

January 9, 2023

MEMORANDUM FOR AMBASSADOR CAROLINE KENNEDY

FROM: RICHARD C. VISEK
DESIGNATED AGENCY ETHICS OFFICIAL

SUBJECT: 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 waiver of the requirements of Section 1, Paragraph 2 of the Executive Order for Ambassador Caroline Kennedy. I have determined that this waiver is necessary and in the public interest so that Ambassador Kennedy can effectively carry out her duties as the Chief of Mission for U.S. Embassy Canberra.

Background

Executive Order 13989 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 the 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. Ambassador Kennedy served as a member of the Board of Directors of the Boeing Company (“Boeing”) from August 2017 until January 2021. Due to the timing of her service on the Board of Directors of Boeing, this entity is included in the definition of “former employer” under the Executive Order. Absent this waiver, therefore, Ambassador Kennedy would be restricted for two years following her appointment from communicating with Boeing in most circumstances and from participation in any particular matter involving specific parties that is directly and substantially related to Boeing.

Ambassador Kennedy serves as the personal representative of the President and the senior diplomat for the United States in Australia. As such, Ambassador Kennedy represents the United States before the Australian government and to the Australian people. She has a leadership role in all aspects of this bilateral relationship. This includes advancing U.S. national security, promoting U.S. economic interests, and reinforcing the ties between our countries. The United States and Australia are vital allies, promoting peace and stability in the region through a close military and security relationship. Recently, Australia, the United Kingdom, and the United States have formed an enhanced security partnership (AUKUS).

Boeing is a U.S. aerospace and defense company. Boeing has a large presence in Australia, particularly in the areas of defense procurement and commercial aviation. The U.S. Embassy in Australia works with Boeing across a range of issues. For example, the U.S. Embassy has advocated for Boeing on particular commercial tenders, as it has for other American companies. This sort of advocacy might include the Ambassador signing letters or taking in-person meetings with Australian government decision-makers to describe the merits of U.S. products. The U.S. Embassy also engages the Australian government on defense policies, and aspects of these policies can be viewed as particular matters involving specific parties. The Embassy's handling of such issues can include meetings with Boeing and other U.S. defense companies., and issues related to defense industry policy can be raised at meetings between the Ambassador and ministers or senior Australian defense officials.

Finally, as a U.S. company with a large business presence in Australia, Boeing is active in AmCham and engages with the Embassy on matters related to its local presence and the promotion of U.S. economic interests more generally. In fact, Dr. Brendan Nelson, the President of Boeing for Australia, New Zealand, and the Pacific Islands, currently serves as the AmCham Chairman. AmCham Australia is the Mission's premier business association partner to advance U.S. economic policy objectives. Ambassador Kennedy has already received an invitation from AmCham Australia to serve as the Patron of the American Chamber of Commerce, a purely honorary position with no fiduciary role, but one that serves to emphasize the support for the business community and U.S. companies in Australia. Prior U.S. Ambassadors to Australia have served in this position.

Analysis

In accordance with Section 3 of Executive Order 13989, it is in the public interest to grant Ambassador Kennedy a waiver of the requirements of Section 1, Paragraph 2 to enable her to effectively carry out her duties as Ambassador to Australia.

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 interest. Those factors 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 non-profit organization; and
- (iv) 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 waiver to Ambassador Kennedy.

Government Need

The U.S. Embassy works with Boeing across a range of matters related to national security and economic opportunity, as it does with other U.S. defense contractors and companies more generally. Of particular note, the Ambassador leads the Embassy's efforts to advance U.S. national security goals articulated in the March 2021 Interim National Security Strategy and the March 2021 President's Trade Policy Agenda. As noted above, the U.S. Embassy has advocated for Boeing on particular commercial tenders. The U.S. Mission frequently engages the Australian government on defense policies that directly affect Boeing and other U.S. defense companies, such as advocating for purchase of equipment that enables greater interoperability between U.S.

and Australia forces. These policy issues can include particular matters involving specific parties such as Boeing. Additionally, in the defense policy area, the establishment of the Australia-United Kingdom-United States (AUKUS) enhanced security partnership further supports defense policy as an even greater focus in bilateral relations. The U.S. Mission also engages the Australian government on transportation policies and issues that directly involve U.S. transportation companies and their suppliers. Boeing is often active on these sorts of issues, both representing its own interests and as a member of trade groups representing the affected industries.

Finally, the U.S. Mission also works closely with AmCham Australia. This is important engagement to advance U.S. economic interests. Boeing's involvement—and its current leadership of the AmCham—means the Ambassador will need to communicate with Boeing employees, and even when that communication occurs under the auspices of the AmCham, the communications may well touch on Boeing's own affairs.

Future events that are already in the planning stage underscore these points. Over the next 18 months, for example, the Mission's Office of Defense Cooperation and Foreign Commercial Service will organize U.S. participation in several major defense-related events, ideally led by the Ambassador. These include the Indo Pacific Maritime Conference and the Australia International Airshow (Avalon Air Show), each likely to have a large Boeing Company presence.

If Ambassador Kennedy is restricted from participating in matters involving Boeing or communications with the company, the U.S. Embassy's engagement on matters related to national security and defense cooperation as well as the promotion of U.S. economic interests, trade, and transportation would be significantly negatively impacted. As discussed below, the Ambassador's personal engagement makes a difference in the effectiveness of our Embassy's activities.

Unique Qualifications

As the top diplomat representing the United States Government, the Ambassador plays a critical role in advancing U.S. interests in Australia. The Chief of Mission at the U.S. Embassy in Australia is particularly well-positioned to achieve U.S. national security

goals as the personal representative of the President. The Ambassador is able to access the highest echelons of the Australian government, as well as sub-national government, academic, private sectors, and non-governmental actors to achieve U.S. objectives. The Ambassador's participation in representational and diplomatic functions including interaction with Boeing officials would serve to heighten the impact of the United States Government's message, as the Ambassador's involvement would draw influence, media attention and public interest. By contrast, the Ambassador's recusal would undercut the efficacy of Embassy engagement.

Prior Lobbying

Ambassador Kennedy has not engaged in prior lobbying activities on behalf of any paying clients, nor did she lobby the executive branch.

Other Limitations

Ambassador Kennedy has already taken steps to limit the scope of potential conflicts with Boeing. She was required to, and has, divested her stock interest in Boeing and no longer holds a financial interest in Boeing. Her remaining recusal obligation stems solely from her former relationship with Boeing as a Director which ended January 2021. Limiting the scope of the Ambassador's participation in particular matters involving Boeing as a party would not satisfy the purposes of the restriction in the Executive Order, but would constrain her effectiveness as U.S. Ambassador in the areas of national security and support for U.S. economic interests.

Conclusion

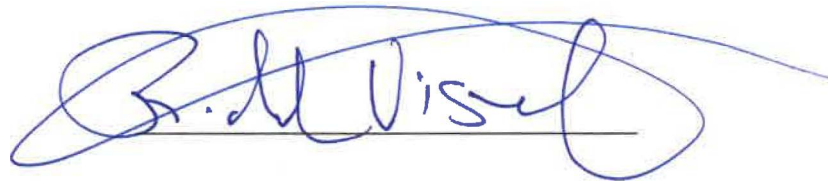
It is in the public interest for our Ambassador to Australia to participate in matters involving Boeing, which has a key presence in Australia, to advance United States policy interests in areas ranging from support for U.S. industry, national security, aviation and space policy, and collaboration with close military allies.

For the foregoing reasons, I grant Ambassador Kennedy a waiver of the restrictions in Section 1, Paragraph 2 of the Executive Order to enable her to effectively carry out her duties as Ambassador to Australia.

Pursuant to this waiver, Ambassador Kennedy may participate in particular matters in which Boeing is a party. This waiver does not otherwise affect Ambassador Kennedy's obligation to comply with all other applicable government ethics rules and provisions of the Executive Order.

May 26, 2023

Date



Richard C. Visek

Designated Agency Ethics Official

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