



Homeland
Security

MEMORANDUM FOR MICHELLE BRANÉ

FROM: Joseph B. Maher
Acting General Counsel
Designated Agency Ethics Official

SUBJECT: Limited Waiver of Executive Order 13989 for Michelle Brané

Pursuant to Section 3 of Executive Order 13989 (January 20, 2021) (“Executive Order” or “E.O.”) and after consultation with the Counsel to the President, and for the reasons stated below, I hereby grant you a limited waiver of the requirements of Section 1, Paragraph 2 of the Executive Order. I have determined it is in the public interest to grant this waiver to enable you to effectively carry out the duties as the Director of the Family Unification Task Force for the U.S. Department of Homeland Security (“the Department”). This waiver is limited to the restrictions related to the Women’s Refugee Commission (WRC) and you must abide by all other restrictions imposed by the Executive Order.

Section 1 of the Executive Order, “Ethics Commitments by Executive Branch Personnel” (“Ethics Pledge”), requires all covered political appointees to abide by certain commitments above those required by preexisting government ethics rules. Paragraph 2 of the Ethics Pledge requires that, for 2 years from the date of appointment, covered appointees not participate in any particular matter involving specific parties that is directly and substantially related to any former employer or former clients, whom the appointee has personally served within the 2 years prior to appointment. For purposes of applying this restriction, the term “particular matter” has been interpreted to include “meetings or other communications relating to the performance of one’s official duties with a former employer or client.” See U.S. Office of Government Ethics (“OGE”) Legal Advisory (“LA”) 21-03, referencing OGE Memorandum to Designated Agency Ethics Officials, DO-09-011.

A waiver of Paragraph 2 of the Ethics Pledge may be granted upon a determination that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. E.O. 13989, Sec. 3(a). The Director of the Office of Management and Budget has delegated to each executive branch Designated Agency Ethics Official the authority to issue waivers under Section 3 of Executive Order. OGE LA-21-04.

On February 2, 2021, the President signed Executive Order 14011, “Establishment of Interagency Task Force on the Reunification of Families” in “order to reunite children separated from their families at the United States-Mexico border.” Under this Executive Order, the

Department is charged with chairing this interagency group to identify all children separated from families under the Zero-Tolerance Policy and work at reuniting them.

As the Director of this Task Force, you are expected to engage directly with non-governmental entities working towards the reunification of families, including your former employer, the Women's Refugee Commission (WRC), which is a prominent group advocating on behalf of and already working on the identification of children not yet reunited with families after separation at the border.

Absent this waiver, you would be restricted for two years following appointment from participating in any particular matter involving specific parties that directly and substantially related to your former employer or former clients, including meetings and other communications.

Without this waiver, you would not be able to effectively perform the duties of the Director, which would hinder the mission priority of family unification and result in serious limitations and inefficiencies in the Department's efforts to meet this Presidential mandate.

Background

You are recognized as an expert on U.S. asylum protections, migrant children, and detention policies for migrants, with more than three decades of experience in the field. You have extensively researched and monitored, developed recommendations, and advocated on issues associated with migrant policy, especially related to vulnerable individuals such as women and children.

Following your graduation from Georgetown University Law Center, you worked at the U.S. Department of Justice Board of Immigration Appeals and as a labor negotiator at the National Treasury Employees Union. You also held positions at Lutheran Immigration and Refugee Service, with human rights organizations in India, and as a human rights officer with the Organization for Security and Co-operation in Europe, where you served as the head of the Sarajevo Field Office.

You most recently serves as the senior director of the Migrant Rights and Justice program at the WRC, a non-profit organization, where you works on ensuring government accountability for the treatment of migrants and for migrant-related migrant policies and programs. This includes testifying before Congress as well as international human rights organizations such as the United Nations High Commission for Refugees, and numerous presentations before immigration professionals at conferences, such as the Human Rights Council.

At the WRC, you lead the national advocacy program, writing landmark reports on migration and asylum issues, including critical issues such as family separation, border policies, alternatives to detention, and unaccompanied children's rights. This included participation in the American Civil Liberties Union steering committee on family reunification.

Analysis

In accordance with Section 3 of Executive Order, it is in the public interest to grant you a limited waiver of the of the requirements of Section 1, Paragraph 2 of the Executive Order to enable you to effectively carry out the duties as the Director of the Family Unification Task Force.

Your restriction arises from your work on human rights priorities for a non-profit organization and, based on discussions with relevant authorities, I understand that this is not the type of business-oriented, prior relationship that the Executive Order intended to reach in protecting the public trust. Indeed, your work at WRC relates to the core function of the Task Force itself which is to identify children separated from families under the Zero-Tolerance Policy and work at reuniting them. Application of the restriction would thwart the Administration's immigration priority and humanitarian effort to reunite children separated at the border and help restore our values as a nation of immigrants.

In making this assessment, I have considered the factors set forth in Section 3 of the Executive Order and determined that the government needs your individual services, given your unique qualifications, which arise from services rendered on behalf of a nonprofit organization.

You are distinctively qualified to meet the government's mandate to address the humanitarian need to reunite families separated under the Zero-Tolerance policy. You have decades of relevant experience within and external to government. You have studied immigration policy, developed recommendations, and advocated on key issues. Your perspective includes not only local humanitarian engagements but also international humanitarian efforts for the most vulnerable. More importantly, you have first-hand functional experience directly related to the reunification of families. Finally, as outlined above, applying the restriction would be inconsistent with humanitarian efforts to reunite families. Any adjustments seeking to address the restriction are impracticable and will result in serious limitations and inefficiencies in the Department.

Simply put, this waiver is supported by the government's critical need, your specialized experience, the inadequacy of other arrangements, and the fact that this restriction arises from work for a non-profit organization.

Conclusion

Pursuant to Section 3 of the Executive Order, it is in the public interest to grant this waiver. The restriction arises from her work on human rights priorities for a non-profit organization, which is not the type of business-oriented relationship that the Executive Order is intended to reach in protecting the public trust. Further, the significant public interest in the ability of the Department to accomplish its missions requires that you be able to fully engage in the Administration's commitment to reunite families. Due to the scope of Section 1, paragraph 2, of the Executive Order, a broad application of this prohibition would be detrimental to accomplishing the mission of the Task Force. Without a waiver, you would be precluded from engaging with the very organization with the data and relationships necessary to accomplish the Task Force's charge.

For the foregoing reasons, I grant you a limited waiver of the restrictions in Section 1, paragraph 2 of the Executive Order to enable you to effectively carry out the duties as the Director of the Family Unification Task Force.

Pursuant to this waiver, you may participate in any particular matter involving specific parties related to your former employer, Women's Refugee Commission, within the two years before her appointment. This waiver does not otherwise affect your other obligation to comply with all other applicable government ethics rules and provisions of the Executive Order. For example, this waiver does not permit you to participate in any party-specific matters directly affecting the financial interests of WRC, including but not limited to contracts or grants.

cc: Dana Remus, Counsel to the President, Office of the White House Counsel