

July 25, 2017

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Chuck Schumer
Democratic Leader
U.S. Senate
Washington, DC 20510

The Honorable Charles Grassley
Chairman
U.S. Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
U.S. Senate Committee on the Judiciary
Washington, DC 20510

Dear Senators,

We write to request that the Senate postpone the confirmation of a new Director of the Federal Bureau of Investigations (FBI) until the White House takes concrete steps to insulate the Director and the law enforcement agency he will lead from improper political interference. Recent statements by President Trump indicate that he believes the FBI Director should be politically loyal to him, instead of serving the country and the rule of law. The President's recent statements further indicate that he is aggressively seeking to undermine, if not eliminate, a specific Department of Justice law enforcement matter—the Special Counsel's investigation into Russian interference in our elections. The President's comments demeaning the Attorney General over his recusal in this matter, as well as his extraordinary reference to him as "beleaguered," raise deep concerns that the President may be considering a series of personnel changes seeking to terminate the investigation. Under these circumstances, confirming the President's hand-picked FBI Director—regardless of that nominee's individual merits—would plunge a new Director into an unfair and untenable position, where the stated expectations of the

President directly conflict with the Director's independent law enforcement responsibilities. As such, the Senate should not proceed to confirm a new Director until the President has made specific commitments—set forth below—to respect the independence of the Department of Justice, including the FBI Director and the Special Counsel.

The Director of the FBI is an independent position, by its nature as a federal law enforcement leader, its statutory ten year term, and its protection from White House interference under historic policies governing White House communications with law enforcement on specific matters. For over forty years, to prevent even the appearance of political meddling in federal law enforcement, White House policies of Republican and Democratic administrations alike have either forbid, or, vastly minimized any White House contacts with federal law enforcement functions involving specific investigations or prosecutions.¹ These policies, including the current White House policy,² designate less than a handful of individuals at the Department of Justice—excluding the FBI—which may properly have contact with the White House about any specific investigation or enforcement matter.

Likewise, the decades-long policy of the Department of Justice (DOJ), including the currently operative version,³ also protects the integrity of particular investigation and enforcement matters by prohibiting communications with the White House about them, other than those involving the Attorney General and Deputy Attorney General. Strict enforcement of these policies restricting White House interference with specific law enforcement matters is especially crucial where the investigation at hand may relate to the President, his family, his campaign, and his closest political advisors.

Currently, the White House has a contacts policy, but as it applies only to DOJ, it is vastly inadequate compared to policies of prior administrations, which applied across the federal government to address other law enforcement functions, as well as specific party matters in procurement, grant-making, and regulatory decisions, among others. Recently, internal White House documents, released through FOIA, disclosed that the White House Counsel's office plans

¹ See United to Protect Democracy, *White House Communications with the DOJ and FBI* (Mar. 8, 2017), <https://unitedtoprotectdemocracy.org/agencycontacts/>.

² Memorandum from Donald F. McGahn II, White House Counsel, to All White House Staff (Jan. 27, 2017), available at <http://www.politico.com/f/?id=0000015a-dde8-d23c-a7ff-dfef4d530000>.

³ See Letter from U.S. Department of Justice to Protect Democracy (on behalf of the Offices of the Attorney General and Deputy Attorney General) (May 15, 2017), available at <https://unitedtoprotectdemocracy.org/wp-content/uploads/2017/05/DOJContactsFOIA.pdf> (attaching DOJ's current policy, Memorandum for Heads of Department Components and All U.S. Attorneys: Communications with the White House and Congress (May 11, 2009)).

to issue a more complete and robust White House agency contacts policy,⁴ which would be in line with the precedent of prior Administrations, and in keeping with the White House's commitment months ago.⁵ This is a critical moment for the White House to publicly commit to avoiding political interference with law enforcement and other independent government functions. The White House should, as it has promised, issue a thorough and comprehensive policy limiting inappropriate White House contacts about specific matters with officials across the Federal agencies.

Unfortunately, recent comments from the President and the White House, consistent with the White House's prior actions, suggest that the President does seek the ability to interfere with and impede specific investigations. In particular, the President seems intent on thwarting the special counsel's investigation regarding Russian interference in the 2016 election. The statements from the White House spokesperson on limiting the scope of the special counsel investigation, as well as news reports of the President's staff working to investigate the Special Counsel staff in order to discredit them, and by extension, the investigation,⁶ plainly pose improper White House threats against independent law enforcement functions. In addition, just a few days ago, the President stated in an interview with the *New York Times* that the "F.B.I. person really reports directly to the president of the United States, which is interesting. You know, which is interesting. And I think we're going to have a great new F.B.I. director."⁷ Even after the outcry following testimony of the President's demand for "loyalty" from prior FBI Director James Comey, it appears the President still expects political or personal loyalty to him from the next FBI Director. It also suggests that the President does not respect or abide by the contacts policy of his own White House, or of the Department of Justice.

Before moving to confirm a new Trump-selected FBI Director, the Senate should be assured that President Trump and his White House will respect the independence of the FBI's law enforcement function from White House interference. In particular, the Senate should ensure the following conditions are met:

- 1) The White House publicly issues a complete and robust agency contacts policy, as it has said it will.

⁴ See Email from Stefan Passatino, Deputy Counsel to the President for Compliance and Ethics, Office of the White House Counsel to Rachael Leonard, General Counsel, Office of Science and Technology Policy (June 2, 2017) (attached) ("We are actually in the final phase of getting this out.").

⁵ Isaac Arnsdorf, *Priebus Talk with FBI Appears to Break White House Rules*, Politico (Mar. 17, 2017), <http://www.politico.com/story/2017/03/reince-priebus-fbi-discussion-white-house-rules-236192> ("A White House official said staff has received oral guidance about other agencies, and a separate memo is being finalized.").

⁶ Michael Schmidt, et al., *Trump Aides, Seeking Leverage, Investigate Mueller's Investigators*, N.Y. Times (July 20, 2017), <https://www.nytimes.com/2017/07/20/us/politics/donald-trump-robert-mueller-russia-investigation.html>.

⁷ *Excerpts from the Times's Interview with Trump*, N.Y. Times (July 19, 2017), <https://www.nytimes.com/2017/07/19/us/politics/trump-interview-transcript.html>.

- 2) President Trump commits that he and his White House will abide by the White House's agency contacts policy.
- 3) Consistent with the agency contacts policy and importance of protecting specific law enforcement matters from agency interference, the President commits not to fire or otherwise interfere with Special Counsel Mueller's investigation.

To approve the nomination of any FBI Director without clarification from the President himself that he will not interfere with ongoing law enforcement matters, would be to thrust that nominee into an impossible position, undermining the head of the FBI before he steps in the door. As the nominee, Christopher Wray, has testified, receiving reassurance from the Department of Justice senior leadership that Special Counsel Mueller is continuing his investigation made Wray "comfortable that I would be able to do my job . . ."⁸ To confirm a

⁸ *Nomination of Christopher Wray to be Director of the FBI*, Hearing Before the S. Comm. on the Judiciary (July 12, 2017) (statements of Sen. Mazie Hirono and Christopher A. Wray)

WRAY: There was not a discussion of Comey's firing or of the Russia investigation other than, other than, Deputy Attorney General Rosenstein making a comment to the effect that now that Special Counsel Mueller has been appointed, that situation is more straightforward because there's an investigation going and Special Counsel Mueller has that. So that the -- so, from my perspective, the landscape that I was coming into at that point was different than it would have been without Special Counsel Mueller having been appointed.

HIRONO: So, did you come to a conclusion that you would not probably be having one-on-one discussions about the Russian interference with the president, as had occurred with Director Comey? Because you had Mueller there conducting an investigation?

WRAY: Yes.

HIRONO: So that you were assured or reassured that you would be able to do your job.

WRAY: I was very comfortable I would be able to do my job after that meeting, yes.

HIRONO: At the time that you had a meeting with Jeff Sessions and Deputy Director Rosenstein, did you indicate to them that should you get the job that you would very much support the Mueller investigation?

WRAY: I did not discuss the Russia investigation with them. As I said, other than Deputy Attorney General Rosenstein making the comment that that was now in place, which would make it easier for me to do my job, that was the sum total of that.

What I did say to them is I would approach -- much as I've said to this committee, the way I would approach this job is with independence, straight and by the book.

Director, with widespread criminal and national security responsibilities, under such a cloud could have lasting harmful consequences for the FBI, the Justice Department, and the nation.

Through the confirmation process, Congress serves its role as a check on the executive pursuant to the constitution. Nothing is more important in upholding our constitutional system and rule of law than the President not be allowed to place himself above the law. In fulfilling Congress's constitutional role, the Senate should demand these assurances before confirming a new FBI Director.

Thank you for your consideration.

Sincerely,

American Oversight

Citizens for Responsibility and Ethics

Common Cause

Daily Kos

MoveOn.org

Protect Democracy

Public Citizen

Revolving Door Project

UltraViolet

Encl.