



via electronic mail

February 18, 2021

The Honorable Merrick B. Garland
Attorney General-Designate
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General-Designate Garland:

The Project On Government Oversight congratulates you on your nomination as attorney general. We are a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles. As such, we ask you to act quickly, should you be confirmed, to restore the Department of Justice's commitment to civil rights and the rule of law.

As you and President Joe Biden noted on the day he announced your nomination, the Department of Justice was founded after the Civil War in part to enforce compliance with the 13th, 14th, and 15th Amendments. But the department has a mixed history of living up to those commitments, and for the last four years it has been more likely to commit violations of fundamental rights than to hold officials accountable for violations. We ask you to change that by launching investigations into the previous administration's violations of individual rights; links between law enforcement officials and white supremacist groups; and then-President Donald Trump's efforts to deprive U.S. voters of a free and fair election.

1. Investigate and acknowledge the previous administration's violations of individual rights.

The prior administration, including the Department of Justice, repeatedly violated individual rights over the past four years.

The most notorious example is the "zero tolerance" policy, which used prosecutions for misdemeanor immigration offenses to separate children from their parents for prolonged periods of time, or even permanently. A recent report by the Department of Justice Inspector General found that then-Attorney General Jeff Sessions was "a driving force" behind the policy, telling

U.S. attorneys on a conference call that “we need to take away children.”¹ Then-Attorney General Sessions, who refused to be interviewed for the report, and then-Deputy Attorney General Rod Rosenstein instructed prosecutors not to decline cases even if they resulted in separation of very young children.²

Family separation was only one of a long series of violations of the rights of noncitizens. The Trump administration also banned immigrants based on their nationality and religion; virtually eliminated legal protections for unaccompanied children and asylum seekers; and detained both children and adults in deplorable conditions, leading to a large increase in the number of deaths in custody.³ There are pending lawsuits challenging over 100 of the Trump administration’s policies.⁴

Then-Attorney General Sessions also all but ended the Justice Department’s use of “pattern or practice” investigations to address abusive police conduct.⁵ Last summer, rather than restart vigorous oversight as protests against police brutality spread across the country, then-Attorney General William Barr both encouraged and authorized use of excessive force against protestors. Then-Attorney General Barr denounced Black Lives Matter protestors as “essentially Bolsheviks” whose “tactics are fascistic,” and branded cities that declined to press charges against protestors as “anarchist jurisdictions,” all while disregarding extensive evidence that

¹ Department of Justice, Office of the Inspector General, *Review of the Department of Justice’s Planning and Implementation of Its Zero Tolerance Policy and Its Coordination with the Departments of Homeland Security and Health and Human Services*, 21-028 (January 2021), 33, 39. https://oig.justice.gov/sites/default/files/reports/21-028_0.pdf

² Department of Justice, Office of the Inspector General, *Review of the Department of Justice’s Planning and Implementation of Its Zero Tolerance Policy and Its Coordination with the Departments of Homeland Security and Health and Human Services*, 21-028 (January 2021), 41-42, 69. https://oig.justice.gov/sites/default/files/reports/21-028_0.pdf

³ Liam Knox, “Civil rights groups condemn Trump’s travel-ban expansion to six African countries,” NBC News, February 27, 2020. <https://www.nbcnews.com/news/nbcblk/civil-rights-groups-condemn-trump-s-travel-ban-expansion-six-n1142231>; Julia Preston, “Biden Will Try to Unmake Trump’s Immigration Agenda. It Won’t Be Easy,” *The Marshall Project*, November 23, 2020. <https://www.themarshallproject.org/2020/11/23/biden-will-try-to-unmake-trump-s-immigration-agenda-it-won-t-be-easy>; Zolan Kanno-Youngs, “Judge Halts ‘Public Health’ Expulsions of Children at the Border,” *New York Times*, November 18, 2020. <https://www.nytimes.com/2020/11/18/us/politics/trump-migrant-children.html>; Katherine Hawkins and Emma Stodder, Project On Government Oversight, *Past Deaths in Custody Highlight Dire Risks for Immigration Detainees During Coronavirus Outbreak*, April 29, 2020. <https://www.pogo.org/investigation/2020/04/past-deaths-in-custody-highlight-dire-risks-for-immigration-detainees-during-coronavirus-outbreak/>; Nicole Acevedo, “Why are migrant children dying in U.S. custody?” NBC News, May 29, 2019. <https://www.nbcnews.com/news/latino/why-are-migrant-children-dying-u-s-custody-n1010316>; Catherine E. Shoichet, “The death toll in ICE custody is the highest it’s been in 15 years,” CNN, September 30, 2020. <https://www.cnn.com/2020/09/30/us/ice-deaths-detention-2020/index.html>

⁴ Lucas Guttentag, “Immigration Policy Tracking Project,” last updated January 31, 2021. <https://immpolicytracking.org/home/>

⁵ John Shiffman and Brad Heath, “Special Report: How U.S. Justice Department disarmed its police reform effort,” Reuters, October 2, 2020. <https://www.reuters.com/article/us-usa-police-justice-specialreport/special-report-how-u-s-justice-department-disarmed-its-police-reform-effort-idUSKBN26N2VE>

police were using excessive force against demonstrators.⁶ Moreover, he reportedly authorized the tear gassing of peaceful protesters in Lafayette Square, and deployed heavily armed federal agents whose uniforms did not display their name, badge number, or other identifying information, and who, in some cases, refused to tell protestors or journalists what agency employed them.⁷

In order to end these violations and ensure accountability, we ask that you create a Justice Department task force to investigate credible allegations of serious violations of individual rights by federal officials starting with the past four years, with authority to:

- Review factual evidence that will shed light on whether policy changes were motivated by discriminatory intent or were otherwise in violation of the law. If the changes are found to have violated the law, the Justice Department should officially acknowledge the discrimination and illegality, and cease defending the policies in court.
- Launch criminal investigations into cases where there is substantial evidence of violations of 18 U.S.C. § 241 (conspiracy against rights), 18 U.S.C. § 242 (deprivation of rights under color of law), or other federal laws.
- Launch civil investigations into cases where there is substantial evidence of a pattern or practice of conduct by Immigration and Customs Enforcement or Customs and Border Protection employees that deprives persons of rights protected by the Constitution or laws of the United States, and recommend specific steps that the Department of Homeland Security should take to eliminate that pattern or practice.
- Refer evidence of professional misconduct by Justice Department employees to the Office of Professional Responsibility.

2. Develop a national strategy to address law enforcement officers' links to white supremacist and far-right extremist groups, and law enforcement's inadequate response to far-right violence.

On January 6, 2021, an armed mob violently attacked the United States Capitol in an attempt to disrupt Congress's certification of Joseph R. Biden Jr. as the winner of the 2020 presidential

⁶ Yael Halon, "AG Barr: US facing new form of 'urban guerilla warfare' driven by left's 'lust for power,'" Fox News, August 9, 2020. <https://www.foxnews.com/media/bill-barr-urban-guerrilla-warfare-protests-black-lives-matter-democrats-power>; Allan Smith, "Justice Department deems New York City, Portland and Seattle 'anarchist jurisdictions,'" NBC News, September 21, 2020. <https://www.nbcnews.com/politics/justice-department/justice-dept-deems-new-york-city-portland-seattle-anarchist-jurisdictions-n1240600>

⁷ Carol D. Leonnig et al., "Barr personally ordered removal of protesters near White House, leading to use of force against largely peaceful crowd," *Washington Post*, June 2, 2020. https://www.washingtonpost.com/politics/barr-personally-ordered-removal-of-protesters-near-white-house-leading-to-use-of-force-against-largely-peaceful-crowd/2020/06/02/0ca2417c-a4d5-11ea-b473-04905b1af82b_story.html; Garrett M. Graff, "The Story Behind Bill Barr's Unmarked Federal Agents," *Politico Magazine*, June 5, 2020. <https://www.politico.com/news/magazine/2020/06/05/protests-washington-dc-federal-agents-law-enforcement-302551>; Katie Shepherd and Mark Berman, "'It was like being preyed upon': Portland protesters say federal officers in unmarked vans are detaining them," *Washington Post*, July 17, 2020. <https://www.washingtonpost.com/nation/2020/07/17/portland-protests-federal-arrests/>

election, leading to five deaths and injuries to over 100 police officers.⁸ The Department of Justice has already charged over 200 people for their role in the insurrection.⁹

Several current or former police officers have also been arrested for their role in the attack, and over a dozen Capitol police officers are under investigation for their actions during the insurrection.¹⁰

While the number of law enforcement officials who actively took part in the Capitol attack was relatively limited, the security response was grossly inadequate. The three top security officials at the Capitol—Capitol Police Chief Steven Sund, House Sergeant at Arms Paul Irving, and Senate Sergeant at Arms Michael Stenger—resigned as a result of their force’s failure to protect Congress and their own officers.¹¹ Acting Capitol Police Chief Yogananda D. Pittman formally apologized to Congress at a briefing on January 26, and testified that,

By January 4th, the Department knew that the January 6th event would not be like any of the previous protests held in 2020. We knew that militia groups and white supremacists organizations would be attending. We also knew that some of these participants were intending to bring firearms and other weapons to the event. We knew that there was a strong potential for violence and that Congress was the target.¹²

Far-right groups openly advocated violence on January 6 for weeks on social media.¹³ Demonstrators carried weapons, including firearms, tasers, metal pipes, sticks, and flagpoles, all

⁸ “Capitol Riot Death Toll Rises to 5; Police Hunt for Suspects,” NBC Washington and Associated Press, January 8, 2021. <https://www.nbcwashington.com/news/local/capitol-riot-death-toll-rises-to-5-police-hunt-for-suspects/2534406/>; Tom Jackman, “Police union says 140 officers injured in Capitol Riot,” *Washington Post*, January 27, 2021. https://www.washingtonpost.com/local/public-safety/police-union-says-140-officers-injured-in-capitol-riot/2021/01/27/60743642-60e2-11eb-9430-e7c77b5b0297_story.html

⁹ Rachel Axon et al., “Capitol riot arrests: See who’s been charged across the U.S.,” *USA Today*, February 16, 2021. <https://www.usatoday.com/storytelling/capitol-riot-mob-arrests/>

¹⁰ Eric Westervelt, “Off-Duty Police Officers Investigated, Charged With Participating in Capitol Riot,” NPR, January 15, 2021. <https://www.npr.org/2021/01/15/956896923/police-officers-across-nation-face-federal-charges-for-involvement-in-capitol-ri>; Aaron C. Davis, Rebecca Tan, and Beth Reinhard, “Several Capitol police officers suspended, more than a dozen under investigation over actions related to rally, riot,” *Washington Post*, January 11, 2021. https://www.washingtonpost.com/politics/capitol-police-officers-suspended/2021/01/11/0ee0e422-545f-11eb-a931-5b162d0d033d_story.html

¹¹ Alana Wise, “Unconscionable: Capitol Police Union Says Leadership Failed Officers in Riot,” NPR, January 27, 2021. <https://www.npr.org/sections/insurrection-at-the-capitol/2021/01/27/961268306/unconscionable-capitol-police-union-says-leadership-failed-officers-in-riot>

¹² *January 6 Security Failures: Briefing before the House Committee on Appropriations*, 117th Cong. (January 26, 2021) (statement of Acting Chief of Police Yogananda D. Pittman, US Capitol Police). <https://int.nyt.com/data/documenttools/capitol-police-sergeant-at-arms/4edd6c362b9303dc/full.pdf>

¹³ Logan Jaffe et al., “Capitol Rioters Planned for Weeks in Plain Sight. The Police Weren’t Ready,” *ProPublica*, January 7, 2021. <https://www.propublica.org/article/capitol-rioters-planned-for-weeks-in-plain-sight-the-police-werent-ready>

of which are routinely banned at protests at the National Mall and U.S. Capitol.¹⁴ Despite this, police set up only a single, easily breached security perimeter, and arrested only a few dozen rioters on January 6—less stringent security measures and lower arrest numbers than are routine at even nonviolent protests at the Capitol.¹⁵

This disparity is not limited to the Capitol protests. Mike German, a fellow for the Brennan Center for Justice who previously infiltrated white supremacist groups for the FBI, has described how all too often, “far-right militants are allowed to engage in violence and walk away while protesters are met with violent police actions.”¹⁶ Mr. German has reported extensively on law enforcement officials with links to far-right militias or white supremacist groups, and a nonprofit database called the Plain View Project has compiled thousands of explicitly racist social media posts by law enforcement officers.¹⁷ A recent study found that in protests across the United States between May 1 and November 28, 2020, police used force in response to about 4.7% of left wing demonstrations and 1.4% of right wing demonstrations.¹⁸ Looking only at demonstrations where protestors did not engage in vandalism, violence, or looting, authorities used force in response to 1.8% of left wing protests and .5% of right wing protests.¹⁹ Another study compared media arrests at protests that attracted counter-protesters in 2017 and 2018, and found that 279 left wing protesters and 26 right wing protesters were arrested.²⁰ The disparity between law enforcement’s treatment of Islamic terrorism and far-right terrorism is also glaring.²¹

¹⁴ Peter Hermann and Julie Zauzmer, “Beaten, sprayed with mace and hit with stun guns: police describe injuries to dozens of officers during assault on U.S. Capitol,” *Washington Post*, January 11, 2021. https://www.washingtonpost.com/local/public-safety/police-capitol-injuires-trump/2021/01/11/ca68e3e2-5438-11eb-a08b-f1381ef3d207_story.html

¹⁵ Beth Reinhard, Neena Satija and Tara Bahrapour, “Arrested by Capitol Police at peaceful protests? You’re not alone,” *Washington Post*, January 8, 2021. https://www.washingtonpost.com/investigations/capitol-police-arrests-peaceful-protests/2021/01/08/b6b2489c-5141-11eb-b2e8-3339e73d9da2_story.html; Candice Norwood, “How was a violent mob able to breach the U.S. Capitol? Activists see double standard in police response,” *PBS NewsHour*, January 12, 2021. <https://www.pbs.org/newshour/politics/how-was-a-violent-mob-able-to-breach-the-u-s-capitol-activists-see-double-standard-in-police-response>

¹⁶ Sam Levin, “White supremacists and militias have infiltrated police across US, report says,” *Guardian*, August 27, 2020. <https://www.theguardian.com/us-news/2020/aug/27/white-supremacists-militias-infiltrate-us-police-report>

¹⁷ Michael German, Brennan Center for Justice, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement* (August 27, 2020). <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>

¹⁸ Lois Beckett, “US police three times as likely to use force against leftwing protesters, data finds,” *Guardian*, January 14, 2021. <https://www.theguardian.com/us-news/2021/jan/13/us-police-use-of-force-protests-black-lives-matter-far-right>

¹⁹ Lois Beckett, “US police three times as likely to use force against leftwing protesters, data finds,” *Guardian*, January 14, 2021. <https://www.theguardian.com/us-news/2021/jan/13/us-police-use-of-force-protests-black-lives-matter-far-right>

²⁰ Richard Allen Greene, “Police respond differently when it’s a left wing protest, study finds,” *CNN*, January 16, 2021. <https://www.cnn.com/2021/01/15/us/protest-disparity-study-trnd/index.html>

²¹ Shirin Sinnar, “Separate and Unequal: The Law of ‘Domestic’ and ‘International’ Terrorism,” *Michigan Law Review*, vol. 117, no. 7 (2019). <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2654&context=mlr>

This disparity must end. Law enforcement response that differs depending on the race, religion, or ideology of the participants violates the First Amendment and equal protection clauses of the U.S. Constitution, and endangers the lives of civilians and law enforcement officers alike. On January 6, it also endangered our democracy. Accordingly, we request that you:

- Create a working group within the Justice Department to investigate law enforcement ties to white supremacist, far-right militant, or paramilitary groups, and to review evidence of markedly different treatment by law enforcement of political protests and violent events depending on the race, religion, or ideology of the participants.
- Develop and enforce clear policies against overt racism or affiliation with white supremacist, paramilitary, or other extremist groups by federal law enforcement officials.
- Assist other federal departments and state and local law enforcement agencies in developing and implementing comparable policies, and restrict the use of federal grants to state and local law enforcement departments that tolerate white supremacy in their ranks.
- Instruct the FBI and U.S. Attorneys offices to give equal priority to protecting the people of the United States from all forms of terrorism and ideologically motivated violence (including hate crimes), and require thorough, accurate reporting to verify that investigative resources are being deployed in proportion to groups' threats of violence.

3. Open a criminal investigation into then-President Trump's attempt to overturn the 2020 election, as well as any other potential federal crimes he may have committed.

The House of Representatives impeached then-President Trump for his role in inciting the violent attack on the Capitol. The Senate fell short of the two-thirds majority needed for conviction because a decisive number of Senators refused to apply the impeachment power to a former president.²² This included Senate Majority Leader Mitch McConnell, who said that Trump “didn’t get away with anything yet” because “we have a criminal justice system in this country.”²³

It is imperative that the government use every available legal means to deter future attempts to subvert free elections and disrupt the peaceful transfer of power. The Department of Justice should investigate whether then-President Trump committed federal crimes in the course of his months-long attempt to remain in power despite losing the election.

Specifically, the investigation should examine:

²² Ryan Goodman and Josh Asabor, “In Their Own Words: The 43 Republicans’ Explanations of Their Votes Not to Convict Trump in Impeachment Trial,” *Just Security*, February 15, 2021. <https://www.justsecurity.org/74725/in-their-own-words-the-43-republicans-explanations-of-their-votes-not-to-convict-trump-in-impeachment-trial/>

²³ Erwin Chemerinsky, “Investigate Donald Trump for criminal acts, just as Mitch McConnell says,” *Los Angeles Times*, February 16, 2021. <https://www.latimes.com/opinion/story/2021-02-16/donald-trump-prosecution-federal-crimes>

- Then-President Trump’s December 23, 2020, phone call to Georgia’s lead election investigator, in which he reportedly urged the investigator, who was then conducting an inquiry into allegations of improper election practices in Cobb County, to “find the fraud.”²⁴
- Then-President Trump’s January 2, 2021, phone call to the secretary of state of Georgia, Brad Raffensperger, in which he told Mr. Raffensperger, “I just want to find 11,780 votes”; that failing to produce evidence of fraud was “a big risk to you and to Ryan, your lawyer”; and that “there’s nothing wrong with saying that, you know, that you’ve recalculated.”²⁵
- Any other calls or meetings in which then-President Trump pressured, threatened, or otherwise attempted to induce state election officials or state legislators to throw out valid votes or to overturn election results based on unsupported allegations of fraud.
- Any attempts to induce Department of Justice officials to make false allegations of voter fraud, or to interfere with state or congressional certification of the election results.²⁶
- Any White House contacts with the organizers of the January 6, 2021, protests.
- Then-President Trump’s statements on January 6, 2021, including his attempt to induce then-Vice President Michael Pence to unlawfully nullify the election results; his calls on the crowd to “walk down to the Capitol” and “fight like hell”; and his tweet at 2:24 p.m. that “Mike Pence didn’t have the courage to do what should have been done to protect our Country and our Constitution.”²⁷
- Any interference with law enforcement’s or the national guard’s preparation for or response to the January 6 protests and insurrection by then-President Trump, his Department of Defense appointees, or others acting on his behalf.

The actions above may have violated a number of laws, including but not limited to 18 U.S.C. § 371-373 (conspiracy and solicitation), 18 U.S.C. § 1505 (obstruction of official proceedings), and 52 U.S.C. § 20511 (attempted deprivation of a fair and impartially conducted election).

The Justice Department should also investigate any other potential crimes by then-President Trump that the evidence warrants, including possible tax evasion, financial corruption, money

²⁴ Amy Gardner, “‘Find the fraud’: Trump pressured a Georgia elections investigator in a separate call legal experts say could amount to obstruction,” *Washington Post*, January 9, 2021.

https://www.washingtonpost.com/politics/trump-call-georgia-investigator/2021/01/09/7a55c7fa-51cf-11eb-83e3-322644d82356_story.html

²⁵ Amy Gardner and Paulina Firozi, “Here’s the full transcript and audio of the call between Trump and Raffensperger,” *Washington Post*, January 5, 2021. https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356_story.html

²⁶ Katie Benner, “Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General,” *New York Times*, January 22, 2021. <https://www.nytimes.com/2021/01/22/us/politics/jeffrey-clark-trump-justice-department-election.html>

²⁷ Julia Jacobo, “This is what Trump told supporters before many stormed Capitol Hill,” *ABC News*, January 7, 2021. <https://abcnews.go.com/Politics/trump-told-supporters-stormed-capitol-hill/story?id=75110558>; Josh Dawsey and Ashley Parker, “Inside the remarkable rift between Donald Trump and Mike Pence,” *Washington Post*, January 11, 2021. https://www.washingtonpost.com/politics/trump-pence-breakup-capitol-riot/2021/01/11/6a6aa052-5357-11eb-89bc-7f51ceb6bd57_story.html

laundering, campaign finance violations, obstruction of justice, violations of the Hatch Act, and violations of civil rights.

In listing potential subjects for criminal investigation, we do not intend to prejudge the evidence, which should be carefully evaluated by prosecutors who are insulated to the greatest degree possible from political interference. But Mr. Trump's status as a former president must not place him above the law.

Thank you for your consideration.

Sincerely,

Sarah Turberville
Director, The Constitution Project

Danielle Brian
Executive Director

cc: Acting Attorney General Monty Wilkinson