that he would be appointing her as the interim U.S. Attorney for the District of New Jersey. Ms. Habba confirmed that she would begin her new position the following week.

¹ See 5 U.S.C. § 7323 (providing that "(a) Subject to the provisions of subsection (b), an employee may take an active part in political management or in political campaigns, except an employee may not ... use his official authority or influence for the purpose of interfering with or affecting the result of an election.").

² See 5 C.F.R. § 2635.702 (providing that "An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise...").

³ Human Events Daily with Jack Posobiec, *Alina Habba Will Make New Jersey Safe Again*, Real America's Voice (Mar. 27, 2025), <https://americasvoice.news/video/bLdbdOiJSvxnUao/>.

During the course of the interview, at around the 8:55 minute mark, the interviewer brought up trends he was seeing in New Jersey elections.⁴ The interviewer prefaced his next remarks by acknowledging that Ms. Habba couldn't talk about elections, but he then went on to state:

We certainly saw the results last time around, and New Jersey was very, very close and I think that's something that with proper governance could potentially be a trend that continues.⁵

In response to his remark, Ms. Habba stated:

Yeah, I hope so. I hope so. We could turn New Jersey red. I really do believe that. There is momentum right now. President Trump's agenda is working. The American people voted for it. 80 million people voted for it. And I think New Jersey is absolutely close to getting there. So hopefully while I'm there I can help that cause. And I'm not a political person in that role. But I can tell you that the one thing I just want to do is make it safer. And once they see that our policies do work... they work. Kicking illegals out, kicking criminals out that are acting as terrorists - that are hurting our people. ... And strengthening the men and women that are wearing uniforms. We have to give them their power back. I think that they lost it for a period of time in this country. So I can't wait to invigorate them and really have their backs.⁶

Ms. Habba appropriately discussed the President's law enforcement priorities at the meeting. That is part of the job of a United States Attorney. She should not, however, in the same speech connect those policies to future election results by saying that "we could turn New Jersey red." She is expressly encouraging voters to support the President's policies by electing Republicans. That crosses the line from an official statement to a political statement.

The Hatch Act regulation makes clear that it is a prohibited use of official authority for employees to use their official title or position while participating in political activity, which is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.⁷

The Office of Special Counsel ("OSC") has previously found multiple White House appointees violated the Hatch Act during the first Trump Administration when speaking in an official capacity during media interviews they referenced an upcoming election campaign and endorsed a political party or candidate.⁸ OSC explained that the "Hatch Act has been understood to prohibit partisan political activity undertaken as a government employee—such as by using an official

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See 5 C.F.R. § 734.302(b)(1); 5 C.F.R. § 734.101.

⁸ Office of Special Counsel, *Investigation of Political Activities by Senior Trump Administration Officials During the 2020 Presidential Election* (Nov. 9, 2021), <https://osc.gov/Documents/Hatch%20Act/Reports/Investigation%20of%20Political%20Activities%20by%20Senior%20Trump%20Administration%20Officials%20During%20the%202020%20Presidential%20Election.pdf>

title in connection with one's political activity—which risks implying that the government itself has a preference for one political party or candidate over another."⁹

The Hatch Act must be enforced without regard to party affiliation. When President Biden's Press Secretary violated the Hatch Act by referring to "MAGA Republicans" in an official briefing, several government ethics lawyers objected. The Office of Special Counsel found a violation.¹⁰ The fact that the Office of Special Counsel is part of the Executive Branch under the President, makes no difference. The President's appointees are bound by the law like everyone else. Your offices should take appropriate action on these matters without delay.

Ms. Habba's political speech during an official interview appears to violate the Hatch Act. This is no trivial matter – given that she acknowledged that she would soon be embarking on a role in the Department of Justice in which politics has no place. U.S. attorneys are Officials of the Department and also must obey the law.

The Office of Special Counsel should investigate.

A similar investigation should be undertaken with respect to the OGE ethics rule prohibiting misuse of official position. 5 CFR § 2635.702. Even if the president is not personally subject to the OGE rules, other federal officials are subject to the rules, and actions taken by them even upon the president's orders can still be misuse of official position.

Respectfully,

/s/

Norman Eisen

Former Special Counsel to President Barack Obama

/s/

Virginia Canter

Former Associate Counsel to President Barack Obama and President Bill Clinton

/s/

Richard W. Painter

Former Associate Counsel to President George W. Bush

⁹ *Id.* at 9.

¹⁰ Letter from Chief, Hatch Act Unit, Office of Special Counsel to Director, Protect the Public's Trust (June 7, 2023), https://www.washingtonpost.com/documents/139f8223-99e4-4ac1-84f3-a9bddd1ad9f8.pdf?itid=lk_inline_manual_4