

United States Senate

WASHINGTON, DC 20510

May 5, 2017

Don McGahn
Counsel to the President
The White House
1600 Pennsylvania Ave, NW
Washington, DC 20500

Dear Mr. McGahn,

We write to confirm that you will maintain policies governing communications between White House staff and the federal law enforcement agencies.

On January 27, 2017, you issued a memorandum establishing the Trump Administration's guidelines for communications between the White House (including all components of the Executive Office of the President) and the Department of Justice. That policy does not address contacts with other federal law enforcement agencies, many of which work with the Department of Justice and United States Attorneys to bring civil and criminal prosecutions across the country. Even the limited policy announced already appears to have been violated on multiple occasions by White House personnel.

As you know, there is a long history—among Democratic and Republican administrations alike—of protecting law enforcement efforts from any appearance of political interference. For most of the last several decades, clear written policies governing—and limiting—White House contacts with executive branch agencies and offices with law enforcement functions have played an important role in this effort. Those policies have governed criminal prosecutions, which raise obvious and fundamental liberty and due process concerns for defendants, and civil enforcement matters (e.g., civil rights prosecutions, antitrust enforcement, environmental remediation), which can have significant financial and reputational implications for parties against whom the United States brings suit, and where political interests can be implicated.

Your January 27th memorandum applies only to contacts with personnel at the Department of Justice, but the same risk of improper political interference, or the appearance thereof, exists when the White House contacts any federal law enforcement agency about a particular matter. The Departments of Treasury, Defense, Commerce, Energy, Homeland Security and the Environmental Protection Agency are just some of the federal agencies that have civil or criminal law enforcement components. We are not aware of any stated policy by the White House to address communications with those entities.

Developments since the January 27th memo have also raised questions about whether that memo provides sufficient guidance to prevent inappropriate contacts between the White House and the Department of Justice and what steps, if any, the White House is taking to enforce it. Reports of the following events are of particular concern:

- Efforts by you or your office on or about March 3, 2017, to secure access to what you believed to be an order issued by the Foreign Intelligence Surveillance Court authorizing surveillance related to President Trump and his associates.¹
- A request by White House Chief of Staff, Reince Priebus, to the FBI on or about February 15, 2017, asking the agency to refute reports that Trump campaign advisors had contact with Russia during the 2016 presidential campaign.²
- A call from White House Senior Adviser Stephen Miller to the home of Robert Capers, the U.S. Attorney for the Eastern District of New York, on or about February 3, 2017, to dictate how he should defend the Administration's travel ban.³
- A call from President Trump to U.S. Attorney for the Southern District of New York Preet Bharara on or about March 9, 2017, the day before he was asked to resign from his position.⁴

The apparent absence of a government-wide law enforcement contacts policy, in conjunction with apparent violations of the Department of Justice policy, has led to a perception that this Administration has not made protecting the integrity of law enforcement investigations a priority. To address our concerns, we request answers to the following questions:

- (1) Does the White House have in place a written policy governing contacts between employees of all components of the Executive Office of the President and all federal law enforcement agencies? If so, please provide a copy. If not, please explain why one has not been issued.
- (2) If a written policy has been established, what steps have been taken to disseminate it to relevant federal law enforcement agencies? Have you advised other agencies to institute, or update as the case may be, agency policies related to contacts with the White House that reflect the January 27th policy?
- (3) What enforcement mechanisms does the Office of White House Counsel have in place to enforce official policy with respect to White House-law enforcement agency contacts?

¹ Michael D. Shear and Michael S. Schmidt, *Trump, Offering no Evidence, Says Obama Tapped His Phones*, N.Y. Times (March 4, 2017), https://www.nytimes.com/2017/03/04/us/politics/trump-obama-tap-phones.html?_r=0.

² See, e.g., Brian Naylor, *White House Asked FBI To Publicly Refute Reports Trump Associates Had Russia Contacts*, NPR (Feb. 24, 2017), <http://www.npr.org/2017/02/24/517011779/white-house-asked-fbi-to-publicly-refute-reports-trump-associates-had-russia-con>; Spencer Ackerman, *White House confirms conversation with FBI about Trump and Russia*, The Guardian (Feb. 24, 2017), <https://www.theguardian.com/us-news/2017/feb/24/donald-trump-russia-reince-priebus-fbi-talks-james-comey>; Massimo Calabresi, *The FBI Talked to the White House About Its Russia Probe. That Was Probably Against the Rules*, Time (Feb. 25, 2017), <http://time.com/4682791/fbi-russia-reince-priebus-andrew-mccabe-justice-rules/>.

³ Harry Siegel, *Stephen Miller Called Brooklyn U.S. Attorney At Home and Told Him How To Defend Travel Ban in Court*, NY Daily News (Feb. 18, 2017), <http://www.nydailynews.com/opinion/stephen-miller-called-u-s-attorney-travel-ban-defense-article-1.2975873>.


⁴ Maggie Haberman and Charlie Savage, *U.S. Attorney Preet Bharara Says He Was Fired After Refusing to Quit*, NY Times, (Mar. 11, 2017), https://www.nytimes.com/2017/03/11/us/politics/preet-bharara-us-attorney.html?_r=0.


- (4) What is the White House's version of events of the four reports of contact between the White House officials and Department of Justice employees? For each of these cases, what investigation was conducted into whether the contacts violated January 27th policy and what conclusions were made?

We respectfully ask that you respond to the questions below no later than May 19, 2017. Thank you in advance for your cooperation.

Sincerely,


Sheldon Whitehouse
United States Senator


Richard Blumenthal
United States Senator


Al Franken
United States Senator

Cc: Attorney General Jeff Sessions, Department of Justice