



U.S. Department of Justice

Washington, D.C. 20530

September 2, 2021

MEMORANDUM FOR THE ASSOCIATE ATTORNEY GENERAL

FROM: Lee J. Lofthus
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Lee Lofthus Date: 2021.09.02
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SUBJECT: Limited Waiver of Executive Order 13989 for Vanita Gupta, Associate Attorney General, Department of Justice

Pursuant to Section 3 of Executive Order 13989 (January 20, 2021) (“Executive Order”), and for the reasons stated below, I have granted a limited waiver to Vanita Gupta 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 Ms. Gupta to effectively carry out the duties of Associate Attorney General, Department of Justice. This Memorandum memorializes the terms of the waiver that the White House, the Department of Justice, and Ms. Gupta agreed to and have been implemented with my approval since Ms. Gupta’s confirmation.

Background

The Executive Order requires all covered political appointees in the Biden-Harris Administration to abide by several commitments. In particular, Section 1, Paragraph 3 imposes a two-year ban on registered lobbyists, barring them from (1) working at any executive branch agency they lobbied in the past two years, and (2) participating in a particular matter or the specific issue area in which a particular matter falls if they lobbied on that particular matter in the past two years. A waiver of the Executive Order's restrictions may be granted when the literal application of the restriction is inconsistent with the restriction's purpose or when it is in the public interest to grant a waiver.

Until her confirmation on April 21, 2021, Ms. Gupta was President and CEO of the Leadership Conference on Civil and Human Rights. In that capacity she signed the organization’s lobbying disclosure reports. She is, therefore, a registered lobbyist under the definition of “Registered lobbyist or lobbying organization” in the Executive Order at Section 2(e). Under the terms of the Executive Order, for the two years following her confirmation as Associate General Attorney, Ms. Gupta would be prohibited from participating in particular matters in the “specific issue area” on which she lobbied.

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In her Ethics Agreement signed March 2, 2021, Ms. Gupta committed that she would seek a limited waiver of Section 1, Paragraph 3, of the Ethics Pledge under Executive Order 13989 with regard to the Leadership Conference on Civil and Human Rights, which she did.

Analysis of Factors for Granting a Waiver

It is in the public interest to grant Ms. Gupta a limited waiver of the requirements of Section 1, Paragraph 3, in order to enable her to effectively carry out her duties as Associate Attorney General, Department of Justice. In making this assessment, I have considered the factors set forth in Section 3(c) of the Executive Order, which include:

- (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.

Government Need: The government's need for Ms. Gupta's services is extremely high. As Associate Attorney General she provides oversight of twelve Department components, including the Civil Division, Environment and Natural Resources Division, Antitrust Division, Tax Division, Civil Rights Division, Community Relations Service, and Office of Justice Programs.

Unique Qualifications: Ms. Gupta has a unique background, making her exceptionally prepared for the position of Associate Attorney General. Ms. Gupta has a long history as a civil rights attorney. Her background as a civil rights lawyer includes service as an attorney and the deputy legal director of the American Civil Liberties Union, overseeing national criminal justice reform efforts. She also served as Assistant Counsel at the NAACP Legal Defense and Educational Fund. The organizations on which she has served without compensation include: Council on Criminal Justice; National Task Force on Election Crises Steering Committee; Equal Justice Works Board of Directors; and International Association of Chiefs of Police, Civil Rights Committee. Most recently she has served as President and CEO of the Leadership Conference Education Fund and the Leadership Conference on Civil and Human Rights. Her government service includes serving in the Obama Administration as Acting Assistant Attorney General and Head of the U.S. Department of Justice's Civil Rights Division. Acting Assistant Attorney, U.S. Department of Justice.

Scope and Nature of Prior Lobbying Activity: Ms. Gupta's lobbying activity has been minimal. Her lobbying was only on behalf of a nonprofit organization. That lobbying activity took place from June 2017 until her confirmation on April 21, 2021, while she was President and CEO of the Leadership Conference on Civil and Human Rights. In that capacity she signed the organization's lobbying disclosure reports. During that time, she was therefore, a registered

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lobbyist under the definition of “Registered lobbyist or lobbying organization” in the Executive Order at Section 2(e). However, Ms. Gupta herself spent very little time lobbying, significantly less than 20% of her time; any specific percentage would be only approximate. In the vast majority of cases her name appears on the Leadership Conference on Civil and Human Rights lobbying reports only because she decided that as the President and CEO she should sign, not because she herself lobbied. When engaged in lobbying work, it was for the most part on Capitol Hill regarding potential civil rights legislation. She lobbied the Department of Justice specifically on four occasions, each time advocating opening an investigation into the killing by police of a Black person.

Other Limitations: The Executive Order’s ban on lobbying in the specific issues area on which a political appointee lobbied, Part 3(b), would prevent Ms. Gupta from participating in the very civil rights policies that the Administration has nominated her to oversee. Were she unable to participate in matters involving the specific issue areas on which she lobbied, the Department would lack oversight over a significant number of components involved in civil rights.

Conclusion

In conclusion, enforcement of the Executive Order’s prohibition on registered lobbyists participating in particular matters in the specific issue area on which they previously lobbied for two years after their appointment would not, in Ms. Gupta’s case, serve the public interest. Rather, it would restrain her ability to participate in matters involving civil rights, areas that are critical to the priorities of the Administration and the Department.

For the foregoing reasons, I have granted Ms. Gupta a limited waiver of the restriction in of Section 1, Paragraph 3(b), of the Executive Order to enable her to effectively carry out the duties of Associate Attorney General at the Department of Justice.

Pursuant to this waiver, Ms. Gupta may participate in matters covering the same specific issue area for which she was a registered lobbyist for the Leadership Conference on Civil and Human Rights.

This waiver does not authorize her to participate in decisions to initiate investigations in matters on which she lobbied the Department.

The waiver does not otherwise affect her obligation to comply with all other applicable government ethics rules and provisions of the Executive Order.

CC: Funmi Olorunnipa, Office of the White House Counsel