



June 11, 2020

Jeffrey R. Ragsdale
Director
Office of Professional Responsibility
U.S. Department of Justice
Suite 3266
950 Pennsylvania Avenue N.W.
Washington, DC 20530
Submitted via email to opr.complaints@usdoj.gov

Dear Director Ragsdale:

Campaign Legal Center (“CLC”) respectfully writes to supplement our February 21, 2020 complaint¹ to the U.S. Department of Justice (“DOJ”) Office of Professional Responsibility. Additional facts regarding the conduct of Attorney General William P. Barr and former acting U.S. Attorney for the District of Columbia Timothy Shea have come to light and warrant your review.

Our prior complaint addressed the improper intervention by senior DOJ officials, including Attorney General Barr and acting U.S. Attorney Shea, in criminal proceedings involving President Trump’s former campaign adviser Roger Stone and President Trump’s former National Security Adviser Michael Flynn. Attorney General Barr and acting U.S. Attorney Shea have now taken more actions in matters relating to the Flynn prosecution that appear politically motivated.

In addition, Attorney General Barr waded into political waters when he directed law enforcement to remove peaceful demonstrators near the White House for a presidential photograph. With these acts, Attorney

¹ CAMPAIGN LEGAL CTR., *CLC Complaint to DOJ Regarding Attorney General William P. Barr, Deputy Attorney General Jeffrey A. Rosen, and U.S. Attorney for the District of Columbia Timothy J. Shea* (Feb. 21, 2020), <https://campaignlegal.org/sites/default/files/2020-02/CLC%20Complaint%20to%20DOJ%20OPR%20-%202-21-20.pdf>.

General Barr and acting U.S. Attorney Shea appear to be in further violation of the Standards of Ethical Conduct for Employees of the Executive Branch (“Standards of Conduct”) and DOJ’s internal policies for the conduct of employees (“Justice Manual”).

Executive Branch Standards of Conduct and DOJ Policies Require the DOJ Officials to Act Impartially and Insulate Themselves from Political Influence

As you know, the Standards of Conduct and the Justice Manual require DOJ officials to act impartially and insulate themselves from political influence. Attorney General Barr’s and former acting U.S. Attorney Shea’s recent conduct conflicts with those legal requirements.

Pursuant to 5 C.F.R. § 2635.101 of the Standards of Conduct, DOJ officials and all executive branch employees “shall act impartially and not give preferential treatment to any private organization or individual.”² In addition, officials “shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards.”³ “Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts,” according to the Standards.⁴

Under Section 1-8.100 of DOJ’s Justice Manual, “[t]he rule of law depends upon the evenhanded administration of justice [and t]he legal judgments of the Department of Justice must be impartial and insulated from political influence.”⁵ The policy emphasizes that it is “imperative” for DOJ’s “investigatory and prosecutorial powers [to] be exercised free from partisan consideration.”⁶

The Actions of Attorney General Barr and Former Acting U.S. Attorney Shea Appear to Violate the Legal Requirements for Impartiality and Insulation from Political Influence

Attorney General Barr’s and acting U.S. Attorney Shea’s recent actions in the Flynn case appear to violate the requirements of the Standards of Conduct and the Justice Manual. First, DOJ officially moved to dismiss

² 5 C.F.R. § 2635.101(b)(8).

³ *Id.* § 2635.101(b)(14).

⁴ *Id.*

⁵ Justice Manual § 1-8.100.

⁶ *Id.*

the case against Flynn,⁷ despite Flynn’s guilty plea that he repeatedly swore to under oath. Flynn pleaded guilty in late 2017 to making false statements to the FBI, but moved to withdraw his guilty plea in January 2020 based on allegations of prosecutorial misconduct.⁸ On May 7, 2020, in a motion signed only by acting U.S. Attorney Shea⁹ and no line prosecutors, DOJ moved to dismiss the case against Flynn, stating that “[t]he Government is not persuaded that” Flynn’s interview with the FBI in 2017 was “conducted with a legitimate investigative basis.”¹⁰ A post-plea motion to dismiss is highly unusual; given the circumstances here, where the motion to dismiss flies in the face of repeated representations of career prosecutors and the defendant, it is “unprecedented.”¹¹

Second, Attorney General Barr appointed a U.S. Attorney to investigate now-debunked allegations that the Obama administration inappropriately requested Flynn’s name be revealed on intelligence reports,

⁷ Meanwhile, the government continues to pursue a criminal case against Flynn’s former business partner, maintaining that he and Flynn were co-conspirators. The different treatment afforded to Flynn, a former close associate of the president, further suggests politicized decision-making at DOJ. See Josh Gerstein, *Feds press criminal case against Flynn partner*, POLITICO (June 7, 2020), <https://www.politico.com/news/2020/06/07/criminal-case-rafiiekian-flynn-partner-306881>.

⁸ Adam Goldman, *Michael Flynn Moves to Withdraw Guilty Plea in About-Face After Extensive Cooperation*, N.Y. TIMES (Jan. 14, 2020), <https://www.nytimes.com/2020/01/14/us/politics/michael-flynn-withdraws-guilty-plea.html>.

⁹ The motion to dismiss was filed on May 7, 2020. Notably, U.S. Attorney Shea was removed from his post shortly thereafter; on May 19, 2020, Attorney General Barr announced Mr. Shea was to be appointed as Acting Administrator of the Drug Enforcement Agency. Press Release, U.S. Drug Enforcement Agency, Attorney General Barr announces Timothy J. Shea as new Acting Administrator of Drug Enforcement Administration (May 19, 2020), <https://www.dea.gov/press-releases/2020/05/19/attorney-general-barr-announces-timothy-j-shea-new-acting-administrator>.

¹⁰ Government’s Motion to Dismiss the Criminal Information Against the Defendant Michael T. Flynn at 2, U.S. v. Michael T. Flynn, Crim. No. 17-232 (D.D.C. May 7, 2020), <https://int.nyt.com/data/documenthelper/6936-michael-flynn-motion-to-dismiss/fa06f5e13a0ec71843b6/optimized/full.pdf>; see also Spencer S. Hsu, Devlin Barrett & Matt Zapotosky, *Justice Dept. moves to drop case against Michael Flynn*, WASH. POST (May 7, 2020), https://www.washingtonpost.com/local/legal-issues/justice-dept-moves-to-void-michael-flynn-conviction-in-muellers-russia-probe/2020/05/07/9bd7885e-679d-11ea-b313-df458622c2cc_story.html.

¹¹ Hsu, Barrett & Zapotosky, *supra* note 10; Brief for Judge Emmet G. Sullivan In Response to May 21, 2020 Order at 1, In Re Michael T. Flynn (D.C. Cir. June 1, 2020), <https://int.nyt.com/data/documenthelper/6983-sullivan-response-to-appeals/c984097e4702e1b8d5b90/optimized/full.pdf#page=1>; see also Brief for Court-Appointed Amicus Curiae at 2-3, U.S. v. Michael T. Flynn, Crim. No. 17-232 (D.D.C. June 10, 2020), <https://www.courtlistener.com/recap/gov.uscourts.dcd.191592/gov.uscourts.dcd.191592.223.2.pdf> (“[T]he Court should deny leave [to dismiss] because there is clear evidence of a gross abuse of prosecutorial power. . . . The Government has engaged in highly irregular conduct to benefit a political ally of the President. The facts of this case overcome the presumption of regularity.”).

or “unmasked,” which led to Flynn’s investigation and ultimate guilty plea. However, former U.S. officials said that Flynn’s name was never hidden on those intelligence reports—so it would have been impossible to “unmask” him.¹² Furthermore, even if an unmasking request were made, such requests are routine in the context of intelligence reports.¹³ Thus, it seems that political motivations may explain why Attorney General Barr has ordered an investigation into the Obama administration despite evidence that nothing improper occurred.

President Trump has publicly questioned the underpinnings of Flynn’s false statement charge, and has expressed that he believes that Flynn’s treatment was unfair.¹⁴ When DOJ moved to drop the case, President Trump called Flynn “an even greater warrior” and DOJ officials who pursued the case against him “human scum.”¹⁵

Finally, on June 1, 2020, Attorney General Barr personally ordered law enforcement to disperse peaceful demonstrators near the White House who were protesting police violence.¹⁶ After he issued the order, chemical gas and flash grenades were used to clear an area to enable President Trump to pose for a picture with Attorney General Barr and others outside of St. John’s Church.¹⁷ The attorney general’s order to forcibly remove peaceful protesters in order to facilitate a photo op was counter to the First Amendment and not in the public’s interest.¹⁸ Once again, Attorney General Barr’s actions appear

¹² Ellen Nakashima, *Michael Flynn’s name was never masked in FBI document on his communications with Russian ambassador*, WASH. POST (May 20, 2020), https://www.washingtonpost.com/national-security/michael-flynn-name-was-never-masked-in-fbi-document-on-his-communications-with-russian-ambassador/2020/05/20/e94ee050-9a0b-11ea-ac72-3841fcc9b35f_story.html.

¹³ Zach Dorfman, *The Michael Flynn “unmasking” controversy unmasked*, AXIOS (May 27, 2020), <https://www.axios.com/flynn-unmasking-explained-6f72c5d4-5ac7-45b9-b21c-21c32e5d09c3.html>.

¹⁴ *E.g.*, Donald J. Trump (@realDonaldTrump), TWITTER (Apr. 20, 2018, 6:34 AM), <https://twitter.com/realdonaldtrump/status/987278269765517312?lang=en>.

¹⁵ Hsu, Barrett & Zapotosky, *supra* note 10.

¹⁶ Carol D. Leonnig, Matt Zapotosky, Josh Dawsey & Rebecca Tan, *Barr personally ordered removal of protesters near White House, leading to use of force against largely peaceful crowd*, WASH. 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.

¹⁷ Ashley Parker, Josh Dawsey & Rebecca Tan, *Inside the push to tear-gas protesters ahead of a Trump photo op*, WASH. POST (June 1, 2020), https://www.washingtonpost.com/politics/inside-the-push-to-tear-gas-protesters-ahead-of-a-trump-photo-op/2020/06/01/4b0f7b50-a46c-11ea-bb20-ebf0921f3bbd_story.html.

¹⁸ The president’s reelection campaign capitalized on the photo opportunity—campaign officials disseminated imagery of President Trump walking toward the church, seeming to view the move as a political success. *Id.*

to be driven by the improper political influence of the president or partisan consideration.

The apparent violations of the attorney general and former acting U.S. Attorney Shea undermine the independence of the Department of Justice and the integrity of its administration of the criminal justice system. The facts detailed in this letter underscore the need for an investigation by your office. Thank you for your consideration.

Sincerely,

_____/s/_____

Kedric L. Payne
General Counsel and Senior Director,
Ethics

_____/s/_____

Delaney N. Marsco
Legal Counsel, Ethics