



U.S. OFFICE OF SPECIAL COUNSEL

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December 7, 2020

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

RE: OSC Case File No. HA-20-000279

Dear Mr. President:

Pursuant to 5 U.S.C. §1215(b), I am forwarding the U.S. Office of Special Counsel's (OSC) investigative findings regarding allegations that Dr. Peter Navarro, Assistant to the President and Director of the Office for Trade and Manufacturing Policy, engaged in prohibited political activity. As detailed in the accompanying report, OSC concluded that Dr. Navarro violated the Hatch Act on several occasions when he engaged in political activity in his official capacity. In accordance with 5 U.S.C. §1215(b), OSC provided Dr. Navarro with an opportunity to respond to the report, but he has chosen not to do so. Therefore, OSC submits this report to you for appropriate action.

Respectfully,

A handwritten signature in black ink, appearing to read "Henry J. Kerner". The signature is stylized and written in a cursive-like font.

Henry J. Kerner
Special Counsel

Enclosure



U.S. OFFICE OF SPECIAL COUNSEL

**Report of Prohibited Political Activity Under the Hatch Act
OSC File No. HA-20-000279 (Peter Navarro)**

November 18, 2020

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 contains the findings and conclusions of the U.S. Office of Special Counsel's (OSC) investigation of allegations that Dr. Peter Navarro, Assistant to the President and Director of the Office for Trade and Manufacturing Policy, violated the Hatch Act by using his official authority or influence to interfere with or affect the result of the 2020 presidential election through both media appearances and social media. As detailed below, OSC substantiated the allegations and concluded that Dr. Navarro violated the Hatch Act. Accordingly, OSC submits this Report of Prohibited Political Activity to President Donald J. Trump for appropriate disciplinary action.¹

II. LEGAL STANDARD REQUIRED TO ESTABLISH A HATCH ACT VIOLATION

For purposes of the Hatch Act, an employee is defined as “any individual, other than the President and the Vice President, employed or holding office in ... an Executive agency other than the Government Accountability Office.”²

The Hatch Act prohibits (1) federal Executive branch employees (2) from using their official authority or influence (3) for the purpose of interfering with or affecting the result of an election.³ The attendant Hatch Act regulation gives examples of the type of activity this prohibition encompasses.⁴ For example, the regulation makes clear that it is a prohibited use of official authority for an employee to use his official title or position while participating in political activity.⁵ 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.⁶ Thus, a covered 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 or using an official social media account.

III. INVESTIGATIVE FINDINGS

OSC's investigation determined that Dr. Navarro violated the Hatch Act's prohibition against using his official authority or influence to affect an election by engaging in political activity during official media appearances and on his official Twitter account. From May 26 through October 19, 2020, during at least six media interviews where he appeared in his official capacity as Assistant to the President and Director of the Office on Trade and Manufacturing Policy, Dr. Navarro repeatedly attacked presidential candidate Joe Biden and/or vice-presidential candidate Kamala Harris. Dr. Navarro often attacked Mr. Biden about his relationship with China and at times accused him of being “compromised” and susceptible to being “bought” by China, even nicknaming him “Beijing Biden.” Dr. Navarro also argued that a Biden presidency

¹ See 5 U.S.C. § 1215(b).

² 5 U.S.C. § 7322(1).

³ See 5 U.S.C. § 7323(a)(1).

⁴ See 5 C.F.R. § 734.302.

⁵ See 5 C.F.R. § 734.302(b)(1).

⁶ 5 C.F.R. § 734.101.

would be devastating to the U.S. economy, and he disparaged vice-presidential candidate Kamala Harris, calling her a mouthpiece who cannot be taken seriously. On his “@PeterNavarro45” Twitter account, which he often used for official purposes, Dr. Navarro engaged in similar partisan attacks, repeating his “Beijing Biden” nickname for Mr. Biden and accusing him of being “soft” on China and a plagiarist. Moreover, Dr. Navarro’s violations of the Hatch Act were knowing and willful. He committed these violations after having received training on the Hatch Act and, for most of the violations, while knowing that OSC was investigating him for engaging in the same prohibited political activity.

A. Dr. Navarro is subject to 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.”⁷ The White House Office is a component of the Executive Office of the President, which is considered an Executive agency for purposes of the Hatch Act.⁸ Dr. Navarro serves in the White House Office as Assistant to the President and Director of the Office for Trade and Manufacturing Policy.⁹ Therefore, as a presidential appointee employed by the White House Office, Dr. Navarro is a federal employee subject to the Hatch Act.

B. Dr. Navarro knew about the Hatch Act and its requirements.

As a federal employee in the White House Office, Dr. Navarro received mandatory ethics training, which included training on the Hatch Act. The White House Counsel’s Office confirmed that all White House employees received this training. Thus, Dr. Navarro was aware of the Hatch Act and its requirements.

More specifically, on July 21, 2020, after having received a complaint regarding Dr. Navarro’s media interview on May 26, 2020 (discussed *infra*), OSC sent Dr. Navarro a letter asking him, *inter alia*, the meaning and purpose of his statements about presidential candidate Biden. An attorney from the White House Counsel’s Office replied on his behalf on September 4, 2020. This July 2020 letter put Dr. Navarro on notice of the Hatch Act allegations OSC was investigating.

⁷ 5 U.S.C. § 7322(1).

⁸ See 19 U.S. Op. Off. Legal Counsel 103 (May 5, 1995), 1995 WL 1767065 (concluding that for Hatch Act purposes, the White House Office is an Executive agency); 27 U.S. Op. Off. Legal Counsel 118 (May 23, 2003), 2003 WL 25728359 (reaffirming conclusion that the Hatch Act applies to employees of the White House Office).

⁹ See <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-establishment-office-trade-manufacturing-policy/> (establishing the Office for Trade and Manufacturing Policy within the White House Office).

C. Dr. Navarro repeatedly attacked 2020 presidential candidate Joe Biden during official media interviews.

Dr. Navarro heads the Office for Trade and Manufacturing Policy, which was established “to defend and serve American workers and domestic manufacturers.”¹⁰ In his role, Dr. Navarro advises the president on “policies to increase economic growth, decrease the trade deficit, and strengthen America’s manufacturing and defense industrial bases.”¹¹ Dr. Navarro regularly gives official media interviews promoting the president’s agenda, particularly about the economy and trade.¹²

At issue here are a number of interviews Dr. Navarro gave in his official capacity.¹³ In each of the interviews he was introduced as Assistant to the President and Director of the Office on Trade and Manufacturing Policy or as the White House Trade Advisor, and during the interviews the chyrons read, “Peter Navarro, White House Trade Advisor” or “Peter Navarro, Assistant to the President.” He appeared to be speaking from the White House grounds during some of the interviews, and in all of the interviews, he spoke on topics related to his White House position—the president’s policies with respect to the economy, manufacturing, and trade.

As detailed below, however, during these official interviews Dr. Navarro also engaged in political activity by disparaging Democratic presidential candidate Joe Biden and/or vice-presidential candidate Kamala Harris. Dr. Navarro often attacked Mr. Biden about his relationship with China and at times accused him of being “compromised” and susceptible to being “bought” by China. His comments were directed at undermining Mr. Biden’s presidential candidacy and persuading voters not to support him in the 2020 election.

1. May 26, 2020 Interview

On May 26, 2020, Dr. Navarro was interviewed by Martha MacCallum on Fox News’s *The Story*.¹⁴ He discussed the economy, jobs creation, and President Trump’s strategy to “transition back to greatness” before attacking presidential candidate Joe Biden. Asked to respond to the Biden campaign’s argument that the coronavirus crisis would not have been as bad if it were not for the things the White House did, Navarro said:

¹⁰ See <https://www.whitehouse.gov/people/peter-navarro/>.

¹¹ *Id.*

¹² The media often refers to Dr. Navarro as the White House Trade Advisor. See e.g., Kristen Holmes, Arman Azad and Nick Valencia, *White House trade adviser argues that CDC 'let the country down' on testing*, CNN (May 17, 2020), <https://www.cnn.com/2020/05/17/politics/peter-navarro-cdc-testing/index.html>; Yen Nee Lee, *White House trade advisor Peter Navarro denies saying that China trade deal is 'over'*, CNBC (June 22, 2020), <https://www.cnbc.com/2020/06/23/white-house-trade-advisor-peter-navarro-denies-saying-china-trade-deal-is-over.html>; David Lynch, Carol D. Leonnig, Jeff Stein, and Josh Dawsey, *Tactics of fiery White House trade adviser draw new scrutiny as some of his pandemic moves unravel*, WASHINGTON POST (Sept. 2, 2020), <https://www.washingtonpost.com/us-policy/2020/09/02/navarro-pandemic-coronavirus/>.

¹³ The interviews detailed in this report are not inclusive of all official interviews during which Dr. Navarro engaged in political activity in violation of the Hatch Act.

¹⁴ Charles Creitz, *Navarro blasts Biden, accuses ex-VP of spending Obama years 'toadying up and kowtowing' to China*, Fox News (May 26, 2020), <https://www.foxnews.com/media/navarro-biden-toadying-up-kowtowing-china-obama>.

To brother Joe, I guess he forgot the eight years he was toadying up and kowtowing to the Chinese and of course he is not going to basically hold China accountable for this pandemic . . . the evidence is overwhelming that the China communist party foisted this pandemic on the world, destroyed trillions of dollars of wealth, and killed close to 100,000 Americans so far . . . If Joe Biden wants to blame President Trump for that and not even talk about China, that is perfectly consistent with the kowtowing he did for eight years as Vice President and 30 years when he was up on the capitol and that is not going to stand. Have at it Joe, we are coming at you on China if you are going to pull that kind of stuff.

The interview then continued with a discussion about events related to China's crackdown on Hong Kong.

2. *August 23, 2020 Interview*

Dr. Navarro appeared on *Sunday Morning Futures* with Maria Bartiromo on August 23, 2020.¹⁵ In the lead up to his appearance on the show, Ms. Bartiromo said, "Coming up, the president's point man on trade and manufacturing, Peter Navarro, is here with POTUS' second-term agenda plans and the shocking reason why he says China wants Joe Biden in the White House." Ms. Bartiromo started the interview by asking, "What are your expectations for this upcoming RNC? And why do you believe that China wants Joe Biden in the White House?" Dr. Navarro responded:

. . . this whole election is setting up, both in China and with the DNC, as a battle between a nice guy and a tough guy. And we like that matchup, because I think the people of America will always choose a tough guy in the White House over a nice guy, because they know the world's a dangerous place . . . But I do want to challenge this notion of the DNC that somehow Joe Biden is a nice and empathetic guy. So, let me ask you a couple of questions here. Does a nice guy vote for NAFTA and ship millions of jobs off to Mexico and spawn millions more illegal immigrants coming north? No. But Joe Biden did. Does a nice guy let China into the World Trade Organization and have tens of thousands of factories across the Midwest go to China? Here is the thing that I find most un-nice about Joe Biden . . . Joe Biden got his start with lobbying money from the credit card companies. What does that mean? If you go, for example, in 2005 to the bankruptcy act that Joe Biden pushed for the credit card company, that prevented both people with heavy student loans and credit card debt from being able to declare bankruptcy . . . And people -- like, these credit cards, they are like addictive, right? You get your credit card, you miss a payment... pretty soon, you're paying 20 percent . . . And Joe Biden is the guy who made sure that your

¹⁵ Sunday Morning Futures, *Rep. Kevin McCarthy, Sen. Tim Scott on House 'emergency' USPS bill, goals for Republican National Convention*, Fox News (Aug. 23, 2020), <https://www.foxnews.com/transcript/rep-kevin-mccarthy-sen-tim-scott-on-house-emergency-usps-bill-goals-for-republican-national-convention>.

interest rate went up to 20 percent if you missed a few of those payments . . . We can get back to China. Hunter, okay, he is on Air Force Two and he brings back \$1 billion for his hedge fund in the 2000s . . . That's why they love Joe Biden. They know he can be bought. They know he's compromised.

Ms. Bartiromo then told Dr. Navarro she wanted to talk about the upcoming election and the president's economic plans. Dr. Navarro responded by discussing the president's policy agenda and finished by saying, "But the big picture here, the big picture here is to continue the agenda of deregulation, tax cuts, energy dominance, and fair trade deals. And that's exactly the opposite of what the Biden administration would do."

3. August 28, 2020 Interview

On August 28, 2020, Dr. Navarro was interviewed by Sandra Smith on Fox News's *America's Newsroom*.¹⁶ At the start of the interview, Ms. Smith asked Dr. Navarro to respond to the president's assertion that "China would own this country if there was a Joe Biden presidency." Dr. Navarro said:

That is exactly right. The problem with Joe Biden is he has a record, a 44 year record and one of things he did in that 44 years, in 2001, he voted to allow China into the World Trade Organization and that created basically a tsunami of offshoring where we lost over 7,000 factories, over five million manufacturing jobs. That happened also on his watch when he was vice president, he was doing his little shuttle diplomacy over there, meeting with Xi Jinping when he was not yet the unelected president of China. So Joe's dangerous when it comes to offshoring American jobs. He's compromised. There's a whole Hunter Biden issue related to bringing back \$1 billion in hedge fund money on Air Force 2 . . .

Ms. Smith cut him off, and they then discussed the threat from China and how China is a "bully," when Dr. Navarro said, "We need a tough president like Donald J. Trump in the White House, not the pushover in Joe." Ms. Smith then asked Dr. Navarro about the Administration's response to vice-presidential candidate Kamala Harris's claim that Trump is weak on China. Dr. Navarro responded:

Let's be clear about what happened in January, that was January 31, the day Donald Trump pulled down the flights from China, which saved hundreds of thousands of American lives. At the time Joe Biden called it xenophobic and racist and then he had to apologize. With respect to Kamala Harris, I can't really take her seriously, for one single reason. This is a woman who put over a thousand young black men in jeopardy or in jail for smoking pot and she would not, she would not, go for the death penalty for a cop killer. So whenever I think of Kamala Harris, that is all I need to know. And she is just a mouthpiece. She

¹⁶ America's Newsroom, *Peter Navarro: CCP is bullying US into submission, invading our capital markets*, Fox News (Aug. 28, 2020), <https://video.foxnews.com/v/6185451314001#sp=show-clips>.

knows nothing about China policy. We haven't heard boo from her while she has been in the Senate or when she was back in California. It is a talking point for her and she does not understand the history of Joe Biden in 2001 voting to put China in the World Trade Organization and then having them strip this country of our factories across the Midwest. Good luck with her going to Ohio or Wisconsin or Michigan, going into a factory and pulling that kind of crap. Because everyone knows across the Midwest who brought the factory jobs back and it is not Kamala Harris, Joe Biden, or Barack Obama.

Ms. Smith reacted to his answer by stating, "I guess you are giving us a preview of what the vice-presidential debate might be like." The final topic of the interview was the president's agenda related to tax cuts, during which Dr. Navarro again attacked presidential candidate Joe Biden by saying:

What we know about Joe Biden is he is going to do just the opposite and that is going to be slow growth and crash the stock market. He has promised a \$4 trillion tax hike. He is going to put more regulations on our farmers our ranchers our loggers and our fisherman. He is going to cap every oil well in this country and he wants to go back to the old days with the Trans-Pacific Partnership. He's promised to take off the tariffs on China. Which look, Sandra, that is the only thing that ever got those guys to the table and will keep them there. So we love having a debate about policy. What they want to do, Sandra, what the Dems and Biden want to do is hide in the basement and blame the pandemic on Donald J. Trump . . . Nobody is buying Joe Biden as tough on China, or Kamala Harris.

4. *September 6, 2020 Interview*

Dr. Navarro again appeared on *Sunday Morning Futures* with Maria Bartiromo on September 6, 2020.¹⁷ The interview began with a discussion about bringing jobs back to the United States to protect the American people from the Chinese Communist Party. They then talked about the *Global Times* "effectively" coming out with an endorsement of Mr. Biden, to which Dr. Navarro said:

What would that mean for the American people? We know what it would mean. Devastation in the Midwest. Blue collar workers just getting hammered. We lost over 70,000 factories, Maria, over 5 million manufacturing jobs and it was because Joe Biden likes Made in China. Donald Trump came along in many ways because he said that's not good, that's not right, I am going to fix that . . . So, Beijing Biden vs. Made in America Donald J. Trump, I think that's one of the stark differences between the two sides. And it's really interesting, Maria, if you watched back when at the Democratic convention . . . you never hear them talk about where the virus came from, they won't say the word China virus, if you try

¹⁷ Sunday Morning Futures, *Peter Navarro comments on China backing Biden, coronavirus pandemic*, Fox News (Sept. 6, 2020), <https://video.foxnews.com/v/6188248199001#sp=show-clips>.

to say it, they cancel you. And the reason is, the whole Biden Democratic Party strategy, it's a dangerous one for them and for us because it is predicated on being able to blame Donald J. Trump on the pandemic . . .

The interview then covered topics such as China and the U.S. capital markets, Americans unknowingly investing in China's military, and President Trump's second-term agenda.

5. September 30, 2020 Interview

On September 30, 2020, Dr. Navarro was interviewed by Hallie Jackson on MSNBC.¹⁸ The interview focused on the previous night's presidential debate, and Ms. Jackson asked Dr. Navarro whether President Trump's comment about "what [he] was put through" when talking about the coronavirus was a "tone deaf" statement to make considering all the lives lost to the virus. Dr. Navarro responded:

If you listen to the signal and avoid the noise of that debate, I think that there was actually pretty clear differences drawn between the candidates. And one of the points President Trump made last night, which is exactly right, is when the president pulled down the China flights on January 31, Joe Biden opposed that and the fact that he opposed that would suggest that if he had been president we would have gone months with those flights coming in and instead of 200,000 Americans being dead there'd be a million or more. I think that's an important point to recognize. The second point that the president made with respect to COVID, just quickly, was how Joe Biden handled the H1N1, swine flu, in 2009. His own chief of staff, Ron Klain said that they made every single mistake in the book and there but for god, they would have had the worst mass casualty event in history. So I think that was a good exchange. I think that if people are going to vote for Biden 'cause they think he might do better on the China virus, I think they're dead wrong on that. And the president underscored that.

After discussing the Administration's response to the coronavirus, Ms. Jackson asked Dr. Navarro about another statement President Trump made during the debate, telling the Proud Boys to "stand back and stand by." Dr. Navarro responded by criticizing the debate moderator but also said, "What the president also made clear, and I think it's a good distinction between Joe Biden and the president, is the president is for law and order." Dr. Navarro ended the interview with more criticism of the moderator.

¹⁸ Hallie Jackson, *Peter Navarro: 'Second debater' Wallace responsible for Trump missteps*, MSNBC (Sept. 30, 2020), <https://www.msnbc.com/hallie-jackson/watch/peter-navarro-second-debater-wallace-responsible-for-trump-missteps-92856389790>.

6. *October 19, 2020 Interview*

Dr. Navarro again was interviewed by Maria Bartiromo on October 19, 2020.¹⁹ Ms. Bartiromo began the interview by referencing a report Dr. Navarro was doing on the swing-state economies and asked specifically about Michigan's economy. Dr. Navarro responded:

Yeah. All job creation is indeed local here at the Trump administration. If you look at Michigan it's really an interesting study in contrast between the policies of President Trump and Joe Biden. You start with the Antrim Shale formation which is in the northern part of the lower peninsula, there's 9,000 wells there and they employ over 50,000 people, directly or indirectly, that's something that's thriving under President Trump, which would get shut down under Joe Biden.

They then discussed tariffs and defense spending before Dr. Navarro said, "and then of course we had Joe Biden voting for NAFTA. We had President Trump renegotiating that and getting the USMCA. Guess what? That's the full employment act for auto workers in Detroit."

Ms. Bartiromo asked Dr. Navarro about China's good economic data and whether it is an indication that the economic recovery has begun. Dr. Navarro responded by accusing China of using the virus to expand its economy and then said:

One of the things we need to be thinking about in the next 14 days is the role of China in the world economy and who would stand up to China. We know who's laid down for China and now all this news about Hunter and emails and all that stuff. You wonder why the mainstream media won't cover that, but my gosh, if any of that stuff is true it's just unbelievable.

They continued to discuss China and Dr. Navarro then said:

The previous presidents, it's like don't worry be happy, just buy this stuff because it's cheap. And then you turn around and Michigan, and Wisconsin, and Pennsylvania are just ravaged. I mean don't forget, China, Biden let China into the World Trade Organization. We lost 70,000 factories, five million manufacturing jobs. We must not forget that. We can bring that stuff back with President Trump.

D. Dr. Navarro violated the Hatch Act's prohibition against using his official authority or influence to affect an election by attacking Joe Biden during official media interviews.

The Hatch Act prohibits Dr. Navarro from using his official authority or influence for the purpose of interfering with or affecting the result of an election.²⁰ This prohibition includes

¹⁹ Mornings with Maria, *Trump stands for 'defending blue-collar America' against China: Navarro*, Fox Business (Oct. 19, 2020), <https://www.foxbusiness.com/economy/michigan-thriving-under-trump-policies-navarro>.

²⁰ 5 U.S.C. § 7323(a)(1).

using his official title or position while engaging in political activity, i.e., activity directed at the success or failure of a candidate for partisan political office.²¹ What constitutes “political activity” has been interpreted broadly by both judicial courts and the Merit Systems Protection Board.

Case law makes it clear that political activity encompasses far more than just express advocacy for the electoral success or failure of a candidate.²² Political activity can include comparing candidates’ records and positions,²³ providing factual information for the purpose of promoting a campaign,²⁴ or advancing a candidate’s campaign promise.²⁵ In *Burrus v. Vegliante*, members of a federal employee union displayed in their workplace posters comparing the positions and voting records of two candidates for president.²⁶ The posters did not explicitly recommend that viewers support either candidate. Instead, the court found that the posters merely “suggested that [one slate] held positions more favorable to the interests of postal workers than the [other slate].”²⁷ The Second Circuit rejected the idea that the poster was not political activity, finding that while it “purported to present only factual information, the [union did] not seriously dispute that it was intended to generate support for” a candidate.²⁸

Like the posters in *Burrus*, during his official media interviews Dr. Navarro repeatedly compared President Trump’s economic and trade policies with those of presidential candidate Biden. But, unlike the posters, Dr. Navarro did more than merely “suggest” that President Trump’s policies were better for voters than Mr. Biden’s policies—he explicitly stated it while arguing that a Biden presidency would be devastating to the U.S. economy. In addition, Dr. Navarro frequently attacked Joe Biden as a presidential candidate, accusing him of kowtowing to China and being compromised, even nicknaming him “Beijing Biden.” Dr. Navarro also disparaged vice-presidential candidate Kamala Harris, calling her a mouthpiece who cannot be taken seriously. His campaign rhetoric was intended to harm Mr. Biden’s presidential candidacy and encourage viewers not to vote for him in the 2020 election. By using his official platform as a high-level White House official to engage in these partisan attacks, Dr. Navarro violated the Hatch Act’s prohibition against using his official authority or influence to affect an election.

²¹ See 5 C.F.R. §§ 734.302(b)(1), 734.101.

²² See *Burrus v. Vegliante*, 336 F.3d 82, 84 (2d Cir. 2003) (concluding that the display of a poster comparing the positions and voting records of two candidates for president constituted political activity even though it purported to present only factual information); *Special Counsel v. Malone*, 84 M.S.P.R. 342, 363-65 (1999) (finding that an employee violated the Hatch Act when he informed people doing business with his agency of an upcoming partisan fundraiser because, even though he did not solicit attendance or a contribution, he “intended to promote the fundraiser for political purposes”); *Special Counsel v. DePaolo*, MSPB Docket No. CB-1216-18-0016-T-1, at 11, 21-22 (Sept. 13, 2019) (holding that an employee violated the use of official authority prohibition when she “tout[ed],” “advertised,” and “advanced [a candidate’s] campaign promise” while acting in the scope of her official duties).

²³ See *Burrus*, 336 F.3d at 84.

²⁴ See *Malone*, 84 M.S.P.R. at 363-65.

²⁵ See *DePaolo*, MSPB Docket No. CB-1216-18-0016-T-1, at 21-22.

²⁶ *Burrus v. Vegliante*, 247 F. Supp.2d 372, 373 (S.D.N.Y. 2003), *rev’d*, *Burrus v. Vegliante*, 336 F.3d 82 (2d Cir. 2003).

²⁷ *Id.* at 374.

²⁸ 336 F.3d at 84.

The White House Counsel's Office has asserted, on Dr. Navarro's behalf,²⁹ that he did not violate the Hatch Act. It argued that a government official does not violate the Hatch Act by making "factual and policy-based statements" and that such statements do not "constitute advocacy for or against a candidate." The White House Counsel's Office further argued that Dr. Navarro's statements about Joe Biden and his "kowtowing to the Chinese" were the kind of factual, policy-based statements acceptable for him to make in his official capacity.

These arguments, however, are contrary to the law. The White House Counsel's Office provided no basis for its assertion that making factual and policy-based statements could not violate the Hatch Act, and OSC is unaware of any authority supporting such a rule. And as detailed above, express advocacy for or against a candidate is not required to find that an employee engaged in political activity. A federal employee acting in his official capacity violates the Hatch Act when, as here, he makes statements intended to encourage others to vote for or against a candidate for partisan political office or otherwise promotes or disparages that candidate's campaign. Dr. Navarro violated the Hatch Act because he engaged in that very activity.

E. Dr. Navarro violated the Hatch Act's prohibition against using his official authority or influence for the purpose of affecting the result of an election by disparaging 2020 presidential candidate Joe Biden on his Twitter account, "@PeterNavarro45."

Until October 5, 2020, Dr. Navarro's Twitter account, created in March 2020, was "@PeterNavarro45."³⁰ The account identified him as, "Assistant to the @POTUS for Trade & Manufacturing Policy" and linked to the official White House website. He tweeted about issues related to his official position—manufacturing, the economy, and trade—and about the Administration's response to the coronavirus. The official White House Twitter account, "@WhiteHouse," tweeted at "@PeterNavarro45" to highlight, for example, Dr. Navarro's official media interviews.³¹ Because Dr. Navarro used the "@PeterNavarro45" Twitter account for official purposes, the Hatch Act prohibited him from also using that account to engage in political activity.³²

But in the relatively short time Dr. Navarro had this Twitter account, he repeatedly used it to attack presidential candidate Joe Biden.³³ For example, on August 23, 2020, he included a link to the *Sunday Morning Futures* interview detailed above and wrote, "Biden a 'Nice Guy?'"

²⁹ As part of OSC's investigation, after receiving a complaint concerning Dr. Navarro's May 26, 2020 interview, on July 21, 2020, OSC sent him a letter asking a series of questions about the interview, including the meaning and purpose of his statements about presidential candidate Biden. While Dr. Navarro did not respond to this letter, an attorney from the White House Counsel's Office replied on September 4, 2020.

³⁰ Several administration officials have similar official Twitter accounts, bearing their name and the number 45. *See e.g.*, "@Scavino45," "@MarcShort45," "@StephGrisham45," "@JaRonSmith45." The White House Counsel's Office told OSC, though, that Dr. Navarro's account was not created or managed by the White House.

³¹ This occurred on several occasions, including on July 28-29, August 6, and September 22, 2020.

³² *See* OSC's February 2018 "Hatch Act Guidance on Social Media," pg. 7, *available at*: <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Social%20Media%20Guidance.pdf>.

³³ The tweets discussed here are just a sampling of the many political messages Dr. Navarro posted on his account.

Nice guys don't vote for NAFTA and China's entry into the WTO and destroy American factories and jobs like Joe did. NICE GUYS don't CRUSH poor people with credit card debt and DESTROY young folks with student loans like Joe did.”

On August 28, 2020, he tweeted, “Major POLICY differences reviewed in DNC v. RNC conventions. @potus 4 attack vectors to defeat China virus. Biden econ plan to destroy U.S. energy, logging, fishing. Dems crossing THIN BLUE LINE between peaceful protests and anarchy/looting.” Also on August 28, he included a link to the *America's Newsroom* interview detailed above and wrote, “Joe Biden's soft on China Tsunami of offshoring, K. Harris knows NOTHING about China policy vs. greatest jobs president in history. When will Dems hold China accountable for the pandemic and the loss of factories and jobs in America?”

Dr. Navarro repeated his nickname for Mr. Biden, “Beijing Biden,” on his Twitter account. On September 6, 2020, he wrote, “NYT panda hug of Beijing Joe Biden. Not a SINGLE mention of HUNTER Biden is the tell in this con game. As soft as this puff piece is, it still EXPOSES Biden as a pawn in Xi Jinping's Great Global Game. Read it and weep. C'mon Man...” and linked to a *New York Times* story. Dr. Navarro also repeatedly accused Mr. Biden of being a plagiarist. For example, on September 9, 2020, he wrote, “All hail @potus as the Lobster King. DJTRUMP delivers for fisherman from Alaska to Maine and New Hampshire. AND Joe Biden the serial plagiarizer tries to steal Trump Buy American agenda. Biden's agenda MADE IN CHINA. Trump agenda Made in America.” And on September 11, 2020, he tweeted, “. . . Joe Biden is a plagiarist trying to steal our Buy American agenda.”

On September 21, 2020, Dr. Navarro retweeted a message from the Trump 2020 Campaign Senior Advisor for Strategy that read, “Joe Biden went to the industrial heartland of Wisconsin today...and he actually promised to help manufacturing? Look at his record, and dismiss his rhetoric!” Dr. Navarro added, “Joe Biden tore the heart out of the heartland by voting for NAFTA and China into the WTO.” And On September 30, 2020, Dr. Navarro shared a Federalist.com story about Spanish-speaking voters concluding that President Trump had won the first presidential debate. He wrote, “Trump Si, Biden No . . . The Latino community knows who will deliver prosperity and security to the American land.”

Just like with his media interviews, Dr. Navarro used his high-level White House position, through his public social media account, to attack a presidential candidate and persuade voters against supporting his candidacy. Because he engaged in political activity while in his official capacity, he violated the Hatch Act's prohibition against using his official authority or influence to affect an election.³⁴

IV. CONCLUSION

Dr. Navarro's violations of the Hatch Act were knowing and willful. The White House Counsel's Office attorney explained that all White House employees receive mandatory ethics

³⁴ Four days after OSC reached out to the White House Counsel's Office to inquire about Dr. Navarro's Twitter account, the account was deleted.

training, which includes training on the Hatch Act. And five of the interviews discussed above occurred after OSC sent its July 21, 2020 letter to Dr. Navarro, putting him on notice of the allegations OSC was investigating. Yet Dr. Navarro continued to violate the Hatch Act by attacking Democratic presidential candidate Joe Biden during official interviews despite knowing that OSC was investigating him for engaging in that very activity.

In passing the Hatch Act, Congress intended to promote public confidence in the executive branch by ensuring the federal government is working for all Americans without regard to their political views.³⁵ Thus, while the Hatch Act allows federal employees to express their views about candidates as private citizens, it restricts employees from using their official government positions for partisan political purposes, including by trying to influence elections. Dr. Navarro's attempt to influence voters in the 2020 presidential election, while speaking as a representative of their government, is just what the Hatch Act is intended to prevent.

The U.S. Constitution confers on the president authority to appoint senior officers of the United States, such as Dr. Navarro. Considering that constitutional authority, the proper course of action, in the case of violations of the Hatch Act by such officers, is to refer the violations to the president. Accordingly, OSC hereby submits this Report of Prohibited Political Activity to the president for appropriate disciplinary action.³⁶

³⁵ See *Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 565 (1973) (upholding the constitutionality of the Hatch Act and noting 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").

³⁶ See 5 U.S.C. 1215(b).