

**EXAMINING DEMOCRAT ALLEGATIONS AGAINST ATTORNEY GENERAL
WILLIAM P. BARR**

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Committee on the Judiciary
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EXECUTIVE SUMMARY

Attorney General William P. Barr is a serious and experienced leader with a sterling reputation who came into office at the right time to clean up the mess left behind by the highly politicized Obama-Biden Department of Justice (DOJ) and Federal Bureau of Investigation (FBI). During his public service career—first during the George H.W. Bush Administration and now during the Donald Trump Administration—Attorney General Barr has been dedicated to upholding the integrity of the Department and promoting equal treatment under the law.

Democrats, led by Chairman Jerrold Nadler, have been obsessed with attacking Attorney General Barr precisely because he is exposing the Obama-Biden abuses. Democrats have alleged that it is Attorney General Barr who has “politicized” the Justice Department, saying that he is doing the personal bidding of President Trump. This allegation is absurd, especially in comparison to the actions of the Obama-Biden Justice Department, first led by President Obama’s self-described “wingman” Attorney General Eric Holder. The Obama-Biden Justice Department investigated journalists, targeted legitimate businesses disliked by the Obama-Biden Administration, and flouted Congressional oversight. Most notoriously, the Obama-Biden Justice Department weaponized its law-enforcement apparatus against the campaign of Donald Trump.

Attorney General Barr has led the effort to expose how the Obama-Biden DOJ and FBI targeted the Trump campaign. An Inspector General report in December 2019 found seventeen significant errors in the FBI’s unlawful surveillance of Trump campaign associate, Carter Page, including an FBI lawyer who doctored evidence to support a probable cause warrant. Recently uncovered FBI notes and other documents—discovered as a result of an internal investigation ordered by Attorney General Barr—show how then-FBI Director James Comey violated protocol to send two agents to interview President Trump’s then-National Security Advisor, LTG Michael Flynn, without any legitimate investigative reason but merely to get him “fired.” Newly declassified documents show how the Obama-Biden FBI used a routine defensive intelligence briefing as a pretext to investigate President Trump and LTG Flynn.

Democrats oppose the Attorney General’s work to expose the Obama-Biden abuses. Although Special Counsel Robert Mueller’s exhaustive investigation debunked allegations of collusion between the Trump campaign and Russia, Democrats allege—without evidence—that Attorney General Barr somehow covered up misconduct. Democrats seem reluctant to accept the truth: that the Trump campaign did not collude with Russia. In the interest of public transparency, Attorney General Barr published the Special Counsel’s report with limited redactions for sensitive information so that Americans could read it for themselves. Attorney General Barr also allowed Special Counsel Mueller to testify under oath before two separate Democrat-controlled House committees.

Even still, Democrats continue to infer nefarious intent in almost all of Attorney General Barr’s actions leading the Justice Department. Chairman Nadler and Democrats claim that Attorney General Barr improperly interfered in the sentencing of Roger Stone to avoid a harsh sentence. Democrats conveniently ignore that Federal District Court Judge Amy Berman Jackson—a President Obama appointee—found the initial recommendation made by former Special Counsel prosecutors to be excessive and that she agreed with the

revised recommendation. Former federal judge and Attorney General Michael Mukasey said Attorney General Barr's involvement in the sentencing recommendation was "not only proper but also advisable" because the initial recommendation lacked common sense and "cast doubt" on the Department's competence.

Democrats have now resorted to politicizing the appointment and removal of U.S. Attorneys—something squarely within the discretion of the President as chief executive and influence of the Attorney General as head of the Justice Department. Following President Trump's removal of Geoffrey Berman, the U.S. Attorney for the Southern District of New York (SDNY), Chairman Nadler, again without evidence, said the removal of Berman "smacks of corruption and incompetence, which is what we have come to expect from this President and his Attorney General."¹ During Berman's closed-door testimony before the Committee, it became clear that Berman resisted Attorney General Barr's attempts at an amicable transition and believed that he was immune from Justice Department oversight. Importantly, Berman offered no evidence that Attorney General Barr or any Justice Department official acted illegally or inappropriately—directly contradicting the Chairman's allegation.

Attorney General Barr is the right man to lead the Department during these unique times. Left-wing agitators have used protests in response to the murder of George Floyd as cover to incite violence and destruction in American cities. Mayors and governors across the country have abdicated their duties to prevent these violent left-wing agitators from terrorizing citizens, businesses, and federal property. Attorney General Barr has led the federal law enforcement response to investigate and hold accountable these left-wing antagonists. During the COVID-19 pandemic, the Attorney General has directed the Department to identify and challenge orders from activist state and local governments that unconstitutionally encroach on citizens' Constitutional rights. He has also led the Department's effort to prevent fraudsters from profiting off the pandemic.

As Attorney General Barr works to restore integrity to the Justice Department, Democrats continue to play political games. Democrats accused him of being a "biased" person before he even had a chance to appear before the Committee. After Democrats changed Committee rules knowing it would prevent the Attorney General's appearance, Democrats laughed and shared a bucket of fried chicken to imply that he was somehow scared of the Committee. Now Democrats have sought to impeach him—a proposal so ridiculous that Speaker Pelosi quickly shot it down. In these important times in our nation's history, Democrats appear more inclined to manufacture controversy than recognize how Attorney General Barr is the right person to restore integrity to the Department of Justice.

¹ Press Release, Chairman Nadler Statement on Bill Barr's Purported Firing of SDNY Prosecutor (June 20, 2020).

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I. The Obama-Biden Justice Department Was Highly Politicized

Democrats allege that Attorney General Barr has “politicized” the Justice Department, doing the personal bidding of President Trump. This allegation is not only unfounded but especially hypocritical in light of the Department’s politicization during the Obama-Biden Administration. Led by President Obama’s self-described “wingman,” the Obama-Biden Justice Department investigated journalists, targeted disfavored businesses and industries, and flouted Congressional oversight.

A. Attorney General Holder described himself as President Obama’s “wingman”

Although Eric Holder claimed during his Senate confirmation process that he would act independently of President Obama as attorney general,² in office he proved to be a close ally and defender of the President—especially during congressional investigations concerning the Justice Department. Attorney General Holder admitted as much during a 2013 interview, after the House of Representatives held him in contempt for refusing to produce documents concerning the Obama-Biden Administration’s botched Operation Fast and Furious. When asked if he had plans to leave the Obama-Biden Administration, Holder called himself President Obama’s “wingman,” stating: “I’m still enjoying what I’m doing, there’s still work to be done. I’m still the President’s wingman, so I’m there with my boy.”³

The closeness between President Obama and Attorney General Holder drew criticism at the time. News reports indicated that during the Obama-Biden Administration, the White House knew days or weeks in advance of when the Justice Department would file “controversial cases,” reviewed court briefs, and sought to “delay announcement of Justice Department moves that might prove politically distracting.”⁴

B. The Obama-Biden Justice Department investigated journalists

President Obama and Vice President Biden promised the most transparent administration in history.⁵ However, during the Obama-Biden Administration, the DOJ extensively investigated journalists. The *Washington Post* stated that the Obama-Biden DOJ set a “clear blueprint” to follow for attacking and investigating journalists.⁶

James Risen. On several occasions, the DOJ ordered James Risen, a *New York Times* reporter, to testify against former Central Intelligence Agency (CIA) officer Jeffrey Sterling, who was accused of leaking national security information.⁷ Risen resisted orders to testify, insisting that he would go to prison before he revealed his source. In 2015, the Obama-Biden

² Nomination of Eric H. Holder, Jr., Nominee to be Attorney General of the United States Before the S. Comm. on the Judiciary, 111th Cong. 99 (2009) (statement of Eric H. Holder, Jr.).

³ Josh Gerstein, *Eric Holder: ‘I’m Still the President’s Wingman’*, POLITICO (Apr. 4, 2013), <https://www.politico.com/blogs/politico44/2013/04/eric-holder-im-still-the-presidents-wingman-160861>.

⁴ Carrie Johnson, *Obama, Holder Catch Heat for Close Ties*, NPR (Jul. 9, 2010), <https://www.npr.org/templates/story/story.php?storyId=128392138>.

⁵ Memorandum from President Barack Obama to the Heads of Executive Departments and Agencies on Freedom of Information Act Requests (Jan. 21, 2009).

⁶ Margaret Sullivan, *Shocked by Trump Aggression Against Reporters and Sources? The Blueprint Was Drawn by Obama*, WASH. POST (Jun. 8, 2018), https://www.washingtonpost.com/lifestyle/style/shocked-by-the-trump-aggression-against-reporters-and-sources-the-blueprint-was-made-by-obama/2018/06/08/c0b84d88-6b06-11e8-9e38-24e693b38637_story.html.

⁷ *Id.*

DOJ dropped its pursuit.⁸ In a December 2016 opinion piece, Risen wrote, “If Donald J. Trump decides as president to throw a whistle-blower in jail for trying to talk to a reporter, or gets the F.B.I. to spy on a journalist, he will have one man to thank for bequeathing him such expansive power: Barack Obama.”⁹

Associated Press (AP). In 2012, the Obama-Biden DOJ subpoenaed “two months of telephone records of reporters and editors for the Associated Press.”¹⁰ AP executives called the seizure “unusual and largely unprecedented” and stated that “[t]here can be no possible justification for such an overbroad collection of the telephone communications”¹¹ Although the government would not confirm its reason for seeking the records, in previous public testimony, U.S. officials acknowledged an investigation into the unauthorized disclosure of classified information to the AP for its May 2012 story on a CIA operation in Yemen that foiled a terrorist plot.¹²

James Rosen. In 2013, the Obama-Biden DOJ began an investigation into *Fox News* reporter James Rosen, who the agency suspected of receiving information from State Department contractor Stephen Jin-Woo Kim about a classified report related to North Korea’s nuclear program.¹³ The Obama-Biden DOJ used security badge access records at the State Department to track Rosen’s movements, obtained a search warrant for his personal emails, and “traced the timing of his calls with a State Department security adviser.”¹⁴ In the search warrant affidavit, Obama-Biden DOJ officials referred to Rosen as a “co-conspirator” who “asked, solicited and encouraged Mr. Kim to disclose sensitive United States internal documents and intelligence information.”¹⁵ Critics believed DOJ used its pursuit of a State Department leak as “little more than pretext to seize [Rosen’s] e-mails to build their case against the suspected leaker.”¹⁶ After the Obama-Biden DOJ dropped its investigation into Rosen, Attorney General Holder stated that the investigation could have been handled more “sensitively.”¹⁷

⁸ *Id.*

⁹ James Risen, *If Donald Trump Targets Journalists, Thank Obama*, N.Y. TIMES (Dec. 30, 2016), [nytimes.com/2016/12/30/opinion/sunday/if-donald-trump-targets-journalists-thank-obama.html](https://www.nytimes.com/2016/12/30/opinion/sunday/if-donald-trump-targets-journalists-thank-obama.html).

¹⁰ *Gov’t Obtains Wide AP Phone Records in Probe*, AP (May 13, 2013), <https://www.ap.org/ap-in-the-news/2013/govt-obtains-wide-ap-phone-records-in-probe>.

¹¹ *Id.*

¹² *Id.*

¹³ Ann Marimow, *Justice Department’s Scrutiny of Fox News Reporter James Rosen in Leak Case Draws Fire*, WASH. POST (May 20, 2013), https://www.washingtonpost.com/local/justice-departments-scrutiny-of-fox-news-reporter-james-rosen-in-leak-case-draws-fire/2013/05/20/c6289eba-c162-11e2-8bd8-2788030e6b44_story.html.

¹⁴ Margaret Sullivan, *Shocked by Trump Aggression Against Reporters and Sources? The Blueprint was Drawn by Obama*, WASH. POST (Jun. 8, 2018), https://www.washingtonpost.com/lifestyle/style/shocked-by-the-trump-aggression-against-reporters-and-sources-the-blueprint-was-made-by-obama/2018/06/08/c0b84d88-6b06-11e8-9e38-24e693b38637_story.html.

¹⁵ Ann Marimow, *Justice Department’s Scrutiny of Fox News Reporter James Rosen in Leak Case Draws Fire*, WASH. POST (May 20, 2013), https://www.washingtonpost.com/local/justice-departments-scrutiny-of-fox-news-reporter-james-rosen-in-leak-case-draws-fire/2013/05/20/c6289eba-c162-11e2-8bd8-2788030e6b44_story.html.

¹⁶ *Id.*

¹⁷ David Graham, *Does Eric Holder Want to Prosecute Journalists or Not?*, THE ATLANTIC (Oct. 29, 2014), <https://www.theatlantic.com/politics/archive/2014/10/does-eric-holder-want-to-prosecute-journalists-or-not/382081/>.

C. The Obama-Biden Justice Department prosecuted whistleblowers and leakers

In addition to investigating journalists, the Obama-Biden DOJ sought to prosecute more whistleblowers and leakers than all prior Administrations combined.¹⁸ The Obama-Biden DOJ launched eight prosecutions under the Espionage Act, a statute used to prosecute individuals accused of leaking or mishandling classified information.¹⁹

For instance, the Obama-Biden DOJ prosecuted Thomas Drake, a former senior official at the National Security Agency (NSA) who was suspected of leaking classified information to a *Baltimore Sun* reporter concerning what he believed was mismanagement of NSA programs.²⁰ Drake's trial exposed, however, that the information Drake had disclosed was either unclassified or had previously already been publicly discussed.²¹ Under a plea agreement, Drake pled guilty to one misdemeanor charge of exceeding the authorized use of his government computer—a major reversal from the original ten felony charges brought forward.²²

At Drake's sentencing, the judge stated that the Obama-Biden DOJ's handling of Drake's case was “unconscionable” and declined to fine Drake because “there has been financial devastation wrought upon this defendant that far exceeds any fine that can be imposed by me.”²³ At the time, the Government Accountability Project characterized the case against Drake as “largely built on sand” and that “[o]nce it was put to the test, it started collapsing under the weight of the truth.”²⁴

D. The Obama-Biden Justice Department sidelined prosecutors and agents during Iran deal negotiations

The Obama-Biden DOJ sidelined and ignored career officials to achieve the Administration's political objectives. On January 17, 2016, President Obama announced a prisoner swap and implementation of a six-party nuclear deal with Iran. President Obama stated that the seven prisoners released during the exchange “were not charged with terrorism

¹⁸ Spencer Ackerman and Ed Pilkington, *Obama's war on whistleblowers leaves administration insiders unscathed*, THE GUARDIAN (Mar. 16, 2015), <https://www.theguardian.com/us-news/2015/mar/16/whistleblowers-double-standard-obama-david-petraeus-chelsea-manning>; Dinah Pokempner, *Chelsea Manning Commutation Doesn't Erase Obama's Awful Whistleblower Legacy*, TIME (Jan. 19, 2017), <https://time.com/4638617/chelsea-manning-commutation-obama-whistleblower-legacy/>.

¹⁹ *Id.*

²⁰ *United States v. Drake*, No. R0B18CR0181 (D. Md.) (Indictment of Thomas Drake) (filed Apr. 14, 2010), <https://assets.documentcloud.org/documents/323707/drake-indictment.pdf>; see also Reuters, *Ex-Official for N.S.A. Accepts Deal in Leak Case*, N.Y. TIMES (June 10, 2011), <http://www.nytimes.com/2011/06/11/us/11justice.html>.

²¹ See STEPHEN P. MULLIGAN ET AL., CONG. RES. SERV., R41404, CRIMINAL PROHIBITIONS ON LEAKS AND OTHER DISCLOSURES OF CLASSIFIED DEFENSE INFORMATION 20 (March 7, 2017) (“prosecution's case suffered setbacks after it was revealed that much of the information at issue was either not classified or had been publicly discussed by other government officials...”); Brent Kendall, *Plea Deal Ends Leak Case Against Former Official*, WALL ST. J. (June 10, 2011), <https://www.wsj.com/articles/SB10001424052702304259304576375971250513248>.

²² *United States v. Drake*, No. 10-00181 (D. Md.) (Government Motion to Dismiss the Indictment at the Time of Sentencing) (filed June 10, 2011), <http://www.fas.org/sgp/jud/drake/061011-dismiss.pdf>.

²³ Steven Aftergood, *Handling of Drake Leak Case was “Unconscionable,” Court Said* SECURITY NEWS (July 29, 2011), https://fas.org/blogs/secrecy/2011/07/drake_transcript/.

²⁴ Brent Kendall, *Plea Deal Ends Leak Case Against Former Official*, WALL ST. J. (June 10, 2011), <https://www.wsj.com/articles/SB10001424052702304259304576375971250513248>.

or any violent offenses. They're civilians, and their release is a one-time gesture to Iran"²⁵ However, the Obama-Biden DOJ had previously accused several of the seven prisoners of posing national security threats and illegally procuring U.S.-made technology that could be used to build Iran's nuclear program.²⁶

In addition to releasing seven prisoners, the Obama-Biden DOJ dropped charges and arrest warrants against 14 Iranian fugitives.²⁷ Many of the fugitives were dangerous actors known for illegally procuring supplies and weapons for Iran.²⁸ A *Politico* investigation found that the Obama-Biden Administration not only downplayed the threat that the 21 Iranian proliferators posed, but starting in 2014 "began slow-walking some significant investigations and prosecutions of Iranian procurement networks operating in the U.S."²⁹

Obama-Biden Administration officials working on the Iran deal kept prosecutors and investigators in the dark, meaning the people negotiating the release could not grasp how the releases would affect "the broader and interconnected matrix of U.S. investigations" into how Iran continued to secretly build its nuclear programs.³⁰ Only top officials in the Obama-Biden DOJ and FBI, including Attorney General Loretta Lynch, helped to vet the 21 Iranians to be released or have charges dropped.³¹ Federal prosecutors and agents were reportedly "shocked and angry" when they learned the true extent of the exchange.³² David Locke Hall, a former DOJ counterproliferation prosecutor stated, "[The prisoner swap] has erased literally years—many years—of hard work, and important cases that can be used to build toward other cases and even bigger players in Iran's nuclear and conventional weapons programs."³³

One former Obama-Biden official interviewed by *Politico* defended the Obama-Biden Administration's decision to short-circuit line prosecutors and agents: "It's entirely possible that during the pendency of the negotiations, that folks who were doing their jobs, doing the investigations and bringing cases, having no understanding of and insight into the [policy] process, were frustrated because they don't feel like their stuff is moving forward That doesn't strike me as being a, unusual or, b, wrong."³⁴

E. The Obama-Biden Justice Department politicized the Civil Rights Division

Attorney General Holder politicized the hiring process for career civil service positions in the Civil Rights Division by hiring 16 left-leaning attorneys for its Voting Section—responsible for enforcing the Voting Rights Act and protecting the right to vote.³⁵ These lawyers were affiliated with organizations like the American Civil Liberties Union and

²⁵ Press Release, The White House, Statement by the President on Iran (Jan. 17, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/01/17/statement-president-iran>.

²⁶ Josh Meyer, *Obama's Hidden Iran Deal Giveaway*, POLITICO (Apr. 24, 2017), <https://www.politico.com/story/2017/04/24/obama-iran-nuclear-deal-prisoner-release-236966>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Hans A. von Spakovsky, *Every Single One: The Politicized Hiring of Eric Holder's Voting Section*, HERITAGE FOUND. (Aug. 15, 2011), <https://www.heritage.org/civil-society/commentary/every-single-one-the-politicized-hiring-eric-holders-voting-section>. US. DEP'T. OF JUSTICE, *Civil Rights Division*, <https://www.justice.gov/crt>.

donated to Democrat candidates—including Barack Obama and Hilary Clinton’s presidential campaigns.³⁶

Furthermore, the Assistant Attorney General for the Civil Rights Division—now DNC Chairman Thomas Perez—politicized the Division’s actions. In April 2013, the Judiciary Committee and Oversight Committee exposed Perez’s effort to arrange a *quid pro quo* with the City of St. Paul, Minnesota, in which the Department sacrificed two promising qui tam suits against St. Paul that could have recovered up to \$200 million for taxpayers, in exchange for St. Paul withdrawing an appeal at the Supreme Court that threatened to destroy “disparate impact” theory—a dubious legal theory Perez used to settle Fair Housing Act cases.³⁷ Career Justice Department officials from the Civil Division initially recommended that the Department intervene in the two qui tam cases against St. Paul; however, Perez pulled strings with Department leadership to overrule the careers’ recommendation and, ultimately, the Department chose not to intervene in the cases.³⁸

In another instance, in July 2010, the U.S. Commission on Civil Rights wrote to Perez regarding the Civil Rights Division’s decision to drop certain voter intimidation lawsuits.³⁹ In the letter, the Commission raised concerns about whether the Obama-Biden DOJ’s policies “are being pursued in a race neutral fashion.”⁴⁰

F. The Obama-Biden Justice Department flouted Congressional oversight

The Obama-Biden DOJ flouted Congress’s oversight responsibilities during the House Oversight Committee’s investigation into Operation Fast and Furious, a gun-running program conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).⁴¹ The program allowed around two thousand firearms to fall into the hands of drug cartels in Mexico and led to the death of U.S. Border Patrol agent Brian Terry.⁴²

On October 12, 2011, following six months of constant refusal by the Obama-Biden DOJ to comply with the Committee’s investigation, then-Oversight Chairman Darrell Issa issued a subpoena to Attorney General Holder for documents about the Operation.⁴³ Attorney General Holder still refused to comply. After a year of stonewalling, the House voted on June 28, 2012 to hold Attorney General Holder in criminal contempt of Congress.⁴⁴ Although he openly defied congressional subpoenas and refused to comply with reasonable requests from Congress, Attorney General Holder called the House’s actions “misguided” and “politically

³⁶ *Id.*

³⁷ Press Release, H. Comm. on Oversight & Gov’t Reform, Joint Staff Report: Department of Justice’s (DOJ) Quid Pro Quo with St. Paul: How Assistant Attorney General Thomas Perez Manipulated Justice and Ignored the Rule of Law (Apr. 15, 2013), <https://republicans-oversight.house.gov/report/joint-staff-report-doj-quid-pro-quo-with-st-paul/>.

³⁸ *Id.*

³⁹ Jan Crawford, *New Black Panther Case Spurs Civil Rights Commission to Challenge DOJ*, CBS NEWS (July 14, 2010), <https://www.cbsnews.com/news/new-black-panther-case-spurs-civil-rights-commission-to-challenge-doj/>.

⁴⁰ *Id.* The controversy occurred after DOJ dropped lawsuits against members of the New Black Panther Party in Philadelphia accused of intimidating voters at a polling place in November 2008.

⁴¹ H.R. Rep. No. 112-546, at 3 (2012).

⁴² *Id.* at 2 & 6.

⁴³ *Id.* at 12.

⁴⁴ Alan Silverleib, *House Holds Holder in Contempt*, CNN (Jun. 29, 2012), <https://www.cnn.com/2012/06/28/politics/holder-contempt/index.html>.

motivated.”⁴⁵ Later, the U.S. Attorney for the District of Columbia, who reported up through Attorney General Holder to President Obama, declined to prosecute Holder’s contempt—even though the relevant statute mandated that he must.⁴⁶

G. The Obama-Biden Justice Department targeted industries disfavored by the Obama-Biden Administration

In 2013, Obama-Biden officials at DOJ, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, and other agencies pressured financial institutions to terminate financial services for businesses in industries such as payday lending, gun stores, and firework dealers that federal regulators unilaterally deemed to be “high-risk.”⁴⁷ On December 8, 2014, following an investigation, the House Oversight Committee released a staff report that concluded “legal and legitimate businesses are being choked off from the financial system” by the Obama-Biden Administration.⁴⁸ During Operation Choke Point, federal regulators “equated legitimate and regulated activities such as coin dealers and firearms and ammunition sales with inherently pernicious or patently illegal activities such as Ponzi schemes, debt consolidation scams, and drug paraphernalia.”⁴⁹ Documents produced to the Oversight Committee revealed that senior DOJ officials informed Attorney General Holder that as a consequence of Operation Choke Point, banks are “exiting” lines of business deemed high-risk by federal regulators.⁵⁰

⁴⁵ *Id.*

⁴⁶ *See* 2 U.S.C. § 194 (2006); Letter from Sen. Charles Grassley, Chairman, S. Comm. on the Judiciary, to Hon. Ronald C. Machen, Jr., U.S. Att’y, D.C. (Jun. 29, 2012), <https://www.grassley.senate.gov/sites/default/files/about/upload/2012-06-29-CEG-to-USA-Machen-contempt-citation.pdf>.

⁴⁷ Chairman Darrell Issa, H. Comm. on Oversight & Gov’t Reform, Federal Deposit Insurance Corporation’s Involvement in “Operation Choke Point” (Dec. 8, 2014), <https://republicans-oversight.house.gov/wp-content/uploads/2014/12/Staff-Report-FDIC-and-Operation-Choke-Point-12-8-2014.pdf>; *see also* Walter Olson, *Republicans kill Obama’s awful ‘Operation Choke Point’*, WASH. EXAMINER (Aug. 21, 2017), <https://www.washingtonexaminer.com/republicans-kill-obamas-awful-operation-choke-point>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

II. Attorney General Barr Is Restoring Integrity to the Justice Department

Since Attorney General Barr’s confirmation, he has attempted to restore integrity to the Justice Department. Although Democrats and the left-wing media cry foul about some of Attorney General Barr’s decisions and actions—such as in the sentencing of Roger Stone or the prosecution of LTG Michael Flynn—Attorney General Barr is the chief law-enforcement officer in the country and the decisions are his to make. Regardless, both examples prove that Attorney General Barr is restoring integrity to the Justice Department and promoting equal treatment under the law. Most recently, as the COVID-19 pandemic has forced Americans to adjust their daily lives, Attorney General Barr has led the federal government’s law enforcement response to violent rioters across the country—chaos that is preventing legitimate peaceful First Amendment activity in the wake of George Floyd’s murder from taking place. These and other challenges have shown Attorney General Barr’s commitment to true leadership at the Justice Department.

A. Democrats initially praised Attorney General Barr during his confirmation hearing

Attorney General Barr’s confirmation hearing took place on January 15 and 16, 2019.⁵¹ During the confirmation hearing, Barr promised to apply an “even-handed application of the law.”⁵² Democrats like Senate Judiciary Ranking Member Dianne Feinstein suggested that Barr should have an “easy road to confirmation.”⁵³ Democrats understood Barr’s history and experience leading the Department in the 1990s and were generally satisfied with his answers to questions during his confirmation hearing.⁵⁴ Ultimately, Barr received the votes of Democrat Senators Manchin, Jones, and Sinema.⁵⁵

B. Attorney General Barr has been forceful in confronting anarchist violence in American cities

Attorney General Barr has sought to hold radical, left-wing anarchist groups like Antifa accountable for their crimes.⁵⁶ Most recently, during the protests in response to the killing of George Floyd in the custody of the Minneapolis police department, Attorney General Barr “made clear” that Antifa and other extremist groups were “involved in instigating and participating in violent activity.”⁵⁷ FBI Director Christopher Wray added that Antifa is “exploiting the situation to pursue violent extremist agendas”⁵⁸ President

⁵¹ *Confirmation Hearing on the Nomination of Hon. William Pelham Barr to be Attorney General of the United States: Hearing Before the S. Comm. On the Judiciary*, 116th Cong. (2019).

⁵² Kimberely A. Strassel, *The Trials of Bill Barr*, WALL ST. J. (Feb. 13, 2020), <https://www.wsj.com/articles/the-trials-of-bill-barr-11581637977>.

⁵³ Kelly Cohen, *‘Did pretty well’: Boost for Trump as William Barr impresses Democrats in marathon confirmation hearing*, WASHINGTON EXAMINER (Jan. 15, 2019), <https://www.washingtonexaminer.com/news/did-pretty-well-william-barr-impresses-dems-in-marathon-confirmation-hearing>

⁵⁴ *See generally id.*

⁵⁵ Matt Zapposky & Karoun Demirjian, *Senate Confirms William Barr as attorney general in 54-45 vote*, WASH. POST (Feb. 14, 2019), https://www.washingtonpost.com/world/national-security/william-barr-expected-to-be-confirmed-as-attorney-general-thursday/2019/02/13/fl62e514-2f1a-11e9-813a-0ab2f17e305b_story.html.

⁵⁶ *See generally* Philip Bump, *The Justice Department’s rhetoric focuses on antifa. Its Indictments don’t.*, WASH. POST (June 4, 2020), <https://www.washingtonpost.com/politics/2020/06/04/justice-departments-rhetoric-focuses-antifa-its-indictments-dont/>

⁵⁷ *Id.*

⁵⁸ *Id.*

Trump ultimately indicated that he would designate Antifa as a domestic terrorist organization and Attorney General Barr explained that the FBI's Joint Terrorism Task Force would be using its existing network to "apprehend and [charge] the violent radical agitators."⁵⁹

On June 1, 2020, the DOJ deployed federal law-enforcement personnel from the FBI; Drug Enforcement Agency (DEA); Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); U.S. Marshals Service (USMS); and Bureau of Prisons (BOP) to prevent harm to citizens and the destruction of property during violent protests.⁶⁰ The estimated cost of the damage in Minneapolis, Minnesota, alone was over \$500 million dollars as some 400 businesses were either damaged or destroyed.⁶¹ In addition, on June 1, Attorney General Barr sent specialized units of federal law-enforcement officials, including BOP riot teams and FBI hostage rescue teams, to protests in Washington, D.C.⁶²

Attorney General Barr correctly pointed out that violent anarchists and left-wing agitators hijacked opportunities for those seeking to peacefully exercise their First Amendment rights. In early June, Attorney General Barr said:

Unfortunately, with the rioting that is occurring in many of our cities around the country, the voices of peaceful protest are being hijacked by violent radical elements. Groups of outside radicals and agitators are exploiting the situation to pursue their own separate and violent agenda.⁶³

President Trump also readied thousands of National Guard personnel after left-wing extremists incited violence and looting across the nation. President Trump accused governors and mayors of "insufficient action" and accused them of not responding forcefully enough to the violent anarchists and looters.⁶⁴ On June 7, 2020, President Trump began the process of withdrawing more than 5,000 National Guard personnel from Washington, D.C., stating that "everything is under perfect control."⁶⁵ Eleven states activated their National Guard personnel in response to the unrest.

⁵⁹ DOJ to treat antifa involvement in protests as domestic terrorism, AXIOS (May 31, 2019), <https://www.axios.com/antifa-protests-trump-8f7519c2-fcc2-4caf-b881-6781ea1fe3df.html>

⁶⁰ Eric Katz, *Trump Federalizes Crackdown on Protestors*, GOVERNMENT EXECUTIVE (Jun. 2, 2020), <https://www.govexec.com/management/2020/06/trump-federalizes-crackdown-protestors/165838/>.

⁶¹ William La Jeunesse, *George Floyd protests could be most expensive civil disturbance in US history, experts say*, FOX NEWS (Jun. 29, 2020), <https://www.foxnews.com/politics/george-floyd-protests-expensive-civil-disturbance-us-history>.

⁶² Ryan Lucas, *Attorney General Steps Up Federal Law Enforcement Response to Protests*, NPR (Jun. 1, 2020), <https://www.npr.org/2020/06/01/867059312/attorney-general-steps-up-federal-law-enforcement-response-to-protests>.

⁶³ *Id.*

⁶⁴ Eric Katz, *Trump Federalizes Crackdown on Protestors*, GOVERNMENT EXECUTIVE (Jun. 2, 2020), <https://www.govexec.com/management/2020/06/trump-federalizes-crackdown-protestors/165838/>.

⁶⁵ Danielle Wallace, *Trump withdraws National Guard from DC now that 'everything is under perfect control'*, FOX NEWS (Jun. 7, 2020), <https://www.foxnews.com/politics/trump-national-guard-withdraw-washington-dc-perfect-control-george-floyd>.

On June 8, 2020, the DOJ released a list of charges against rioters and looters, with 47 federal charges brought against 68 individuals.⁶⁶ The list included charges in 22 states and included charges of arson, possession of Molotov cocktails, theft, looting, and impersonation of a police officer.⁶⁷

Around the country, left-wing agitators desecrated and brought down statues of Presidents George Washington, Abraham Lincoln, and Thomas Jefferson, and attempted to harm others, including a statue of Andrew Jackson in Washington, D.C.⁶⁸ Unwilling to condone violent destruction of federal property honoring America's past leaders, President Trump on June 26, 2020, issued an executive order that sought to protect federal monuments and statues from vandalism amid the violent protests occurring across the nation.⁶⁹

1. Lafayette Square and St. John's Episcopal Church, June 1, 2020

On June 1, 2020, the United States Park Police (USPP) cleared a crowd from Lafayette Park in front of the White House in order to conduct a pre-planned perimeter expansion.⁷⁰ Acting Chief of the USPP, Gregory Monahan, explained that the perimeter expansion was scheduled as a result of the increasing violence.⁷¹ Leading up to June 1, violent mobs disobeyed the 11 p.m. curfew to set fire to parked cars, demolish coffee shops and banks, burn American flags, and even intentionally set fire to historic St. John's Episcopal Church near Lafayette Square.⁷²

Multiple agencies, including the U.S. Secret Service, assisted the USPP in responding to and quelling the acts of destruction and violence to protect citizens and property.⁷³ USPP explained:

To curtail the violence that was underway, the USPP, following established policy, issued three warnings over a loudspeaker to alert demonstrators on H Street to evacuate the area. Horse mounted patrol, Civil Disturbance Units and additional personnel were used to clear the area. As many of the protestors

⁶⁶ Elle Reynolds, *DOJ Releases List of Federal Riot Charges for Looting, Violence, Homemade Explosives, And More*, THE FEDERALIST (Jun. 11, 2020), <https://thefederalist.com/2020/06/11/doj-releases-list-of-federal-riot-charges-for-looting-violence-homemade-explosives-and-more/>.

⁶⁷ *Id.*

⁶⁸ See e.g. Bryant Clerkley, *Statue of George Washington toppled and spray painted in Hollywood neighborhood*, KGW8 (June 19, 2020), <https://www.kgw.com/article/news/local/statue-of-george-washington-toppled-and-spray-painted-in-hollywood-neighborhood/283-6f3d5c28-74c6-4307-88d7-493c5dfcd59b>; Phil Davis, *George Washington monument in Druid Hill Park spray-painted with 'destroy racists,' anti-police sentiment*, BALTIMORE SUN (June 21, 2020), <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-baltimore-washington-monument-vandalized-20200621-h5tbqr6jazb7dfn645to5wb37a-story.html>.

⁶⁹ Exec. Order 13933 of June 26, 2020, *Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence*, <https://www.whitehouse.gov/presidential-actions/executive-order-building-rebuilding-monuments-american-heroes/>.

⁷⁰ Charles Creitz, *Barr blasts 'canard' that Park Police cleared out protesters to let Trump visit church: 'Totally false'*, FOX NEWS (June 8, 2020), <https://www.foxnews.com/media/barr-lafayette-park-protesters-trump-church-visit>.

⁷¹ Press Release, *Statement from United States Park Police acting Chief Gregory T. Monahan about the actions taken over the weekend to protect life and property*, United States Park Police, National Park Service (June 4, 2020), https://www.nps.gov/subjects/uspp/6_2_20_statement_from_acting_chief_monahan.htm.

⁷² Rebecca Tan, et al., *Night of destruction across D.C. after protestors clash with police outside White House*, WASH. POST (June 1, 2020).

⁷³ *Id.*

became more combative, continued to throw projectiles, and attempted to grab officers' weapons, officers then employed the use of smoke canisters and pepper balls.⁷⁴

The Secret Service's and USPP's appropriate use of safe order restorative force in smoke and pepper balls to clear a looting and rioting so close to the White House was an effectuation of their chief mission to protect the President and his family. In total, 51 USPP officers were injured during the weekend leading up to the perimeter expansion and during the perimeter expansion.⁷⁵

Still, Democrats accuse the Administration and especially Attorney General Barr of clearing the park for a Presidential "photo-op" at St. John's Episcopal Church.⁷⁶ Attorney General Barr explained, however, that "the decision to expand the perimeter was made the previous evening" and that expansion was necessary following "three days of extremely violent demonstrations right across from the White House."⁷⁷ The Attorney General emphasized that "this canard that this exercise was done to make [the President's visit to St. John's Episcopal Church] possible is totally false."⁷⁸

2. Capitol Hill Autonomous Zone (CHAZ) or Capitol Hill Organized Protest (CHOP) Zone in Seattle, Washington

On June 8, 2020, following days of clashes between protesters and Seattle police, activists and protestors took over a six-block area in downtown Seattle and created an "autonomous" police-free zone.⁷⁹ At the direction of Seattle Mayor Jenny Durkan, the Seattle Police Department abandoned its East Precinct building and allowed the left-wing extremists to use it as a headquarters.⁸⁰ Shortly after taking over the six-block area, protestors made a list of over thirty demands, including the abolition of the Seattle Police Department, the abolition of imprisonment, the abolition of the court system, and a demand for free college.⁸¹

Over the course of June and early July, several shootings occurred inside of the "autonomous" zone, including the murders of a sixteen-year-old and a nineteen-year-old due to violent clashes between protestors.⁸² Mayor Durkan issued an order on June 30, 2020, declaring the newly named Capitol Hill Organized Protest (CHOP) zone an "unlawful

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Charles Creitz, *Barr blasts 'canard' that Park Police cleared out protesters to let Trump visit church: 'Totally false'*, FOX NEWS (June 8, 2020), <https://www.foxnews.com/media/barr-lafayette-park-protesters-trump-church-visit>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Emily Shapiro, *Seattle police chief on autonomous takeover: 'We did not ... abandon the precinct'*, ABC NEWS (Jun. 12, 2020), <https://abcnews.go.com/US/seattle-police-chief-autonomous-takeover-abandon-precinct/story?id=71217085>.

⁸⁰ *Id.*

⁸¹ Free Capitol Hill, *The Demands of The Collective Black Voices at Free Capitol Hill to the Government of Seattle, Washington*, MEDIUM (Jun. 9, 2020), <https://medium.com/@seattleblmanon3/the-demands-of-the-collective-black-voices-at-free-capitol-hill-to-the-government-of-seattle-ddaee51d3e47>.

⁸² Lisa Baumann, *Teenager killed, another wounded in shooting inside Seattle's occupied zone*, USA TODAY (Jun. 29, 2020), <https://www.usatoday.com/story/news/nation/2020/06/29/seattle-autonomous-zone-shooting-leaves-teenager-dead/3282105001/>.

gathering” and ordering agencies, including the Seattle Police Department, to clear the area.⁸³ Mayor Durkan explained that “[t]he deteriorating conditions and repeated gun violence required us to immediately address public safety concerns. It was clear that many individuals would not leave, and that the impacts to the community could not be reduced, and public safety could not be improved, until they did leave.”⁸⁴

While Seattle Police Chief Carmen Best said she supports lawful protests, she also said that, “enough is enough. The CHOP has become lawless and brutal.”⁸⁵ On July 1, 2020, police cleared the area and arrested over thirty individuals for a variety of crimes, including assault, failure to disperse, obstruction, and unlawful weapon possession.^{86,87} The Mayor’s order only came after six people were shot and after numerous allegations of sexual assault within the CHOP zone during the four-week occupation.⁸⁸

Attorney General Barr called the CHOP zone a “haven for violent crime” and praised the work of Chief Best in cleaning up the CHOP zone.⁸⁹ In a statement, Attorney General Barr said, “As Chief Best made clear throughout the process, there is a fundamental distinction between discussion of substantive issues—including addressing distrust of law enforcement by many in the African-American community—and violent defiance of the law.”⁹⁰ After the police cleared the CHOP zone, Attorney General Barr noted, “The message of today’s action is simple but significant: The Constitution protects the right to speak and assemble freely, but it provides no right to commit violence or defy the law.”⁹¹

3. Federal Law Enforcement Response to Civil Unrest

Some have alleged that the Justice Department and Department of Homeland Security (DHS) are allowing their officers to appear without proper identification while quelling civil unrest across the country. Recent reports have indicated that some federal officers at protests did not wear badges or concealed them.⁹² For instance, demonstrators in Portland, Oregon, have suggested that federal officers are using unmarked vehicles to detain demonstrators—evidenced by a viral video apparently depicting such an encounter.⁹³ However, according to a statement by Customs and Border Protection (CBP) about that incident, officers “had

⁸³ Ryan W. Miller, *Seattle police clear CHOP zone and make arrests after mayor orders protesters to leave*, INDIANAPOLIS STAR (Jul. 2, 2020), <https://www.indystar.com/story/news/nation/2020/07/01/chop-zone-seattle-mayor-orders-police-dismantle-protest-area/5354605002/>.

⁸⁴ Rachel Abrams, *Police Clear Seattle’s Protest ‘Autonomous Zone’*, N.Y. TIMES (Jul. 7, 2020), <https://www.nytimes.com/2020/07/01/us/seattle-protest-zone-CHOP-CHAZ-unrest.html>.

⁸⁵ *Id.*

⁸⁶ Katelyn Burns, *The violent end of the Capitol Hill Organized Protest, explained*, VOX (Jul. 2, 2020), <https://www.vox.com/policy-and-politics/2020/7/2/21310109/chop-chaz-cleared-violence-explained>.

⁸⁷ Emily Shapiro, *Seattle police clear CHOP zone, make arrests after mayor’s executive order*, ABC NEWS (Jul. 1, 2020), <https://abcnews.go.com/US/seattle-police-clear-chop-zone-make-arrests-mayors/story?id=71551625>.

⁸⁸ *Id.*

⁸⁹ Eric Levenson and Hira Humayun, *Seattle police disperse protestors from occupied CHOP area after emergency order*, CNN (Jul. 1, 2020), <https://amp.cnn.com/cnn/2020/07/01/us/seattle-chop-protesters/>.

⁹⁰ *Id.*

⁹¹ Press Release, Statement by Attorney General William P. Barr on the Restoration of Law and Order in Seattle, Dep’t of Justice (July 1, 2020).

⁹² Steve Almasy, *Some law enforcement officers at protests have no badges and some have covered them. City officials say that is unacceptable*, CNN (June 5, 2020), <https://www.cnn.com/2020/06/05/politics/law-enforcement-badges-protests/index.html>.

⁹³ Katie Shepherd, *‘It was like being preyed upon’: Portland protesters say federal officers in unmarked vans are detaining them*, WASH. POST (July 17, 2020), <https://www.washingtonpost.com/nation/2020/07/17/portland-protests-federal-arrests/>.

information indicating the person in the video was suspected of assaults against federal agents or destruction of federal property.”⁹⁴ Additionally, CBP explained that “a large and violent mob moved towards their location. For everyone’s safety, CBP agents quickly moved the suspect to a safer location for further questioning.”⁹⁵ During that encounter, “CBP agents identified themselves and were wearing CBP insignia,” and “names of the agents were not displayed due to recent doxing incidents against law enforcement personnel who serve and protect our country.”⁹⁶ Through doxing, violent left wing groups published the personal identities of various federal personnel, endangering the safety of them and their families.⁹⁷ CBP Commissioner Mark Morgan explained, “You will not see names on their uniforms [because] these same violent criminals use this information to target them [and] their families, putting both at risk”⁹⁸

C. Attorney General Barr is addressing the Obama-Biden Justice Department’s abuses toward the Trump campaign and Trump transition

Attorney General Barr is taking action to hold the Justice Department and the FBI accountable for its misconduct in targeting the Trump campaign and Trump transition team in 2016 and early 2017. Attorney General Barr publicly stated in 2019: “I think there were gross abuses . . . and inexplicable behavior that is intolerable in the FBI.”⁹⁹ He said based on the Justice Department Inspector General’s report, the Trump campaign “was clearly spied upon”¹⁰⁰ and he noted that the Department is not ruling out “the possibility of bad-faith” actions taken by certain FBI personnel.¹⁰¹ Attorney General Barr warned, “From a civil liberties standpoint, the greatest danger to our free system is that the incumbent government use the apparatus of the state . . . both to spy on political opponents but also to use them in a way that could affect the outcome of an election.”¹⁰²

Several investigations make clear that the Obama-Biden Administration—including the Justice Department and FBI—took unfair, aggressive, and potentially illegal actions toward the Trump campaign. Senior FBI officials expressed bias against candidate Trump and for candidate Hillary Clinton. The Obama-Biden Justice Department investigated allegations of Trump campaign collusion with Russia in a manner far different than its investigation into Clinton’s mishandling of classified information. The Attorney General has appointed U.S. Attorney John Durham to investigate potential criminality in the targeting of the Trump campaign and transition team.¹⁰³

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See Press Release, Acting Secretary Wolf Condemns The Rampant Long-Lasting Violence in Portland, Dep’t of Homeland Security (July 16, 2020) (“Law enforcement officers’ personal information was publicly exposed, including FPS, ICE, and CBP personnel.”); *id.* (“Violent anarchists released personal information of federal law enforcement officers to the public, publishing names of those in Portland.”); *id.* (“Violent anarchists doxed members of federal law enforcement.”).

⁹⁸ CBP Mark Morgan, (@CBPMarkMorgan), Twitter, (July 17, 2020, 3:21 PM), <https://twitter.com/cbpmarkmorgan/status/1284206664913215491>.

⁹⁹ Ken Dilanian, *Barr thinks FBI may have acted in ‘bad faith’ in probing Trump campaign’s links to Russia*, NBC NEWS (Dec. 10, 2019).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Adam Goldman et al., *Barr assigns U.S. Attorney in Connecticut to Review Origins of Russia Inquiry*, N.Y. TIMES, (May 13, 2019).

1. Obama-Biden FBI illegally surveilled then-candidate Trump's campaign

The Justice Department Office of Inspector General (OIG), led by Inspector General Michael E. Horowitz, detailed in a December 2019 report serious FBI abuse in FISA warrant applications it submitted to the Foreign Intelligence Surveillance Court (FISA) to surveil Trump campaign associate Carter Page. The OIG found 17 significant errors in FISA applications to surveil Page and 51 factual assertions in the FISA applications to surveil Page that lacked supporting documentation, the supporting document did not state facts, or the supporting document contained an inaccurate factual assertion. In explaining the OIG report during a Senate Judiciary Committee hearing, Horowitz testified that he could not rule out bias as contributing to FBI misconduct.¹⁰⁴

The OIG also found:

- The DNC-funded opposition researcher, Christopher Steele, supplied the FBI with incriminating information against Carter Page. The Justice Department told the OIG that Steele's reporting "was 'what kind of pushed it over the line' in terms of the FBI being ready to pursue FISA authority targeting Page."¹⁰⁵
- The OIG concluded the FBI should have "provided greater clarity on the political origins and connections of Steele's reporting, including that [Fusion GPS head Glenn] Simpson was hired by someone associated with the Democrat Party and/or the DNC."¹⁰⁶
- The OIG found the FBI presented cherry-picked favorable evidence to obtain a FISA warrant to surveil Page and ignored "facts that cut against probable cause."¹⁰⁷ The OIG found the FISA applications against Page omitted that Page was working with another U.S. Government agency as an "operational contact."¹⁰⁸
- The OIG found the FBI omitted facts showing Steele's reporting was unreliable. For example, the FBI did not disclose that Steele's primary sub-source did not corroborate what Steele claimed. The FBI also did not disclose in the FISA applications that witnesses made statements inconsistent with what Steele reported to the FBI.¹⁰⁹
- The OIG found the FBI selectively used statements that Page made to an FBI human source in the FISA applications, but omitted statements that "undercut" Steele's reporting and a probable cause determination.¹¹⁰

¹⁰⁴ *Examining the Inspector General's Report on Alleged Abuses of the Foreign Intelligence Surveillance Act: Hearing Before the S. Comm. on Judiciary*, 116th Cong. 110 (2019).

¹⁰⁵ INSPECTOR GEN., DEP'T OF JUSTICE, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation*, 369 (2019) [hereinafter FISA Report].

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at xiii.

¹⁰⁸ *Id.* at 358.

¹⁰⁹ *Id.* at 368-69.

¹¹⁰ *Id.* at xiii, 366.

- The OIG found that one year after the FBI’s initial FISA application, and following three renewals, the FBI still had not fully corroborated Steele’s reporting and much of his information was publicly available.¹¹¹
- The OIG found the FBI misrepresented Steele’s reliability as a source to the FISC. The FBI “overstated” Steele’s previous contributions to the FBI before the Carter Page investigation.¹¹² In the middle of investigating Page, the FBI noted that Steele demonstrated “poor judgment”; “pursued people with political risk but no intelligence value”; “didn’t always exercise great judgment”; and “not clear what he [Steele] would have done to validate [his reporting].”¹¹³
- The OIG found the FBI did not disclose Steele’s biases to the FISC, namely that Steele was “desperate that Donald Trump not get elected and was passionate about him being the U.S. President.”¹¹⁴
- The OIG found that an FBI lawyer altered evidence to support a FISA application to surveil Page. The OIG criminally referred this lawyer to U.S. Attorney Durham for federal prosecution. This same lawyer, who also worked on the investigations into Clinton’s misuse of classified information and Russian collusion, expressed bias against Donald Trump.¹¹⁵

Following the release of the OIG report, the Justice Department admitted to the FISC that “there was insufficient predication to establish probable cause to believe that Page was acting as an agent of a foreign power.”¹¹⁶ Attorney General Barr publicly remarked that “potential criminality” exists for abuses identified by the DOJ OIG, but he is awaiting the conclusion of U.S. Attorney Durham’s investigation.¹¹⁷

2. FBI Director James Comey leaked his conversations with President Trump to spur a Special Counsel investigation

On May 16, 2017, former FBI Director James Comey directed his friend, Daniel Richman, to read aloud to the *New York Times* contents of a memorandum that Comey wrote on February 14, 2017, describing his conversation with President Trump.¹¹⁸ Comey alleged that the President instructed him to “let[] Flynn go”—a comment Comey viewed as obstruction of the FBI’s investigation of LTG Michael Flynn.¹¹⁹

¹¹¹ *Id.* at 196.

¹¹² *Id.* at 364.

¹¹³ *Id.* at 368.

¹¹⁴ *Id.* at 369.

¹¹⁵ The lawyer texted his FBI colleagues these anti-Trump messages: “the crazies won finally”; “This is the tea party on steroids”; “I just can’t imagine the systematic disassembly of the progress we made over the last 8 years;” “Pence is stupid” ; and “vive le resistance.” *Id.* at 256 n. 400.

¹¹⁶ Order Regarding Handling and Disposition of Information, *In re Carter W. Page, A U.S. Person*, Nos. 16-1182, 17-52, 17-375, 17-679 (“DOJ assess that with respect to the applications in Docket Numbers 17-375 and 17-679, ‘if not earlier, there was insufficient predication to establish probable cause to believe that [Carter] Page was acting as an agent of a foreign power.’”).

¹¹⁷ Morgan Chalfant, *Barr doesn’t expect Obama, Biden criminal investigations*, THE HILL (May 18, 2020).

¹¹⁸ INSPECTOR GEN., DEP’T OF JUSTICE, *Report of Investigation of Former Federal Bureau of Investigation Director James Comey’s Disclosure of Sensitive Investigative Information and Handling of Certain Memoranda*, 39-41 (2019).

¹¹⁹ *Id.* at 56.

Comey later told the OIG that he was reacting to the President’s tweet about the possibility that tapes of their conversation existed. Comey told the OIG that a Special Counsel would be able to preserve the tapes from being destroyed by the President and eventually find the President’s alleged wrongdoing in asking FBI to “let[] Flynn go.”¹²⁰

DOJ OIG found Comey’s conduct to be so egregious that it criminally referred Comey for prosecution. The Justice Department, however, declined to prosecute Comey.¹²¹ DOJ OIG strongly criticized Comey for orchestrating the leak of his memo.¹²² It concluded that Comey “set a dangerous example for the over 35,000 current FBI employees and the many thousands more former employees.”¹²³ The DOJ OIG condemned Comey for putting his own “personal conception” over Department policies and rules, to achieve a “personally desired outcome.”¹²⁴

3. FBI misconduct in investigating LTG Michael Flynn

The FBI began a counterintelligence investigation on LTG Michael Flynn in August 2016 for potential violations of the Foreign Agents Registration Act.¹²⁵ At that time, LTG Flynn was part of candidate-Trump’s presidential campaign. The FBI had originally decided by December 2016 to close the Flynn investigation because it could not substantiate the allegations.¹²⁶ The FBI’s Washington Field Office prepared a memorandum to close the investigation. However, after listening to phone calls between Russian Ambassador Sergey Kislyak and LTG Flynn, the FBI leadership intervened to keep the case open. Director Comey violated Department procedures by sending two senior agents to interview LTG Flynn in the White House on January 24, 2017. Even still, Justice Department officials did not find the Flynn-Kislyak calls troubling, and in fact considered their conversations to be “pretty common.”¹²⁷

¹²⁰ *Id.* at 39 (Comey: “if I put out into the public square that encounter, that will force DOJ, likely to appoint a Special Counsel to go get the tapes. Or even if they won’t do that, it will force them to go get the tapes.”).

¹²¹ *Id.* at 52 (“Upon completing our investigation, we provided our factual findings to the Department for a prosecutorial decision regarding Comey’s conduct....After reviewing the matter, the Department declined prosecution.”).

¹²² *Id.* at 61 (“Comey’s unauthorized disclosure of sensitive law enforcement information about the Flynn investigation merits similar criticism. In a country built on the rule of law, it is of utmost importance that all FBI employees adhere to Department and FBI policies, particularly when confronted by what appear to be extraordinary circumstances or compelling personal convictions. Comey had several other lawful options available to him to advocate for the appointment of a Special Counsel, which he told us was his goal in making the disclosure. What was not permitted was the unauthorized disclosure of sensitive investigative information, obtained during the course of FBI employment, in order to achieve a personally desired outcome.”).

¹²³ *Id.* at 60 (“By not safeguarding sensitive information obtained during the course of his FBI employment, and by using it to create public pressure for official action, Comey set a dangerous example for the over 35,000 current FBI employees—and the many thousands more former FBI employees—who similarly have access to or knowledge of non-public information.”).

¹²⁴ *Id.* at 57 (“Comey’s own, personal conception of what was necessary was not an appropriate basis for ignoring the policies and agreements governing the use of FBI records, especially given the other lawful and appropriate actions he could have taken to achieve his desired end.”); *id.* at 61.

¹²⁵ FISA Report, *supra* note 105, at 59.

¹²⁶ Government’s Mot. to Dismiss the Criminal Information Against the Defendant Michael T. Flynn, Document 198, United States v. Flynn, No. 17-000232 (D.D.C. May 7, 2020) [hereinafter Motion to Dismiss].

¹²⁷ Mary McCord Transcribed Interview 77, Nov. 1, 2017 (“And, you know, we had some discussions about how we -- you know, this is a statute that hadn’t been used ever, you know, in 200 years on the books, and that we imagined that in many incoming administrations, it’s probably pretty common for incoming officials to reach out to who their counterparts are in advance of the transition to just sort of say we want to start developing a relationship.”).

The FBI committed several errors and misconduct in investigating LTG Flynn:

- The DOJ OIG faulted the FBI for using an August 2016 defensive intelligence briefing as an opportunity to investigate Flynn.¹²⁸
- The FBI attempted to use the Logan Act against LTG Flynn—a charge never successfully used by the Justice Department in its history.¹²⁹ The DOJ informed the FBI that it was not supportive of using the Logan Act against LTG Flynn. However as late as March and April 2017, the FBI continued briefing DOJ on the Logan Act usage, according to notes by Dana Boente, the then-Acting Deputy Attorney General.¹³⁰
- FBI handwritten interview notes stated that one of the FBI’s “goal[s]” during the FBI’s interview of Flynn on January 24, 2017 was to “get him to lie, so we can prosecute him or get him fired.”¹³¹ The FBI did not have a criminal predicate to interview LTG Flynn on January 24, 2017.¹³²
- Then-Deputy FBI Director Andrew McCabe dissuaded LTG Flynn from reaching out to anyone, including White House Counsel’s office, before the interview.¹³³
- FBI agent Peter Strzok and FBI lawyer Lisa Page provided “edits” to the memorandum memorializing LTG Flynn’s interview—known as a FD-302—weeks after the interview.¹³⁴ In a text message, Strzok described how he had to “completely re-write the thing so as to save [redacted] voice . . . in anticipation of needing it soon.”¹³⁵ Strzok later wrote to Page, “Also, is Andy [McCabe] good with F 302,” to

¹²⁸ FISA Report, *supra* note 105, at 407-409 (“ODNI strategic intelligence briefings of the type that were provided to candidates Trump and Clinton convey sensitive information to familiarize the recipients with certain national security issues.... The briefings are important because they attempt to prepare both national political party candidates, on an equal footing, for the national security threats facing them if elected. The transfer of information, the exchanges of questions and answers that can occur, and the effectiveness of this process rely on an expectation of trust and good faith among the participants. The FBI’s use of such briefings for investigative purposes potentially interferes with this expectation and could frustrate the purpose of future counterintelligence briefings.”).

¹²⁹ Motion to Dismiss, *supra* note 126, at 15 n.4.

¹³⁰ FISA Report, *supra* note 105, at 73-74.

¹³¹ Assistant Director of FBI’s Counterintelligence Division, Bill Priestap’s made handwritten notes before interviewing Flynn. He wrote: “What’s our goal? Truth/Admission or to get him to lie, so we can prosecute him or get him fired?” Motion to Dismiss, *supra* note 126, at 8 n. 2.

¹³² *Id.* at 15-16. (“Mr. Flynn’s calls with the Russian ambassador—the only new information to arise since the FBI’s decision to close out his investigation—did not constitute an articulable factual basis to open any counterintelligence investigation or criminal investigation.... Whether or not Mr. Flynn had been entirely candid with the future Vice President or Press Secretary did not create a predicate for believing he had committed a crime or was beholden to a foreign power.”).

¹³³ Government’s Reply to Def.’s Memorandum in Aid of Sentencing, Document 56-1, United States v. Flynn, No. 17-000232 (D.D.C. Dec. 14, 2018) (“I explained to LTG Flynn that my desire was to have two of my agents interview him as quickly, quietly and discretely as possible.... I explained that I thought the quickest way to get this done was to have a conversation with between him and the agents only. I further stated that if LTG Flynn wished to include anyone else in the meeting, like the White House Counsel for instance, that I would need to involve the Department of Justice.”).

¹³⁴ Text Messages, Document 189-1, United States v. Flynn, No. 17-000232 (D.D.C. Apr. 30, 2020).

¹³⁵ *Id.*

which Page responded, “Launch on f 302.”¹³⁶

- According to an email that Susan Rice, President Obama’s National Security Advisor, wrote to herself on the last day of President Obama’s term, Director Comey told President Obama on January 5, 2017, that he was investigating LTG Flynn “by the book.” In 2018, however, Director Comey bragged to MSNBC’s Nicolle Wallace that he broke White House protocols to interview LTG Flynn. Comey said he would not have “gotten away with” it in a different Administration.¹³⁷

Nicole Wallace: You look at this White House now and its hard to imagine two FBI agents hanging out in the [Situation] room. How does that happen?

Mr. Comey: I sent them. Something we, I probably wouldn’t have done or gotten away with in a more organized investigation – a more organized administration. The FBI wanted to send agents into the White House itself to interview a senior official. You would work through the White House counsel and there were discussions and approvals and it would be there and I thought, it’s early enough. Let’s just send a couple of guys over.

Based on LTG Flynn’s interview with FBI Agents Peter Strzok and Joseph Pientka, the Special Counsel’s Office later charged him with making false statements under 18 U.S.C. § 1001. In December 2017, LTG Flynn pled guilty to making false statements. Flynn later claimed that he was coerced into pleading guilty because the Special Counsel prosecutors threatened to prosecute his son, Michael G. Flynn.¹³⁸

After firing his original legal team in June 2019, LTG Flynn retained Sidney Powell as his new attorney. In November 2019, Powell asked Judge Emmett Sullivan to compel the Justice Department to turn over additional documents related to LTG Flynn’s investigation. Judge Sullivan delayed sentencing until after the DOJ OIG released its report on the FBI’s FISA surveillance of Carter Page.¹³⁹ In January 2020, Powell filed a motion to withdraw LTG Flynn’s original guilty plea.¹⁴⁰ Also in January 2020, Attorney General Barr chose Jeffrey Jensen, the U.S. Attorney for the Eastern District of Missouri, as outside counsel to independently review DOJ’s investigation of LTG Flynn.¹⁴¹ On April 24, 2020, Jensen

¹³⁶ Flynn Reply in Support of Mr. Flynn’s Motion to Compel Production of Brady Material and to Hold the Prosecutors in Contempt, Document 133, United States v. Flynn, No. 17-000232 (D.D.C. Nov. 1, 2019); see Margot Cleveland, *The Federal Judge Overseeing Flynn’s Sentencing Just Dropped A Major Bombshell*, THE FEDERALIST (Dec. 13, 2018).

¹³⁷ See 92nd Street Y, James Comey in Conversation with Nicolle Wallace (2018), <https://www.youtube.com/watch?v=9xqgu66d6vu>; James Comey Transcribed Interview 49, Dec. 17, 2018 (Mr. Gowdy. You said the protocol was to go through White House Counsel, correct? Mr. Comey. That was what I understood, yes My understanding was, to do an interview at the White House complex, we would arrange – the FBI would arrange those interviews through the White House Counsel’s Office. I never participated in one, don’t know of one, but I have a recollection that’s what the protocol was).

¹³⁸ George Will, *Our plea bargain system can make the innocent admit guilt. Enter Michael Flynn*, WASH. POST (May 20, 2020).

¹³⁹ Kevin Breuninger, *Judge once again delays Trump ex-national security advisor Michael Flynn’s sentencing until further notice*, CNBC (Nov. 27, 2019).

¹⁴⁰ Josh Gerstein, *Michael Flynn Seeking to Withdraw Guilty Plea*, POLITICO (Jan. 14, 2017).

¹⁴¹ Letter from Timothy Shea, U.S. Attorney Dist. Columbia, Dep’t of Justice, to Sidney Powell, et al., counsel for Michael Flynn (April 24, 2020).

produced several Justice Department documents previously withheld from LTG Flynn’s legal team—Powell described these documents as demonstrating the FBI’s attempt to “intentionally frame” LTG Flynn.¹⁴² Included in these new documents was a handwritten note by then-FBI Assistant Director of Counterintelligence Bill Priestap stating if “goal[s]” of interviewing LTG Flynn was to “get him to lie so we can prosecute him or get him fired?”¹⁴³

In May 2020, the Justice Department filed a motion to withdraw charges against LTG Flynn due to these and other errors.¹⁴⁴ Following the DOJ’s motion, Judge Sullivan requested amicus briefs from outside parties that would be affected by the Department’s decision to dismiss the case.¹⁴⁵ On May 19, 2020, Powell filed an emergency petition for a writ of mandamus from the Circuit Court of Appeals to force Judge Sullivan to dismiss the charges against LTG Flynn.¹⁴⁶

On June 24, 2020, a panel of the Court of Appeals for the D.C. Circuit ordered Judge Sullivan to dismiss the case against LTG Flynn.¹⁴⁷ Writing for the majority, Judge Neomi Rao explained that “clearly established legal principles and the Executive’s ‘long-settled primacy over charging decisions,’ foreclose the district court’s proposed scrutiny of the government’s motion to dismiss the Flynn prosecution.”¹⁴⁸ Judge Rao likened Judge Sullivan’s appointment of amicus to scrutinize the motives of the Justice Department to the court appointing “one private citizen to argue that another citizen should be deprived of his liberty regardless of whether the Executive Branch is willing to pursue the charges.”¹⁴⁹ Judge Sullivan has petition for the full Court of Appeals to rehear the matter en banc.

4. Excessive sentencing of Roger Stone

On January 25, 2019, Special Counsel Mueller sent approximately 25 agents in tactical gear on a pre-dawn raid to then-66-year old Roger Stone’s house to arrest him.¹⁵⁰ *CNN* was apparently tipped off to the raid and had cameras ready to capture the arrest.¹⁵¹ In November 2019, Stone was convicted of one count of obstruction, five counts of false statements, and one count of witness tampering—none of these charges were related the substance of alleged Russian collusion. The prosecutors on the Stone case were three special counsel Mueller prosecutors—Aaron Zelinsky, Jonathan Kravis, and Adam Jed—and a fourth prosecutor, Michael Marando from the U.S. Attorney’s Office in D.C.¹⁵²

¹⁴² Eric Tucker et al., *Trump praise of tormented Flynn raises pardon speculation*, AP (May 12, 2020).

¹⁴³ Josh Gerstein et al., *Documents show FBI debated how to handle investigation of Michael Flynn*, POLITICO (April 29, 2020).

¹⁴⁴ Government’s Mot. to Dismiss the Criminal Information Against the Defendant Michael T. Flynn, Document 198, *United States v. Flynn*, No. 17-000232 (D.D.C. May 7, 2020).

¹⁴⁵ Philip Ewing, *Judge in Flynn case invites briefs without ruling on feds’ dropped charges*, NPR (May 13, 2020), <https://www.npr.org/2020/05/13/855124672/judge-in-flynn-case-invites-briefs-without-ruling-on-feds-dropped-charges>.

¹⁴⁶ Emergency Petition for a Writ of Mandamus, In Re: Michael T. Flynn, No. 20-5143 (D.C. May 19, 2020).

¹⁴⁷ Order on Emergency Petition for a Writ of Mandamus, In Re: Michael T. Flynn, No. 20-5143 (D.C. Jun. 24, 2020).

¹⁴⁸ *Id.* at 7.

¹⁴⁹ *Id.* at 16.

¹⁵⁰ See Chuck Rosenberg, *Why the FBI Sent So Many Agents to Roger Stone’s Home*, LAWFARE BLOG (Feb. 3, 2019).

¹⁵¹ See generally INSPECTOR GEN., DEP’T OF JUSTICE, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election*, 428-430 (2018);

¹⁵² Neil Vigdor, *These are the Roger Stone prosecutors who quit the case*, N.Y. TIMES (Feb. 11, 2020).

These prosecutors initially submitted a sentencing memorandum recommending a sentence of 7 to 9 years (i.e., the offense-level guidelines range of 90 to 108 months) for Stone, a first-time, non-violent offender. They recommended augmenting Stone’s sentence due to threats that Stone made to Randy Credico, a witness for Congress’s Russia investigation. Credico, however, told the court he did not actually feel threatened by Stone.¹⁵³ By including an enhancement for these threats, prosecutors were able to raise Stone’s recommended sentence pursuant to sentencing guidelines from a level 21 offender (approximately three years imprisonment) to level 29 (seven to nine years imprisonment). (See sentencing chart below).¹⁵⁴

SENTENCING TABLE
(in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293

Although Stone’s original sentence was an accurate application of sentencing guidelines for an enhancement due to threatening a witness,¹⁵⁵ a DOJ official later said that senior DOJ officials were blindsided by the 7 to 9 year recommendation: “The Department finds seven to nine years extreme, excessive and grossly disproportionate. . . . The sentencing recommendation was not what had been briefed to the Department.”¹⁵⁶ In a revised sentencing memorandum filed on February 11, 2020, the Justice Department asserted to the court that the original sentencing enhancement “while perhaps technically applicable,” “disproportionately escalate[s] [Stone’s] sentence to that “typically applie[d] in cases involving violent offenses, such as armed robbery, not obstruction cases.”¹⁵⁷ The Justice Department advised the court that sentencing law instructs the court to impose “sufficient, but

¹⁵³ Andrew C. McCarthy, *The Roger Stone Sentencing Fiasco*, NAT’L REV. (Feb. 14, 2020).

¹⁵⁴ *Id.*

¹⁵⁵ Andrew C. McCarthy, *The Roger Stone Sentencing Fiasco*, NAT’L REV. (Feb. 14, 2020).

¹⁵⁶ Jake Gibson & David Spunt, *DOJ expected to scale back Roger Stone’s ‘extreme’ sentencing recommendation: official*, FOX NEWS (Feb. 11, 2020).

¹⁵⁷ Government’s Supplemental and Amended Sentencing Mem. *U.S. v. Roger J. Stone Jr.* (Feb. 11, 2020).

not greater than necessary” sentences.¹⁵⁸ Sentencing law also requires the court to review “nature and circumstances of the offense” as well as “avoid unwarranted sentencing disparities.”¹⁵⁹

To achieve the result of imposing “sufficient, but not greater than necessary” punishment, the Justice Department revised the sentence recommendation to note that a term of between 37- and 46-months’ imprisonment (i.e. about 3 years) is more in line with similar cases. The revised memorandum noted that, among other things, Credico never felt threatened by Stone and that that enhancement is “typically . . . imposed for defendants who have higher criminal history categories or who obstructed justice as part of a violent criminal organization.”¹⁶⁰ The revised memo also noted that similar offenders, while “involved in lesser offense conduct,” received “a fraction of the penalty suggested” and would be contrary to the court’s duty to “avoid unwarranted sentencing disparities.”¹⁶¹ The government ultimately deferred the sentencing recommendation to the judge.

Judge Amy Berman Jackson—appointed to the bench by President Obama—agreed with DOJ’s revised recommendation and sentenced Stone to 40 months in prison.¹⁶² At the February 20, 2020 sentencing, Judge Jackson denounced the original prosecutors’ sentencing recommendation of 7-to-9 years as “greater than necessary” and that she would not have sentenced him to that long of a term even without the revised sentencing suggestion. She explained:

I am concerned that seven to nine years, or even the 70 to 87 months, as I calculated the guideline range, **would be greater than necessary. I sincerely doubt that I would have sentenced him within that range**, even if the sentencing had simply proceeded in its typical fashion, without any of the extraneous commentary or the unprecedented actions of the Department of Justice within the past week. **I agree with the defense and with the government’s second memorandum, that the eight-level enhancement for threats, while applicable, tends to inflate the guideline level beyond where it fairly reflects the actual conduct involved.**¹⁶³

Following the Justice Department’s revised sentencing memorandum, all four original prosecutors resigned on February 11, 2020.

The aggressive treatment of Trump campaign aide Roger Stone can be highlighted by the disparate treatment of former FBI Deputy Director Andrew McCabe. Like Stone, McCabe violated federal statutes pertaining to false statements. According to Justice Department Inspector General Horowitz, McCabe lied to federal investigators multiple times.¹⁶⁴ Horowitz

¹⁵⁸ *Id.* at 2-3.

¹⁵⁹ *Id.* at 3.

¹⁶⁰ *Id.* at 4.

¹⁶¹ *Id.*

¹⁶² Sharon Lafreniere, *Roger Stone is sentenced to over three years in prison*, N.Y. TIMES (Feb. 20, 2020).

¹⁶³ Sentencing Tr. of Roger Stone, U.S. v. Roger J. Stone (Feb. 20, 2020), pp. 77-78 (statement of Judge Amy Berman Jackson).

¹⁶⁴ INSPECTOR GEN., DEP’T OF JUSTICE, *A Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe*, 2 (2018).

even criminally referred McCabe for federal criminal prosecution.¹⁶⁵ The Justice Department, however, declined to prosecute McCabe while to aggressively prosecuted Stone.¹⁶⁶

On July 10, 2020, four days before Stone had to report to prison, President Trump commuted his sentence.¹⁶⁷ On Stone's commutation, White House Press Secretary Kayleigh McEnany stated at a July 13 press briefing that "the Roger Stone clemency was a very important moment for justice in this country. You had a completely bogus Russia witch hunt that found nothing. And in order to justify the waste of taxpayer dollars, you had Robert Mueller charging people with process crimes."¹⁶⁸ McEnany reiterated that President Trump "is the president of criminal justice reform."¹⁶⁹ She stated:

It's absolutely not the case that only those who are politically connected get a pardon. This President is the president of criminal justice reform. This President did the First Step Act. This President has fought for those who are given unduly harsh sentences more than any Democrat who like to talk about it but never actually did it.¹⁷⁰

Roger Stone's commutation drew ire from Democrats and the liberal media. Speaker Pelosi stated that "Congress will take action to prevent this type of brazen wrongdoing. Legislation is needed to ensure that no President can pardon or commute the sentence of an individual who is engaged in a cover-up campaign to shield that President from criminal prosecution."¹⁷¹ CNN called the commutation "yet another norm busted by a man who seems to revel in doing things that no one who has held the job in the past would even consider."¹⁷² Another liberal commentator, Jeffrey Toobin, called President Trump's action "the most corrupt and cronyistic act in perhaps all of recent history."¹⁷³

However, despite their sensationalized rhetoric about the Stone commutation, Democrats ignore how Democrat presidents have used their pardon power. President Bill Clinton notoriously used his pardon power to help his family and friends.

- President Clinton pardoned his brother Roger for felony cocaine related offenses.¹⁷⁴

¹⁶⁵ *Id.* at 2; *see also id.* at 34.

¹⁶⁶ Josh Gerstein, *DOJ drops probe into former FBI Deputy Director Andrew McCabe*, Politico (Feb. 14, 2020).

¹⁶⁷ Chris Cillizza, *Donald Trump's commutation of Roger Stone's sentence is even worse than it looks*, CNN (Jul. 13, 2020), <https://www.cnn.com/2020/07/13/politics/roger-stone-donald-trump/index.html>.

¹⁶⁸ Briefing, White House, Press Briefing by Press Secretary Kayleigh McEnany (Jul. 13, 2020), <https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-kayleigh-mcenany-7-13-2020/>.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Marty Johnson, *Pelosi plans legislation to limit pardons, commutations after Roger Stone move*, THE HILL (Jul. 11, 2020), <https://thehill.com/homenews/house/506894-pelosi-plans-legislation-to-limit-pardons-commutations-after-roger-stone-move>.

¹⁷² Chris Cillizza, *Donald Trump's commutation of Roger Stone's sentence is even worse than it looks*, CNN (Jul. 13, 2020), <https://www.cnn.com/2020/07/13/politics/roger-stone-donald-trump/index.html>.

¹⁷³ Josh Feldman, *Roger Stone Commutation: 'The most corrupt and cronyistic act in perhaps all of recent history'*, MSN (Jul. 11, 2020), <https://www.msn.com/en-us/news/politics/cnns-jeffrey-toobin-stunned-by-roger-stone-commutation-the-most-corrupt-and-cronyistic-act-in-perhaps-all-of-recent-history/ar-BB16B636>.

¹⁷⁴ *Clinton Pardons McDougal, Hearst, Others*, ABC NEWS (Jan. 6, 2006), <https://abcnews.go.com/Politics/story?id=122001&page=1>.

- President Clinton pardoned business partner and key witness in the Whitewater scandal Susan McDougal.¹⁷⁵ McDougal had refused to answer questions before a grand jury about whether President Clinton lied.
- President Clinton pardoned his CIA Director and HUD Secretary.¹⁷⁶
- President Clinton pardoned four people convicted during Special Counsel Kenneth Starr’s investigation and eight people convicted following an investigation at the Agriculture Department.¹⁷⁷
- President Clinton pardoned international fugitive and Democrat donor Marc Rich, who was wanted for fraud, tax evasion, racketeering, and illegal dealings with Iran.¹⁷⁸
- In 1999, President Clinton granted clemency to 16 members of the Puerto Rican group the Armed Forces of National Liberation (FALN), “asserting that the sentences were disproportionate to the crimes.” The FBI linked the group to over 146 bombings.¹⁷⁹

Near the end of his term, on January 17, 2017, President Barack Obama commuted sentences for or pardoned hundreds of people, including:

- Known terrorist, Oscar Rivera Lopez, a top FALN leader.¹⁸⁰
- Chelsea Manning, a former U.S. soldier who passed top-secret information to Wikileaks.¹⁸¹
- James Cartwright, Obama’s former Joint Chiefs of Staff vice chairman, convicted of making false statements to federal investigators.¹⁸²

D. Attorney General Barr appropriately oversaw the Special Counsel investigation

Democrats allege that Attorney General Barr has politicized the Justice Department by misrepresenting the findings of the Special Counsel’s investigation into Russian collusion and withholding material relating to the investigation. In truth, however, Attorney General Barr has acted appropriately.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ E.J. Dionne, Jr., *Bill Clinton’s Last Outrage: The President’s Defenders Feel Betrayed by His Pardon of Marc Rich*, BROOKINGS (Feb. 6, 2001), <https://www.brookings.edu/opinions/bill-clintons-last-outrage-the-presidents-defenders-feel-betrayed-by-his-pardon-of-marc-rich/>.

¹⁷⁹ Debra Burlingame, *The Clinton’s Terror Pardons*, WALL ST. J. (Feb. 12, 2008), <https://www.wsj.com/articles/SB120277819085260827>.

¹⁸⁰ Zach Dorfman, *Why Did Obama Free This Terrorist?*, POLITICO (Jan. 24, 2017), <https://www.politico.com/magazine/story/2017/01/oscar-lopez-commutation-barack-obama-214685>.

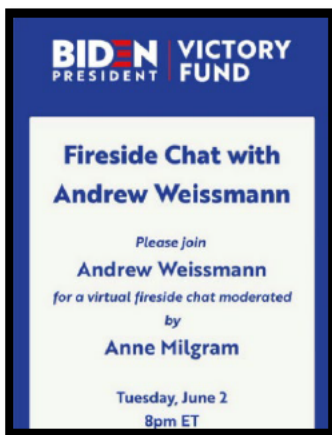
¹⁸¹ OFFICE OF PARDON ATT’Y, U.S. DEP’T OF JUSTICE, COMMUTATIONS GRANTED BY PRESIDENT BARACK OBAMA (2018).

¹⁸² OFFICE OF PARDON ATT’Y, U.S. DEP’T OF JUSTICE, PARDONS GRANTED BY PRESIDENT BARACK OBAMA (2018).

1. Special Counsel likely knew by 2017 that collusion allegations were unfounded

On May 17, 2017, then-Acting Attorney General Rod Rosenstein appointed former FBI Director Robert Mueller as special counsel to investigate allegations of Russian collusion.¹⁸³ On August 2, 2017, Rosenstein drafted a scope memorandum outlining the parameters of the investigation. Rosenstein testified on June 3, 2020, that he drafted the August scope memorandum based on information that the Special Counsel team had provided him.¹⁸⁴ The August 2017 scope memorandum authorized the Special Counsel to investigate Carter Page for “colluding” with the Russian government to interfere with the 2016 election. However, as the DOJ OIG reported, by August 2017, the FBI failed to corroborate any of Christopher Steele’s specific Russian collusion allegations against Page.¹⁸⁵ Rosenstein also authorized the Special Counsel to investigate LTG Michael Flynn’s conversations with Russians, despite DOJ officials not finding Flynn’s conversations to be problematic and actually “pretty common.”¹⁸⁶ In addition, as early as July 2017, the House Permanent Select Committee on Intelligence learned from senior Obama-Biden officials—James Clapper, Loretta Lynch, Ben Rhodes, Sally Yates, Mary McCord, Susan Rice, Samantha Power—that they never saw any evidence of collusion or conspiracy between the Trump campaign and the Russian government.

2. Special Counsel’s team of Democrats



Of the 17 attorneys on the Special Counsel’s team investigating President Trump for allegedly conspiring with Russia, 13 were registered Democrats or asserted they were.¹⁸⁷ Nine of the 17 lawyers donated money to Democrats in political races.¹⁸⁸ Aaron Zebley, Mueller’s chief of staff, represented Hillary Clinton aide Justin Cooper in congressional investigations about Clinton’s mishandling of classified information. Jonathan Kravis, a lawyer on Special Counsel Mueller’s team and one of the prosecutors on Roger Stone’s case, was a former lawyer in the White House Counsel’s office for President Obama.¹⁸⁹ Andrew Weissmann, a lead attorney investigating President Trump, had applauded then-Deputy Attorney General Sally Yates for disobeying President Trump, writing: “I am so proud and in awe. Thank you so much. All my deepest respects.”¹⁹⁰ In May

¹⁸³ Press Release, Appointment of Special Counsel, Dep’t of Justice (May 17, 2017).

¹⁸⁴ *Oversight of the Crossfire Hurricane Investigation, Hearing Before the S. Comm. on Judiciary*, 116th Cong. (June 3, 2020) (“I’m relying on information that was coming out [from Special Counsel office].”) (statement of Rod Rosenstein).

¹⁸⁵ FISA Report, *supra* note 105, at xi.

¹⁸⁶ Mary McCord Transcribed Interview 77, Nov. 1, 2017 (“And, you know, we had some discussions about how we -- you know, this is a statute that hadn’t been used ever, you know, in 200 years on the books, and that we imagined that in many incoming administrations, it’s probably pretty common for incoming officials to reach out to who their counterparts are in advance of the transition to just sort of say we want to start developing a relationship.”).

¹⁸⁷ Louis Jacobson, *Fact-checking Donald Trump’s claims about Democrats on Robert Mueller’s team*, POLITIFACT (March 21, 2018).

¹⁸⁸ Matt Zapposky, *Trump said Mueller’s team has ‘13 hardened Democrats.’ Here are the facts*. WASH. POST (March 18, 2018).

¹⁸⁹ Betsy Swan, *Inside Mueller’s Army*, DAILY BEAST (July 11, 2018).

¹⁹⁰ Jonathan Easley, *Mueller lieutenant sent email saying he was proud of Sally Yates*, THE HILL (Dec. 5, 2017).

2020, Weissmann agreed to host a virtual fundraiser for former Vice President Joe Biden. In light of this information, Rosenstein testified to the Senate Judiciary Committee in June 2020 that he wished Special Counsel Mueller had chosen a “more politically diverse group.”¹⁹¹

3. Timeline of the release of Special Counsel’s report

On March 22, 2019, Special Counsel Mueller provided a classified report to Attorney General Barr.¹⁹² On March 24, 2019, due to public eagerness to know the results of the investigation, Attorney General Barr released a four page summary of findings from the report.¹⁹³ The findings simply concluded that the Special Counsel did not find a conspiracy between associates of the Trump campaign and the Russian government and that Attorney General Barr and Deputy Attorney General Rosenstein found that the facts did not support obstruction of justice against the President. On April 18, 2019, following a month of review for classified and other protected information, the Justice Department publicly released a redacted version of the report.¹⁹⁴ On July 24, 2019, Robert Mueller testified before both the House Judiciary Committee and House Permanent Select Committee on Intelligence. At no point did Attorney General Barr attempt to prevent Mueller from testifying before Congress and, in fact, he told the Senate Judiciary Committee: “I have no objection to him testifying.”¹⁹⁵

Under Attorney General Barr’s leadership, the Justice Department moved quickly to make the Special Counsel report public. Attorney General Barr testified to Senate Appropriations Committee that “none of [the Report] was releasable,” that “every page . . . had a warning” and “it had not been vetted.” Attorney General Barr testified that DOJ was “expecting” a report that would be easy to be publicly released but “that’s not how the report came to [DOJ].” To protect legitimate equities (e.g. classified information, grand jury material), the Justice Department was required to go through the long process of making the report safe for public release. Recognizing there would be serious “lag time” between his receipt of the report and public release, Attorney General Barr testified he felt it was “important to just advise the country as to what the bottom-line conclusions were.”¹⁹⁶ He said there was a “high state of agitation” and “massive interest in learning what the bottom-line results of Bob Mueller’s investigation was.”¹⁹⁷

Although Democrats point to Special Counsel Mueller’s complaint that the Attorney General’s March 24 letter did not adequately capture his work and conclusions, Attorney General Barr testified to the Senate Judiciary Committee that Special Counsel Mueller had no issues with the March 24th bottom-line conclusions: “[H]e was very clear with me that he was not suggesting that we had misrepresented his report.”¹⁹⁸ Special Counsel Mueller did not have issues with Attorney General Barr’s bottom-line findings, but rather he had issue

¹⁹¹ *Oversight of the Crossfire Hurricane Investigation, Hearing Before the S. Comm. on Judiciary*, 116th Cong. (June 3, 2020).

¹⁹² Press Conference, Attorney General Barr News Conference on Release of Mueller Report (April 18, 2019).

¹⁹³ Morgan Chalfant et al., *Barr defends handling of the Mueller Report*, The Hill (May 1, 2019).

¹⁹⁴ Press Conference, Attorney General Barr News Conference on Release of Mueller Report (April 18, 2019).

¹⁹⁵ *William Barr Testimony on Mueller Report, hearing before the S. Comm. on Judiciary* (May 1, 2019).

¹⁹⁶ *Justice Department Fiscal Year 2020 Budget Request, Hearing Before the S. Comm. on Appropriations*, 116th Cong. (April 10, 2019).

¹⁹⁷ *William Barr Testimony on Mueller Report, Hearing Before the S. Comm. on Judiciary*, 116th Cong. (May 1, 2019).

¹⁹⁸ *Id.*

with how the “media” was mischaracterizing the bottom-line conclusions.¹⁹⁹ Additionally, Attorney General Barr gave Special Counsel Mueller the opportunity to review the bottom-line conclusions, but Special Counsel Mueller declined.²⁰⁰

Democrats may accused Attorney General Barr of protecting President Trump in how he handled the report of Special Counsel Mueller, but the evidence shows otherwise. Former Deputy Attorney General Rosenstein testified to the Senate Judiciary Committee that “the investigation was completed, appropriately reviewed, no one recommended in favor of prosecution” for the President.²⁰¹ Similarly, Special Counsel Mueller informed Attorney General Barr multiple times that the OLC opinion prohibiting indictments against a sitting president was not the reason he was not indicting the President on obstruction.²⁰²

E. Attorney General Barr appropriately handled the removal of U.S. Attorney Geoffrey Berman

On Friday, June 19, 2020, Attorney General Barr announced that Geoffrey Berman, the U.S. Attorney for the Southern District of New York, would resign his position and Craig Carpentino, the U.S. Attorney for the District of New Jersey, would replace him.²⁰³ Shortly thereafter, Berman issued a public statement announcing that he had not resigned.²⁰⁴ President Trump fired Berman on June 20.²⁰⁵ Without evidence, Chairman Nadler said the removal of Berman “smacks of corruption and incompetence, which is what we have come to expect from this President and his Attorney General.”²⁰⁶

On July 9, 2020, Berman provided two hours of closed-door testimony before the Committee during a transcribed interview according to his self-dictated terms of appearance. Following the interview, Chairman Nadler and Committee Democrats selectively released cherry-picked information trying to paint a misleading and one-sided view of Berman’s testimony. In fact, after the interview Chairman Nadler left and promptly accused the Attorney General—without evidence—of attempted “bribery” and a *quid pro quo*.²⁰⁷

Contrary to Chairman Nadler’s portrayal, the interview proved that Attorney General Barr acted appropriately at all times, including and especially in his interactions with Berman. The interview uncovered no evidence of misconduct, wrongdoing, or criminality. The interview uncovered no nefarious plot to stifle ongoing investigations in the Southern District of New York or anywhere else. Instead, the interview showed that Berman believed himself to be independent of and immune from Departmental oversight.

¹⁹⁹ *Id.* (AG Barr: “[Mueller] was concerned by how the media was playing this.”).

²⁰⁰ *Id.*

²⁰¹ *Oversight of the Crossfire Hurricane Investigation, Hearing Before the S. Comm. on Judiciary*, 116th Cong. (June 3, 2020).

²⁰² *William Barr Testimony on Mueller Report, Hearing Before the S. Comm. on Judiciary*, 116th Cong. (May 1, 2019) (“Special Counsel Mueller stated three times to us in that meeting in response to our questioning that he emphatically was not saying that but for the OLC opinion he would have found obstruction.”) (statement of William P. Barr, Att’y Gen., Dep’t of Justice).

²⁰³ Andrew C. McCarthy, *President Trump fires Manhattan U.S. Attorney*, NAT’L REV., June 20, 2020.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Press Release, Chairman Nadler Statement on Bill Barr’s Purported Firing of SDNY Prosecutor (June 20, 2020).

²⁰⁷ Mike Lillis, *Nadler: Barr dealings with Berman came ‘awfully close to bribery’*, THE HILL (Jul. 9, 2020), <https://thehill.com/homenews/house/506650-nadler-barr-dealings-with-berman-came-awfully-close-to-bribery>.

1. Berman stubbornly resisted the Attorney General's attempts at an amicable transition for Berman out of his position in favor of a Senate-confirmed U.S. Attorney for the SDNY

On June 19, 2020, Attorney General Barr met with Berman in New York.²⁰⁸ Attorney General Barr informed Berman that the President intended to nominate current Securities and Exchange Commission (SEC) Chairman Jay Clayton to be the permanent U.S. Attorney for the Southern District of New York (SDNY).²⁰⁹ The Attorney General told Berman, who had been appointed U.S. Attorney by the court pursuant to a special provision of U.S. law, that his service was no longer necessary.²¹⁰

The Attorney General had decided to replace Berman prior to the meeting on June 19. The meeting was not a counseling session or an opportunity to present Berman with a performance improvement plan.²¹¹ Berman testified that the Attorney General did not share any negative feedback or concerns about his job performance in office during the meeting.²¹² He stated:

I asked if [Barr] was dissatisfied in any way with my job as U.S. attorney, and he said that he was not at all dissatisfied. He was extremely complimentary to me in his press release on Friday evening. And, previously, both publicly and privately, he has been very complimentary of me and the job I was doing as U.S. attorney for the Southern District of New York.²¹³

During the course of the conversation, the Attorney General offered Berman an opportunity to remain in the Department as the Assistant Attorney General for the Civil Division.²¹⁴ Berman did not reciprocate the Attorney General's attempt to amicably manage the personnel change.²¹⁵ Berman testified:

Q. But it seems like you're missing the whole point that, when a boss is trying to engineer a separation of an employee, of a report, that oftentimes the best way to facilitate that is amicably. And you meet with the employee and you say: Thanks for your service.

And that's . . . essentially what happened here, and yet . . . your statement makes it seem like you're . . . identifying . . . false statements that the Attorney General made when he was just giving you some platitudes and he was trying to engineer an amicable departure.

²⁰⁸ Transcribed Interview of Geoffrey Berman, Former U.S. Att'y, Southern District of N.Y. at 7. (Jul. 9, 2020) [hereinafter Berman TI].

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.* at 34.

²¹² *Id.* at 29.

²¹³ *Id.*

²¹⁴ *Id.* at 8.

²¹⁵ *Id.* at 69-70.

A. I disagree with that characterization.²¹⁶

Instead, Berman dug in and decided that he would not leave his position without a fight. Berman informed the Attorney General that he would not resign and preferred not to leave his position.²¹⁷ Berman testified that he believed he could convince the Attorney General to change his mind to allow him to stay in his position as U.S. Attorney.²¹⁸ The Attorney General graciously agreed to speak again with Berman.

The Attorney General subsequently telephoned Berman on the evening of June 19, at which time Berman again requested to remain at SDNY. Berman testified:

Q. Did you ask [Barr] during that [7pm] call to wait until Monday to have another conversation on the subject?

A. Yes. I thought that the longer I could put off this kind of final conversation, the better. It would give the Attorney General an opportunity to reconsider his plan and back off, and it would give me an opportunity to prepare the office and my full executive staff for a possible disruption.²¹⁹

The Attorney General again mentioned other opportunities that would allow Berman to remain in the Administration, including the prospect of being considered for SEC chairmanship.²²⁰ Berman stubbornly refused, believing that he was entitled to his SDNY position.²²¹

The Attorney General, apparently tired of Berman's intransigence, announced Berman's departure following the telephone call.²²² The Attorney General also announced the President's intention to nominate Clayton for the permanent position.²²³ As a professional courtesy to Berman, the Attorney General offered mild platitudes about Berman's service in the announcement.²²⁴ Shortly after the Attorney General's press release, Berman issued a public statement announcing that he had not resigned. Berman testified his position as U.S. Attorney required that he make a press statement on June 19 subsequent to Barr's press release.²²⁵

Although Committee Democrats half-heartedly alleged the Attorney General's offer of other positions in the Administration proves a nefarious but unspecified plot, Berman testified that his removal was not related to concerns the Attorney General had with his

²¹⁶ *Id.*

²¹⁷ *Id.* at 12-13.

²¹⁸ *Id.* at 19-20 & 71.

²¹⁹ *Id.* at 19-20.

²²⁰ *Id.* at 9-10.

²²¹ *Id.*

²²² *Id.* at 10.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.* at 25.

management of any cases run by the SDNY.²²⁶ After Berman resisted the Attorney General's efforts at a conciliatory outcome, the President fired Berman on June 20.²²⁷

2. Berman did not testify that any specific wrongdoing, misconduct, or other impropriety occurred during his dismissal by the Attorney General

Berman provided no specific testimony about any inappropriate actions taken by any Justice Department official, on June 19, June 20, or at any time.²²⁸ Berman testified:

Q. You're not making any assertions of wrongdoing by anybody at Main Justice, though, right, about supervising your cases or trying to impede anything?

A. I'm not going to respond to that question.

Q. Your testimony here today, you are not making today any assertion of wrongdoing by any particular official at the Justice Department who supervised you on any of your cases?

A. In my testimony today, I have made no reference to that.²²⁹

Berman testified that the Attorney General did not mention any specific witnesses, defendants, or cases as reasons for why he was asking Berman to resign as U.S. Attorney. He stated:

Q. The Attorney General did not raise any pending cases with you, did he?

A. No.

Q. Was there any discussion of any particular witness that was appearing before the Southern District of New York, whether it was in the Epstein case or anything like that?

A. There was no discussion of any witness.²³⁰

Berman testified that the Attorney General did not mention the President as a reason why he was asking him to resign as U.S. Attorney.²³¹ Berman testified:

²²⁶ *Id.* at 27.

²²⁷ Letter from William P. Barr, Att'y Gen., Dep't of Justice, to Mr. Geoffrey Berman, U.S. Att'y, S.D.N.Y. (Jun. 20, 2020).

²²⁸ Berman TI, *supra* note 208, at 44.

²²⁹ *Id.*

²³⁰ *Id.* at 33-36.

²³¹ *Id.* at 36.

Q. And there was no discussion on the 19th of anything involving the President. Is that correct? Why the President wanted you to be removed or if the President wanted you to be removed?

A. No.²³²

Berman testified that the Attorney General never indicated that there were certain actions that Berman could take with respect to ongoing cases that would allow him to keep his position as U.S. Attorney.²³³ He stated:

Q. When you met with him at the hotel on the 19th, he didn't give you an opportunity to take a set of actions that would result in you keeping your job, did he?

A. No.

Q. Okay. So he didn't ask you to do anything differently with any of your cases or with any of the personnel on the cases, correct?

A. No.²³⁴

In fact, Berman testified that he did not know what Barr's reasons were for having him removed.²³⁵

Berman never suggested the prospect of a *quid pro quo* in his testimony.²³⁶ The Attorney General had decided to replace Berman and merely offered him the opportunity to continue his service with the Department at the Civil Division out of a desire to achieve an amicable transition.²³⁷ Berman testified:

Q. There was no quid pro quo proposed, correct –

A. You know, he wanted me to resign to take a position. I assume you could call that a quid pro quo. You resign and you get this, that would mean quid pro quo.

Q. When you met with the Attorney General on June 19th, he did not invite you to take a set of actions, whether it's on a case or whether it's with the operation of your office, and that doing that action would end up in you keeping your job?

²³² *Id.*

²³³ *Id.* at 34.

²³⁴ *Id.* at 34.

²³⁵ *Id.* at 12-13.

²³⁶ *Id.* at 34-36.

²³⁷ *Id.*

- A. He did not mention anything to that effect.
- Q. So there was no quid pro quo for you getting to keep your job by doing something with respect to your office or one of the cases involved in the office?
- A. There was no discussion to that effect.²³⁸

3. Berman believed himself to be independent of supervision from superior officers in the Executive Branch and immune from removal from his position

Berman testified that he did not believe the President could lawfully remove him as U.S. Attorney for SDNY and that, if he were to litigate the matter, he would prevail.²³⁹ Berman reached this conclusion, he said, after consulting with more than one attorney.²⁴⁰ Berman appeared before the Committee without an attorney, however.

Berman testified that he believed the only way he could be removed was if the United States Senate confirmed a presidential appointee for the position, or by removal of the U.S. federal district judges of the United States District Court for the Southern District of New York.²⁴¹ He testified:

- Q. Did you believe it was your official duty to remain in your position as U.S. attorney pursuant to the court order appointing you until the vacancy for your position had been filled or that you were otherwise removed pursuant to the lawful basis?
- A. Right. I just want to make clear that it was my position that I could neither be fired by the Attorney General nor the President. And so I could be removed by the court, which appointed me . . . or I could be removed if a nominee was confirmed by the Senate.²⁴²

Berman cited no legal authority for his extraordinary position. To the contrary, the existing legal doctrine in this area is persuasively and decisively of the view that the President has the power to remove court-appointed U.S. Attorneys.²⁴³ Berman testified that he believes that both the Justice Department's Office of Legal Counsel opinion and relevant case law are incorrect, and that he would prevail if he litigated the matter.²⁴⁴ Berman had significant difficulty testifying about the working and reporting relationship that he maintained with the Attorney General and the Deputy Attorney General.²⁴⁵

²³⁸ *Id.*

²³⁹ *Id.* at 30.

²⁴⁰ *Id.* at 42.

²⁴¹ *Id.* at 17.

²⁴² *Id.* at 17.

²⁴³ U.S. Attorneys—Removal of Court-Appointed U.S. Attorney (28 U.S.C. §§ 541, 546), 83 Op. O.L.C. 448, 449 (1979) (citing *U.S. v. Solomon*, 216 F. Supp. 835, 843 (S.D.N.Y. 1963)).

²⁴⁴ Berman TI, *supra* note 208, at 30-31.

²⁴⁵ *Id.* at 29.

While some joke that “SDNY” stands for the “Sovereign District of New York,”²⁴⁶ Berman would not concede that SDNY under his leadership operated under the supervisory authority of superior officers at the Department of Justice—specifically the Attorney General and Deputy Attorney General.²⁴⁷ Berman testified:

Q. How does the supervision work at the Justice Department between—you said you report directly into the DAG. What does that mean, for all intents and purposes? Like, at Main Justice . . . they have supervisory authority over the U.S. attorneys nationwide, right?

A. Well, the powers of the U.S. attorneys are statutory, and it’s provided by 28 U.S.C. Section 547, where the Attorney General has delegated responsibility and authority to U.S. attorneys over matters in their districts. It states that the U.S. attorneys may make reports to the Attorney General as he or she may direct.

Q. Right. But in your day-to-day, without looking at the statute, in your just day-to-day experience, what type of supervision were you given by the Justice Department? Like, what was your obligation to your boss?

A. The relationship between the Southern District of New York and Main Justice is complex and very much specific to the matters being investigated. And so this discussion would be outside the scope of my testimony.²⁴⁸

4. Berman’s purported concerns about the Attorney General’s actions are unfounded, vague, and lacking specific evidence

Berman disagreed with the Attorney General’s choice of Craig Carpenito, the U.S. Attorney for the District of New Jersey, as interim replacement for Berman during Clayton’s confirmation. Berman called Carpenito an “outsider”²⁴⁹ and said that having an “outsider” leading SDNY as an interim U.S. Attorney would cause unspecified disruptions and delays with pending cases;²⁵⁰ however, Berman was unable to offer specific evidence to support this conclusory assertion.²⁵¹

Berman testified that he was not questioning Carpenito’s honesty or integrity, but that he believes that abrupt changes in leadership from outside a U.S. Attorney’s office inherently

²⁴⁶ Matthew Chayes, *U.S. attorney for Southern District of New York refuses to resign*, *NEWSDAY* (Jun. 20, 2020), <https://www.newsday.com/news/new-york/geoffrey-berman-u-s-attorney-1.45910086>.

²⁴⁷ Berman TI, *supra* note 208, at 43.

²⁴⁸ *Id.*

²⁴⁹ *Id.* at 39-40.

²⁵⁰ *Id.* at 22.

²⁵¹ *Id.* at 64-67.

causes delay and disruption.²⁵² Berman chafed at the fact that Carpenito would have been responsible for running both the U.S. Attorney’s Office for the District of New Jersey and the SDNY, saying that Carpenito was unqualified for the position even though he runs a U.S. Attorney’s Office in a neighboring jurisdiction.²⁵³

Berman himself initially started serving as the U.S. Attorney for SDNY on an interim basis. But Berman refused to answer what, if any, delays and disruptions occurred when he was appointed to lead the SDNY as interim U.S. Attorney.²⁵⁴

Q. When you took over as the interim U.S. attorney in the beginning of 2018, were there any delays to the cases of the Southern District?

A. I’m going to decline to answer that question because it’s outside of the parameters.

Q. Okay. Any disruptions?

A. I’m going to decline to answer that question.²⁵⁵

Berman believed that only one person—his deputy, Audrey Strauss—was the appropriate and legal replacement for him.²⁵⁶ While federal law makes Strauss the Acting U.S. Attorney by operation of law, it also allows the President to choose other senior federal officials to serve in that position.²⁵⁷ Berman was unable to explain with specificity how or why Strauss was the only person he believed could serve as U.S. Attorney and why the President could not select someone else.²⁵⁸

Berman also quibbled over whether Strauss holds the title of “Acting” U.S. Attorney or “Interim” U.S. Attorney.²⁵⁹ While an Acting U.S. Attorney comes into his or her position as a matter of law, an Interim U.S. Attorney is appointed by the Attorney General (28 U.S.C. § 546). When asked if he thought that the Attorney General could now appoint an interim U.S. Attorney under § 546(c), Berman asserted—without providing a rationale—that he did not think § 546(c) applied in this instance.²⁶⁰

Berman did not believe the President’s intended permanent choice for U.S. Attorney, SEC Chairman Clayton, was qualified for the position.²⁶¹ However, Berman acknowledged that Clayton has extensive financial regulatory experience relevant to the Office’s caseload

²⁵² *Id.* at 22.

²⁵³ *See* Berman TI, *supra* note 208, at 53 (“Q: Carpenito also had no experience in the Southern District of New York, correct? A: Correct.”); *see also id.* at 40 (“Q: And why did you fear outsiders? What was the harm they were going to do, in your mind? A: The problem with someone coming in as acting and bypassing the normal process of the deputy, the problem with that, it would inevitably cause disruption and delay in the ongoing investigations.”).

²⁵⁴ *Id.* at 65 & 67.

²⁵⁵ *Id.* at 67.

²⁵⁶ *Id.* at 61-63.

²⁵⁷ *See, e.g.*, 28 U.S.C. § 546 (2007).

²⁵⁸ Berman TI, *supra* note 208, at 61-63.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.* at 17.

and that Clayton is an experienced manager.²⁶² Despite questioning Clayton's qualifications, Berman also testified that if Clayton were confirmed by the Senate he would have left the SDNY office without causing a commotion.²⁶³

Q. You indicated Jay Clayton wouldn't be a good pick to be the U.S. attorney for the Southern District of New York because he didn't have experience with the office, but would you agree that having - - that he had sophisticated financial experience, correct?

A. I don't dispute that.

Q. And you agree that he's got significant management experience?

A. I don't dispute that.

Q. I mean, he runs the SEC, which has a lot of complicated financial, regulatory, and enforcement proceedings, correct?

A. Agreed.

Q. And he practiced law for a number of years in Manhattan, correct?

A. Agreed. Look, he's a distinguished practitioner. My issue with Mr. Clayton was that he had no prior criminal experience, either on the government side or the defense side. But, as I told the Attorney General, nominate him, have him confirmed, you won't hear a peep out of me. I'll leave without a sound.²⁶⁴

Berman inaccurately testified that no U.S. Attorney in modern history who had left or been removed had been replaced by someone from outside the U.S. Attorney's office.²⁶⁵ This belief appeared to form the basis for Berman's claim that the Attorney General's plan to have Carpenito succeed him was "unprecedented."²⁶⁶

However, in 1989, then-U.S. Attorney for the SDNY Rudy Giuliani was replaced by Benito Romano, a lawyer in private practice.²⁶⁷ When confronted with this fact, Berman asserted that Romano was not an "outsider" because he had previously served in the SDNY

²⁶² *Id.* at 61.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.* at 37.

²⁶⁶ *See, e.g., id.* at 15.

²⁶⁷ Dennis Hevesi, *Interim U.S. Attorney: 'Street smart' and fair*, N.Y. TIMES (Jan. 11, 1989), <https://www.nytimes.com/1989/01/11/nyregion/interim-us-attorney-street-smart-and-fair.html>.

office—even though Romano had not served in the office in approximately 18 months and had no familiarity with ongoing investigations or prosecutions.²⁶⁸

Berman did not concede that he could be removed for any reason, and he did not seem to understand that the Attorney General acts on behalf of the President with respect to managing the personnel of the Department of Justice.²⁶⁹ The reality that presidents rely on their attorneys general when it comes to managing personnel decisions within the Department of Justice and U.S. Attorney offices seemed foreign to Berman.

Berman’s testimony was limited by his self-dictated terms of appearance. He only agreed to discuss matters that occurred on June 19 and June 20, relating to his departure from SDNY. He only agreed to testify for two hours.²⁷⁰ Even still, his limited testimony showed that Attorney General Barr acted appropriately in removing Berman from SDNY and allowing a Presidentially-appointed U.S. Attorney to take his place.

F. The Justice Department responded appropriately to the COVID-19 pandemic

The Justice Department responded early and comprehensively to threats posed by COVID-19. Both Deputy Attorney General Jeffrey Rosen and Attorney General Barr pursued policies to ensure the safety of court employees, prison populations, as well as investigating fraudsters exploiting new government legislation related to the pandemic. Below is timeline of significant Justice Department responses to COVID-19:

- On March 16, 2020, three days after the President declared COVID-19 to be a national emergency, Attorney General Barr issued a memorandum to all U.S. Attorneys directing them to work with the chief district judge in their respective jurisdictions to ensure appropriate precautions are taken to protect health and safety in the courts and to be vigilant for individuals seeking to exploit the crisis.²⁷¹
- On March 18, 2020, Deputy Attorney General Rosen sent an email to all U.S. Attorneys and other senior leaders of U.S. Attorney offices across the country encouraging them to implement teleworking and other electronic means of doing business so that their operations would not be adversely impacted by the COVID-19 pandemic.²⁷²
- On March 19, 2020, Deputy Attorney General Rosen issued a memorandum to all U.S. Attorneys and heads of litigating components of the DOJ describing resources and guidelines that the DOJ had put in place to help combat the “wide array of fraudulent and otherwise illegal schemes . . . exploiting the national emergency caused by COVID-19 (the coronavirus).”²⁷³

²⁶⁸ Berman TI, *supra* note 208, at 64-67.

²⁶⁹ *Id.* at 30-31 & 38-39.

²⁷⁰ *Id.* at 65-66.

²⁷¹ Memorandum from William P. Barr, Att’y Gen., Dep’t of Justice, to All United States Attorneys (Mar. 16, 2020), <https://www.justice.gov/ag/page/file/1258676/download>.

²⁷² Email from Jeffrey A. Rosen, Deputy Att’y General, Dep’t of Justice, to All United States Attorneys, All First Assistant United States Attorneys, All Executive Assistant United States Attorneys, and All Criminal Chiefs (Mar. 18, 2020, 06:34 PM ET), <https://www.justice.gov/file/1268696/download>.

²⁷³ Memorandum from Jeffrey A. Rosen, Deputy Att’y Gen., Dep’t of Justice, to All Heads of Litigating Components and United States Attorneys (Mar. 19, 2020), <https://www.justice.gov/file/1268521/download>.

- On March 20, 2020, Attorney General Barr issued a memorandum to all U.S. Attorneys informing them that the DOJ employees carrying out law enforcement functions were essential employees and exempt from any state or local shelter-in-place or lockdown order related to COVID-19.²⁷⁴ Attorney General Barr further directed all U.S. Attorneys to communicate this determination to their respective state and local law enforcement partners and request their cooperation in not impeding the travel of DOJ employees on official business.²⁷⁵ Attorney General Barr issued a similar memorandum on April 8, 2020, stating this determination applied to federal contractor employees as well.²⁷⁶
- On March 24, 2020, Deputy Attorney General Rosen issued another memorandum describing common fraudulent schemes relating to the coronavirus and encouraging U.S. Attorneys to work with their state and local counterparts to pursue COVID-19-related misconduct.²⁷⁷
- On March 24, 2020, Attorney General Barr issued a memorandum announcing the creation of a hoarding and price gouging task force and directing certain DOJ officials and U.S. Attorneys to designate members.²⁷⁸
- On March 26, 2020, Attorney General Barr issued a memorandum to the Director of BOP directing him to utilize home confinement where appropriate in order to combat the spread of COVID-19 in federal prisons.²⁷⁹
- On April 3, 2020, Attorney General Barr issued another memorandum to the Director of the BOP directing him to “immediately maximize appropriate transfers to home confinement of all appropriate inmates” at three federal prisons that were experiencing particularly severe COVID-19 outbreaks.²⁸⁰
- On April 6, 2020, Attorney General Barr issued a memorandum to certain DOJ officials and all U.S. Attorneys containing guidelines for the use of pre-trial detention during the COVID-19 pandemic. Attorney General Barr stated that while “under no circumstance should those who present a risk to any person or the community be released[,] . . . the current COVID-19 pandemic requires that we also ensure we are giving appropriate weight to potential risks facing certain individuals from being remanded to federal custody.”²⁸¹

²⁷⁴ Memorandum from William P. Barr, Att’y Gen., Dep’t of Justice, to All United States Attorneys (Mar. 20, 2020), <https://www.justice.gov/file/1262766/download>.

²⁷⁵ *Id.*

²⁷⁶ Memorandum from William P. Barr, Att’y Gen., Dep’t of Justice, to All United States Attorneys (Apr. 8, 2020), <https://www.justice.gov/file/1267741/download>.

²⁷⁷ Memorandum from Jeffrey A. Rosen, Deputy Att’y Gen., Dep’t of Justice, to All Heads of Law Enforcement Components, Heads of Litigating Divisions, and United States Attorneys (Mar. 24, 2020), <https://www.justice.gov/file/1262771/download>.

²⁷⁸ Memorandum from William P. Barr, Att’y Gen., Dep’t of Justice, to All Heads of Department Components and Law Enforcement Agencies and All United States Attorneys (Mar. 24, 2020), <https://www.justice.gov/file/1262776/download>.

²⁷⁹ Memorandum from William P. Barr, Att’y Gen., Dep’t of Justice, to Michael Carvajal, Director, Bureau of Prisons (Mar. 26, 2020), <https://www.justice.gov/file/1262731/download>.

²⁸⁰ Memorandum from William P. Barr, Att’y Gen., Dep’t of Justice, to Michael Carvajal, Director, Bureau of Prisons (Apr. 3, 2020), <https://www.justice.gov/file/1266661/download>.

²⁸¹ Memorandum from William P. Barr, Att’y Gen., Dep’t of Justice, to All Heads of Department Components and All United States Attorneys (Apr. 6, 2020), <https://www.justice.gov/file/1266901/download>.

- On April 23, 2020, Attorney General Barr issued a memorandum announcing actions designed to target predatory housing practices associated with the COVID-19 pandemic.²⁸²
- On April 27, 2020, Attorney General Barr issued a memorandum to the Assistant Attorney General for Civil Rights and all U.S. Attorneys directing U.S. Attorneys to “be on the lookout for state and local directives that could be violating the constitutional rights and civil liberties of individual citizens.”²⁸³

G. Justice Department acted appropriately in adding a citizenship question to the 2020 Census

On December 12, 2017, the Justice Department requested that the Census Bureau, an agency within the Department of Commerce (DOC), add a citizenship question to the 2020 Census.²⁸⁴ DOJ indicated that the Department needed “a reliable calculation of the citizen voting-age population” to help identify Section 2 violations of the Voting Rights Act.²⁸⁵ On March 26, 2018, Commerce Secretary Wilbur Ross announced that DOC would reinstate a citizenship question on the 2020 Census and later included it in his presentation of the 2020 Census questions to Congress.²⁸⁶

1. Congressional Democrats’ partisan investigation into the decision-making process

Democrats in Congress, liberal states, and left-wing groups swiftly decried the decision, arguing it would depress responses in states with large Hispanic populations and lead to an inaccurate population count.²⁸⁷ On January 8, 2019, newly installed House Oversight and Reform Committee Chairman Elijah Cummings initiated an inquiry into Secretary Ross’s decision. Chairman Cummings requested several tranches of documents from both DOC and DOJ.²⁸⁸ On March 14, 2019, Secretary Ross testified for over six hours before the Oversight Committee about his decision to add the citizenship question. Even still,

²⁸² Memorandum from William P. Barr, Att’y Gen., Dep’t of Justice, to the Assistant Attorney General for Civil Rights and All United States Attorneys (Apr. 23, 2020), <https://www.justice.gov/coronavirus/page/file/1270951/download>.

²⁸³ Memorandum from William P. Barr, Att’y Gen., Dep’t of Justice, to Eric S. Dreiban, Assistant Attorney General for Civil Rights, U.S. Department of Justice, and All United States Attorneys (Apr. 27, 2020), <https://www.justice.gov/opa/page/file/1271456/download>.

²⁸⁴ Letter from Mr. Arthur Gray, General Counsel, U.S. Dep’t of Justice, to Dr. Ron Jarmin, Acting Census Dir., U.S. Census Bureau (Dec. 12, 2017).

²⁸⁵ *Id.*

²⁸⁶ See Letter from Hon. Wilbur Ross, Sec’y, U.S. Dep’t of Commerce, to Hon. Karen Dunn Kelley, Undersecretary for Econ. Affairs, U.S. Dep’t of Commerce (Mar. 26, 2018); U.S. CENSUS BUREAU, QUESTIONS PLANNED FOR THE 2020 CENSUS AND AMERICAN COMMUNITY SURVEY: FEDERAL LEGISLATIVE PROGRAMS AND USES (2018).

²⁸⁷ Letter from The Leadership Conference on Civil and Human Rights, et. al. to Hon. Wilbur Ross, Sec’y, U.S. Dep’t of Commerce (Jan. 10, 2018).

²⁸⁸ Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Hon. Wilbur Ross, Sec’y, U.S. Dep’t of Commerce (Jan. 8, 2019). Although Chairman Cummings previously sought some information about the 2020 Census as Ranking Member, this request was his first following his selection as Chairman and the Committee’s organizing meeting.

on April 2, 2019, Chairman Cummings issued subpoenas to Secretary Ross and Attorney General Barr for the requested documents.²⁸⁹

On June 3, 2019, Chairman Cummings sent a letter to Attorney General Barr and Secretary Ross, stating his intent to hold them in contempt of Congress if they did not produce the subpoenaed documents. In his letter to Attorney General Barr, Chairman Cummings stated, “[t]he Trump administration has been engaged in one of the most unprecedented cover-ups since Watergate . . . challenging Congress’ core authority to conduct oversight under the Constitution This cover-up is being directed from the top.”²⁹⁰

On June 11, 2019, DOJ requested that Chairman Cummings delay the contempt vote as its premature nature compelled the Attorney General to request that the President invoke executive privilege over some of the materials.²⁹¹ On June 12, 2019, Attorney General Barr sent a letter informing the Oversight Committee that:

the President has asserted executive privilege over certain subpoenaed documents identified by the Committee . . . as well as drafts of the Department’s December 12, 2017 letter to the U.S. Census Bureau [T]his protective assertion ensure the President’s ability to make a final decision whether to assert privilege following a full review of these materials Regrettably, you [Chairman Cummings] have made these assertions necessary by your insistence upon scheduling a premature contempt vote.²⁹²

On July 17, 2019, Democrats held Attorney General Barr and Secretary Ross in contempt of Congress.²⁹³ Contrary to the Democrats’ allegations of a “cover up,” the Administration cooperated in good faith with the Democrat investigation. As of the date of the contempt vote, the Trump Administration had produced over 31,000 pages of documents to Congress and made five senior officials available for day-long transcribed interviews.

²⁸⁹ Subpoena from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Hon. Wilbur Ross, Sec’y, U.S. Dep’t of Commerce (Apr. 2, 2019); Subpoena from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Hon. William Barr, Att’y Gen., U.S. Dep’t of Justice (Apr. 2, 2019).

²⁹⁰ Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Hon. William Barr, Att’y Gen., U.S. Dep’t of Justice (Jun. 3, 2019).

²⁹¹ Matt Zapotosky, *Justice Dept. to Congress: Back off contempt process, or Barr will ask Trump to shield census documents*, WASH. POST (Jun. 11, 2019), https://www.washingtonpost.com/world/national-security/barr-will-ask-trump-to-assert-executive-privilege-over-materials-on-added-census-question-if-lawmakers-dont-back-off-contempt/2019/06/11/ce4fd3dc-8c7d-11e9-8f69-a2795fca3343_story.html.

²⁹² Letter from Mr. Stephen Boyd, Assistant Att’y Gen., U.S. Dep’t of Justice, to Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform (Jun. 12, 2019).

²⁹³ Clare Foran & Ashley Killough, *House votes to hold Barr, Ross in criminal contempt over census dispute*, CNN (Jul. 17, 2019), <https://www.cnn.com/2019/07/17/politics/house-contempt-vote-barr-ross-census/index.html>.

2. The Road to the Supreme Court

Liberal interest groups filed multiple lawsuits challenging the decision to reinstate the citizenship question. The first lawsuit decided by the lower courts was *Department of Commerce v. New York*. Judge Jesse Furman, an Obama appointee, initially authorized the deposition of Secretary Ross in that case.²⁹⁴ However, on October 22, 2018, the U.S. Supreme Court issued a stay to halt the deposition.²⁹⁵ In a concurring statement, Justices Neil Gorsuch and Clarence Thomas wrote:

But there’s nothing unusual about a new cabinet secretary coming to office inclined to favor a different policy direction, soliciting support from other agencies to bolster his views, disagreeing with staff, or cutting through red tape. Of course, some people may disagree with the policy and process. But until now, at least, this much has never been thought enough to justify a claim of bad faith and launch an inquisition into a cabinet secretary’s motives.²⁹⁶

On January 15, 2019, Judge Furman ruled that Secretary Ross violated the Administrative Procedure Act in adding a citizenship question to the census questionnaire. Given the immediacy of the 2020 Census timeline, DOJ appealed the decision directly to the U.S. Supreme Court.

On June 27, 2019, the Supreme Court held that the process that Secretary Ross used to add the citizenship question to the 2020 Census was flawed; however, the Court was clear that the question itself was lawful.²⁹⁷ In his dissenting opinion, Justice Thomas stated, “[u]nable to identify any legal problem with the Secretary’s reasoning, the Court imputes one by concluding that he must not be telling the truth This conclusion is extraordinary.”²⁹⁸ Justice Samuel Alito noted in a separate dissenting opinion that, “[n]o one disputes that it is important to know how many inhabitants of this country are citizens. And the most direct way to gather this information is to ask for it in a census.”²⁹⁹

Following the Court’s ruling, President Trump asked Attorney General Barr to determine “whether there remained any viable path for including a citizenship question on the 2020 census.”³⁰⁰ Attorney General Barr determined that the government had “ample justification” for the citizenship question and “could plainly provide rationales for doing so that would satisfy the Supreme Court.”³⁰¹ However, Attorney General Barr decided that any new decision would be immediately challenged, which would affect the ability to carry out the census. He stated that “the impediment was logistical, not legal.”³⁰² The Administration

²⁹⁴ Order re: Deposition of Secretary of Commerce Wilbur Ross, *New York v. U.S. Dep’t of Commerce*, 315 F.Supp.3d 766 (S.D.N.Y. 2018).

²⁹⁵ *Dep’t of Commerce, et al. v. New York, et al.*, 586 U.S. ___ (2018).

²⁹⁶ *Id.*

²⁹⁷ *Dep’t of Commerce, et al. v. New York, et al.*, 588 U.S. ___ (2019).

²⁹⁸ *Id.* at 2 & 5 (Thomas, J., dissenting).

²⁹⁹ *Id.* at 1 (Alito, J., dissenting).

³⁰⁰ U.S. Dep’t of Justice, Remarks by Attorney General William P. Barr on Census Citizenship Question (Jul 11, 2019), <https://www.justice.gov/opa/speech/remarks-attorney-general-william-p-barr-census-citizenship-question>.

³⁰¹ *Id.*

³⁰² *Id.*

ultimately decided to remove the citizenship question from the 2020 Census. On July 11, 2019, President Trump signed an executive order that required government agencies to share citizenship data with DOC to “help provide an accurate picture of U.S. citizenship.”³⁰³ On July 21, 2020, in furtherance of this executive order, President Trump signed a Presidential Memorandum addressed to Secretary Ross directing him to use those administrative citizenship records to exclude illegal aliens from the census count for purposes of reapportionment of Representatives following the 2020 Census.³⁰⁴ The memorandum reasoned that states should not receive extra Representatives because of their large illegal immigrant populations that are not considered legal “inhabitants” of a state.³⁰⁵

3. Democrats’ erroneous allegations of a vast Republican conspiracy

Democrats are afraid of knowing how many citizens are in the United States. Soliciting citizenship information is not new or controversial. Other countries ask about citizenship, the United Nations recommends it as a best practice, and the Census Bureau already solicits citizenship information annually from a segment of the population.³⁰⁶ In addition, information obtained from the Census is protected by federal law. Any citizenship information obtained through the Census cannot be used for immigration enforcement or any other law-enforcement purpose.³⁰⁷

Democrats mischaracterized a redistricting study authored by a conservative consultant named Thomas Hofeller as proof of a nefarious Republican plot to weaponize the census. Democrats cherry-picked information to create a false narrative about the citizenship question.³⁰⁸ There is no evidence that the study touted by the Democrats played any role in the Administration’s decision to add a citizenship question. In fact, testimony from three witnesses directly involved in the decision disproved the Democrat allegations—these witnesses said that they did not know about the study or its author.³⁰⁹ According to the *New York Times*, the woman who discovered the study in her father’s papers is a “political progressive who despises Republican partisanship.”³¹⁰

³⁰³ Kevin Liptak, et al., *Trump backs away from census citizenship question, orders agencies to hand over citizenship information to Commerce*, CNN (Jul. 11, 2019), <https://www.cnn.com/2019/07/11/politics/trump-census-executive-action/index.html>; see also Exec. Order No. 13,880, 84 Fed. Reg. 33,821 (2019);

³⁰⁴ Memorandum from President Donald J. Trump, White House, to Hon. Wilbur Ross, Sec’y, Dep’t of Commerce, *Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census* (Jul. 21, 2020), <https://www.whitehouse.gov/presidential-actions/memorandum-excluding-illegal-aliens-apportionment-base-following-2020-census/>.

³⁰⁵ *Id.*

³⁰⁶ U.S. CENSUS BUREAU, *HISTORY OF QUESTIONNAIRES*, https://www.census.gov/history/www/through_the_decades/questionnaires/; see also U.S. CENSUS BUREAU, *HISTORY: AMERICAN COMMUNITY SURVEY*, https://www.census.gov/history/www/programs/demographic/american_community_survey.html.

³⁰⁷ 13 U.S.C. § 214 (1994).

³⁰⁸ Thomas Hofeller, *The Use of Citizen Voting Age Population in Redistricting*, <https://www.brennancenter.org/sites/default/files/legal-work/2019-05-31-595-1-Unredacted%20Exhibits.pdf> (last accessed Jul. 7, 2020).

³⁰⁹ RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES FIND WILLIAM P. BARR, ATTORNEY GENERAL OF THE UNITED STATES, AND WILBUR L. ROSS, JR., SECRETARY OF COMMERCE, IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY WITH SUBPOENAS DULY ISSUED BY THE COMMITTEE ON OVERSIGHT AND REFORM, H.R. REP. NO. 116-XXX AT 53-58 (2019).

³¹⁰ Michael Wines, *Deceased G.O.P. strategist’s hard drives reveal new details on the census citizenship question*, N.Y. TIMES (May 30, 2019), <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html>.

III. The Democrats' Obsession with Attacking Attorney General Barr

Chairman Nadler's oddly personal obsession with attacking the Attorney General—and using the Committee's limited time and resources to do it—has sadly become a vanity project. In feeding his vanity, Chairman Nadler has chosen to use Committee time and energy on fruitless partisan pursuits rather than issues of bipartisan significance.

A. Chairman Nadler's hearing to attack Attorney General Barr was a complete failure

On June 24, 2020, Chairman Nadler convened a Committee hearing titled, "Oversight of the Department of Justice: Political Interference and Threats to Prosecutorial Independence." Chairman Nadler invited three witnesses to air their hearsay-laced, one-sided professional, personal, and political grievances with the Attorney General.

Assistant U.S. Attorney Aaron Zelinsky, a self-declared Democrat, testifying remotely from his attorney's office half a mile from the hearing room—the only witness to not be physically present at the hearing—made double-hearsay accusations against Attorney General Barr and the Justice Department. Zelinsky without direct evidence accused the Justice Department of using politics to intervene in his excessive recommendation to sentence Roger Stone—a non-violent 67-year-old first time offender—to 87 to 108 months in prison.³¹¹ Judge Jackson—an Obama-appointee—stated on the record at the sentencing hearing that she disagreed with Zelinsky's original recommendation as being overly harsh and agreed with the Justice Department's revised sentencing memorandum noting that 37 to 46 months (i.e., three to four years) was more appropriate.³¹² During the hearing, former federal judge and Attorney General Michael Mukasey rightly noted that it was proper for Department leadership to oversee the Stone sentencing, and that Zelinsky's initial recommendation of a harsher sentence ignored "common sense."³¹³

During his remote appearance, Zelinsky—without firsthand evidence—accused the Justice Department of politicizing Stone's sentencing by departing from his initial recommendation.³¹⁴ Zelinsky alleged that two supervisors, J.P. Cooney and Alessio Evangelista (although he could not initially recall Evangelista's surname), told him the Justice Department had "political reasons" for disagreeing with Zelinsky's initial recommendation.³¹⁵ Zelinsky could not state with specificity how Cooney or Evangelista

³¹¹ *Oversight of the Department of Justice: Political Interference and Threats to Prosecutorial Independence Before the H. Comm. on the Judiciary*, 116th Cong. (2020) [hereinafter Oversight Hearing].

³¹² Sentencing Tr. of Roger Stone, U.S. v. Roger J. Stone (Feb. 20, 2020), pp. 77-78 (statement of Judge Amy Berman Jackson) ("I am concerned that seven to nine years, or even the 70 to 87 months, as I calculated the guideline range, would be greater than necessary. I sincerely doubt that I would have sentenced him within that range, even if the sentencing had simply proceeded in its typical fashion, without any of the extraneous commentary or the unprecedented actions of the Department of Justice within the past week. I agree with the defense and with the government's second memorandum, that the eight-level enhancement for threats, while applicable, tends to inflate the guideline level beyond where it fairly reflects the actual conduct involved.").

³¹³ *Id.*

³¹⁴ Oversight Hearing, *supra* note 311 (opening statement of Mr. Aaron S. J. Zelinsky).

³¹⁵ *Id.* at 9 ("In response, we were told by a supervisor that the U.S. Attorney had political reasons for his instructions, which our supervisor agreed was unethical and wrong. However, we were instructed that we should go along with the U.S. Attorney's instructions, because this case was 'not the hill worth dying on' and that we could 'lose our jobs' if we did not toe the line.").

came to obtain this impression.³¹⁶

The Democrats' second witness, Antitrust Division attorney John Elias made accusations—again without direct evidence—that the Antitrust Division took action in two matters as a result of political pressure.³¹⁷ During the hearing, Elias acknowledged that he had actually sought a detail to Chairman Nadler's staff to work on oversight matters around the time that Democrats began ramping up investigations with the goal of impeaching President Trump.³¹⁸ Additionally, in 2015, Elias served on detail in the Obama-Biden White House in the office responsible for presidential appointments.³¹⁹

Elias's testimony was so "misleading and lack[ing] critical facts" that Assistant Attorney General Makan Delrahim was compelled to correct the record—noting that Elias had "no first-hand involvement in the matters about which he testified."³²⁰ In Delrahim's letter to the Committee, he provided additional context to Elias's allegations, including for Elias's accusation that the Division began investigating the automakers' agreement with California because of political pressure from President Trump. He explained that the Division had begun preliminarily probing the automakers weeks before the President's public comments.³²¹ In fact, he informed the Committee that the Division had drafted a preliminary investigative memorandum about the automakers over two weeks before the President's statements about it.³²²

Elias did not note at the hearing that the DOJ's Office of Professional Responsibility (OPR) had reviewed and dismissed similar allegations concerning the Antitrust Division.³²³ 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 into Elias's accusations. In the closing memorandum, 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."³²⁴ Chairman Nadler made no attempt to factor in OPR's review and exculpatory findings to the context of Elias's

³¹⁶ *Id.* ("I know that he was in meetings with senior leadership. I do not know the source of his information.").

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *See id.* at 21, 165-66.

³²⁰ Letter from Makan Delrahim, Assistant Att'y 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 (Jul. 1, 2020). ("Mr. Elias did not work on, oversee, or otherwise have any first-hand involvement in the matters about which he testified.").

³²¹ *Id.* at 6-7.

³²² *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).

³²³ Memorandum from Jeffrey R. Ragsdale, Off. of Prof. Resp., to Bradley Weinsheimer, Assoc. Deputy Att'y Gen., Dep't of Justice (June 11, 2020).

³²⁴ *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).

allegations and thereby deprived the Committee of this critical information.

Former Justice Department official Donald Ayer, Chairman Nadler’s third witness, generally alleged that Attorney General Barr was unfit for office.³²⁵ However, Ayer failed to disclose he has held a thirty-year grudge against Attorney General Barr ever since then-Attorney General Richard Thornburgh replaced Ayer with Barr in 1990. Thornburgh explained that “Bill Barr was the first deputy I had and that came when I was two years into the job.”³²⁶ Attorney General Thornburgh detailed in a 2010 memoir how Ayer “proved to have exaggerated notions of his responsibilities,” and “[s]oon developing a serious chip on his shoulder, he began taking actions independent of, or in conflict with, my wishes.”³²⁷ Ayer has a long history of airing his personal grievances with the Department, as Attorney General Thornburgh also lamented on how Ayer retaliated against the Justice Department by “by giving a wide-ranging interview to the *Los Angeles Times* that received prominent play” after then-Deputy Attorney General Barr replaced him.³²⁸ Ayer has apparently never gotten over Barr replacing him thirty years ago, as his complaints and accusations against Attorney General Barr at the hearing were so colored by bias.

B. Democrats embarrass the Committee by resorting to theatrics to attack Attorney General Barr



Committee Democrats have no intention of bringing in Attorney General Barr for legitimate and serious oversight of the Justice Department. Rather, it appears instead that Democrats’ obsession with attacking Attorney General Barr is more for harassment and intimidation than anything else. As the Supreme Court has reminded—as recently as July 19—these motivations are illegitimate reasons for the

Committee to conduct oversight.³²⁹

The Committee would have heard from Attorney General Barr in May 2019 if not for Chairman Nadler’s last-minute change to the Committee’s hearing procedures to allow questioning from unelected staff—a rule to which no other recent Attorney General had been subjected. When Attorney General Barr declined to appear due to this unprecedented change, Democrats laughed about his absence. One senior Democrat, Rep. Steve Cohen (D-TN), even brought a bucket of Kentucky Fried Chicken to imply that Attorney



³²⁵ See Oversight Hearing, *supra* note 311.

³²⁶ Presidential Oral Histories, George H. W. Bush Presidency, Richard Thornburgh Oral History, <https://millercenter.org/the-presidency/presidential-oral-histories/richard-thornburgh-oral-history> (last accessed Jun. 20, 2020).

³²⁷ DICK THORNBURGH, WHERE THE EVIDENCE LEADS: AN AUTOBIOGRAPHY 282 (Univ. of Pittsburgh Press, 1st ed. 2010).

³²⁸ *Id.* at 283.

³²⁹ See *Trump v. Mazars USA, LLP*, No. 19-715, at *11-12 (U.S. Jul. 19, 2020) (citing *McGrain v. Daugherty*, 273 U.S. 135 (1927), and *Watkins v. United States*, 354 U.S. 178 (1957)).

General Barr was somehow afraid of testifying. Rep. Cohen, Chairman Nadler, and other Democrats were photographed inside the Committee hearing room laughing and sharing chicken during the stunt.



In addition, Democrat Members have called for Attorney General Barr’s dismissal, impeachment, or resignation since shortly after his confirmation—suggesting their criticism is not substantive but political. Below are only a few baseless Democrat calls for Attorney General Barr to step down:

1. On April 18, 2019, Rep. Eric Swalwell tweeted, “Russia attacked us. The #MuellerReport details a multiplicity of contacts b/w Russia & @realDonaldTrump’s team and that Trump & his team “materially impaired” the investigation. Yet, OUR Attorney General acts as Trump’s defense attorney. He can’t represent both. Barr must resign.”³³⁰
2. On October 24, 2019, Rep. Eric Swalwell tweeted, “Yes, Barr must be disBarred. But let’s stay focused: all evidence suggests @realDonaldTrump used your money to extort Ukraine. Nothing matters more than holding him — and him first — accountable. Stunts like this are Trump-directed distraction devices.”³³¹
3. On December 19, 2019, Rep. Hank Johnson tweeted: “@TheJusticeDept A message for Attorney General Barr: resign.”³³²
4. On February 16, 2020, Rep. Pramila Jayapal tweeted, “This is an absolutely necessary call from 1,100 former prosecutors & officials who served both GOP & Dem Admins to AG Bill Barr: Step down. Stop politicizing DOJ. GOP Senators need to do the same thing. Democracy & justice die in broad daylight.”³³³
5. On May 8, 2020, Rep. Madeleine Dean tweeted, “Instead of focusing on getting the country through this pandemic, the President and AG Barr are corruptly focused on helping their friends. Gen. Flynn pled guilty to lying to the FBI. It is

³³⁰ Eric Swalwell (@RepSwalwell), Twitter, (April 18, 2019, 12:08 PM), <https://twitter.com/RepSwalwell/status/1118909240725385216?s=20>.

³³¹ Eric Swalwell (@RepSwalwell), Twitter, (Oct. 24, 2019, 10:02 PM), <https://twitter.com/RepSwalwell/status/1187550004929617920?s=20>.

³³² Hank Johnson (@RepHankJohnson), Twitter, (Dec. 19, 2019, 3:57 PM), <https://twitter.com/RepHankJohnson/status/1207767044369899520?s=20>.

³³³ Pramila Jayapal (@RepJayapal), Twitter, (Feb. 16, 2020, 12:02 PM), <https://twitter.com/RepJayapal/status/1229088656679268353?s=20>.

an assault on our rule of law to drop the charges. I'll say again, AG Barr should resign.”³³⁴

6. On June 20, 2020, Rep. Debbie Mucarsel-Powell tweeted, “AG William Barr’s attempt to replace US NY Attorney Geoffrey Bergman while conducting investigations of @realDonaldTrump is a clear attempt to obstruct justice. William Barr must be removed.”³³⁵
7. June 21, 2020, Chairman Nadler told CNN, Attorney General Barr “deserves impeachment.”³³⁶
8. At the June 24, 2020 hearing, Rep. Steve Cohen said “Even if the ultimate trier, the Senate, is impotent to see the truth and to exercise discretion in keeping with the American public and the rule of law, we should pursue impeachment of Bill Barr because he is raining terror on the rule of law.”³³⁷
9. On June 30, 2020, Rep. Cohen again tweeted: “Today, I introduced #HRes1032, which would authorize an impeachment inquiry into Attorney General Barr. He has politicized the DOJ, undermined the rule of law, abused his power, obstructed justice & violated the first amendment. He is not fit to be Attorney General. #ImpeachBarr”³³⁸

The timing and tenor of these statements suggests that no matter what Attorney General Barr did, Democrats would still call for his removal. These statements do not suggest a serious effort to oversight the Department, but instead a politicized charade deigned to intimidate and harass. Rather than working with Republicans on pressing issues, Democrats—led by Chairman Nadler—have poured the Committee’s limited time and resources into a vanity project of attacking Attorney General Barr.

³³⁴ Madeleine Dean, (@RepDean), Twitter, (May 8, 2020, 8:32 AM), <https://twitter.com/RepDean/status/1258736625686851586?s=20>.

³³⁵ Debbie Mucarsel-Powell (@RepDMP), Twitter, (June 20, 2020, 9:52 AM), <https://twitter.com/RepDMP/status/1274339344434814979?s=20>.

³³⁶ Nadler Barr “Deserves Impeachment”, CNN (June 21, 2020) <https://www.cnn.com/videos/politics/2020/06/21/sotu-nadler-full.cnn>.

³³⁷ Todd Ruger, *House Judiciary members trade barbs over Barr as he agrees to testify*, ROLL CALL (June 24, 2020).

³³⁸ Steve Cohen (@RepCohen), Twitter, (June 30, 2020, 11:22 AM), <https://twitter.com/RepCohen/status/1277985812714569730?s=20>.

CONCLUSION

Attorney General Barr is a serious and experienced leader of the Justice Department at a critical time in our nation's history. He is committed to the mission of the Justice Department. He is working to expose how the Obama-Biden Administration weaponized the Department and intelligence community to target the Trump campaign. He is working to restore law and order to American cities plagued by left-wing violence and destruction. He is striving to ensure that all Americans may exercise their Constitutional rights safely and freely amid the global pandemic.

Precisely because he is effective, Democrats have sought to stop him. Democrats have mocked him for declining to submit to hearing procedures that no other attorney general faced. Democrats have baselessly accused him of withholding evidence and interfering in prosecutions. Democrats have alleged—without evidence—that his involvement in the Department's personnel decisions are nefarious. Democrats have rejected his effort to restore law and order to American citizens and to protect federal property from violent vandals.

Chairman Nadler and Democrats have deluded themselves into believing that Attorney General Barr, a seasoned and steady law-enforcement official, is the preeminent problem that the Committee must address. In doing so, Democrats have wasted the Committee's time and resources on this unhealthy obsession with attacking the Attorney General. Their obsession has come at the expense of working across the aisle to address issues of real importance to the American people. In these serious times, as Democrats have shirked from their responsibility to lead, Attorney General Barr has answered the call to restore integrity in the Department of Justice.