

Congress of the United States
Washington, DC 20515

June 9, 2020

The Honorable Mary Ann Glendon,
Ambassador and Chair
Dr. Peter Berkowitz,
Executive Secretary
Commission on Unalienable Rights
2201 C Street, N.W.
Washington, D.C. 20520

Dear Ambassador Glendon and Dr. Berkowitz:

We write to express our serious misgivings about the direction taken by the State Department's new Commission on Unalienable Rights and how its anticipated report may change the way the State Department treats violations of human rights around the world. We are aware that the Commission's hearings recently ended, and that the Commission is reportedly preparing its final report.¹ We are concerned that this report will undermine our nation's ability to lead on critical issues of universal human rights, including reproductive freedom and protections for millions of people globally in the LGBTQ community.

The Commission's purpose is ostensibly to "provide fresh thinking about human rights discourse where such discourse has departed from our nation's founding principles of natural law and natural rights." The Commission's focus on "natural law" has been interpreted by some advocacy groups and Department staff alike as an attempt by the Trump Administration to redefine human rights based on religious objections to reproductive freedom and protections for members of the LGBTQ community. Specifically, reports indicate that Robert George, who has cited his conception of "natural law" to argue against homosexuality and reproductive freedom, played a prominent role in the Commission.²

Commission members reportedly used hearings to "demonstrate skepticism toward human rights treaties and institutions" and "advance the idea that human rights are in need of prioritization or being placed into a hierarchy, conceivably with freedom of religion trumping other rights." This is in line with statements that Secretary Pompeo has made claiming that religious freedom is the "first liberty."³ He has also said that politicians and bureaucrats have

¹ *Pompeo's Commission on Unalienable Rights Looks to Be a "Win-Win" for China*, Just Security (Mar. 23, 2020) (online at www.justsecurity.org/69323/pompeos-commission-on-unalienable-rights-looks-to-be-a-win-win-for-china/).

² *State Dept. Panel to Redefine Human Rights Based on 'Natural Law and Natural Rights'*, ABC News (May 31, 2019) (online at <https://abcnews.go.com/Politics/state-dept-panel-redefine-human-rights-based-natural/story?id=63400485>).

³ *Pompeo's Commission on Unalienable Rights Looks to Be a "Win-Win" for China*, Just Security (Mar. 23, 2020) (online at www.justsecurity.org/69323/pompeos-commission-on-unalienable-rights-looks-to-be-a-win-win-for-china/).

blurred the distinction between “unalienable” and “ad hoc” rights, asserting vaguely that “unalienable rights are by nature universal,” but that not everything good can be a universal right.⁴

Theocratic states have been trampling the rights of religious minorities, dissenters and secularists, and we should be on the front lines of denouncing religious tyranny as our Enlightenment Forebears were. But counterposing religious freedom against other essential freedoms is an assault on the American Bill of Rights and our history of constitutional jurisprudence upholding the inviolable freedoms of the person against the state. This anomalous new trajectory you have embarked upon threatens to undermine the responsibility of the Department of State to comply with international human rights treaties, including those approved by Congress, such as the International Covenant on Civil and Political Rights.⁵

In addition, it appears that the creation and operation of the Commission may have violated the Federal Advisory Committee Act, which requires committees to be “fairly balanced in terms of the points of view represented.”⁶ Several human rights organizations have filed a lawsuit against the Commission alleging that none of the Commission’s Members support LGBTQ and reproductive rights as articulated by the U.S. Supreme Court. The groups have also alleged that the Act requires the Commission to make almost all meetings and records open to the public, but the Commission has held mostly closed-door meetings and kept records private.⁷

This letter, in part, follows on the work of the House Committee on Foreign Affairs, which launched an investigation into the Commission last year and has yet to receive an adequate response from the State Department about this matter.⁸

In light of these serious concerns, the Subcommittee on Oversight and Investigations within the Committee on Foreign Affairs and the Subcommittee on Civil Rights and Civil Liberties within the Committee on Oversight and Reform request a briefing by June 26, 2020 with the State Department on the Unalienable Rights Commission. In addition, please produce by June 23, 2020, the following documents and information covering the time period of January 1, 2019, to present:

win-for-china/).

⁴ *Unalienable Rights and U.S. Foreign Policy*, Wall Street Journal (July 7, 2019) (online at www.wsj.com/articles/unalienable-rights-and-u-s-foreign-policy-11562526448).

⁵ *International Covenant on Civil and Political Rights*, United States Congress (Oct. 5, 1977) (online at <https://www.congress.gov/treaty-document/95th-congress/20/resolution-text>).

⁶ 5a U.S.C. § 5.

⁷ *Human Rights Organization File Suit Over Pompeo’s ‘Unalienable Rights’ Commission*, CNN (Mar. 6, 2020) (online at www.cnn.com/2020/03/06/politics/human-rights-organizations-lawsuit-unalienable-rights-commission/index.html); Plaintiff’s Complaint for Declaratory and Injunctive Relief, 35-41 (Mar. 6, 2020), *Robert F. Kennedy Human Rights et al. v. Pompeo*, S.D.N.Y. (No. 1:20 CV 02002).

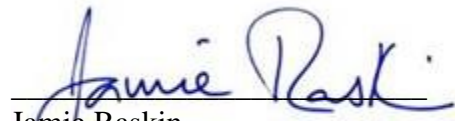
⁸ Letter from 50 Representatives to Secretary Mike Pompeo, Department of State (July 18, 2019) (online at https://foreignaffairs.house.gov/_cache/files/2/9/294cc9ed-3391-4fa2-968a-424f8e687dac/6B92FE10FE738FAEB3A6FB2BB7E69BC9.doc139.pdf).

1. All documents referring or relating to concerns or inquiries that provided the rationale for creating this Commission and why “fresh thinking” on human rights was necessary;
2. The criteria that were used to determine who was appointed to this Commission;
3. The Commission’s definition of “unalienable” rights and which rights the Commission considers “unalienable;”
4. The Commission’s definition of “ad hoc” rights and which rights the Commission considers “ad hoc;”
5. The Commission’s definition of “natural law” and the derivation of this definition;
6. The number of meetings the Commission and its subcommittees have had, as well as:
 - a. The invitees and attendees of those meetings other than the members of the Commission;
 - b. The subject matter of those meetings;
 - c. Any minutes and/or notes from those meetings;
7. Copies of all remarks made by speakers at Commission meetings;
8. All briefing materials provided by the Bureau of Democracy, Human Rights, and Labor and the Office of the Legal Advisor to the Commission;
9. All internal and external communications relating to the Commission; and
10. All documents related to the purpose, development, and implementation of the Commission.

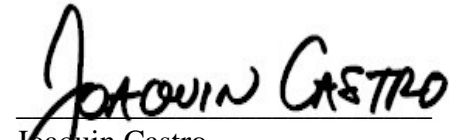
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. The Committee on Foreign Affairs’ jurisdiction extends to the Department of State, within which the Commission resides.

An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,



Jamie Raskin
Chairman
Subcommittee on Civil Rights
and Civil Liberties,
Committee on Oversight and Reform



Joaquin Castro
Chairman
Subcommittee on Oversight
and Investigations,
Committee on Foreign Affairs

Enclosure

cc: The Honorable Chip Roy, Ranking Member
Subcommittee on Civil Rights and Civil Liberties,
Committee on Oversight and Reform

The Honorable Lee Zeldin, Ranking Member
Subcommittee on Oversight and Investigations,
Committee on Foreign Affairs

Professor Kenneth Anderson, Member
Commission on Unalienable Rights

Dr. Russell A. Berman, Member
Commission on Unalienable Rights

Professor Paolo Carozza, Member
Commission on Unalienable Rights

Professor Hamza Yusuf Hanson, Member
Commission on Unalienable Rights

Dr. Jaqueline Rivers, Member
Commission on Unalienable Rights

Rabbi Dr. Meir Soloveichik, Member
Commission on Unalienable Rights

Dr. Katrina Lantos Swett, Member
Commission on Unalienable Rights

Dr. Christopher Tollefsen, Member
Commission on Unalienable Rights

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Dr. Peter Berkowitz

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Dr. David Tse-Chien Pan, Member
Commission on Unalienable Rights

Mr. F. Cartwright Weiland, Member
Commission on Unalienable Rights

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.