



Harmeet K. Dhillon  
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April 20, 2022

**Via Federal Express**

Keith Olbermann  
21 Fenwick Rd.  
Hastings on Hudson, NY 10706-3508

Keith Olbermann  
c/o Harry Walker Agency  
355 Lexington Avenue  
New York, New York 10017

**Re: Cease and Desist Concerning Your Defamation Against Former Representative Tulsi Gabbard**

Dear Mr. Olbermann:

Our firm represents former Representative and Lieutenant Colonel Tulsi Gabbard (“Representative Gabbard”) regarding false and defamatory statements you made about Representative Gabbard on Twitter. This letter concerns an urgent matter requiring your prompt legal attention. Please direct all future correspondence regarding this matter to me (Harmeet@DhillonLaw.com), Karin Sweigart (KSweigart@DhillonLaw.com), and Jesse Franklin-Murdock (JFranklin-Murdock@DhillonLaw.com). To avoid litigation, we request your response to this letter on or before April 27, 2022. If you are represented by counsel in this matter, please promptly alert us, and we will correspond directly with your attorneys.

**FACTUAL BACKGROUND**

Representative Gabbard has spent her entire adult life volunteering in service for the United States of America. After this country was attacked by terrorists on September 11, 2001, Representative Gabbard enlisted in the Army National Guard to defend the United States. In 2002, she was elected to the Hawaii state House of Representatives, the youngest person ever elected in the state at the age of twenty-one. She then voluntarily left this post in 2004 to deploy to Iraq with the 29th Brigade Combat Team. Representative Gabbard was not on the mandatory deployment roster, but she nonetheless volunteered to serve in a war zone. Through this experience, Representative Gabbard gained an appreciation of the true costs of war, costs sometimes lost on those who have not served in uniform.

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After serving in elected office at the state and local levels, Representative Gabbard was elected to the United States Congress at the age of thirty-one. Representative Gabbard served on the Armed Services, Homeland Security, and Foreign Affairs Committees. Representative Gabbard continues to serve the United States in uniform as a lieutenant colonel in the 351st Civil Affairs Command, a unit of the United States Army Reserve. Thus, she has skin in the game when it comes to matters of foreign policy and war.

On March 14, 2022, the Twitter account @LibWatchDog posted a video in which hosts of the *View* made outlandish statements suggesting that the Department of Justice should investigate Representative Gabbard, along with Fox News Host Tucker Carlson. That same day, you replied to the tweet, stating, “They are Russian Assets and there is a war. There’s a case for detaining them militarily. Trials are a sign of good faith and patience on the part of democracy.” Keith Olbermann (@KeithOlbermann), Twitter (Mar. 14, 2022, 13:25), <https://twitter.com/KeithOlbermann/status/1503467489572921346>.

While neither you nor the *View* hosts gave Representative Gabbard fair notice of the precise grounds for your attack on her, we surmise that your tweet was made in reference to a video Representative Gabbard published on Twitter the day before. In her video, Representative Gabbard called for a ceasefire in the ongoing war between Russia and Ukraine so that any biological laboratories in Ukraine could be secured. Tulsi Gabbard (@TulsiGabbard), Twitter (March. 13, 2022 03:59), <https://twitter.com/TulsiGabbard/status/1502960938147729413>. In her video, Representative Gabbard discussed United States government reports regarding American-funded biological laboratories in Ukraine and opined on the danger potentially posed by these laboratories. Representative Gabbard also generally criticized the United States government’s ongoing funding of laboratories engaged in experimental research on pathogens both in the U.S. and foreign countries because such pathogens may escape and result in new pandemics—threatening the health and wellbeing of citizens of the U.S. as well as people around the world.

Whether your tweet’s baseless accusations stemmed from Representative Gabbard’s March 13, 2022, video or have some other unknown genesis, they were malicious and could not be further from the truth. Representative Gabbard is loyal to the United States and its interests. Further, any suggestion that she supports Russia’s actions in Ukraine is unmoored from reality. Representative Gabbard has unequivocally condemned Vladimir Putin for this brutal attack on Ukraine. She has personally visited Ukraine and has great love, empathy, and sympathy for both the nation and its people.

While Representative Gabbard believes that free speech is a cornerstone of American democracy, your accusation that she is a “Russian Asset” is far outside of the bounds of free speech and civility. It is defamation.

### **YOUR LEGAL LIABILITY**

As a result of your actions described above, you are liable to Representative Gabbard for the tort of defamation *per se*.

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Defamation is an “invasion of the interest in reputation” that involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage. *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 27; *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369. Publication occurs when the statement is communicated to at least one person other than the plaintiff who understands its defamatory meaning and that it refers to the plaintiff. *Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1242. Defamation *per se* exists when the false statement charges plaintiff with criminal activity, or which, by natural consequence, causes actual damage. Cal. Civ. C. §46; *see also McGarry v. Univ. of San Diego* (2007) 154 Cal.App.4th 97, 112. Actual malice means that the defamatory statement was made “with knowledge that it was false or with reckless disregard of whether it was false or not.” *Khawar v. Globe Int’l, Inc.* (1998) 19 Cal. 4th 254 (internal citation omitted).

While the word “asset” of course has different meanings in different contexts, the context of your tweet makes evident that you used the word as it is used in the context of intelligence gathering and national security. One of the principal forms of intelligence tradecraft is “human intelligence” or “humint,” which is “the use of agents or ‘assets,’ as professionals refer to the foreign operatives who comprise their spy rings.” Oxford Handbooks Online, “The Oxford Handbook of National Security Intelligence,” <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780195375886.001.0001/oxfordhb-9780195375886-e-0001> (last accessed Apr. 13, 2022).

After you falsely labeled Representative Gabbard a “Russian Asset,” you ludicrously claimed that there is a “case for detaining [her] militarily.” A reasonable reader would only understand that you meant to convey that Representative Gabbard is a foreign operative of the Russian government. If an American citizen was acting as a “Russian Asset,” he or she should be committing the crime of gathering, transmitting or losing defense information, and would be subject to imprisonment. *See* 18 U.S.C. § 793(a) (prohibiting the gathering of certain kinds of intelligence to the benefit of a foreign nation). The consequences of this crime for a military officer such as Representative Gabbard are even worse. If you had intended any other meaning than to accuse a United States service member of aiding a foreign enemy, you would not have immediately followed your accusation with a statement that Representative Gabbard should be “detain[ed] . . . militarily.”

Your accusation that Representative Gabbard is a “Russian Asset” therefore conveys to your readers that Representative Gabbard is a foreign operative who is aiding the Russian government in its human intelligence efforts. Needless to say, this is completely false. Further, this accusation is extremely injurious to the reputation of Representative Gabbard as an Army officer and former member of Congress.

You further acted with actual malice when you defamed Representative Gabbard. Representative Gabbard’s loyalty to the United States is beyond reproach, and you either knew your description of her as a “Russian Asset” was false when you made it, or you acted in reckless disregard as to her allegiance to the United States.

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## **NOTICE TO PRESERVE EVIDENCE**

Representative Gabbard will likely be forced to pursue litigation concerning this matter. Under governing state and federal court rules, you are on notice to maintain hard copies of documents as well as all e-mail and other electronically stored information pertaining to any statements you have made regarding Representative Gabbard (whether naming her directly or only referencing her) from March 1, 2022, onward, including, but not limited to, any prior communications with or concerning Representative Gabbard and any statements alleging Representative Gabbard is a Russian asset.

Electronically stored information includes e-mail, voicemail, word processing documents, spreadsheets, databases, calendars, networks, computer systems (including legacy systems), servers, archives, backup and disaster recovery systems, tapes, disks, drives, cartridges, other storage media, laptops, internet records (including but not limited to, any postings made to Facebook, Reddit, and other similar social media sites), web pages, personal computers, and other information storage devices. You are instructed to retain any copies you have on any storage medium, including sources of data such as portable hard drives, memory cards, “thumb drives,” blackberry, personal digital assistants, mobile telephones, iPods® and smartphones.

This list is not exhaustive; these potential locations of relevant data are included by way of example only, and all documents relating in any way to the dispute discussed in this letter must be preserved. Your failure to comply with all statutory document and data preservation obligations that now exist may be severe, including monetary sanctions, terminating sanctions, or other sanctions.

## **CEASE AND DESIST AND SETTLEMENT DEMAND**

Representative Gabbard hereby demands that you immediately cease and desist from making false statements of the type discussed above, including, but not limited to, that Representative Gabbard engaged in treasonous conduct of any kind, to any third parties, and by any means, including verbally, in writing, on social media or otherwise on the Internet.

We further demand that you retract/takedown all such statements you have made about Representative Gabbard and destroy all copies of those statements.

If you wish to settle this matter before litigation is commenced, we further demand that you agree to enter into a settlement and release agreement, which will memorialize the above terms and which will include a retraction and apology, and other terms to be mutually negotiated.

*[continued on following page]*

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## CONCLUSION

While Representative Gabbard is prepared to take whatever legal action necessary to protect her good name and reputation, her preference would be to resolve this matter out of court. Please confirm with us, in writing via E-Mail, by Wednesday, **April 27, 2022**, that you will comply with the above demands, and to indicate whether you will enter into a settlement and release agreement. Our client reserves all rights to proceed with litigation in the event that a settlement cannot be reached. Please feel free to contact me (Harmeet@DhillonLaw.com) or my colleagues, Karin Sweigart (KSweigart@DhillonLaw.com) and Jesse Franklin-Murdock (JFranklin-Murdock@DhillonLaw.com) with any questions about the contents of this letter.

Regards,



Harmeet K. Dhillon

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