

August 24, 2022

UNCLASSIFIED

MEMORANDUM FOR AMBASSADOR AT LARGE ELIZABETH VAN SCHAACK

FROM: Richard C. Visek
Designated Agency Ethics Official

SUBJECT: LIMITED WAIVER OF EXECUTIVE ORDER 13989

Pursuant to Section 3 of Executive Order 13989 (January 20, 2021) (the “Executive Order”), and for the reasons stated below, I hereby grant a limited waiver of the requirements of Section 1, Paragraph 2 of the Executive Order for Elizabeth Van Schaack. I have determined that this limited waiver is necessary and in the public interest so that Ms. Van Schaack can effectively carry out her duties as the Ambassador at Large for Global Criminal Justice at the U.S. Department of State.

Background

The Office of Global Criminal Justice (“J/GCJ”) has the lead role in the Department of State with regard to the formulation of transitional justice policy and advising on transitional justice processes and strategies, such as judicial processes, truth commissions, fact-finding initiatives, reparation programs, and institutional reforms.

In her role as Ambassador at Large for Global Criminal Justice, Ms. Van Schaack has primary responsibility for leading the formulation and execution of U.S. policies regarding responses to, and accountability for, war crimes, crimes against humanity, genocide, and ethnic cleansing. Further, Ms. Van Schaack participates in the formulation and execution of U.S. policies regarding atrocity prevention. Ms. Van Schaack oversees the design, implementation, and monitoring of foreign assistance programs to promote justice and accountability for atrocities and to assist transitional justice mechanisms. She provides guidance and serves as a primary coordinator on

atrocities prevention and response with other federal departments and agencies, non-governmental organizations, private sector partners, foreign governments, and international institutions.

Previously, Ms. Van Schaack served on the Board of Directors for The Center for Justice & Accountability. The Center for Justice & Accountability is a non-profit human rights organization, based in California, that engages in litigation to prosecute human rights abusers, promote human rights policies, and support transitional justice mechanisms. The Center for Justice & Accountability is a partner and recipient of funding from J/GCJ. For instance, The Center for Justice & Accountability receives funding from J/GCJ in order to lead a consortium that promotes justice and accountability through the establishment of locally led transitional justice processes. Further, The Center for Justice & Accountability receives funding to investigate and develop international human rights litigation to support the prosecution of ISIS crimes.

The Executive Order requires all covered political appointees in the Biden-Harris Administration to abide by several commitments. In particular, Section 1, Paragraph 2 imposes a 2-year ban from date of appointment for participation in particular matters involving specific parties that are directly and substantially related to a former employer or client, including regulations and contracts. It also restricts communications with a former employer or client.

In her role as Ambassador at Large, Ms. Van Schaack will need to regularly consult with The Center for Justice & Accountability on the implementation of programming pursuant to Department funding. Further, Ms. Van Schaack will need to engage with senior leadership at The Center for Justice & Accountability to facilitate information sharing that would benefit the Department's ability to prevent and respond to atrocities. Absent this waiver, Ambassador at Large Van Schaack would be restricted for two years following her appointment from participation in any particular matter involving specific parties that is directly and substantially related to The Center for Justice & Accountability. As a result, the recusal would result in serious limitations and inefficiencies.

Analysis

In accordance with Section 3 of the Executive Order, it is in the public interest to grant Ambassador at Large Van Schaack a limited waiver of the requirements of Section 1, Paragraph 2, to enable her to effectively carry out her duties as Ambassador at Large for Global Criminal Justice.

While this waiver does not relate to the restrictions in paragraphs 3(b) or 3(c) of the pledge, I have considered the factors set forth in Section 3 of the Executive Order to inform my assessment of the public interests. Those factors include:

- a) 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;
- b) the uniqueness of the individual's qualifications to meet the government's needs;
- c) the scope and nature of the individual's prior lobbying activities, including whether such activities were *de minimis* or rendered on behalf of a non-profit organization; and
- d) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services. Here, these factors demonstrate that it is in the public interest to grant a limited waiver to Ambassador at Large Van Schaack.

Government Need

The Office of Global Criminal Justice has the lead role in the Department for formulating transitional justice policies and working with domestic and foreign entities on transitional justice strategies. It would damage the Department's initiatives if the

Ambassador at Large were not able to maintain a channel of communication between The Center for Justice & Accountability and the Office of Global Criminal Justice.

The Center for Justice & Accountability receives Department funding, for instance, to lead a consortium that responds rapidly to time-sensitive windows of opportunity to establish locally led transitional justice processes. The organization also receives funding to investigate and develop international human rights litigation to support prosecutions of ISIS crimes, leveraging its relationship with Iraqi minority communities. Further, the organization develops structural investigations that assist jurisdictions in developing cases and facilitates future proceedings by potential international justice mechanisms.

Because The Center for Justice & Accountability is a long-standing partner that works with J/GCJ on a range of initiatives, it is important to maintain a channel of communication between the organization and the Department. There is no substitute for that channel to effectively steward the long-term relationship between The Center for Justice & Accountability and J/GCJ and to ensure that The Center for Justice & Accountability is effectively implementing existing programs pursuant to Departmental funding. Further, it is important for the Ambassador at Large to be able to communicate directly with the senior leadership at The Center for Justice & Accountability from time-to-time for information sharing related to atrocities and human rights litigation. Restrictions on meetings or similar engagement that could be construed as particular matters involving The Center for Justice & Accountability would damage the efficacy of transitional justice initiatives that are implemented by The Center for Justice & Accountability and impede J/GCJ's effectiveness in furthering its policies.

The Center for Justice & Accountability is likely to apply for additional funding from J/GCJ in the future. The Ambassador at Large's recusal from participating in new funding decisions that include The Center for Justice and Accountability as an applicant would not overly restrict the efficacy of J/GCJ decision-making or programming. The evaluation of grant applications and other funding proposals is

guided by strict procedural requirements and established criteria. By the time a funding decision is forwarded for final approval, the critical evaluation is already done and the sign-off can often be viewed as a ministerial step. There is history of officials other than the Ambassador at Large giving final approval for funding decisions. Accordingly, as discussed further below, Ms. Van Schaack will be precluded from participation in particular matters involving decisions to provide new funding in which The Center for Justice & Accountability is a party or represents a party.

Unique Qualifications

Ms. Van Schaack is uniquely situated to participate in particular matters involving The Center for Justice & Accountability and to communicate with its leadership. Ms. Van Schaack served on the Board of Directors for The Center for Justice & Accountability from 2018 until she was appointed to her role as Ambassador at Large at the Department of State. Earlier in her career, Ms. Van Schaack was a staff attorney at The Center for Justice & Accountability. In addition, Ms. Van Schaack previously served as Deputy to the Ambassador at Large for the Office of Global Criminal Justice at the Department of State. In this capacity, she oversaw funding for atrocity prevention and response programming, as well as engaged with outside stakeholders to support J/GCJ initiatives.

Ms. Van Schaack knows The Center of Justice & Accountability well and is ideally positioned to work with the organization both in terms of initiatives that require rapid responses to time-sensitive matters, as well as building long-term partnerships to support the Department's mission. Ms. Van Schaack's professional background and experience at The Center for Justice & Accountability is an asset that will strengthen her ability to lead U.S. policies and interagency coordination regarding justice and accountability for atrocities in this appointed position. Furthermore, as the Ambassador at Large, Ms. Van Schaack has responsibility for leading J/GCJ and in some cases it is important to have an official with a prominent role and leadership position engaged in a matter.

Prior Lobbying

Ambassador at Large Van Schaack has not engaged in prior lobbying activities on behalf of The Center for Justice & Accountability, nor did she lobby the executive branch.

Other Limitations

The recusal obligation and related adjustments that would be necessary to maintain the restrictions imposed by the Executive Order would result in serious limitations on Ambassador at Large Van Schaack and lessen the efficacy of J/GCJ's operations. Other limitations would not satisfy the purpose of the restrictions contained in the Executive Order. However, the waiver can be tailored to advance the public interest in the important work of J/GCJ while also serving the purpose underlying Section 1, Paragraph 2 of the Executive Order—the Revolving Door Ban on appointees entering government service. That paragraph is intended to limit possible concerns that appointees might show preferential treatment toward their former employers and clients. Those concerns are at their highest when it comes to funding decisions. Therefore, the waiver granted to her is limited to preclude the Ambassador at Large from participating in any funding decisions involving The Center for Justice & Accountability. For example, Ambassador at Large Van Schaack will not participate in the assessment of any new applications for funding or the execution of contracts, grants, or cooperative agreements with The Center for Justice & Accountability.

Conclusion

The significant public interest in the ability of the Office of Global Criminal Justice to accomplish its mission requires that Ambassador at Large Van Schaack participate in a range of matters involving The Center for Justice & Accountability, which is a strategic partner and grant recipient, and that she be able to communicate with The Center for Justice & Accountability's leadership. Without a waiver of Section 1,

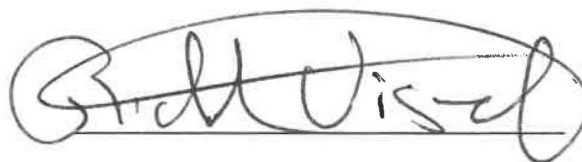
Paragraph 2 of the Executive Order, Ambassador at Large Van Schaack would be precluded from engaging with The Center for Justice & Accountability on information sharing related to global atrocities, human rights litigation, and the implementation of Department funded programming. The waiver is limited in scope and will not permit Ambassador at Large Van Schaack's participation in any funding decisions related to The Center for Justice & Accountability.

For the foregoing reasons, I grant Ambassador at Large Van Schaack a limited waiver of the restrictions in Section 1, Paragraph 2 of the Executive Order to enable her to effectively carry out her duties as Ambassador at Large for Global Criminal Justice.

Pursuant to this waiver, Ambassador at Large Van Schaack may participate in particular matters in which The Center for Justice & Accountability is a party, with the exception of funding decisions. This waiver does not otherwise affect Ambassador at Large Van Schaack's obligation to comply with all other applicable government ethics rules and provisions of the Executive Order.

August 24, 2022

Date

A handwritten signature in black ink, appearing to read "Richard C. Visek", enclosed within a large, loopy oval scribble.

Richard C. Visek

Designated Agency Ethics Official

Cc: Stuart Delery, White House Counsel & Designated Agency Ethics Official