



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

September 9, 2023

MEMORANDUM

TO: Summer Sylva, Senior Advisor for Native Hawaiian Affairs

FROM: Heather C. Gottry, Director, Departmental Ethics Office and
Designated Agency Ethics Official

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SUBJECT: Limited Ethics Pledge Waiver Pursuant to Section 3, Executive Order 13989

Pursuant to the authority delegated under Section 3 of Executive Order 13989 (January 20, 2021) and as designated by the Acting Director of the Office of Management and Budget,¹ and after consultation with the Counsel to the President, I hereby grant you a limited waiver from the requirements of Section 1, paragraph 2 of the Executive Order. After consultation with the ethics officials for the U.S. Department of Homeland Security, I certify that this limited waiver is necessary and in the public interest to permit you to participate in certain particular matters related to the response and recovery efforts related to the recent wildfires in Maui in which your former employer, the Council for Native Hawaiian Advancement, is a party or represents a party.

I. Background

On January 20, 2021, President Biden signed Executive Order 13989, “Ethics Commitments by Executive Branch Personnel” (Ethics Pledge). The Ethics Pledge imposes ethics requirements beyond federal ethics laws and regulations and attorney bar obligations. All individuals appointed to political positions on or after January 20, 2021, are required to sign the Ethics Pledge, which sets forth the following restriction at Section 1, paragraph 2:

I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

¹ Waiver Authority and Making Waivers Public under Section 3 of Executive Order 13989, “Ethics Commitments by Executive Branch Personnel,” U.S. Office of Government Ethics, Legal Advisory LA-21-04, (Feb. 18, 2021).

With the approval of the White House, the Acting Director of the Office of Management and Budget (OMB) has delegated to each executive branch Designated Agency Ethics Official the authority to exercise Section 3 waiver authority after consultation with the Counsel to the President.² Such waivers from the restrictions contained in Section 1, paragraph 2 may be granted upon certification either 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.

A. Position at the U.S. Department of the Interior and Prior Board Service for the Council for Native Hawaiian Advancement

You entered federal service on October 10, 2021, as Senior Advisor for Native Hawaiian Affairs, U.S. Department of the Interior (DOI or Department), and signed the Ethics Pledge on October 12, 2021. As Senior Advisor for Native Hawaiian Affairs, you serve as the Secretary's senior advisor focusing on Native Hawaiian activities and their impact on major program and policy issues of the Department. Your major duties and responsibilities include, but are not limited to, providing close review and coordination of issues, programs and/or policies involving the Department, the State of Hawaii, and Native Hawaiians; participating in intra-agency meetings where the subject matter crosses Bureau/Assistant Secretary lines to seek consensus on controversial issues and to develop a coordinated approach to recommend or seek changes for better legislative and public acceptance of Departmental programs/policies related to Native Hawaiian issues and initiatives; developing and performing necessary liaison with constituents and the private sector to ensure widespread understanding of Departmental programs and as legislative initiatives impacting those programs and policies related to Native Hawaiians.

Prior to joining the Biden Administration, you most recently served as Executive Director of the Native Hawaiian Legal Corporation, non-profit law firm established in 1974 to provide direct legal services to Native Hawaiian individuals, communities, and organizations, from November 2019 to October 2021. In this capacity, you served as the chief administrator and executive officer selected by the Board of Directors of the Native Hawaiian Legal Corporation and also provided personal legal services to certain clients of the Native Hawaiian Legal Corporation.

Additionally, prior to joining the Department, you also served as an unpaid, *ex officio* member of the Board of Directors of the Council for Native Hawaiian Advancement (CNHA) until you resigned in October 2021. The CNHA is a member-based 501(c)3 non-profit organization with a mission to enhance the cultural, economic, political, and community development of Native Hawaiians.

As defined in Executive Order 13989, a former employer is any person for whom you have within the two (2) years prior to the date of your appointment served as an employee, officer, director, trustee, or general partner, except that "former employer" does not include any

² See OGE Legal Advisory, LA-21-04 (Feb. 18, 2021).

executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state. Executive Order 13989, Section 2(k). As defined in Executive Order 13989, a former client is any person or entity for whom you have, within two years prior to your appointment, served personally as an agent, attorney, or consultant.³ Based on information, provided to the Departmental Ethics Office (DEO), we previously determined that the CHNA qualifies as a former employer for the purposes of the Ethics Pledge.

Consistent with this determination, DEO ethics officials have advised you that you are required to recuse yourself from and not participate in certain particular matters involving specific parties that is directly and substantially related to these former employers and clients. Absent a waiver of the applicable Ethics Pledge restrictions and until the expiration of your Ethics Pledge recusals after October 12, 2023, you will continue to be restricted from participating in any particular matter involving specific parties, including meetings or other communications, that is directly and substantially related to the CHNA.

B. Current Assigned Duties Related to the Recovery Efforts Related to the Maui Wildfires

On August 10, 2023, President Joseph R. Biden, Jr. declared that a major disaster exists in the State of Hawaii and ordered Federal aid to supplement state and local recovery efforts in the areas affected by wildfires beginning on August 8, 2023, and continuing. The President's action made Federal funding available to affected individuals in Maui County. Federal assistance can include grants for temporary housing and home repairs, low-cost loans to cover uninsured property losses, and other programs to help individuals and business owners recover from the effects of the disaster. Additionally, Federal funding was also made available to state and eligible local governments and certain private nonprofit organizations on a cost-sharing basis for debris removal and emergency protective measures in Maui County, and assistance for emergency protective measures for Hawaii County. As noted in the President's declaration, Maona N. Ngwira of FEMA was appointed to coordinate Federal recovery operations in the affected areas.

Given your current role and in recognition of your unique particular credentials, expertise, and respected reputation within the Native Hawaiian community, you were recently assigned to assist with the U.S. Government's response and recovery efforts related to the recent fires in Maui. Specifically, you were detailed on August 20, 2023, to FEMA to assist with the Mission Assignment for the Hawaii August 2023 Wildfires and your primary role is to serve as Cultural Advisor to the Mission. Your detail was authorized in response to a request from FEMA for the Department to "activate the Natural and Cultural Resources Recovery Support Function (NCR RSF) to provide federal coordination support with the appropriate Recovery Support

³ OGE has advised that the definition of former client includes non-profit organizations. Ethics Pledge: Revolving Door Ban--All Appointees Entering Government, OGE DO-09-011 (March 26, 2009).

Function (RSF) primary and support agencies and organizations to address recovery needs.” In your role of Cultural Advisor, you are anticipated to participate in a number of communications, meetings, and other particular matters involving specific parties as well as particular matters of general applicability.

As reflected in public reporting on the Federal recovery efforts, FEMA is working closely with Maui's faith-based and community-based partners, as well as local, state, and federal organizations. As of late August 2023, there are approximately 1,000 Federal responders on Maui, including 350 search and rescue and canine team members, and nearly 6,000 survivors have registered for federal assistance and may be eligible for immediate resources, such as hotel rooms or financial assistance.

FEMA has advised that in your role as Cultural Advisor you will be asked to perform the following activities in support of the Mission Assignment: (1) helping to increase the cultural competence of FEMA staff (i.e., staff training); (2) completing cultural sensitivity reviews for documents produced in support of FEMA’s work on the Mission Assignment; and (3) networking/liasing with the local community with a goal of building trust between the Native Hawaiian community and FEMA. It is our understanding that it is the hope of FEMA that CHNA and others in the Native Hawaiian community as well as with Maui faith-based and community-based partners will work with FEMA to help amplify messages so as to better assist those impacted by the wildfires in getting needed assistance form the U.S. Government.

Your former employer, the CNHA, established the Kāko‘o Maui Fund to provide resources that can be deployed quickly and efficiently to Hawaiian communities impacted by the Maui wildfires. As reflected on their website, CNHA is also working in close collaboration with state and county leaders, nonprofit organizations, and community members to get an understanding of the quickly evolving priorities. See hawaiiancouncil.org (visited on August 24, 2023). Per CNHA, funding from the Kāko‘o Maui Fund will support evolving needs, including shelter, food, financial assistance, and other services as identified by our partners doing critical work on Maui. In addition to other efforts, the CNHA is also working closely with FEMA on recovery efforts including specific community engagement efforts as well as in assisting with cultural sensitivity training for Federal responders.

Therefore, as a result of your assignment from FEMA and the increased role that CNHA is taking as a nonprofit partner with FEMA on the recovery efforts underway in Maui, you have informed us that it is your expectation that you will need to regularly engage in communications and meetings with CNHA, as well as participating in both particular matter involving specific parties that are directly and substantially related to CNHA as well as broader particular matters of general applicability which impact CNHA. Additionally, given the nature of this disaster and the significant impact of the wildfires on Maui, you have advised both that you anticipate that the nature of your engagement with CNHA will continually evolve and change as recovery efforts progress and that you will need flexibility in order to be able to effectively serve in your role as Cultural Advisor.

At the present time, you have informed the Department that your Ethics Pledge recusal from CNHA is no longer tenable because there is a critical need for your unique qualifications and participation in matters related to the response and recovery efforts for the recent fires in Maui involving these organizations and persons as discussed above. Further, due to the fast-evolving nature of the recovery effort, you could be put in a situation that would not give you sufficient time to reach out to an ethics official to confirm whether you may participate in a specific situation or to find an alternate employee to work on the matter as you recuse yourself. As a result, you are seeking a waiver of your Ethics Pledge restrictions with the CNHA, which expire after October 12, 2023, so that you can effectively serve in your detailed role as Cultural Advisor to FEMA on their recover efforts in Maul.

II. Ethics Pledge Limited Waiver Analysis and Determination

Given your current role and in recognition of your unique particular credentials and expertise, you have recently been assigned to assist with the Department's and U.S. Government's response and recovery efforts related to the recent fires in Maui and have sought a waiver of the Ethics Pledge restrictions for the CNHA and will serve as the Cultural Advisor to the Mission Assignment for the Hawaii August 2023 Wildfires. In this role, you will need to engage directly with CNHA, your former employer, given their increased role in Maui as a nonprofit partner with FEMA on the recovery efforts underway in Maui. As a result of your current Ethics Pledge recusal with CNHA, you will not be able to participate in most communications and meetings with CNHA or in particular matter involving specific parties that are directly and substantially related to CNHA.

Without a waiver, your current recusal from CNHA would impair your ability to fulfill your role as Cultural Advisor to the Mission Assignment for the Hawaii August 2023 Wildfires, which in turn would adversely impact the ability of the U.S. Government to fully interact with CNHA, a significant partner in the Maui recovery efforts. As noted above, the CNHA is directly engaged with the U.S. Government on the current and ongoing recovery and response efforts in Maui and FEMA has tied their efforts to full and respectful engagement with local communities. The CNHA currently has stepped in to play a key role in these efforts along with state and local government officials. As a result and without this waiver, your Ethics Pledge recusal from the CNHA would prevent you from fully participating and representing the interests of the U.S. Government in particular matters involving specific parties, including meetings and other communications, involving the CNHA, which in turn limits your ability to engage with other stakeholders impacted by the recent wildfires in Maui.

Finally, your recusal under the Ethics Pledge with respect to the CNHA expires after October 12, 2023, and the primary purposes underlying the Ethics Pledge restrictions can be met through the limitations contained in this limited waiver and discussed further below. Given the emergency nature of the declared disaster in Maui and the significant need for the Federal response to include community engagement, I have determined that continuing your ongoing

recusal with CNHA would result in substantial limitations in your ability to perform the essential duties of your position as Cultural Advisor with the Mission Assignment for the Hawaii August 2023 Wildfires. This would in turn significantly and negatively impact the U.S. Government's recovery efforts in Maui.

Therefore, I have determined that it is within the public interest to grant you a limited waiver of Ethics Pledge Section 1, paragraph 2 restrictions related to the CNHA. Absent this limited waiver, you would be required to continue to recuse yourself from participating in all particular matters involving specific parties directly and substantially related to the CNHA, including meetings and other communications. Such a recusal would materially impair your ability to perform your assigned duties related to the Mission Assignment for the Hawaii August 2023 Wildfires and it is our understanding that this would negatively impact the ability of FEMA and the U.S. Government to ensure that their efforts take into account both cultural protocols and community priorities related to Maui's disaster relief and recovery. Further, the U.S. Government would be deprived of your particular credentials and expertise in the critical areas of working to ensure cultural sensitivity is baked into the Federal response and there is significant community engagement, with respect to the response and recovery efforts related to the Mission Assignment for the Hawaii August 2023 Wildfires.

Accordingly, under this limited waiver you may participate in certain particular matters involving specific parties, including meetings and other communications, directly related to the CNHA and assigned to you as part of your role as Cultural Advisor to the Mission Assignment for the Hawaii August 2023 Wildfires. This limited waiver is intended to authorize you in your role as Cultural Advisor to provide advice and input needed by FEMA and the U.S. Government on cultural protocols and community priorities related to Maui's disaster relief and recovery subject to the specific limitations discussed herein. If you are asked to participate in certain particular matters involving specific parties, including meetings and other communications, related to grants, contracts, or other financial benefits including federal disaster assistance or cost-sharing in your role as Cultural Advisor to the Mission Assignment for the Hawaii August 2023 Wildfires, you are authorized under this limited waiver to only provide advice and you are not authorized to make any final decisions, determinations, or commitments on behalf of FEMA or the U.S. Government. This waiver is further limited and does not authorize your participation in particular matters involving specific parties, including meetings and other communications, directly related to the CNHA, that are not assigned to you as part of your role as Cultural Advisor to the Mission Assignment for the Hawaii August 2023 Wildfires. Finally, this limited waiver does not authorize you to participate in particular matters involving specific parties, including meetings and other communications, directly related to the CNHA, if they are the same particular matters involving specific parties that you worked on while serving as a board member of CNHA.

III. Conclusion

For the reasons set forth above, I have concluded that it is in the public interest to grant you a limited waiver of the provisions of Section 1, paragraph 2 of Executive Order 13989 to enable you to effectively carry out your duties as Senior Advisor for Native Hawaiian Affairs on detail to the Mission Assignment for the Hawaii August 2023 Wildfires. Pursuant to this limited waiver, you may participate in certain particular matters involving specific parties, including meetings and other communications, directly related to the CNHA and assigned to you as part of your role as Cultural Advisor to the Mission Assignment for the Hawaii August 2023 Wildfires, subject to the limitations discussed herein.

This limited waiver does not otherwise affect your obligations to comply with all other applicable federal ethics laws and regulations and provisions of Executive Order 13989, including other applicable recusals. Additionally, this limited waiver covers only your duties as assigned by the Department or the U.S. Government while you serve as Senior Advisor for Native Hawaiian Affairs on detail to the Mission Assignment for the Hawaii August 2023 Wildfires and does not extend to any other position. In accordance with Section 3(b) of Executive Order 13989 and OGE LA-21-04, once issued, this limited waiver shall be publicly posted on the DOI website.

Cc: Stuart Delery, Counsel to the President