

March 11, 2020

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Michael E. Horowitz
Inspector General
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Request for Investigation into Attorney General William Barr's Involvement in a Whistleblower Complaint Alleging President Donald J. Trump Solicited Foreign Interference in the 2020 Presidential Election

Dear Acting Director Ragsdale and Inspector General Horowitz,

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that your offices investigate Attorney General William Barr's involvement in a whistleblower complaint alleging President Donald J. Trump solicited foreign interference in the 2020 presidential election ("Ukraine Pressure Campaign"), and review if Attorney General Barr's failure to recuse resulted in the Department of Justice ("DOJ") mishandling that complaint. An investigation is necessary to determine if Attorney General Barr's failure to recuse not only violated applicable ethics laws and regulations, but also whether his involvement compromised the integrity and independence of DOJ's inquiry into the whistleblower complaint.

This request supplements CREW's October 7, 2019 letter to DOJ Inspector General Michael E. Horowitz in which we raised similar questions about the propriety of Attorney General Barr's participation in matters arising from the whistleblower complaint based on his financial conflict of interest, lack of impartiality, and use of public office for private gain.¹ Since that letter, new evidence has emerged that sheds additional light on Attorney General Barr's knowledge and involvement in the Ukraine Pressure Campaign. Witnesses have come forward with reports that Attorney General Barr was "on the team" of those involved with the Ukraine Pressure Campaign as it was happening,² and that indicate he was personally contacted by former National Security Advisor John Bolton to discuss concerns about President Trump's

¹ Letter from Noah Bookbinder to Inspector General Michael E. Horowitz, Oct. 7, 2019 ("Oct. 7 Letter"), available at <https://go.aws/36lAM5u>.

² Rachel Maddow Interviews Lev Parnas. Transcript: 1/15/20, The Rachel Maddow Show, MSNBC, Jan. 15, 2020 ("Parnas Transcript"), available at <http://www.msnbc.com/transcripts/rachel-maddow-show/2020-01-15>.

personal lawyer, Rudy Giuliani, and the Ukraine Pressure Campaign.³ These developments are further evidence of Attorney General Barr's disqualifying conflict of interest on matters related to the whistleblower complaint.

Information has also emerged that indicates the whistleblower complaint was well founded. In this regard, two senior government officials – an inspector general and the general counsel of a separate agency – deemed the complaint sufficiently credible to merit a DOJ investigation. In addition, the General Accountability Office (“GAO”) issued a decision finding that the Office of Management and Budget (“OMB”) violated federal law by withholding funds appropriated for Ukraine military assistance from obligation.⁴ As well, CREW and others have identified several incidences of criminal activity by President Trump and others involved in the Ukraine Pressure Campaign.⁵ All of this suggests that Attorney General Barr's failure to recuse from the whistleblower complaint may have tainted DOJ's handling of the matter.

Attorney General Barr's oversight of the whistleblower complaint appears to be part of a larger pattern of conduct to place the personal political interests of President Trump above his loyalty to the Constitution, laws, and ethical principles. As CREW highlighted in prior letters to DOJ, Attorney General Barr made public statements indicating he has prejudged the outcome of DOJ investigations into the origins of the Russia investigation.⁶ CREW has also raised questions about Attorney General Barr's impartiality in matters pertaining to Special Counsel Robert S. Mueller's investigation into Russia's interference in the 2016 election and possible obstruction of justice by President Donald J. Trump, in part because of his apparent attempt to skew public opinion in favor of President Trump.⁷ Further indicating a pattern of prejudicial conduct, Attorney General Barr also has “take[n] control of legal matters of personal interest” to President Trump,⁸ which resulted in Attorney General Barr reducing the sentencing recommendation for President Trump's long-time associate, Roger Stone,⁹ and opened a backdoor channel for Mr.

³ Maggie Haberman and Michael S. Schmidt, Trump Tied Ukraine Aid to Inquiries He Sought, Bolton Book Says, *New York Times*, Jan. 28, 2020, available at <https://nyti.ms/38W4S1c>.

⁴ GAO Decision, Office of Management and Budget - Withholding of Ukraine Security Assistance, B-331564, Jan. 16, 2020 (“GAO Decision”), available at <https://d3i6fh83elv35t.cloudfront.net/static/2020/01/703909.pdf>.

⁵ CREW Report on Criminal Abuse of Power: Trump's Five Crimes Connected to Ukraine, available at <https://go.aws/2TfEIQJ>.

⁶ Letter from Noah Bookbinder to Acting Director and Chief Counsel, Office of Professional Responsibility Jeffrey Ragsdale and Inspector General Michael E. Horowitz, Feb. 14, 2020, available at <https://go.aws/37XKbAZ>; Letter from Noah Bookbinder to Assistant Attorney General Lee J. Lofthus, Sept. 17, 2019, available at <https://bit.ly/2lh1KtB>.

⁷ Letter from Noah Bookbinder to Attorney General William P. Barr, Apr. 11, 2019, available at <https://bit.ly/2IN1ZXE>; Letter from Noah Bookbinder to Assistant Attorney General Lee J. Lofthus, May 20, 2019, available at <https://bit.ly/2Mis3LH>.

⁸ Carol E. Lee, Ken Dilanian, and Peter Alexander, Barr takes control of legal matters of interest to Trump, including Stone sentencing, *NBC News*, Feb. 11, 2020, available at <https://nbcnews.to/2tRNVG5>.

⁹ Matt Zapposky, Devlin Barrett, Ann E. Marimow, and Spencer S. Hsu, Prosecutors quit amid escalating Justice Dept. fight over Roger Stone's prison term, *Washington Post*, Feb. 11, 2020, available at <https://wapo.st/37ocNTs>.

Giuliani to send damaging information directly to DOJ about former Vice President Joe Biden.¹⁰ The allegations in this letter should be considered with those previously raised by CREW.

Authority to Investigate Attorney Misconduct

As you know, while the Inspector General is the person in most executive branch agencies responsible for investigating alleged misconduct,¹¹ DOJ's Inspector General lacks independent authority to investigate alleged misconduct involving Attorney General Barr or other DOJ attorneys because of a carve-out provision in the Inspector General Act of 1978.¹² For misconduct allegations against DOJ attorneys, primary responsibility for investigations rests with DOJ's Office of Professional Responsibility ("OPR").¹³ OPR is responsible for receiving, reviewing and investigating "allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice" and "any information concerning conduct by a Department employee that may be in violation of law, regulations or orders, or applicable standards of conduct."¹⁴

To ensure that Attorney General Barr is held to the highest professional standards consistent with what is expected of our nation's principal law enforcement agency,¹⁵ CREW requests that your offices jointly conduct an investigation into Attorney General Barr's conduct consistent with past investigations involving the alleged misconduct of an attorney general.¹⁶

Background

Attorney General Barr's Involvement in the Ukraine Pressure Campaign

As CREW previously explained, Attorney General Barr was implicated in the Ukraine Pressure Campaign in an August 12, 2019 whistleblower complaint filed with Intelligence Community Inspector General ("ICIG") Michael Atkinson, which alleged that President Trump was "using the power of his office to solicit interference from a foreign country in the 2020 U.S. election" by "pressuring a foreign country to investigate one of the President's main domestic

¹⁰ Matt Zapotosky and Devlin Barrett, Barr acknowledges Justice Dept. has created 'intake process' to vet Giuliani's information on Bidens, *Washington Post*, Feb. 10, 2020, available at <https://wapo.st/2UMGvik>.

¹¹ Walter M. Shaub, Jr., OGE and the Inspector General Community, July 17, 2015, Office of Government Ethics website, available at <https://www.oge.gov/web/oge.nsf/Resources/OGE+and+the+Inspector+General+Community>.

¹² Inspector General Act of 1978, Pub. L. 95-452, 8E, Oct. 12, 1978, 92 Stat. 1101 ("In carrying out the duties and responsibilities specified in the Act, the Inspector General of the Department of Justice . . . shall refer to the Counsel, Office of Professional Responsibility of the Department of Justice, allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice. . . .").

¹³ *Id.*; OPR website, "About OPR" page, available at <https://www.justice.gov/opr/about-opr>.

¹⁴ *Id.*; 28 C.F.R. § 0.39a.

¹⁵ OPR website.

¹⁶ See DOJ Office of the Inspector General and DOJ Office of Professional Responsibility, An Investigation into the Removal of Nine U.S. Attorneys in 2006, Sept. 2008, available at <https://oig.justice.gov/special/s0809a/final.pdf>.

political rivals.”¹⁷ The complaint implicated Attorney General Barr in a July 25, 2019 telephone call between President Trump and Ukrainian President Volodymyr Zelensky in which President Trump repeatedly called on President Zelensky to speak with Attorney General Barr and President Trump’s personal attorney Mr. Giuliani about pursuing investigations into issues related to the 2016 U.S. Presidential election and into Vice President Biden and his son’s position with Burisma, a natural gas company in Ukraine.¹⁸ The whistleblower further noted that the phone call took place in the context of a national security policy change made by President Trump that suspended U.S. aid to Ukraine earlier in July.¹⁹ After reviewing the complaint, Inspector General Atkinson deemed it credible.²⁰

The allegations in the whistleblower complaint were corroborated by a five-page memorandum (“White House Memorandum”) released by the White House that summarized the July 25 telephone conversation between President Trump and President Zelensky.²¹ The White House Memorandum corroborates the whistleblower allegations that President Trump asked President Zelensky to investigate two matters, one involving the 2016 election and the other involving Vice President Biden, and also makes clear that President Trump repeatedly asked President Zelensky to speak with Attorney General Barr and Mr. Giuliani about them.²²

Nevertheless, DOJ made two questionable decisions to close down possible investigations into the Ukraine Pressure Campaign based on the whistleblower’s allegations. First, DOJ’s Criminal Division declined to investigate the matter based on a highly limited review of relevant evidence and a narrow interpretation of campaign finance law.²³ With these restraints in place, the Criminal Division apparently failed to consider that the investigations being pursued were prompted by President Trump’s personal attorney in furtherance of his client’s personal, political interests, and that other possible criminal law provisions might be implicated. Second, DOJ’s Office of Legal Counsel (“OLC”) issued a legal opinion concluding that the alleged conduct did not trigger a reporting requirement to congressional intelligence committees.²⁴ If it had prompted disclosure to Congress, the whistleblower complaint would have likely prompted an immediate congressional investigation into the underlying allegations.

¹⁷ Letter to Senator Richard Burr and Rep. Adam Schiff from an unnamed whistleblower, Aug. 12, 2019 (“Whistleblower Complaint”), available at <https://bit.ly/2lXyus1>; Letter from ICIG Michael Atkinson to Acting DNI Joseph Maguire, Aug. 26, 2019 (“Atkinson Letter”), available at <https://bit.ly/2nWqjwW>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Atkinson Letter.

²¹ Memorandum of Telephone Conversation, Telephone conversation with President Zelensky of Ukraine, Sept. 24, 2019 (“White House Memorandum”), available at <https://bit.ly/2n4ZFBg>.

²² *Id.*

²³ Devlin Barrett, Matt Zapposky, Carol D. Leonnig, and Shane Harris, Trump offered Ukrainian president Justice Dept. help in an investigation of Biden, memo shows, *Washington Post*, Sept. 26, 2019 (DOJ reviewed only the “official record of the call” and concluded that under campaign finance law, “help with a government investigation could not be quantified as ‘a thing of value’”), available at <https://wapo.st/2mAVey7>.

²⁴ Memorandum Opinion for the General Counsel of the Director of National Intelligence, “Urgent Concern” Determination by the Inspector General of the Intelligence Community, Sept. 24, 2019, available at <https://bit.ly/2mmm1OI>.

DOJ made these decisions even after it received a second criminal referral from the Central Intelligence Agency's General Counsel, Courtney Simmons Elwood. Ms. Elwood's criminal referral was based on a separate accusation she received anonymously from the whistleblower.²⁵ On August 14, 2019, Ms. Elwood reportedly participated in a conference call with John Eisenberg, the senior national security lawyer at the White House, and John Demers, Assistant Attorney General for National Security.²⁶ Ms. Elwood and Mr. Eisenberg reportedly informed Mr. Demers that the "allegations merited examination" by the DOJ.²⁷ Although there is no indication of a written referral, Ms. Elwood reportedly viewed the communication as a criminal referral to DOJ.²⁸ After reading the transcript of the call at the White House the next day,²⁹ Mr. Demers then reportedly alerted Deputy Attorney General Jeffrey A. Rosen and Associate Attorney General for the Criminal Division Brian A. Benczkowski about the allegations.³⁰ Attorney General Barr reportedly "was briefed" on the matter around this time, but "did not oversee the discussions about how to proceed."³¹

New Information Further Implicates Attorney General Barr in the Ukraine Pressure Campaign

Since CREW filed its October 7 letter, two major witnesses – a key associate of Mr. Giuliani, Lev Parnas, and former National Security Advisor John Bolton – have offered relevant information that provides new details about Attorney General Barr's knowledge and involvement in the Ukraine Pressure Campaign.

In a January 2020 television interview, Mr. Parnas asserted that Attorney General Barr was "on the team" of people involved with Mr. Giuliani's efforts to obtain a public announcement from Ukraine about its investigation into Vice President Biden while they were occurring.³² Asked if he knew whether Mr. Giuliani had contact with or had spoken to Attorney General Barr specifically about Ukraine, Mr. Parnas responded "absolutely."³³ Mr. Parnas also said he knew that Attorney General Barr spoke with attorneys Victoria Toensing and Joe diGenova about it.³⁴ While Mr. Parnas acknowledged he did not speak personally with Attorney General Barr, he said that he witnessed "lots of conversations" that Mr. Giuliani and Mr.

²⁵ Ken Dilanian and Julia Ainsley, *CIA's top lawyer made 'criminal referral' on complaint about Trump Ukraine call*, *NBC News*, Oct. 4, 2019, available at <https://nbcnews.to/2URGuKa>; Julian E. Barnes, Michael S. Schmidt, Adam Goldman, and Katie Benner, *White House Knew of Whistleblower's Allegations Soon After Trump's Call With Ukraine Leader*, *New York Times*, Sept. 26, 2019, available at <https://nyti.ms/38tZ92w>.

²⁶ Dilanian and Ainsley, *NBC News*, Oct. 4, 2019.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Barnes, Schmidt, Goldman, and Benner, *New York Times*, Sept. 26, 2019.

³⁰ *Id.*

³¹ *Id.*

³² Parnas Transcript.

³³ *Id.*

³⁴ *Id.*

diGenova had with Attorney General Barr.³⁵ According to Mr. Parnas, “they were all best friends. . . . Attorney General Barr was basically on the team.”³⁶

Mr. Parnas also suggested that the Ukraine Pressure Campaign was linked to Attorney General Barr through U.S. Attorney John Durham’s investigation into the origins of the FBI’s Russia investigation. According to Mr. Parnas:

We knew about the Durham investigation, and that was going to be part [of it] – I mean, Attorney General Barr wanted to get to the bottom of the Biden stuff and everything. I think he might have got upset that Trump talked – the president ousted [sic] him, maybe, he didn’t want to be in the public eye that he was doing it, but it was known internally that [Barr] was investigating the investigators.³⁷

In addition to Mr. Parnas’ disclosures, revelations from a yet-to-be-released book by Mr. Bolton reportedly includes new details that offers insight into relevant discussions Mr. Bolton had with Attorney General Barr and others about aspects of the Ukraine Pressure Campaign.³⁸ According to the *New York Times*, in the book Mr. Bolton discloses that after President Trump’s July 25 phone call with President Zelensky, Mr. Bolton “raised” with Attorney General Barr “his concerns about Mr. Giuliani, who was pursuing a shadow Ukraine policy, encouraged by the president, and told Mr. Barr that the president had mentioned him on the call.”³⁹ This conversation further implicates Attorney General Barr in the Ukraine Pressure Campaign.

Mr. Parnas’ allegation that Attorney General Barr was “on the team” further appears to comport with President Trump’s own take on the situation and helps explain why President Trump repeatedly asked President Zelensky in their July 25 call to speak with both Attorney

³⁵ *Id.*

³⁶ *Id.* Mr. Parnas also suggested another connection between the Ukraine Pressure Campaign and DOJ involving the same individuals, providing specific details about working with Mr. Giuliani, Mr. diGenova, and Ms. Toensing to bring an end to DOJ’s extradition case against Ukrainian oligarch Dmytro Firtash for bribery and money laundering. Parnas Transcript. Mr. Parnas explained that he helped broker a deal with Mr. Firtash, telling him “that he’s being prosecuted for no reason” and “it could get taken care of.” *Id.* In return for help getting DOJ to drop its extradition case, Mr. Parnas said, Mr. Firtash offered up information that would be damaging to the Mueller Investigation and to facilitate the announcement by the Ukrainian government of an investigation into Vice President Biden. *Id.* Considering the evidence of Attorney General Barr’s involvement in other aspects of the Ukraine Pressure Campaign, any investigation should examine whether he was involved in the extradition case against Mr. Firtash and his knowledge of the alleged offer.

³⁷ Parnas Transcript. See Adam Goldman, Charlie Savage, and Michael S. Schmidt, [Barr Assigns U.S. Attorney in Connecticut to Review Origins of Russia Inquiry](https://nyti.ms/2LIIMtf), *New York Times*, May 13, 2019, available at <https://nyti.ms/2LIIMtf>; Matt Zapposky and Felicia Sonmez, [Barr taps U.S. attorney in Connecticut to investigate the origins of Russia probe](https://wapo.st/2xGIPfj), *Washington Post*, May 13, 2019, available at <https://wapo.st/2xGIPfj>; Julian E. Barnes, Katie Benner, Adam Goldman, and Michael S. Schmidt, [Justice Dept. Seeks to Question C.I.A. in Its Own Russia Investigation](https://nyti.ms/2IbDWzK), *New York Times*, June 12, 2019, available at <https://nyti.ms/2IbDWzK>.

³⁸ Haberman and Schmidt, *New York Times*, Jan. 28, 2020.

³⁹ *Id.*

General Barr and Mr. Giuliani about pursuing investigations into Vice President Biden and Burisma.⁴⁰

New Evidence Corroborates the Whistleblower Complaint and Raises Questions About DOJ's Handling of the Matter

New evidence, some of it revealed through President Trump's impeachment proceedings, also corroborates the allegations in the whistleblower complaint. This information raises questions about DOJ's handling of the matter, including whether it was tainted by Attorney General Barr's possible involvement in it.

Much of what Mr. Parnas recently disclosed corroborates the allegations in the whistleblower complaint that President Trump used his power to solicit interference from as foreign country in the 2020 election by pressuring Ukraine to investigate Vice President Biden. According to Mr. Parnas, the Ukraine Pressure Campaign "was never about corruption," but "strictly about Burisma, which included Hunter Biden and Joe Biden" and that President Trump "knew exactly what was going on."⁴¹ By indicating that he would not have engaged in any communications with Ukrainians "without the consent" of Mr. Giuliani and President Trump, Mr. Parnas conveyed that his own role in the Ukraine Pressure Campaign was sanctioned by Mr. Giuliani and President Trump. Moreover, Mr. Parnas said, the Ukrainians he met with would never have spoken to him without having been "told to meet with me."⁴² Mr. Parnas "was on the ground" doing President Trump's and Mr. Giuliani's "work."⁴³ Mr. Parnas explained that this was all part of a coordinated effort. It "was all connected" with the agenda "to make sure the Ukrainians announced the Biden investigation."⁴⁴

Mr. Bolton's book similarly corroborates allegations in the whistleblower complaint. According to the *New York Times*, the book discloses an August 2019 conversation in which President Trump told Mr. Bolton that he wanted to continue the freeze on military aid to Ukraine until they helped investigate the Bidens.⁴⁵ Mr. Bolton also apparently reveals that Secretary of State Mike Pompeo "acknowledged privately" that there was "no basis" to Mr. Giuliani's claims that the U.S. ambassador to Ukraine was corrupt and that he "believed Mr. Giuliani may have been acting on behalf of other clients" – an apparent reference to the team's efforts to get the ambassador removed based on her anti-corruption agenda.⁴⁶

Further evidence supporting the whistleblower's allegations about the Ukraine Pressure Campaign came to light in the impeachment proceedings. On September 9, the House Permanent Select Committee on Intelligence, the Committee on Oversight and Reform, and the Committee

⁴⁰ White House Memorandum.

⁴¹ Parnas Transcript.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Haberman and Schmidt, *New York Times*, Jan. 28, 2020.

⁴⁶ *Id.*

on Foreign Affairs announced an investigation into a “scheme” by President Trump and his personal attorney, Mr. Giuliani, “to improperly pressure the Ukrainian government to assist the President’s bid for reelection.”⁴⁷ Lending significant credibility to the whistleblower’s allegations, the impeachment inquiry produced testimony from several White House staff members who personally listened in on the July 25 telephone call and who confirmed through testimony that President Trump solicited foreign interference from President Zelensky for his personal political benefit.⁴⁸

The inquiry also generated credible evidence that President Trump withheld \$391 million in U.S. military aid to Ukraine beginning in early July as part of an “effort to extract from a foreign nation the personal political benefits sought by the President,”⁴⁹ and that a “coveted White House meeting” would only happen after President Zelensky committed to publicly announcing two political investigations being demanded by President Trump and Mr. Giuliani.⁵⁰ The inquiry further established evidence that the July 25 call was part of a “months-long campaign driven by President Trump in which senior U.S. officials, including the Vice President, the Secretary of State, the Acting Chief of Staff, the Secretary of Energy, and others were either knowledgeable of or active participants in an effort to extract from a foreign nation the personal political benefits sought by the President.”⁵¹

Raising additional questions about the legality of the conduct of the Trump administration, GAO recently determined that OMB violated the Impoundment Control Act (“ICA”) when it withheld from obligation the \$214 million appropriated to the Department of Defense for security assistance to Ukraine.⁵² Concluding that OMB “withheld the funds from obligation for an unauthorized reason in violation of the ICA,” GAO found that “the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law,” and that OMB’s claims that the withholding was simply “a programmatic delay . . . [has] no basis in law.”⁵³ GAO further questioned whether actions taken by OMB to delay the obligation of foreign military financing for Ukraine that had been appropriated to the State Department similarly violated the ICA, and said it will continue to pursue the matter.⁵⁴

⁴⁷ Report of the House Permanent Select Committee on Intelligence, Pursuant to H. Res. 660 in Consultation with the House Committee on Oversight and Reform and the House Committee on Foreign Affairs, The Trump-Ukraine Impeachment Inquiry Report, Dec. 2019 (“Impeachment Report”), at 25, available at https://intelligence.house.gov/uploadedfiles/20191203_-_full_report_hpsci_impeachment_inquiry_-_20191203.pdf.

⁴⁸ *Id.* at 105, 107.

⁴⁹ *Id.* at 9, 18.

⁵⁰ *Id.* at 18, 34.

⁵¹ *Id.* at 9.

⁵² GAO Decision; 2 U.S.C. § 684.

⁵³ GAO Decision.

⁵⁴ *Id.* State and OMB have thus far not produced information requested by GAO.

Legal Analysis

As CREW explained in its October 7 letter, Attorney General Barr's possible involvement in DOJ's handling of a whistleblower report raises numerous ethics issues.⁵⁵ These concerns include a disqualifying financial interest under 18 U.S.C. § 208; a lack of impartiality in overseeing related DOJ matters; and an apparent misuse of public office for President Trump's personal political benefit in violation of the Standards of Ethical Conduct for Employees of the Executive Branch ("Standards of Conduct").⁵⁶

The criminal conflict of interest statute, 18 U.S.C. § 208, prohibits an executive branch employee from participating personally and substantially in any particular government matter that will have a direct and predictable effect on his known financial interests. Federal employees are obligated "to place loyalty to the Constitution, laws and ethical principles above private gain."⁵⁷ Because "public service is a public trust," federal employees' decisions and actions must be made in the "best interests of the American people."⁵⁸ For this reason, the government-wide Standards of Conduct require all executive branch employees to act impartially and to avoid any actions creating the appearance that they are violating the applicable ethical standards.⁵⁹ In addition to the impartiality regulation, DOJ regulations prohibit a DOJ employee, without written authorization, from participating in a criminal investigation or prosecution if he has a personal or political relationship with any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution, or any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.⁶⁰

Attorney General Barr was personally named in the whistleblower complaint and the White House Memorandum. Accordingly, he was a potential subject of any investigation and clearly barred from participating in related DOJ matters without seeking authorization from agency ethics officials. There is no evidence that he received an authorization, and it would have been inappropriate for agency ethics officials to grant one because his participation would have tainted the credibility of DOJ's determinations regarding the whistleblower complaint. The recent disclosures by Mr. Parnas and Mr. Bolton about Attorney General Barr's knowledge and involvement in the Ukraine Pressure Campaign further bolster the necessity for his recusal based on lack of impartiality and financial conflicts of interest.⁶¹

⁵⁵ Oct. 7 Letter.

⁵⁶ *Id.*

⁵⁷ 5 C.F.R. § 2635.101(a), (b)(1).

⁵⁸ Justice Manual § 1-4.010.

⁵⁹ 5 C.F.R. §§ 2635.101(b)(8), (14).

⁶⁰ 28 C.F.R. § 45.2.

⁶¹ As CREW previously explained in its October 7 letter, consideration of the whistleblower complaint was a particular matter that directly and predictably affected Attorney General Barr's financial interests, and he appears to have participated in the matter. Oct. 7 Letter (citing 18 U.S.C. § 208). As a result of being named as a possible subject in the whistleblower complaint, Attorney General Barr had a disqualifying financial interest that this particular matter affected directly and predictably. *Id.* Had DOJ's Criminal Division opened an investigation, he would have needed to answer questions about his role in the underlying matter. *Id.* The new allegations that

Any involvement by Attorney General Barr in DOJ matters related to the Ukraine Pressure Campaign is cause for serious concern. While the extent of Attorney General Barr's involvement in DOJ's handling of the whistleblower complaint is not fully known, DOJ confirmed that Attorney General Barr did not formally recuse from these allegations even as it attempted to minimize his involvement.⁶² Attorney General Barr's failure to formally recuse may have unduly influenced decisions taken by DOJ, including OLC's opinion to help prevent the whistleblower complaint from being disclosed to Congress and the Criminal Division's decision not to investigate whistleblower allegations that were deemed credible by two separate government officials – ICIG Atkinson and CIA General Counsel Elwood.

New information about the Ukraine Pressure Campaign establishes the credibility of the whistleblower complaint, raising further doubts about the integrity of DOJ's decision to close the matter without investigation. Moreover, as CREW and others have explained, President Trump and others likely committed criminal offenses in carrying out the scheme, including: bribery (18 U.S.C. § 201); soliciting foreign campaign contributions (52 U.S.C. §§ 30109, 30121); coercion of political activity (18 U.S.C. § 610); misappropriation of federal funds (18 U.S.C. § 641); obstruction of Congress (18 U.S.C. §§ 1505, 1512(b), (c)); and deprivation of federal benefit for political contribution (18 U.S.C. § 601).⁶³

Attorney General Barr's apparent failure to recuse has tainted the Criminal Division's decision-making process and undermined its investigation and enforcement process. Accordingly, any role Attorney General Barr played in the Criminal Division's determination not to launch an investigation gave rise to at the very least substantial appearance concerns that he improperly used his public office and the resources of the DOJ to protect President Trump's personal political interests in violation of the Standards of Conduct.

Under circumstances such as these, where there is substantial evidence of criminal activity related to a criminal referral and significant conflicts of interest on the part of the Attorney General, the most appropriate course of action was for Attorney General Barr to recuse and for the acting Attorney General to decide whether the case should be reassigned to a U.S. Attorney's Office or if it would be in the public interest to appoint a Special Counsel.⁶⁴

Attorney General Barr was "on the team" and discussed concerns about Mr. Giuliani with Mr. Bolton further implicate him and raise additional questions he would have needed to answer. The decision not to investigate allowed him to avoid incurring legal fees during the investigation, as well as the risk of civil or criminal liability as a result of the investigation. *Id.*

⁶² Josh Gerstein, [Barr is thrust back in harsh glare as Ukraine scandal grows](https://politi.co/2iOi2dB), *Politico*, Sept. 25, 2019, available at <https://politi.co/2iOi2dB>; Evan Perez and Katelyn Polantz, [Trump's attorney general has "minimal involvement" as Justice department whistleblower complaint referral](https://cnn.it/2pmECva), *CNN*, Sept. 25, 2019, available at <https://cnn.it/2pmECva>.

⁶³ See CREW Report on Criminal Abuse of Power: Trump's Five Crimes Connected to Ukraine; Andrew Weissmann, Sam Berger, Randall Eliason, Barbara McQuade, Paul Seamus Ryan, Susan Simpson, Gary Stein, and Michael Stern, [Federal Criminal Offenses and the Impeachment of Donald J. Trump](https://bit.ly/3cdSDiE), available at <https://bit.ly/3cdSDiE>; Max Bergmann and Sam Berger, [Trump Committed Crimes in His Ukraine Shakedown](https://ampr.gs/3a08kIy), available at <https://ampr.gs/3a08kIy>; James D. Harmon Jr., [I Voted for Trump, and I Believe He May be Guilty of Bribery](https://nyti.ms/3aaktui); *New York Times*, Feb. 5, 2020, available at <https://nyti.ms/3aaktui>; Letter from Noah Bookbinder to U.S. Attorney Geoffrey S. Berman, Feb. 20, 2020, available at <https://go.aws/2VqVYof>.

⁶⁴ 28 C.F.R. §§ 600.1-.2.

Conclusion

Attorney General Barr continues to place his loyalty to President Trump's personal political interests above his responsibilities to the American people to uphold the Constitution, the law, and ethical principles. With new reports that Attorney General Barr was "on the team" of those involved with the Ukraine Pressure Campaign and had been consulted by Mr. Bolton about Mr. Giuliani's conduct and the Ukraine Pressure Campaign, it is imperative that your offices fully investigate Attorney General Barr's participation in the whistleblower complaint and related DOJ matters to determine whether he violated applicable ethics laws and regulations. Your offices should further review whether Attorney General Barr's conduct compromised DOJ's decision-making process and undermined the integrity and independence expected of our nation's principal law enforcement agency.

Sincerely,



Noah Bookbinder
Executive Director



Virginia Canter
Chief Ethics Counsel