



U.S. Department of Justice

Washington, D.C. 20530

June 10, 2021

MEMORANDUM FOR FUNMI OLORUNNIPA
OFFICE OF THE WHITE HOUSE COUNSEL

FROM: Lee Lofthus, Assistant Attorney General
for Administration
and Designated Agency Ethics Official,
Department of Justice

Lee Lofthus Date: 2021.06.10
18:10:27 -04'00'

SUBJECT: Limited Waiver of Executive Order 13989 for David Chipman, Nominee
for Director, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Pursuant to Section 3 of Executive Order 13989 (January 20, 2021) (“Executive Order”), and for the reasons stated below, I hereby grant a limited waiver to David Chipman of the requirements of Section 1, Part 3(b) of the Executive Order. I have determined that it is in the public interest to grant this limited waiver of the Executive Order to enable Mr. Chipman to effectively carry out the duties of Director, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

In his Ethics Agreement signed April 26, 2021, Mr. Chipman committed that he would seek a limited waiver of the provisions of paragraphs 2 and 3 of the Ethics Pledge under Executive Order 13989 with regard to Giffords. Paragraph 2 prohibits political appointees for two years after their appointment from participating in specific party matters that are directly and substantially related to their former employers or former clients. I have determined that a waiver as to Part 2 is not needed at this time on the grounds that Mr. Chipman will not have specific party matters before him in which Giffords is a party. He will at this time, and very likely in the future, be able to perform the duties of his position without such a waiver. If a situation arises in which such a waiver is required he will, as he committed, seek a waiver.

Upon assuming the position of Director, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and for the two years following, Mr. Chipman will require a waiver of Executive Order Section 3(b) in order to perform the duties of the position. That section prohibits political appointees who were registered lobbyists from participating in particular matters in the “specific issue area” on which they lobbied in the two years before their appointment.

Within the last two years, Mr. Chipman has lobbied on behalf of Giffords, his former employer. The lobbying focused on an array of gun safety-related matters. For example, the Giffords Lobbying Report (LD-2 Disclosure Form) for Third Quarter 2020 lists Mr. Chipman, among others, as a lobbyist on many specific issues including:

FBI;

SUBJECT: Limited Waiver of Executive Order 13989 for David Chipman, Nominee for
Director, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

ATF;
Office on Violence Against Women;
Community Policing Development Program;
Bump stocks;
Semiautomatic firearms;
Firearm trafficking;
ATF white paper on Options to Reduce or Modify Firearms Regulations;
Guns in schools;
Lost and stolen firearms;
Child access prevention laws;
Consumer product safety;
Smart gun technology;
Gun violence research;
Mental health, as related to firearms; and
House and Senate bills related to these and other issues.

Based on this background, absent a waiver, for two years after his appointment, Mr. Chipman would be unable to participate in the subject area of use and regulation of firearms, an area of critical importance to ATF and to the Administration.

Analysis

Executive Order 13989, Section 3, provides that waivers may be given to political appointees in certain circumstances. In determining that a limited waiver is appropriate, I have considered the factors set out in Section 3:

- (i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment;
- (ii) the uniqueness of the individual's qualifications to meet the government's needs;
- (iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and
- (iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services.

The government is in urgent need of Mr. Chipman's services. The Administration is focused on combatting the increase in gun violence. In April 2021, the Attorney General's directed ATF to work on an updated study of criminal gun trafficking. Recently the Department issued a Proposed Rule and Model Legislation to reduce gun violence. ATF is critical in carrying out these initiatives and needs Mr. Chipman as Director to spearhead them. Such efforts are crucial to the protection of national security and public health.

Mr. Chipman has unique qualifications for the position of Director. He has long experience—25 years—at ATF. That deep experience with the Bureau, along with his experience lobbying on policy matters important to the Bureau, make him especially qualified for the position of

SUBJECT: Limited Waiver of Executive Order 13989 for David Chipman, Nominee for Director, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Director. Finally, Giffords is a nonprofit organization. Lobbying activities by Mr. Chipman were on behalf of advancing gun safety policies, not advancing in the financial interests of any specific industry or company.

Mr. Chipman does not require a waiver for Parts 3(a) or (c). He was not engaged in registrable activity under FARA. Neither did he lobby ATR himself although his other members of his former employer did.

Conclusion

In conclusion, I conclude that granting the waiver is in the public interest. *See* E.O., Section (a)(ii). To enforce the Executive Order's prohibitions would interfere with the very work that the Administration seeks to accomplish in law enforcement.

For the foregoing reasons, I grant Mr. Chipman a limited waiver of the restriction in of Section 1, Part 3(b), of the Executive Order to enable him to effectively carry out the duties of Director, Bureau of Alcohol, Tobacco, Firearms and Explosives at the Department of Justice.

Pursuant to this waiver, Mr. Chipman may participate in matters in the same specific issue area on which he lobbied for Giffords.

This waiver does not otherwise affect Mr. Chipman's obligation to comply with all other applicable government ethics rules and provisions of the Executive Order.

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