

United States Senate

WASHINGTON, DC 20510

October 23, 2019

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Barr:

In light of the torrent of news reports calling into question the Department of Justice's ("the Department" or "DOJ") independence from political bias and pressure, we write to inquire about the status of the Department's policy of limiting communications between DOJ personnel and representatives of the White House regarding pending or contemplated criminal and civil matters.

The Department has long recognized that its own judgments must be impartial and insulated from political influence, and that its investigatory and prosecutorial powers must be exercised free from partisan considerations. To those ends, the Department has long maintained policies restricting communications between the White House and Department officials relating to pending or contemplated criminal and civil investigations or cases. These restrictions were first formally imposed in 1978, following the Watergate scandal, by Attorney General Griffin Bell, who instituted procedures to insulate the Department from political influence.¹ The restrictions were relaxed during the George W. Bush administration by Attorney General John Ashcroft,² later tightened again by Attorney General Alberto Gonzales,³ and further strengthened during the Obama administration by Attorney General Eric Holder.⁴ At the beginning of this administration, Attorney General Sessions reaffirmed and left in place the 2009 Holder memorandum, which, to our knowledge, remains the operative Department policy. Further, in January 2017, under former White House Counsel Donald McGahn, the Trump White House issued its own contacts policy, restricting White House communications with Department personnel regarding ongoing or contemplated cases or investigations.

¹ An Address by the Hon. Griffin B. Bell, Attorney General of the United States, Before Department of Justice Lawyers (Sept. 6, 1978), available at <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/09-06-1978b.pdf>.

² Memorandum for Heads of Department Components and United States Attorneys re: Communications with the Executive Office of the President (May 4, 2006), available at <https://www.justice.gov/sites/default/files/ag/legacy/2009/02/10/ag-050406a.pdf>.

³ Memorandum for Heads of Department Components and United States Attorneys re: Communications with the White House (Dec. 19, 2007), available at <https://www.justice.gov/sites/default/files/ag/legacy/2008/04/15/ag-121907.pdf>.

⁴ Memorandum for Heads of Department Components, All United States Attorneys re: Communications with the White House and Congress (May 11, 2009), available at <https://www.justice.gov/oip/foia-library/communications-with-the-white-house-and-congress-2009.pdf/download>.

Even with these policies in place, however, numerous instances of communications between the White House and the Department have come to light suggesting that the proper procedures are not being followed. For example, during his time as Chief of Staff to Attorney General Sessions, Matthew Whitaker reportedly “frequently spoke by phone with both [President] Trump and Chief of Staff John Kelly,” and “on many of those phone calls nobody else was on the phone except for the President and Whitaker, or only Kelly and Whitaker.”⁵ On those calls, Mr. Whitaker reportedly “privately provided advice to the president ... on how the White House might be able to pressure the Justice Department to investigate the president’s political adversaries.”⁶ According to some reports, Mr. Whitaker “was seen by Department officials as a partisan and a White House spy.”⁷ He was also reportedly known as the “West Wing’s eyes and ears” and someone who was “counseling the White House on how the President and his aides might successfully pressure Sessions and [former Deputy Attorney General] Rosenstein to give in to Trump’s demands.”⁸

These reported inappropriate contacts with Mr. Whitaker were not isolated. We have seen reports of numerous other communications that appear to violate DOJ and White House policy, from the White House seeking a meeting with then-Acting Solicitor General Jeffrey Wall to discuss a sensitive matter involving Trump donor Steve Wynn,⁹ to President Trump directing former economic advisor Gary Cohn to pressure DOJ into blocking the AT&T-Time Warner merger, which the Department later attempted to do.¹⁰ Indeed, Special Counsel Mueller’s report itself details how the President “pushed back on the DOJ contacts policy,” saying “words to the effect of, ‘You’re telling me that Bobby and Jack [Kennedy] didn’t talk about investigations? Or Obama didn’t tell Eric Holder who to investigate?’”¹¹

Recently, questions have arisen about the White House’s role in the Department’s decision to open an antitrust investigation into Ford, Volkswagen, Honda, and BMW, after the automakers reached a deal with California to voluntarily follow the state’s fuel economy

⁵ Murray Waas, *Exclusive: Trump Loyalist Matthew Whitaker Was Counseling the White House on Investigating Clinton*, VOX (Nov. 9, 2018), available at <https://www.vox.com/policy-and-politics/2018/11/9/18080656/matthew-whitaker-trump-hillary-clinton-sessions-attorney-general>.

⁶ *Id.*

⁷ Adam Goldman & Edward Wong, *Trump Installs a Critic of the Mueller Investigation to Oversee It*, THE NEW YORK TIMES (Nov. 7, 2018), available at <https://www.nytimes.com/2018/11/07/us/politics/whitaker-mueller-trump.html>.

⁸ Katie Benner & Maggie Haberman, *Matthew Whitaker, a Trump Loyalist, Is Seen as Ascendant Amid Rosenstein Chaos*, THE NEW YORK TIMES (Sept. 26, 2018), available at <https://www.nytimes.com/2018/09/26/us/politics/matthew-whitaker-justice-department.html>.

⁹ Sam Stein, Lachlan Markay & Betsy Swan, *White House Intervened in Case of Trump’s Casino Pal Steve Wynn*, DAILY BEAST (Jan. 1, 2019) available at <https://www.thedailybeast.com/white-house-intervened-in-trumps-casino-pal-steve-wynns-case>.

¹⁰ Avery Anapol, *Trump directed Gary Cohn to pressure DOJ to block AT&T-Time Warner deal: report*, THE HILL (Mar. 4, 2019), available at <https://thehill.com/homenews/administration/432431-trump-directed-gary-cohn-to-pressure-justice-dept-to-block-att-time>.

¹¹ Report on the Investigation into Russian Interference in the 2016 Presidential Election, Special Counsel Robert S. Mueller, III, Vol. II, p. 51 (March 2019).

standards. President Trump was reportedly “blindsided” and “enraged” by the deal.¹² Then, as interest in the agreement increased among other automakers, a senior Trump advisor reportedly “summoned” Toyota, Fiat Chrysler, and General Motors to the White House, pressuring them to abide by the Trump Administration’s proposed lower standards.¹³ Moreover, one week after President Trump issued a flurry of tweets castigating the “foolish executives” of the “politically correct Automobile Companies,” the Department announced its probe.¹⁴ In the wake of these outbursts, and in the absence of any readily apparent predication for such an investigation, the Department’s decision to launch this antitrust probe raises obvious questions about whether the Department’s independent law enforcement function has been coopted by the White House in the name of political retribution.

Revelations about your own involvement and the involvement of your Department in matters of personal and political interest to the President are also deeply concerning. In the memorandum transcript of the July 25 call between President Trump and President Zelenskyy of Ukraine, President Trump explicitly references you a number of times, and says that he will direct you to contact the President of Ukraine to follow up on investigations of American citizens and political opponents.¹⁵ President Trump has openly and publicly expressed a desire for such investigations, and his support for such investigations taking place. Any action you or your Department have taken in response to a directive by the President on these matters raises serious concerns and highlights the precise reason for the need to maintain DOJ independence from political interference.

This month, Bloomberg News reported the troubling news that in 2017, President Trump “pressed then-Secretary of State Rex Tillerson to help persuade the Justice Department to drop a criminal case against an Iranian-Turkish gold trader who was a client of Rudy Giuliani.”¹⁶ And last week, The New York Times reported that Mr. Giuliani met recently with Criminal Division Assistant Attorney General (AAG) Brian Benczkowski to discuss “a foreign bribery case for a client that Mr. Giuliani described as ‘very, very sensitive.’”¹⁷ It should go without saying that any attempts by the President to pressure the Department into using its law enforcement discretion to help his political allies would be highly improper. Likewise, if Mr. Giuliani has used his role as President Trump’s personal lawyer to influence the Department’s handling of criminal cases against his other clients, that would be alarming.

¹² Coral Davenport and Hiroko Tabuchi, *Trump’s Rollback of Auto Pollution Rules Shows Signs of Disarray*, THE NEW YORK TIMES (Aug. 28, 2019), available at <https://www.nytimes.com/2019/08/20/climate/trump-auto-emissions-rollback-disarray.html>.

¹³ *Id.*

¹⁴ Donald J. Trump (@realdonaldtrump), Twitter (April 21, 2019, 6:38 AM), <https://twitter.com/realdonaldtrump/status/1164169890917433346?lang=en>.

¹⁵ Memorandum of Telephone Conversation with President Zelenskyy of Ukraine, Declassified by order of the President on Sept. 24, 2019 (July 25, 2019), <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>.

¹⁶ Nick Wadhams, Saleha Mohsin, Stephanie Baker & Jennifer Jacobs, *Trump Urged Top Aide to Help Giuliani Client Facing DOJ Charges*, BLOOMBERG (Oct. 9, 2019), available at <https://www.bloomberg.com/news/articles/2019-10-09/trump-urged-top-aide-to-help-giuliani-client-facing-doj-charges>.

¹⁷ Kenneth P. Vogel, Michael S. Schmidt & Katie Benner, *Giuliani Mixes His Business With Role as Trump’s Lawyer*, THE NEW YORK TIMES (Oct. 18, 2019), available at <https://www.nytimes.com/2019/10/18/us/politics/giuliani-business.html>.

At your confirmation hearing, you were asked whether, if confirmed, you intended to maintain the DOJ-White House contacts policy established by the 2009 Holder memo. You replied that you had “looked through the existing regime and [your] instinct [was] to keep it, maybe even tighten it up a little bit more.”¹⁸ We write today to follow up on this exchange and seek an update on the status of the Department’s policy limiting communications with the White House, including your efforts to enforce that policy.

Earlier this year, we introduced the Security from Political Interference in Justice Act of 2019 (S. 1915/H.R. 3380), which would complement the Department’s internal policy by increasing transparency in the relationship between DOJ and the White House. In broad strokes, the bill would require the logging and periodic disclosure of communications between White House and DOJ staff pertaining to specific cases or investigations. In 2007, a substantially identical bill was reported out of the Senate Judiciary Committee by a 14-2 bipartisan vote. It is important to highlight that this bill would not proscribe or prohibit any communications between the White House and the Department of Justice. It would instead provide for more transparency around those communications and thereby reassure the public and reduce potentially baseless speculation as to the nature and intent of those communications.

Congress has a strong legislative interest in obtaining information about this issue, particularly in light of public statements and news reports, such as those described above, revealing efforts by the Trump administration to influence the Department’s civil and criminal law enforcement. Therefore, as we work to develop this bill and other potential legislation on this issue, we respectfully request your response to the following questions:

General questions:

1. Does the May 11, 2009, Holder memo limiting communications with the White House and Congress remain in effect?
2. Have you made any changes to the policy set forth in the Holder memo, or do you contemplate making any changes? If you have issued a new or modified policy, please produce it. If you are contemplating making changes, please describe them.
3. Under the Holder memo, how does the Department treat “unofficial” or “private” communications between Department employees and the White House?
4. Assuming it remains in effect, how does the Department enforce the limitations set forth in the Holder memo?
5. Since your confirmation as Attorney General, has the Department identified any violations of the policy set forth in the Holder memo? How were those violations identified and dealt with?
6. Since your confirmation as Attorney General, what disciplinary actions, if any, have been taken as a result of violations of the Holder memo?

¹⁸ Nomination of William P. Barr to be Attorney General of the United States, Hearing before the U.S. Senate Committee on the Judiciary, (Jan. 15, 2019) (Testimony of William P. Barr).

Questions regarding specific White House contacts:

7. What communications, if any, has the Department had with the White House concerning the Department's antitrust probe into the four automakers' agreement regarding California emissions standards? Please describe any efforts by the President, any employee of the White House, or any adviser to the President (either official or unofficial) to offer an opinion, provide information, inquire into deliberation, or otherwise exert influence over the Department of Justice regarding any investigation into Ford Motor Company, Honda Motor Company, BMW AG, or Volkswagen AG relating to any agreements or discussions with the California Air Resources Board regarding California vehicle emissions standards.
8. What communications did Matthew Whitaker have with the White House when he served as Chief of Staff to Attorney General Sessions? Please describe any efforts by the President, any employee of the White House, or any adviser to the President (either official or unofficial) to offer an opinion, provide information, inquire into deliberation, or otherwise exert influence over the Department of Justice regarding potential or actual investigations into the President's political adversaries, including but not limited to Hillary Clinton.
9. What communications, if any, did then-Acting Solicitor General Jeffrey Wall have with the White House regarding then-Republican National Committee finance chairman Steve Wynn and legal issues surrounding Wynn Resorts? Please describe any efforts by the President, any employee of the White House, or any adviser to the President (either official or unofficial) to offer an opinion, provide information, inquire into deliberation, or otherwise exert influence over the Department of Justice regarding matters involving Mr. Wynn.
10. What communications, if any, did the Department have with the White House concerning the AT&T-Time Warner merger? Please describe any efforts by the President, any employee of the White House, or any adviser to the President (either official or unofficial) to offer an opinion, provide information, inquire into deliberation, or otherwise exert influence over the Department of Justice regarding the Department's eventual challenge of that merger.
11. What communications, if any, did the Department have with the White House concerning investigations discussed during the President's July 25 phone call with the Ukrainian President? Please describe any efforts by President Trump, any employee of the White House, or any adviser to the President (either official or unofficial) to offer an opinion, provide information, inquire into deliberation, or otherwise exert influence over the Department of Justice regarding matters discussed by President Trump during the July 25 phone call, including potential investigations into the President's political adversaries.
12. What communications, if any, did the Department have with the White House or any of its envoys concerning the Department's prosecution of Reza Zarrab? Please describe any efforts by the President, any employee of the White House, or any adviser to the President (either official or unofficial) to offer an opinion, provide information, inquire into deliberation, or otherwise exert influence over the Department of Justice regarding matters involving Mr. Zarrab.
13. Who and what were the subject of AAG Benczkowski's recent meeting with Rudy Giuliani regarding the "foreign bribery case for a client that Mr. Giuliani described as

'very, very sensitive.'? Please also describe any efforts by Mr. Giuliani to offer an opinion, provide information, inquire into deliberation, or otherwise exert influence over the Department of Justice regarding this matter.

Maintaining the Department's independence and integrity is more critical than ever. Accordingly, it is our hope that you will follow through with your instinct to maintain and enforce applicable Department policies. We appreciate your prompt attention to this matter. Please respond by November 25, 2019; you may direct your correspondence to Alex_Aronson@judiciary-dem.senate.gov, Erica_Songer@judiciary-dem.senate.gov, Aparna_Patrie@judiciary-dem.senate.gov, and Nick_Wunder@harris.senate.gov.

Sincerely,



Sheldon Whitehouse
United States Senator



Christopher A. Coons
United States Senator



Richard Blumenthal
United States Senator



Kamala D. Harris
United States Senator