

VIA ELECTRONIC MAIL

October 24, 2023

TO: Matt Olsen
Assistant Attorney General – National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530

CC: Mr. Ed Siskel
White House Counsel
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Matthew Graves
United States Attorney for the District of Columbia
United States Attorney's Office
601 D Street, NW
Washington, DC 20579

Re: Potential Violation of the Espionage Act by Biden White House Officials

Dear Mr. Olsen:

Protect the Public's Trust is a nonprofit organization dedicated to the idea that public service is a public trust. Toward this end, we want to bring your attention to a matter of serious concern that relates to national security and the protection of United States' military operations in the Middle East.

Last week, a White House staff member posted an unobscured photograph of what appears to be members of a secret group of United States Army special operations forces to the White House's official Instagram account. We are concerned that the posting of this unredacted photo may violate the Espionage Act (18 U.S.C. § 792 et seq.) and are requesting that an investigation into the matter be opened.

I. Factual Background

On or about October 18, 2023, an unidentified White House staff member posted to the White House's official Instagram account a photo of President Joe Biden from his recent visit to Israel.¹ The caption to the photo read: "In Israel, President Biden met with first responders to thank them for their bravery and the work they're doing in response to the Hamas terrorist attacks."² Included

¹ Caitlin Doornbos, *White House Posts—then deletes—photo outing special operators working to free Hamas hostages*, N.Y. Post (Oct. 19, 2023), <https://nypost.com/2023/10/19/white-house-posts-then-deletes-photo-outing-special-operators/>.

² *Id.*

in the post was a picture of the President meeting with United States Army soldiers who are reportedly members of “Delta Force,” the United States Army’s elite counter-terrorism unit.³ Notably, the poster of the photograph did not attempt to obscure or hide identifying characteristics of the Delta Force members, including their faces and tattoos.⁴ The men’s identities were put on display for the entire world to see.

The White House’s Instagram post was later removed after public outcry and an apology was issued by the White House.⁵ But the damage had already been done. Screenshots taken by Instagram users indicate that the post garnered at least 6,100 likes and was viewed by thousands more prior to its removal.⁶ It is possible that hundreds of thousands of Instagram users had interacted and viewed the post containing the uncensored photo by the time it was removed. The extent of the damage caused by the posting of the photo is unknown as it is impossible to determine how many people—including people associated with foreign terrorist organizations and intelligence services—took their own screenshots of the unredacted photo prior to its removal.

This is just the latest incident where a government official appears to be working at cross purposes with the United States’ avowed support of its ally Israel against the terrorist group Hamas.

Last week, a Department of Homeland Security employee was placed on leave after it was discovered she previously served as a spokeswoman for the Palestinian Liberation Organization and made numerous social media posts containing antisemitic and anti-Israel rhetoric—including posts that appear to celebrate and glorify the rape, abuse, and murder of over 1,400 Israelis and dozens of American citizens.⁷

Anger among U.S. government officials regarding the United States’ response appears to be both growing and deep-seated. Last week, a State Department official resigned from his position with the agency over the United States continued support of Israel.⁸ Recent media stories reported a ‘mutiny brewing’ inside the State Department as a result of dissent over the alleged pro-Israel response being developed by the United States.⁹ Additional stories have also highlighted the strong

³ *Id.*

⁴ Members of the group are not often photographed due to the nature of their highly confidential work and, if they are, their faces are never revealed to protect their identities.

⁵ Gabriel Hays, *White House berated for posting photo of US troops in Israel: ‘They doxxed our own special forces,’* Fox News (Oct. 19, 2023), <https://www.foxnews.com/media/white-house-berated-posting-photo-us-troops-israel-doxxed-special-forces>.

⁶ Caitlin Doornbos, *White House Posts—then deletes—photo outing special operators working to free Hamas hostages,* N.Y. Post (Oct. 19, 2023), <https://nypost.com/2023/10/19/white-house-posts-then-deletes-photo-outing-special-operators/>.

⁷ Brady Knox, *Biden DHS official placed on leave after pro-Palestinian ties revealed,* Wash. Examiner (Oct. 18, 2023), <https://www.washingtonexaminer.com/policy/defense-national-security/dhs-official-leave-worked-plo>.

⁸ Rachel Treisman, *A former State Dept. official explains why he resigned over U.S arms sent to Israel,* NPR (Oct. 19, 2023), <https://www.npr.org/2023/10/19/1207037984/josh-paul-resign-state-department-military-assistance-israel-gaza>.

⁹ Akbar Shahid Ahmed, *Exclusive: ‘Mutiny Brewing’ Inside State Department Over Israel-Palestine Policy,* HuffPost (Oct. 19, 2023), https://www.huffpost.com/entry/state-department-gaza_n_6531a23ae4b0da897ab75ce4.

anti-Israel views of many in the Biden Administration who appear to be highly motivated to find an outlet for their discontent.¹⁰

Moreover, the Administration’s special envoy to the Islamic Republic of Iran—itsself a chief sponsor of Hamas—has been on “leave” for months “for allegedly mishandling classified materials.”¹¹

II. Legal Background

The Espionage Act of 1917 (18 U.S.C. § 792 et seq.) was enacted for the purpose of criminally punishing individuals who attempt to interfere with the United States’ relationships with foreign countries and undermine the United States through the publication of information vital to the defense of America.

18 U.S.C. § 793 Gathering, Transmitting or Losing Defense Information

This section seeks to punish any individual who transmits any information relating to the defense of the United States of America. Specifically, subsection (d) makes it a crime for a person:

lawfully having possession of, access to, control over, or being entrusted with any . . . photograph . . . relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it

18 U.S.C. § 793(d).

18 U.S.C. § 794 Gathering or Delivering Defense Information to Aid Foreign Government

Similarly, section 794 makes it a crime for an individual to transmit defense information to a foreign government or army. According to 18 U.S.C. § 794(a),

[w]hoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any

¹⁰ Madeleine Hubbard, *Anti-Israel sentiment has permeated Biden administration from the start*, Just the News (Oct. 23, 2023), https://justthenews.com/government/local/least-9-democratic-staffers-who-demanded-biden-hold-israel-accountable-are-now?utm_source=referral&utm_medium=offthepress&utm_campaign=home

¹¹ Josh Christenson, *Suspicion surrounds ex-Iran envoy Rob Malley after Israel attack: ‘Worst State Department scandal,’* N.Y. Post (Oct. 9, 2023), <https://nypost.com/2023/10/09/suspended-iran-special-envoy-rob-malley-under-scrutiny-for-hamas-remarks-following-israel-terror-attack/>.

representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any . . . photograph . . . or information relating to national defense . .

..

To emphasize the seriousness of this offense, punishment for a violation can include a sentence for any term of years up to life in prison.

III. Analysis

Given the recent revelations that there are federal employees who foster hostile feelings toward Israel and fervently disagree with the United States' continued support of Israel—including those who actively celebrate the October 7 terrorist atrocity—there is reason for concern that the subject Instagram post may have been made with the intent of aiding Hamas or its allies to the detriment of the United States.

At minimum, the post contains information relating to the national defense of the United States that could be used to injure our national security. *See* 18 U.S.C. § 793(d). The photograph in the post reveals the faces and other distinct characteristics of members of the classified Delta Force. By making their identities known, the poster of the photograph has leaked the members' identities and undermined not only their mission in Israel but also future operations around the world. The post has not only put their lives in danger, but possibly put their families in harm's way.

Similarly, there are grounds for a potential violation of section 794(a). By posting the unredacted photograph, the poster has directly transmitted to the entire world, including members of Hamas, other terrorist organizations, and hostile foreign intelligence services confidential material relating to the United States military and the defense of the United States. Hamas—as well as their allies in the Islamic Republic of Iran—now possibly have the identity of soldiers who have been sent into Israel to combat them. The photograph puts their current mission, and any possible future missions, at risk.

IV. Conclusion

Accordingly, we request an investigation into the events surrounding the White House's October 19, 2023 Instagram post. At minimum, it is necessary to determine how information that may put American lives at risk made its way to the official White House Instagram.

An investigation should determine which White House official posted the classified information, was approved to do so, and which senior officials who arguably had security clearances and the knowledge of the harm that such disclosures may bring to those American military that have been made public. Even granting that this were merely an error in judgment, which we are not conceding, an investigation must be undertaken to determine why no one in the editorial approval chain had the requisite knowledge of the security restrictions and/or the perceptive capability to notice the obvious implications of revealing identifying characteristics of these military personnel.

It is critically important to assure the American public—including the men and women we ask to put their lives on the line—that this was merely a grave error in judgment and not something

more nefarious. It is also imperative to demonstrate accountability for such a potentially grave decision.

We look forward to a prompt reply in light of the serious nature of the allegations.

Sincerely,

Michael Chamberlain
Director
Protect the Public's Trust