

United States Senate
WASHINGTON, DC 20510

April 20, 2017

Stefan C. Passantino
Deputy Counsel to the President
And Designated Agency Ethics Official
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. Passantino,

We write today to seek clarification on Stephen Bannon's recent communications with Breitbart News Network, as well as to better understand Mr. Bannon's compliance with Executive Order 13770 and other federal ethics regulations.

President Trump signed Executive Order 13770 on January 28, 2017.¹ The order requires "[e]very appointee in every executive agency appointed on or after January 20, 2017" to sign and be "contractually committed to" an "Ethics Pledge." Among other provisions, the Ethics Pledge prevents appointees from "participat[ing] in any particular matter involving specific parties that is directly and substantially related to [their] former employer or former clients" for the first two years after their appointment.² The Executive Order states that a "particular matter involving specific parties" includes "any meeting or other communication relating to the performance of one's official duties with a former employer or former client."³ As an employee of the Executive Office of the President, Mr. Bannon is subject to the requirements outlined in Executive Order 13770.⁴

In addition, Mr. Bannon is subject to federal ethics regulations issued by the U.S. Office of Government Ethics ("OGE").⁵ Among other requirements, OGE regulations require executive

¹ President Donald J. Trump, "Executive Order 13770," *WhiteHouse.gov* (January 28, 2017) (online at <https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>).

² *Id.*

³ 5 U.S.C. § 2641.201 (h) defines a "particular matter involving a specific party or parties" as "a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case" (online at <https://www.law.cornell.edu/cfr/text/5/2641.201>); President Donald J. Trump, "Executive Order 13770," *WhiteHouse.gov* (January 28, 2017) (online at <https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>).

⁴ Trump Transition Team, "President-Elect Donald J. Trump Announces Senior White House Leadership Team" (November 13, 2016) (online at <https://greatagain.gov/president-elect-donald-j-trump-announces-senior-white-house-leadership-team-3dcbe0a37b8>).

⁵ United States Office of Government Ethics, "Laws and Regulations" (online at <https://www.oge.gov/web/oge.nsf/Laws+and+Regulations/>).

branch employees to “avoid an appearance of loss of impartiality in the performance of...official duties.”⁶ To maintain the appearance of impartiality, executive branch employees are prohibited by 5 C.F.R. § 2635.502 from “participat[ing] in...a particularly matter” if they “know that a person with whom [they have] a covered relationship is or represents a party.” Executive branch employees are considered to be in a “covered relationship” with individuals “for whom the employee as, within the last year, served as officer, director, trustee, general partner, agent attorney, consultant, contractor or employee.”⁷

Given the clear restrictions on communicating with former employers outlined in Executive Order 13770, as well as regulatory requirements that he “maintain the appearance of confidentiality” regarding his former employers, we were concerned to hear about Mr. Bannon’s recent communications with Breitbart News Network (“Breitbart”). Mr. Bannon formerly served as Breitbart’s Executive Chairman.⁸ On February 14, 2017, Breitbart published what has been described as “an extensive attack” on Reince Priebus, President Trump’s Chief of Staff.⁹ Mr. Bannon told news outlets that he “went ballistic” on a phone call with Breitbart’s Washington political editor, Matthew Boyle, to protest this article.¹⁰ Later that week, Mr. Bannon reportedly “instructed [Boyle] not to publish additional articles critical of Priebus,” an act that spurred the White House to offer Boyle “access to key staffers,” including Press Secretary Sean Spicer, Deputy Chief of Staff Katie Walsh, and President Trump himself.¹¹ In March, Breitbart’s Editor in Chief, Alex Marlow, told reporters that Mr. Bannon “reach[es] out” to him “every so often.”¹²

Mr. Bannon’s communications with Breitbart appear to violate the Ethics Pledge outlined in Executive Order 13770. Because they relate to news coverage of the Trump Administration, Mr. Bannon’s conversations appear to qualify as “communication[s] relating to the performance of [your] official duties with a former employer.” In addition, because he left his position at Breitbart less than one year ago, these communications appear to be in clear violation of both the pledge and OGE regulations. While the executive order, as well as OGE regulations, permit the

⁶ 5 C.F.R. § 2635.501 (online at <https://www.law.cornell.edu/cfr/text/5/2635.501>).

⁷ 5 C.F.R. § 2635.502 (online <https://www.law.cornell.edu/cfr/text/5/2635.502>).

⁸ David Folkenflik, “Ex-Breitbart Executive Brings Alt-Right Ties To The White House,” *NPR* (November 15, 2016) (online at <http://www.npr.org/2016/11/15/502165973/ex-breitbart-executive-brings-alt-right-ties-to-the-white-house>); Hadas Gold, “Breitbart’s bid for congressional pass put off,” *Politico* (March 27, 2017) (online at <http://www.politico.com/story/2017/03/breitbart-capitol-hill-credentials-merciers-236547>).

⁹ Jonathan Swan, “Steve Bannon privately unloaded on Breitbart reporter,” *Axios* (February 15, 2017) (online at <https://www.axios.com/steve-bannon-privately-unloads-on-breitbart-2263308411.html>).

¹⁰ Lloyd Grove, “Steve Bannon: I Didn’t Order Breitbart Hit on Reince Priebus,” *The Daily Beast* (February 15, 2017) (online at <http://www.thedailybeast.com/articles/2017/02/15/steve-bannon-i-didn-t-order-breitbart-hit-on-reince-priebus.html>).

¹¹ Oliver Darcy, “‘There are no sacred cows’: Breitbart’s honeymoon with establishment win of Trump White House may be over,” *Business Insider* (March 8, 2017) (online at <http://www.businessinsider.com/breitbart-establishment-trump-this-is-war-obamacare-2017-3>).

¹² Lachlan Markay, “Bannon May Have Violated Ethics Pledge by Communicating with Breitbart,” *Daily Beast* (March 30, 2017) (online at <http://www.thedailybeast.com/articles/2017/03/30/bannon-may-have-violated-ethics-pledge-by-communicating-with-breitbart.html>); Breitbart TV, “Watch: Breitbart Editor-in-Chief Alex Marlow Interviewed by NBC’s ‘Today,’” *Breitbart* (March 17, 2017) (online at <http://www.breitbart.com/video/2017/03/17/watch-breitbart-editor-chief-alex-marlow-interviewed-nbcs-today/>).

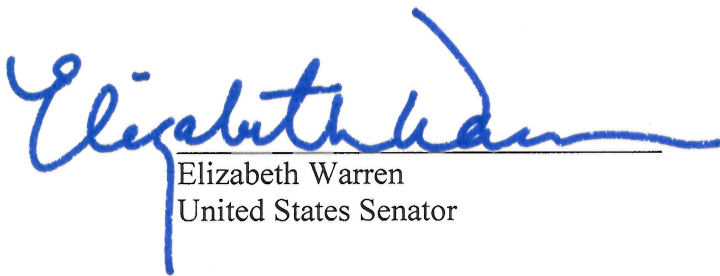
White House to waive ethics requirements in specific circumstances,¹³ the White House has publicly confirmed that Mr. Bannon has not received a waiver to communicate with Breitbart.¹⁴ It is unclear whether he has received a waiver under 5 C.F.R. § 2635.502.

To help us better understand Mr. Bannon's compliance executive branch ethics requirements, as well as your role in ensuring that Mr. Bannon complies with these requirements, please provide us with answers to the following no later than April 28, 2017:

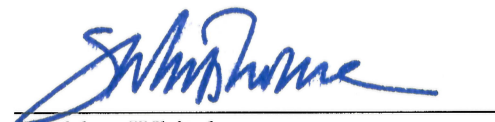
1. Did Mr. Bannon sign an Ethics Pledge, as outlined in Executive Order 13770? If so, please provide a copy of his signed Ethics Pledge.
2. Has your office provided Mr. Bannon with any guidance regarding the protocols for compliance with the Ethics Pledge? If so, please provide copies of that guidance, if written guidance was made, or descriptions, if guidance was provided verbally.
3. Has the White House provided Mr. Bannon a waiver from Executive Order 13770, or an authorization under 5 C.F.R. § 2635.502, to allow him to communicate with Breitbart News?
4. Were Mr. Bannon's communications with Breitbart related to the performance of his official duties? If so, do they constitute a violation of Executive Order 13770 or a violation of 5 C.F.R. § 2635.502? If so, please describe the disciplinary actions taken by your office against Mr. Bannon.

Please do not hesitate to reach out to Brian Cohen of Senator Warren's staff at 202-224-4543, Joe Gaeta of Senator Whitehouse's staff at 202-224-2921, Andrew Cohen of Senator Markey's staff at 202-224-2742, and Jeremy Horan at Senator Hirono's staff at 202-224-6361.

Sincerely,



Elizabeth Warren
United States Senator



Sheldon Whitehouse
United States Senator

¹³ President Donald J. Trump, "Executive Order 13770," *WhiteHouse.gov* (January 28, 2017) (online at <https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>).

¹⁴ Lachlan Markay, "Bannon May Have Violated Ethics Pledge by Communicating with Breitbart," *Daily Beast* (March 30, 2017) (online at <http://www.thedailybeast.com/articles/2017/03/30/bannon-may-have-violated-ethics-pledge-by-communicating-with-breitbart.html>).

Edward J. Markey

Senator Edward J. Markey
United States Senator

Mazie Hirono

Senator Mazie K. Hirono
United States Senator

cc: The Honorable Walter M. Shaub
Director
U.S. Office of Government Ethics