

Congress of the United States

Washington, D.C. 20515

August 25, 2020

The Honorable Stephen E. Biegun
Deputy Secretary
Department of State
2201 C Street, N.W.
Washington D.C. 20520

Deputy Secretary Biegun:

I write concerning Secretary of State Mike Pompeo's decision to speak at a partisan political event, the Republican National Convention, on August 25, 2020. It is highly unusual, and likely unprecedented, for a sitting Secretary of State to speak at a partisan convention for either of the political parties. It appears that it may also be illegal.

According to documents obtained by the Foreign Affairs Committee, it is readily apparent that the Secretary's choice to speak at a political convention may violate the Hatch Act, government-wide regulations implementing that Act, and State Department policies, as described in guidance from the Office of the Legal Adviser.¹ This guidance was circulated to Department employees over your own signature less than a month ago.² In furtherance of the constitutionally mandated obligation to conduct oversight of the State Department, as well as to determine whether and legislative action is necessary, to address this matter, the Subcommittee on Oversight and Investigations intends to examine this issue carefully. Accordingly, I seek written answers and documents as set forth below.

Media reports have revealed that Secretary Pompeo's speech was filmed on August 24, 2020 while he was visiting Jerusalem on official U.S. business. The State Department has claimed that the speech is appropriate because Secretary Pompeo did not use his official title or any State Department resources or staff, and an unnamed source recently told *McClatchy* that "[Pompeo's] lawyer, the State Department lawyers, RNC lawyers, White House lawyers have all worked on his appearance to make sure it is completely lawful and appropriate."³ The Secretary, however, has not made any of this supposed legal analysis public. Instead, the legal analysis that has come to light shows precisely the opposite.

¹ Memorandum from the Office of the Legal Adviser to All Presidential Appointees and All Political Appointees, December 3, 2019 (online at: <https://foreignaffairs.house.gov/cache/files/e/e/eed06418-12ee-496f-8476-8c266c53ddb6/8F33EFAA29B676D27832D35876407707.hatch-act.pdf>)

² See Cable to All Diplomatic and Consular Posts Collective, July 24, 2020, signature: Pompeo re: "2020 Hatch Act/Political Activities" (online at: <https://foreignaffairs.house.gov/cache/files/8/0/805ea04a-93b3-46c0-8baf-8a2d37b16730/4265E7B626B880B793C28C23199903C2.20-state-71636eml.pdf>).

³ Michael Wilner, "Lawyers Examined Pompeo's Plan to Address GOP Convention From Jerusalem, Aides Say," *McClatchy*, August 23, 2020.

In a December 2019 memorandum made available to all State Department employees, the Office of the Legal Adviser makes clear that “[t]he Department has a long-standing policy of limiting participation in partisan campaigns by its political appointees in recognition of the need for the U.S. Government to speak with one voice on foreign policy matters.”⁴ Using both bold type and italics (lest there be any confusion), the memo specifically notes that, under a variety of laws and regulations, including “the provisions of the Hatch Act . . . government-wide regulations implementing that Act, and State Department policies,” Senate-confirmed political appointees such as Secretary Pompeo “***may not even attend a political party convention or convention-related event.***”⁵ It appears incontrovertible that the Secretary’s speech to the RNC violates this prohibition.

Secretary Pompeo was on official travel – funded on an apolitical basis by every American taxpayer – when the speech was pre-recorded and likely will be on official business when it will be shown at the RNC. Similarly, he was outside the United States when the speech was recorded and will be outside the United States when it airs. This is a flagrant violation not only of the laws, regulations and policies summarized in the December 2019 memorandum, but also of the Foreign Affairs Manual, which prohibits not just State Department employees, but also their spouses or family members from “engag[ing] in partisan political activities abroad.”⁶

Mr. Deputy Secretary, I applaud the example you set in your February 18, 2020 email to the State Department’s entire workforce where you recognized the prohibition on Senate-confirmed officials participating in political events like the party conventions when you wrote: “as a Senate confirmed Department official, I will be sitting on the sidelines of the political process this year and will not be attending any political events, to include the national conventions.” The Department’s previous cited legal guidance unambiguously applies the same standard to the Secretary.

In light of this very serious apparent violation, and to obtain more information on the underlying events, I ask that you provide a written response to the following questions **no later than September 1, 2020 and arrange for a briefing with the State Department by that date:**

- What legal guidance was prepared, by whom, and when, authorizing Secretary Pompeo’s speech to the RNC?
- Precisely which attorneys comprised the “four teams of lawyers” who reportedly approved the Secretary’s speech, despite the unambiguous prohibition set forth in the December 3, 2019 memo from the Office of the Legal Adviser?
- What Department of State resources, if any, were used to organize this event, including transportation, coordination with the host government, diplomatic security, and lodging? For instance, were any State Department officials—including the U.S.

⁴ Memorandum from the Office of the Legal Adviser to All Presidential Appointees and All Political Appointees, December 3, 2019.

⁵ *Id.* (emphasis in original).

⁶ *See* 3 FAM 4123.3

Ambassador to Israel and our Embassy officials (both in Jerusalem and Tel Aviv)—involved in securing the King David Hotel for the site of the speech?

- Were any Department of State employees, including support and security staff, present at the location where the Secretary of State made this address? If so, what employees were present and what responsibilities did they carry out?
- Will the Department of State be incurring all costs related to airfare to Israel or travel between countries on this trip? If not, what parts and/or percentages of the costs will be reimbursed by outside groups, including the RNC and the Trump campaign?
- When was the Department of State first made aware of the Secretary's intention to make this address from Jerusalem while on a trip abroad?
- Has the Government of Israel or any of its officials raised any concerns about the partisan nature of this speech and how it could impact bipartisan support for Israel in the United States?
- When did the Department of State first start planning this trip to the region? Did the Department of State initiate the trip to Israel? Did Secretary of State Pompeo or any of his staff members ask the Government of Israel to host him in Jerusalem on this date?
- Has the trip itinerary changed in any way to accommodate the Secretary's decision to make this address from Jerusalem?
- Will you be making any referrals to the Department of State Office of Inspector General or the U.S. Office of the Special Counsel regarding these actions and violations of the Hatch Act and Department policy?

In addition, to assist the Subcommittee in investigating whether any legislative actions are needed, including strengthening the effectiveness of the Hatch Act, I ask you provide the following documents to me **by September 10, 2020**:

- Any and all records prepared by or sent to or from the Office of the Legal Adviser on or after December 3, 2019 regarding restrictions on political activities by Secretary Pompeo or Presidential Appointees or Political Appointees; and
- A list of expenditures from the trip during which Secretary Pompeo recorded his remarks to the RNC, including receipts demonstrating that any expenses incurred by the State Department were reimbursed by the RNC, Trump's campaign, or other outside sponsors.

Given the importance to our democracy in ensuring that public resources are not used for improper campaign purposes—a principle that is particularly important in the conduct of the Nation's foreign policy—I look forward to working with you to address this important issue.

Sincerely,

JOAQUIN CASTRO

JOAQUIN CASTRO

Chairman, Subcommittee on Oversight and Investigations
House Foreign Affairs Committee

CC:

Office of the Legal Adviser, Department of State
Office of the Inspector General, Department of State
United States Office of Special Counsel