



United States
Department of
Agriculture

Office of Ethics

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TO: Andrea Delgado

FROM: Stuart Bender
Designated Agency Ethics Official
and
Director, USDA Office of Ethics

SUBJECT: Limited Waiver of Executive Order 13989 for Andrea Delgado

DATE: January 18, 2022

Pursuant to the authority delegated under Section 3 of Executive Order 13989 (January 20, 2021) as designated by the Acting Director of the Office of Management and Budget,¹ and after consultation with the White House Counsel's Office, I hereby grant a limited waiver of the requirements of Section 1, Paragraph 3 of the Executive Order² for Ms. Andrea Delgado. I have determined this waiver is necessary and it is in the public interest to grant this waiver to enable Ms. Delgado to effectively carry out her duties as the Chief of Staff for the Natural Resources and Environment (NRE) Mission Area in the U.S. Department of Agriculture ("the Department").

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).

² Section 1, Paragraph 3 of Executive Order 13989 imposes the follow requirement upon Administration appointees who served as a federally registered lobbyist in the two years prior to their appointment:

3. *Revolving Door Ban—Lobbyists and Registered Agents Entering Government.* If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq.*, or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq.*, **within the 2 years before the date of my appointment**, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, **within the 2 years before the date of my appointment**;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, **within the 2 years before the date of my appointment**.

(Emphasis supplied).

Ms. Delgado is expected to advise and counsel the Secretary; the Deputy Secretary; the Chiefs of Staff to the Secretary and the Deputy Secretary; the NRE Under Secretary and NRE Deputy Under Secretary, as well as other senior Department officials on matters of national importance related to the nexus of environmental policy-making as it relates to climate change, agricultural labor and equity. Ms. Delgado is also expected to advise and counsel the Secretary of Agriculture, the Deputy Secretary, and other senior policy-making officials in the Department on cross-cutting inter-Departmental and inter-governmental matters of national importance related to the intersection of agricultural labor, immigration, health, equity and environmental issues.

Since June 2019, Ms. Delgado has been employed as the Government Affairs Director for the United Farm Workers Foundation (a nonprofit labor advocacy organization). In this capacity, Ms. Delgado has been a Federally-registered lobbyist for her employer. Absent this waiver, Ms. Delgado would be restricted for two years following her appointment from participating in any particular matter on which she lobbied for the United Farm Workers Foundation in the two years before her appointment, and from participating in the specific issue areas in which those particular matters fall. Managing an ongoing recusal for Ms. Delgado will impact several of the Department's important missions. The successful accomplishment of these missions relies on extensive, open, and ongoing collaborative communications within the Department, including between the Secretary, the Deputy Secretary, the NRE Under Secretary and NRE Deputy Under Secretary and other senior Department officials. Without this waiver, the adjustments that would be necessary to maintain Ms. Delgado's recusal are anticipated to result in serious limitations and inefficiencies in the Department.

Background

As noted above, Ms. Delgado has served, since June 2019, as the Government Affairs Director at the United Farm Workers Foundation. The United Farm Workers Foundation is a nonprofit organization that seeks to assist communities in breaking free from poverty and served over 900,000 agricultural workers and immigrants in agricultural communities across the United States, in 2020. This position involved directing the United Farm Workers Foundation's advocacy of underrepresented communities in the United States, with a focus on immigration, migrant and seasonal workers, and environmental health policy. In this capacity, Ms. Delgado conducted policy research, analysis, and development, as well as aspects of advocacy and public outreach. Notably, Ms. Delgado co-led efforts that resulted in the historical passage of the Farm Workforce Modernization Act (H.R.5038/H.R.1603), a negotiated bipartisan bill that will provide certainty to agricultural employers and farm workers by establishing a path to legalization for the agricultural workforce, reform the H-2A temporary agricultural worker program and improve living and working conditions for the agricultural laborers who work to harvest the food that feeds the nation. Agricultural labor is one of the most important issues in maintaining a stable and continuous food supply and is essential to the economic well-being of the nation.

Ms. Delgado's passion for improving the environment for all and improving the lives of underrepresented minority communities arises from her own personal journey when she came to this country as an immigrant at just 10 years of age. In her professional career over the past 14

years, Ms. Delgado has spoken to hundreds of seasonal and migrant farm workers in individual or group settings. Fluent in English and Spanish, Ms. Delgado can communicate directly with a predominantly Spanish-speaking and immigrant workforce. These experiences helped inform policy negotiations that she was involved in with major agricultural stakeholders involving a wide diversity of farm owner organizations such as the American Farm Bureau Federation, the Western Growers Association, the National Council of Farmer Cooperatives, the Florida Fruit and Vegetable Association, the National Milk Producers Federation, and the Western Dairymen Association. As a result of her ability to listen and understand the needs of industry representatives as well as the laborers who work on a range of agricultural establishments, such as farms, ranches, nurseries, greenhouses and dairy operations, Ms. Delgado became proficient at exchanging views which contributed to the crafting of bipartisan legislation with Senate and House of Representatives staff on both sides of the aisle to achieve common ground on major issues facing American agriculture, namely, pesticide usage and the preservation of protections for workers and consumers in the Pesticide Registration Improvement Extension Act of 2018 (PRIA 4), as well as migrant and seasonal agricultural labor and H-2A guest worker visas.

More recently, during the COVID-19 pandemic, Ms. Delgado worked with the Senate Committee on Agriculture, Nutrition and Forestry on S.4453, the bipartisan Food Supply Protection Act of 2020, to integrate provisions that would help protect food supply chain workers from COVID-19. Some of these provisions were later included and enacted in H.R.1319, the American Rescue Plan to strengthen the food supply chain and agricultural pandemic responses. Ms. Delgado's experiences in working with Congress on important current legislation combined with her unique experiences in working with agricultural labor, equity, and the environment will strengthen the Department of Agriculture's ability to implement legislative mandates and further collaborative communications with Congress.

Prior to June 2019, Ms. Delgado served as the Legislative Director for the Healthy Communities Program at Earthjustice, a nonprofit environmental advocacy organization. From 2012 through 2019, Ms. Delgado served in numerous positions of ever increasing responsibility at Earthjustice, starting as a Legislative Representative, then being promoted to a Senior Legislative Representative, and ultimately becoming the Legislative Director for Earthjustice's Healthy Community Program due to her expertise in climate change, toxic pollutants and chemicals and their effect upon the environment and upon susceptible members of the population.

Ms. Delgado has had extensive experience working with the Latin American community on labor issues and previously she served as a Senior Policy Analyst for the Labor Council for Latin American Advancement. Ms. Delgado also served as a Fellow for the National Latino Coalition on Climate Change. Moreover, Ms. Delgado is a co-founder and board member for GreenLatinos, a nonprofit coalition of Latino leaders committed to addressing national, regional, and local environmental, natural resources, and conservation issues that significantly affect the health and welfare of the Latino community in the United States. Ms. Delgado is also a board member of NC FIELD, a non-profit, North Carolina based organization that works with migrant and seasonal farmworker youth and families. To assist young people and understand their families' unique perspectives, Ms. Delgado volunteers with the National Migrant Seasonal Head

Start Association, as a host and mentor for farmworker youth and to inform farmworker families about national policy developments. For her work on labor and environmental issues, in 2011, Ms. Delgado won the MillerCoors Leader of the Year Award, a national competition among outstanding Latinos nominated for their leadership and contributions to their communities. Ms. Delgado was also named as one of the “Top Women in Conservation and Environmental Justice” by EcoDiversity Magazine in 2018. For her success in furthering bipartisan public interest policies in an increasingly divisive political environment, the D.C. based publication The Hill recognized her among the Top Lobbyists of 2018. In 2021, Ms. Delgado was appointed to serve as a member of the White House Environmental Justice Advisory Council to provide advice and recommendations to the White House Council on Environmental Quality and the White House Environmental Justice Interagency Council on addressing current and historic environmental issues. And most recently, Black Millennials for Flint recognized Ms. Delgado with the 40 under 40 Young, Gifted & Green Award for “Leadership and Excellence in Environmental Justice.”

Through her work in these varied positions, Ms. Delgado has demonstrated a unique expertise in the areas of agricultural labor, immigration, occupational safety, health, environmental and equity issues, along with her expertise in successfully working collaboratively with Congress and various agricultural stakeholders. In view of the national economic stress caused to the American food supply chain by climate change and by the COVID-19 pandemic, the Department of Agriculture has an urgent need for the unique combination of areas of overlapping expertise that Ms. Delgado possesses about agricultural labor and environmental issues. Moreover, the Department has an urgent need for the expertise that Ms. Delgado possesses about policy-making, equity and the effects of pollution on socially-disadvantaged communities, combined with her well-honed skills to achieve bipartisan Congressional legislation.

As part of her efforts working for the United Farm Workers Foundation for the past two years, and for Earthjustice (prior to June 2019), Ms. Delgado registered as a federal lobbyist, and engaged in lobbying activities for these entities, both of which are non-profit organizations. Because Ms. Delgado’s work as a Federally-registered lobbyist for Earthjustice was more than two and a half years ago, her Earthjustice position falls outside of the two-year window imposed by Section 1, Paragraph 3 of Executive Order 13989. As such, Ms. Delgado’s employment with Earthjustice is beyond the scope of the revolving door restrictions contained in Executive Order 13989. Consequently, this waiver only considers Ms. Delgado’s lobbyist work at the United Farm Workers Foundation, her employer for the Executive Order’s two-year prior employment period.

During the past two years, Ms. Delgado exclusively lobbied Congress on a broad variety of environmental, health and worker policy issues. However, Ms. Delgado did not lobby the Department of Agriculture or any other executive branch agencies. In fact, over the past six years, Ms. Delgado only lobbied USDA on one occasion in a single meeting in 2015. During her entire professional career, Ms. Delgado did not lobby on behalf of any paying clients, and she did not receive any contributions on behalf of any political action committees. Indeed, Ms. Delgado was not paid any additional fees beyond her salary for her lobbying activities.

Analysis

In accordance with Section 3 of Executive Order, it is in the public interest to grant Ms. Delgado a limited waiver of the of the requirements of Section 1, Paragraph 3 of the Executive Order to enable her to effectively carry out her duties as a Chief of Staff for the Natural Resources and Environment Mission Area in the Department of Agriculture.

In making this assessment, I have considered the factors set forth in Section 3 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.

Here these factors demonstrate that it is in the public interest to grant a limited waiver to Ms. Delgado. The government has a critical need for Ms. Delgado's services as Chief of Staff in the Natural Resources and Environment Mission Area in the Department of Agriculture. This position impacts several of the Department's important national agricultural and environmental missions. Ms. Delgado is also uniquely qualified to meet the government's needs. She has vital expertise in farm labor issues and extensive experience in health and environmental issues. Additionally, Ms. Delgado's prior lobbying activities were rendered on behalf of nonprofit organizations. Ms. Delgado did not lobby on behalf of any paying clients, and she exclusively worked with Congress on agricultural workers safety and to address historical inequities that impact the agricultural labor force. Finally, the adjustments that would be necessary to maintain other limitations on Ms. Delgado's services are anticipated to result in serious limitations and inefficiencies in the Department, and she would be unable to capably perform the duties of the position.

Simply put, this waiver is supported by the government's critical need, Ms. Delgado's specialized experience, the deleterious impact of other limitations, and the fact that Ms. Delgado only conducted lobbying activity for a non-profit organization.

Conclusion

The significant public interest in the ability of the Department of Agriculture to accomplish its critical mission in the area of agricultural labor, worker health and safety, equity, climate change, environmental policy-making, and agricultural economic sustainability requires that Ms. Delgado be able to fully advise and counsel the Secretary, Deputy Secretary, and other senior officials on environmental and agricultural labor matters of national importance. Due to the scope of Section 1, paragraph 3, of the Executive Order, a broad application of this prohibition would be detrimental to the Department of Agriculture. Without a waiver, Ms. Delgado would be precluded from engaging with the Secretary, Deputy Secretary, other senior officials within the Department, senior

officials with other Executive Branch agencies, and members of the national agricultural community on a broad range of environmental, agricultural labor, immigration, and equity matters. Furthermore, Ms. Delgado's lobbying activity on immigration and environmental safety protections for agricultural workers for the non-profit United Farm Workers Foundation is not the type of business-oriented prior client relationship that the Executive Order intended to reach in protecting the public trust.

For the foregoing reasons, I grant Ms. Delgado a limited waiver of the restrictions in Section 1, paragraph 3 of the Executive Order to enable her to effectively carry out her duties as Chief of Staff in the Natural Resources and Environment for the Department of Agriculture and to advise the Secretary of Agriculture, the Deputy Secretary, the NRE Under Secretary and NRE Deputy Under Secretary as well as the Department's other senior policy-making officials.

Pursuant to this waiver, Ms. Delgado may participate in any particular matter on which she lobbied for the United Farm Workers Foundation within the two years before her appointment, and in the specific issue areas in which those particular matters fall. This waiver does not otherwise affect Ms. Delgado's obligation to comply with all other applicable government ethics rules and provisions of the Executive Order. Specifically, **this waiver is a limited waiver** in that it does **not** permit Ms. Delgado to participate in any party-specific matters directly affecting the financial interests of the United Farm Workers Foundation, including but not limited to litigation, disputes, audits, claims, applications, contracts or grants.

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