

# U.S. House of Representatives

## Committee on the Judiciary

Washington, DC 20515–6216  
One Hundred Sixteenth Congress

July 9, 2020

The Honorable Makan Delrahim  
Assistant Attorney General  
Antitrust Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Assistant Attorney General Delrahim:

On June 24, 2020, Antitrust Division attorney John W. Elias testified during a highly politicized Committee hearing, convened by Chairman Nadler to attack Attorney General William P. Barr for political purposes.<sup>1</sup> Mr. Elias alleged—without firsthand evidence—that you and Division leadership had engaged in misconduct with respect to two antitrust matters.<sup>2</sup> His testimony largely repeated allegations he had filed with the Justice Department Office of Inspector General (OIG) on February 28, 2020.<sup>3</sup> Because Mr. Elias’s testimony was “misleading and lack[ing] critical facts,”<sup>4</sup> preventing the Committee from having an understanding about relevant events, you corrected the record via letter dated July 1, 2020. I appreciate your clarification of the facts and hope that Chairman Nadler will be careful in the future before he publicizes misleading and incorrect information.

On the day before his testimony, Mr. Elias provided the Committee with his complaint to the OIG. Mr. Elias alleged that two Division investigations—one concerning the cannabis industry and one concerning fuel economy standards—were initiated and conducted improperly by the Antitrust Division’s leadership.<sup>5</sup> Mr. Elias alleged in his testimony to the Committee that the Antitrust Division’s actions constituted “an abuse of authority, gross waste of funds, and gross mismanagement.”<sup>6</sup>

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<sup>1</sup> See “*Oversight of the Department of Justice: Political Interference and Threats to Prosecutorial Independence*”: Hearing before the H. Comm. on the Judiciary, 116th Cong. (2020) [hereinafter “Oversight Hearing”].

<sup>2</sup> *Id.*

<sup>3</sup> Letter from John W. Elias, Trial Attorney, Antitrust Div., Dep’t of Justice, to Michael E. Horowitz, Insp. Gen., Dep’t of Justice (Feb. 28, 2020); see Letter from Makan Delrahim, Assistant Attorney Gen., Dep’t of Justice, to Rep. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, Rep. Jim Jordan, Ranking Member, H. Comm. on the Judiciary (July 1, 2020) (“As a result, Mr. Elias did not work on, oversee, or otherwise have any first-hand involvement in the matters about which he testified.”) [hereinafter “Letter from Delrahim”].

<sup>4</sup> Letter from Delrahim, *supra* note 3, at 5.

<sup>5</sup> Letter from John W. Elias, Trial Attorney, Antitrust Div., Dep’t of Justice, to Michael E. Horowitz, Insp. Gen., Dep’t of Justice (Feb. 28, 2020).

<sup>6</sup> Oversight Hearing, *supra* note 1 (opening statement of Mr. John W. Elias).

The Committee has since learned information that Mr. Elias did not note in his testimony or OIG complaint. Mr. Elias did not note that the Department's Office of Professional Responsibility (OPR) had reviewed and dismissed similar allegations concerning the Antitrust Division's treatment of cannabis companies.<sup>7</sup> The Director and Chief Counsel of OPR, Jeffrey R. Ragsdale—a career official with over 30 years of experience at various levels at the Justice Department—found the allegations to be without merit and closed OPR's investigation. In the closing memorandum, Mr. Ragsdale concluded that because “the [Antitrust Division] acted consistent with all applicable laws, regulations, and [Department of Justice] guidelines in its review of the proposed cannabis mergers, OPR is closing its investigation.”<sup>8</sup> You provided the Committee with a copy of the OPR report and noted that, contrary to Mr. Elias's testimony, OPR evaluated the veracity of the allegations themselves—and not merely the Division's conduct in the abstract.<sup>9</sup> Chairman Nadler made no attempt to factor in OPR's review and exculpatory findings to the context of Mr. Elias's allegations and thereby deprived the Committee of critical information.

In addition, despite Mr. Elias's claim that the Antitrust Division was weaponized to harass industries disfavored by the Administration, the Division quickly closed its investigation into automakers' agreements with the State of California about fuel economy standards after determining that no antitrust laws had been violated.<sup>10</sup> In a letter to the Senate, the Justice Department explained that “[t]he Division closed the investigation after finding that, contrary to initial reports, the automakers had not entered into an agreement with each other.”<sup>11</sup> The letter further noted “that political interference from outside the Department must never govern law enforcement efforts. As such, we investigate and pursue only matters with a legitimate legal basis for the belief that an antitrust violation may have occurred, as we did in the automakers matter.”<sup>12</sup>

In your letter to the Committee, you provided additional context to Mr. Elias's allegations, including Mr. Elias's accusation that the Division began investigating the automakers' agreement with California because of political pressure from President Trump. You explained that the Division had begun preliminarily probing the automakers weeks before the President's public comments.<sup>13</sup> In fact, you informed the Committee that the Division had

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<sup>7</sup> Memorandum from Jeffrey R. Ragsdale, Off. of Prof. Resp., to Bradley Weinsheimer, Assoc. Deputy Attorney Gen. (June 11, 2020).

<sup>8</sup> *Id.* (“contrary to the whistleblowers' allegations, the documents provided by [the Antitrust Division] reflect significant, and successful, negotiations among [the Antitrust Division] and the cannabis companies concerning narrowing the scope of the Second Requests.”); see Press Release, Dep't of Justice, Meet the Director and Chief Counsel (June 15, 2020).

<sup>9</sup> Letter from Delrahim, *supra* note 3, at 5.

<sup>10</sup> Letter from Stephen E. Boyd, Assistant Attorney Gen., Dep't of Justice, to Sen. Sheldon Whitehouse, S. Comm. on the Judiciary (June 19, 2020).

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.*

<sup>13</sup> Letter from Delrahim, *supra* note 3, at 6-7.

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drafted a preliminary investigative memorandum about the automakers over two weeks before the President's statements.<sup>14</sup>

Mr. Elias's allegations appear to reflect political or policy differences with the Department's political leadership rather than exposing real waste, fraud, and abuse. In 2015, Mr. Elias served on detail in the Obama-Biden White House in the office responsible for presidential appointments.<sup>15</sup> More recently, as Mr. Elias conceded during the hearing, he sought a detail from the Department to Chairman Nadler's staff to assist with oversight in 2019, the same year that the Democrats began investigations with the goal of impeaching the President.<sup>16</sup> In addition, as you explained to the Committee, Mr. Elias had no direct knowledge of relevant events—as you wrote, he “did not work on, oversee, or otherwise have any first-hand involvement in the matters about which he testified.”<sup>17</sup>

Chairman Nadler has an unfortunate practice of politicizing the Committee to attack the Trump Administration. While whistleblowers play a vital role in rooting out waste, fraud, and abuse in the federal government, we should not mistake policy or political disagreements for misconduct. This is especially true in the context of antitrust, which has historically enjoyed significant bipartisan support. I appreciate the supplemental information that you provided, which offers more clarity and context to the allegations made by Mr. Elias. In the future, I hope that Chairman Nadler will choose cooperation over confrontation and work collaboratively with the Antitrust Division before he allows such a public airing of grievances.

Sincerely,



Jim Jordan  
Ranking Member

cc: The Honorable Jerrold L. Nadler, Chairman

The Honorable Michael Horowitz, Inspector General, Department of Justice

The Honorable Henry Kerner, Special Counsel, Office of Special Counsel

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<sup>14</sup> *Id.* at 6 (“Mr. Elias testified that the investigation into automakers’ agreements was improper because the preliminary investigation was opened the day after the President tweeted about the carmakers. That conclusion is baseless and Mr. Elias’s facts are incomplete at best. Days after the automakers announced publicly their agreement in July 2019, I requested a legal analysis of the antitrust issues associated with the agreement, in keeping with my long-standing focus on inappropriate activity within trade associations and conduct cloaked as standard setting. That request, which was ultimately converted into a preliminary investigation memo, was made *weeks* before the subject tweet that Mr. Elias erroneously concludes was the impetus for the narrow, confidential inquiry into the context of these agreements.”) (emphasis in original).

<sup>15</sup> See Oversight Hearing, *supra* note 1, at 21, 165-66.

<sup>16</sup> *Id.* at 74 (“I may have also asked for oversight at one point, with the blessing of Assistant Attorney General.”).

<sup>17</sup> Letter from Delrahim, *supra* note 3, at 2.