



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

July 18, 2016

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

Re: OSC File No. HA-16-3113

Dear Mr. President:

Pursuant to 5 U.S.C. § 1215(b), I am forwarding to you the investigative findings of the U.S. Office of Special Counsel (OSC) regarding a complaint alleging prohibited political activity by Secretary of Housing and Urban Development Julián Castro, together with Secretary Castro's response.

As explained in the accompanying report, OSC concluded that Secretary Castro violated the Hatch Act by advocating for and against Presidential candidates while giving a media interview in his official capacity on April 4, 2016. Secretary Castro's statements during the interview impermissibly mixed his personal political views with official agency business despite his efforts to clarify that some answers were being given in his personal capacity.

The Hatch Act prohibits federal employees from using their official authority or influence to affect the outcome of an election. While federal employees are permitted to make partisan remarks when speaking in their personal capacity, the Hatch Act restricts employees from doing so when using an official title or when speaking about agency business.

As the upcoming Presidential election approaches, this report offers an opportunity to deter violations by reminding federal employees of the Hatch Act's restrictions.

Respectfully,

A handwritten signature in blue ink that reads "Carolyn N. Lerner".

Carolyn N. Lerner

Enclosures



U.S. OFFICE OF SPECIAL COUNSEL

Report of Prohibited Political Activity Under the Hatch Act OSC File No. HA-16-3113 (Julián Castro)

June 24, 2016

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 General Counsel Lisa V. Terry at (202) 254-3600.

I. INTRODUCTION

This report contains the U.S. Office of Special Counsel's (OSC) investigative findings in OSC File Number HA-16-3113, a complaint of prohibited political activity. The April 11, 2016 complaint alleges that Secretary of Housing and Urban Development (HUD) Julián Castro violated the Hatch Act by using his official authority or influence to affect the outcome of an election during an April 4, 2016 interview on Yahoo News. Upon receipt of the complaint, OSC investigated whether Secretary Castro engaged in the alleged activity.

As detailed below, OSC has determined that Secretary Castro violated the Hatch Act, 5 U.S.C. § 7323(a)(1) and 5 C.F.R. § 734.302. Thus, pursuant to the authority described in 5 U.S.C. § 1215(b), OSC presents this report for appropriate action.

II. FACTUAL FINDINGS

Julián Castro was appointed by the President and confirmed by the Senate to be the Secretary of HUD, a federal agency within the Executive branch. He was sworn into office on July 28, 2014.

A. *Yahoo News requested an interview with Secretary Castro to discuss his work at HUD, the growth of cities, politics, and the upcoming 2016 election.*

In late February 2016, Yahoo News requested an interview with Secretary Castro to be conducted by Yahoo Global News Anchor Katie Couric. Secretary Castro was not personally involved in discussions about the interview with Yahoo News; HUD's Office of Public Affairs (OPA) coordinated the interview on his behalf. According to Secretary Castro, Yahoo News indicated that the interview would focus primarily on HUD's activities, consistent with Ms. Couric's series "Cities Rising: Rebuilding America."

In email communications between OPA and Yahoo News, OPA proposed that Secretary Castro discuss HUD's prosperity playbook tour, the growth and importance of cities, closing the digital divide, and important topics for the upcoming election season. In response, Yahoo News indicated that the interview would likely focus on the 2016 election and Secretary Castro's role as a surrogate for Presidential candidate Hillary Clinton. OPA noted in an email to Yahoo News that it could not arrange an interview focused exclusively on the Presidential election and if that was the intent, then it "would need to re-direct to HRC or the DNC to arrange." Ultimately, OPA agreed that Secretary Castro would be able to discuss both HUD work and the upcoming election in the interview "with some balance."

On April 1, 2016—three days before the interview—OPA sent Secretary Castro a two-page event briefing memorandum. The memo began with bolded bullet points, one of which advised that Secretary Castro "will discuss [his] work at HUD (Prosperity Playbook, ConnectHome), growth of cities, politics and upcoming 2016 election." It further described the potential topics of the interview to include his work at HUD, the century of cities, key issues in

this upcoming election, and his time as surrogate this campaign season. No specific questions were provided to Secretary Castro by OPA or Yahoo News in advance of the interview.

B. During the interview on Yahoo News, Secretary Castro discussed HUD programs, his support of Presidential candidate Hillary Clinton, and how Presidential candidate Donald Trump is unprepared to be President.

Ms. Couric conducted the April 4, 2016 interview of Secretary Castro on Yahoo News remotely from New York. Throughout the 18-minute interview, Secretary Castro was in HUD's broadcast studio in Washington, D.C., with the official HUD seal visible behind him.¹

Ms. Couric introduced Secretary Castro as the former mayor of San Antonio, Texas, the keynote speaker at the 2012 Democratic Convention, the current Secretary of HUD, and a potential Vice Presidential candidate. The interview began with Secretary Castro discussing ConnectHome, a HUD program to expand Internet access to families in public housing. He then discussed the affordable housing crisis in America, home ownership, the difficulties of getting a home loan, and the National Housing Trust Fund, another HUD initiative.

About seven minutes into the interview, Ms. Couric said, "Mr. Secretary, let's move on to politics," and asked him about his endorsement of Presidential candidate Hillary Clinton. Secretary Castro responded by saying, "now taking off my HUD hat for a second and just speaking individually, it is very clear that Hillary Clinton is the most experienced, thoughtful, and prepared candidate for President that we have this year." He then discussed her accomplishments as Secretary of State before criticizing the Republican Party and its candidates for President. In response to Ms. Couric's question about Hillary Clinton's ability to get the electorate excited, Secretary Castro said that he thinks there is excitement about her campaign, which is why she is winning. He also said that the competitive primary election has been good for the Democratic Party and has shown "in full force" how talented and prepared Hillary Clinton is to be President. Secretary Castro went on to say, "in the end, the American people understand that she has a positive vision for the country that includes opportunity for everybody, and she can actually get it done." He then disputed Ms. Couric's statement that Hillary Clinton has lost support from Hispanics and African Americans and stated that he is confident she will win and be a fantastic President.

Later in the interview, Ms. Couric asked Secretary Castro what makes him most fearful about Donald Trump being President. Secretary Castro responded that Mr. Trump is not prepared for the office of President because Mr. Trump does not understand what leadership or being President is about, or the basic functions of our government or its relationships with other countries. Ms. Couric then asked him whether he would be interested in being Hillary Clinton's Vice Presidential candidate. Secretary Castro said he did not think that was going to happen. He further stated:

¹ Video of the interview is available at: <https://www.yahoo.com/katiecouric/julián-castro-on-clinton-vp-potential-and-152611457.html>.

What I am interested in, though, is trying to do a great job here at HUD and serving the people that we do serve, folks that are of modest means but who deserve our attention and our efforts. And so I don't believe that is going to happen, but I am supportive of Secretary Clinton and I believe she is going to make a great President.

Ms. Couric continued to refer to Secretary Castro as Mr. Secretary throughout the interview.

- C. *Secretary Castro asserted that, at the time of the interview on Yahoo News, he believed that he was acting in accordance with the Hatch Act.*

Secretary Castro testified that at the time of the interview with Ms. Couric, he believed that his conduct and statements were consistent with his understanding of the Hatch Act. Since that time, he has reconsidered this position. Specifically, he has since stated:

Based on the information I received regarding the interview in advance of the meeting, I expected that Ms. Couric's questions would focus primarily on HUD's activities and the growth of cities. When, during the live broadcast, I received the direct questions regarding specific candidates, I used the inelegant phrase "taking off my HUD hat" to indicate my intention to respond in my personal capacity, and not as a representative of HUD. My aim was to make clear to anyone viewing the broadcast that, when answering those direct questions regarding candidates, I was not acting in my official capacity ... I now have watched the recording of the interview and appreciate that, while my intention was to avoid any blurring of roles and make clear that I was not speaking as a representative of HUD, that fact may not have been obvious to viewers. At the time, I believed that, so long as I clearly stated that I was not speaking in my official capacity, my actions would be consistent with Hatch Act requirements. I now understand that the mixed-topic interview, even with a proviso, is problematic.

In addition, Secretary Castro expressed regret about his actions during the interview and stated that he never intended to violate, or to be perceived as violating, any federal law. He also stated that he takes his Hatch Act responsibilities seriously and noted that since concern about the interview was brought to his attention, he has sought additional Hatch Act training for himself and OPA employees. Secretary Castro said that he is "confident no similar blurring of roles will occur in the future" and pointed to a subsequent interview, during which he declined to comment about Presidential candidates when appearing in his official capacity as Secretary.

D. Secretary Castro was advised of the Hatch Act.

Since beginning his appointment in July 2014, Secretary Castro has received four briefings on the Hatch Act, including one in February 2016. HUD ethics officials advised him that when speaking in his official capacity as Secretary, his appearance must remain official and not become political. An ethics official testified that they specifically advised Secretary Castro how to handle political questions when he is speaking in his official capacity by stating that he is not there to talk about politics. Conversely, they advised him that when speaking at a political event in his personal capacity, he should not talk about HUD or use the title Secretary. An ethics official testified that during one briefing, Secretary Castro asked how to handle reporters' questions about HUD when he is at a political event. The ethics official advised him that he should tell the reporter he is at a political event in his personal capacity, and thus, cannot answer questions about HUD. The ethics officials testified that, based on the information Secretary Castro was given, they believe that he should have known that he could not switch from speaking in his official capacity to speaking in his personal capacity at an event or during an interview.²

III. ANALYSIS

A. Secretary Castro is subject to the provisions of the Hatch Act.

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." 5 U.S.C. § 7322(1). The Secretary of HUD is holding office in an Executive agency and thus is subject to the Hatch Act's restrictions on political activity. *See* 5 U.S.C. § 101 (identifying HUD as an Executive department) *and* 5 U.S.C. § 105 (defining "Executive agency" as an "Executive department, Government corporation, or independent establishment").

B. Secretary Castro violated the Hatch Act during his interview on Yahoo News.

The Hatch Act prohibits a federal employee from using his official authority or influence to interfere with or affect the result of an election. *See* 5 U.S.C. § 7323(a)(1). The attendant Hatch Act regulation gives examples of the type of activity this prohibition encompasses. For example, it is a use of official authority or influence to affect an election when an employee uses his official title while participating in political activity. *See* 5 C.F.R. § 734.302(b)(1). Political activity is defined as activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group. *See* 5 C.F.R. § 734.101.

When Ms. Couric interviewed Secretary Castro, she introduced him as Secretary, the official HUD seal appeared behind him, and he spent the first seven minutes talking exclusively

² The advice Secretary Castro received from HUD ethics officials is consistent with previously issued White House guidance on the Hatch Act, which advised that when appearing in one's official capacity, an agency official should not advocate for the election or defeat of candidates or political parties.

about HUD programs and initiatives. As such, Secretary Castro gave the interview in his official capacity. Although he stated during the interview that he was “taking off my HUD hat for a second and just speaking individually,” to indicate he was answering questions in his personal capacity, that disclaimer could not negate the fact that he was appearing in his official capacity for the rest of the interview, as the official HUD seal remained behind him and his political comments were bracketed by statements concerning official HUD policies and programs. For example, during the discussion of the Presidential election, when Ms. Couric asked him about being a Vice Presidential candidate, Secretary Castro emphasized the fact that he was most interested in doing “a great job here at HUD.” Thus, because he advocated for and against Presidential candidates while appearing in his official capacity, Secretary Castro violated the Hatch Act’s prohibition against using one’s official authority or influence to interfere with or affect the result of an election.

IV. CONCLUSION

While the Hatch Act allows federal employees, including cabinet secretaries, to express their personal views about candidates and political issues as private citizens, it restricts employees from using their official government positions for partisan political purposes. In passing this law, Congress intended to promote public confidence in the Executive branch by ensuring that the federal government is working for all Americans without regard to their political views. Despite his efforts to clarify that he was speaking only for himself and not as a HUD official when answering political questions, Secretary Castro’s statements impermissibly mixed his personal political views with official government agency business.

The U.S. Constitution provides the President with authority to appoint officers of the United States such as Secretary Castro, by and with the advice and consent of the Senate. In light of the President’s constitutional authority, Congress has determined that violations by such officers be referred to the President. *See* 5 U.S.C. § 1215(b). Accordingly, OSC hereby submits this Report of Prohibited Political Activity, together with Secretary Castro’s response, to the President.