

ALLIANCE FOR JUSTICE REPORT

# William Barr: Eroding Justice

*Report on the abuses of power at the Justice  
Department and attempts to override the  
rule of law in America*



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# Executive Summary

Alliance for Justice's 2020 report, *William Barr: Eroding Justice*, catalogues numerous ways in which Attorney General William Barr has undermined the independence of the Department of Justice ("DOJ" or "the Department") since his confirmation and eroded critical constitutional rights and legal protections.

Attorneys general are political actors who require a president's trust and confidence in order to effectively perform their duties. However, as the nation's chief law enforcement officer overseeing the world's "[largest law office](#)," the attorney general must ensure that our nation's laws are administered fully and fairly. By this standard, Barr's tenure as President Donald Trump's attorney general has been an abject failure. Barr, who in public remarks has made clear he is a hyper-partisan, has used the power of his office to act as Trump's personal attorney; to reward Trump's political donors, supporters, and friends; to punish Trump's perceived enemies; and to subvert Justice Department enforcement of critical laws to advance Trump's political agenda.

Part I of this report highlights the significant ways in which Barr has degraded the independence of the Justice Department and the rule of law to serve and protect Donald Trump's illegality and corruption.

Many of the issues highlighted have, deservedly, received widespread attention and condemnation. Barr's false and misleading summary of the conclusions of the Mueller Report; his decision to launch a criminal investigation into the probe of Russian interference with the 2016 election; his special intake procedures for information on Trump's political opponent from Rudy Giuliani; his decision to dismiss charges against Michael Flynn; his decision to rescind the sentencing recommendation for Trump's friend Roger Stone as being unfairly harsh; and his efforts to remove the chief prosecutor for the Southern District of New York, the official in charge of several investigations into Trump's inner circle, are just a few examples of the actions that have dominated headlines this year. However, many of Barr's transgressions have not received the attention they deserve.

Part II of this report focuses on another key part of Barr's tenure: the policy and enforcement decisions his Department has made to turn back the clock on critical rights and legal protections. Barr has refused to defend acts of Congress, including, most notably, the Affordable Care Act (ACA), risking access to quality health care for millions. He has attacked efforts by state and local officials to

protect the health of the public during the pandemic. He has dramatically scaled back civil rights enforcement at the Justice Department, including voting rights. He derailed efforts to ensure constitutional policing and led an assault on Americans fighting for racial justice following the murder of George Floyd; and he has aggressively fought to curtail LGBTQ rights. He has attacked reproductive freedom; exploited DOJ's position as the superintendent of our nation's immigration courts to advance Trump's anti-immigrant agenda; and aided Trump's assault on clean air and clean water. Moreover, Barr has been a central figure in eroding protections for consumers.

This report is an effort to compile illustrative egregious actions Barr has taken. It provides a damning portrait of an attorney general whose lasting legacy will be the degradation of the rule of law and irreparable harm to the American justice system.

Thousands of former DOJ officials and prosecutors and scores of others have called for William Barr's resignation in recent months. Proper oversight and accountability are essential. By compiling many of Barr's untoward actions, AFJ hopes this report will aid all those who fight daily for the cause of justice and the rule of law so that dignity can be restored to the Justice Department.

# Introduction

When President Trump nominated William Barr to serve as the 85th Attorney General, Alliance for Justice (AFJ) strongly opposed his confirmation. As we wrote [then](#): “[t]he Attorney General is critical for protecting the Constitution and rule of law. Yet, there is nothing in the record suggesting Barr will be an independent check on any illegality or untoward conduct by the President.” We [noted](#) that “Attorney General Barr will be the most influential figure in enforcing some of our nation’s civil rights laws,” yet after reviewing his record concluded that he would “undermine equal justice under the law,” including the rights of persons of color, women, LGBTQ Americans, and immigrants.

Over a year later, Barr has only further reinforced our deepest concerns about his fitness for the sacred office that he holds.

In public remarks, Barr has consistently made clear that he is a hyper-partisan rather than a neutral law enforcement officer who believes in the impartial administration of justice. For example, in a speech at Notre Dame, Barr [vowed](#) to place the Department of Justice “at the forefront” of efforts to resist “forces of secularization.” He said that “Judeo-Christian values . . . have made this country great” and that those who do not practice these religions are “an inversion of Christian morality.” At the 2019 Federalist Society’s National Lawyers Convention, Barr [referred](#) to a “progressive holy war.” He also bemoaned that those who disagree with Trump’s presidency have been “engaged in the systematic shredding of norms and the undermining of the rule of law” while conservatives “tend to have more scruple over their political tactics.”

It is clear from Barr’s statements and actions that he does not see himself as an attorney general for *all* Americans. Rather, he views himself in a “holy war” against the “forces of secularization” and those who oppose Donald Trump.

Indeed, Attorney General Barr has acted more like Trump’s personal defense attorney than the attorney general of the United States. He has devoted the full resources of the Justice Department to shielding the president from legal exposure, brazenly intervened in criminal cases involving Trump’s allies, and weaponized DOJ against Trump’s foes. He has espoused and acted upon extreme ideas of unchecked presidential power and led efforts to gut Congress’s oversight authority. He has failed to defend the Department’s career professionals, judges, jurors and others against Trump’s dangerous personal attacks. He has not defended acts of Congress, such as the Affordable Care Act, as his role as Attorney General requires. He has fought efforts by state and

local officials to protect the health and safety of the American people during the pandemic. And he has eroded civil rights, including leading attacks against thousands of people striving for racial justice following the murder of George Floyd.

Attorney General Barr's actions have drawn repeated and widespread bipartisan rebuke. Twice in recent months, thousands of former Justice Department officials going back to Dwight Eisenhower's administration have called for Barr to resign. Donald Ayer, former deputy attorney general under George H.W. Bush, demanded Barr's resignation, [asserting](#) that Barr "is working to destroy the integrity and independence of the Justice Department, in order to make Donald Trump a president who can operate above the law." Republican-appointed judges have questioned Barr's credibility and repudiated him for his Department's defiance of court orders.

The fact is the Department of Justice is not just any government agency. The Department is tasked with enforcing the laws and administration of justice in the United States. The Attorney General oversees the Federal Bureau of Investigation (FBI), Office of Legal Counsel (OLC), Solicitor General, all United States Attorneys' Offices, and the Civil Rights Division, among other offices, all of which are critical to upholding the rule of law in the United States. The Department's prosecutors have the power to bring the full force of the federal government down on any one individual. They can ruin a person's reputation, ask a court to take away their liberty, and, in some cases, even take their life. The Department's lawyers have the authority to interpret the Constitution and acts of Congress and to represent the United States in litigation. The Attorney General can choose not to defend acts of Congress. The Department's attorneys and agents can decide to not enforce — or to underenforce — laws, and, in the process, render critical rights and statutes meaningless. This enormous and vast power can be dangerous when it falls into the wrong hands.

Of course, the president and political appointees can legitimately set policies and priorities for the Department and its prosecutors, agents, and employees. But, if the rule of law means anything — that no person, not even the president, is above the law — the job of the attorney general must not be to serve as the president's personal lawyer. The attorney general must not use law enforcement to reward friends and political supporters and punish enemies and political opponents; "Equal Justice Under Law" does not mean our government ensures that favored guilty individuals remain above the law and disfavored innocents face the full force of federal law enforcement.

As Justice George Sutherland [wrote](#) in the 1935 case *Berger v. United States*, "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all." As then-Attorney General Robert Jackson wrote in 1940, "The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous . . . While the prosecutor at his best is one of the most beneficent forces in

our society, when he acts from malice or other base motives, he is one of the worst.” And as [noted](#) in a speech by Attorney General Edward Levi in 1975, after Richard Nixon corrupted the Justice Department during Watergate, it is “the Department’s duty to make clear that it is not to be used — and will not use itself — for partisan political purposes.”

Perhaps the best articulation of how William Barr’s tenure should be evaluated comes from William Barr himself. As he [said](#) when nominated to be attorney general for the first time in 1991:

[The Attorney General] holds in trust the fair and impartial administration of justice. It is the attorney general’s responsibility to enforce the law evenhandedly and with integrity. The attorney general must ensure that administration of justice, the enforcement of the law is above and away from politics. Nothing could be more destructive of our system of government, the rule of law or the Department of Justice as an institution than any toleration of political interference with the enforcement of the law.

Unfortunately, as detailed in this report, William Barr has utterly failed his own test. He has discarded the notion of an independent Department of Justice and failed to ensure the impartial administration of justice.

Part I:

# Assault on the Rule of Law and DOJ Independence

## Barr has Undermined the Independence of the Justice Department in Service of Donald Trump's Unchecked Corruption

### MUELLER REPORT AND RUSSIAN INTERFERENCE IN THE 2016 ELECTION

#### Barr Misled the Public Regarding the Findings of the Mueller Report

Just months before President Trump nominated Barr as Attorney General, Barr wrote a 19-page [memo](#) expressing deep skepticism about Robert Mueller's investigation into Russian interference in the 2016 presidential election. Nearly two years later, Mueller completed and [sent](#) his own report to then-confirmed Attorney General Barr. Even though Mueller's team included executive [summaries](#) devoid of any classified information, and the report was designed to be released to the public, Barr withheld the report. Instead he held a press conference and released his own [summary](#), claiming it contained the report's "principal conclusions." His summary was wildly misleading and echoed Trump's narrative of "no collusion, no obstruction." Barr even took it upon himself to exonerate Trump of obstructing justice, despite Mueller's explicit [statement](#) that, "[i]f we had had confidence that the president clearly did not commit a crime, we would have said so." Barr's summary was devised to deceive the American people. Barr continued to withhold the actual Mueller report for four weeks, during which time Congress, the media, and the public were forced to rely only upon his rosy summary of the report's findings.

Mueller wrote a [letter](#) to the Department, stating that Barr "did not fully capture the context, nature, and substance" of his team's findings. As a result, Mueller stated, "[t]here is now public confusion about critical aspects of the results of our investigation." After a redacted version of Mueller's full [report](#) was eventually released, it became clear that Barr had grossly mischaracterized Mueller's conclusions, which, among other things, contained multiple examples of efforts to obstruct justice. Legal analysts, including [many Republicans](#), commented that Barr did not accurately portray the findings of the report.

On March 5, 2020, George W. Bush-appointed judge Reggie Walton [issued](#) a scathing opinion criticizing Barr's handling of Mueller's report. Walton wrote

that Barr's attempt to spin the conclusions of the report while withholding it from the public raised serious doubts about whether Barr could be trusted. Barr's summary was "distorted" and "misleading," according to Judge Walton, and "cause[d] the Court to seriously question whether Attorney General Barr made a calculated attempt to influence public discourse about the Mueller Report in favor of President Trump."

This was a remarkable rebuke from a Republican-appointed judge. However, the damage had already been done. Trump was able to spin the media narrative for a month while Barr withheld the contents of the report from the public. Barr dutifully gave Trump the cover he needed to spread his false [narrative](#) of "total exoneration."

### **Barr Refused to Turn Over to Congress Robert Mueller's Unredacted Report and the Underlying Evidence**

In May 2019, the Justice Department refused to turn over Robert Mueller's unredacted report and the underlying evidence on Russian interference in the 2016 election. In response, the House Judiciary Committee [voted](#) to hold Barr in contempt of Congress.

On March 10, 2020, the D.C. Circuit [ruled](#) that the House Judiciary Committee was entitled to see secret grand jury testimony gathered in Mueller's investigation. "The committee has established a particularized need for the redacted grand jury materials it seeks." On May 20, the Supreme Court [stayed](#) the decision pending Justice Department appeal of the decision.

As House Judiciary Committee Chairman Nadler [wrote](#) in response, "The Justice Department has consistently provided grand jury material to the Committee in past investigations involving Presidential misconduct — but Attorney General Barr chose to break from that long-standing practice, and DOJ radically altered its position in an attempt to withhold this information."

On June 19, 2020, the Department of Justice removed a number of redactions. Newly revealed findings showed that Roger Stone [told](#) Trump in advance WikiLeaks would release Clinton campaign emails and suggested that Mueller believed Trump [was lying](#) about communications with Roger Stone about WikiLeaks.

### **Barr Has Attacked His Own Department, Including its Inspector General, to Advance Trump's Unsubstantiated Conspiracy Theories**

Trump has repeatedly, and falsely, [insisted](#) that the FBI's investigation of his campaign's ties to Russia were improper. Trump has regularly taken aim at the FBI, an arm of the Justice Department, calling officials "[scum](#)," "[dirty cops](#)", and

“[thugs](#).” At a purported health care briefing in the midst of the pandemic, he praised convicted criminals Paul Manafort, Michael Flynn, and Roger Stone, and [said](#) that Justice Department lawyers and FBI agents from the Mueller investigation were “crooked . . . dangerous . . . human scum.” He has also made groundless accusations that Department employees were an arm of the “Deep State” that is leading an insurgency against him. When FBI Director Christopher Wray defended the finding of the Justice Department’s Inspector General’s report on the 2016 counterintelligence investigation into the Trump campaign’s ties to Russia, Trump [called](#) Wray’s statements a “disgrace” and suggested it was part of an “attempted overthrow” of his administration.

Not only has Barr failed to defend his agency and its public servants, but he has joined Trump in the attacks on Department employees.

When the inspector general (IG) released his [report](#) on the FBI’s investigation into Russian interference in the 2016 election, finding that the investigation was properly predicated and that there was no widespread misconduct at the FBI, Barr [disavowed](#) the report’s findings, and stated that the FBI acted in “bad faith” when launching the investigation. Barr claimed that the 2016 investigation was “based on a completely bogus narrative that was largely fanned and hyped by an irresponsible press.” Barr even claimed that the investigation involved “spying” on the Trump campaign, despite the fact that the inspector general concluded that this was not accurate. In fact, Barr publicly misrepresented its conclusions, falsely [stating](#) that the report proved that the FBI launched an “intrusive” investigation into the Trump campaign based on “the thinnest of suspicions.”

In response to an April 2020 question about the Mueller investigation, Barr [told](#) Fox News host Laura Ingraham, “I think the president has every right to be frustrated, because I think what happened to him was one of the greatest travesties in American history. Without any basis they started this investigation of his campaign, and even more concerning, actually is what happened after the campaign, a whole pattern of events while he was president... to sabotage the presidency, and I think that — or at least have the effect of sabotaging the presidency.”

On May 19, 2020, days after President Trump suggested that President Obama and Vice President Biden should be prosecuted for supposed crimes related to the Russia probe — what Trump called “ObamaGate” — Barr [elaborated](#): “What happened to the President in the 2016 election and throughout the first two years of his administration was abhorrent.” He added, “It was a grave injustice and it was unprecedented in American history.” Barr [said](#) that “[t]he law enforcement and intelligence apparatus of this country were involved in advancing a false and utterly baseless Russian collusion narrative against the President.” He added, “[t]he proper investigative and prosecutive standards of the Department of Justice were abused, in my view, in order to reach a particular result.”

It bears noting that the Republican-led Senate Select Committee on Intelligence unanimously [affirmed](#) the intelligence community's conclusion that Russia interfered in the 2016 election to help Donald Trump win the White House. The criminal investigation that DOJ's investigation spawned resulted in the indictment of [over](#) 35 individuals and entities. Recently, however, Barr's Justice Department [dropped](#) the prosecution of Russian companies charged with conspiring to defraud the United States by orchestrating a social media campaign to interfere in the 2016 election.

## **Barr Is Pursuing Trump Conspiracy Theories Regarding the 2016 Election**

In addition to undermining the Mueller report, Barr [announced](#) in May 2019 that he had opened a review of the FBI's investigation into Russian interference in the 2016 election, despite the fact that the Inspector General was investigating the same matter. Barr tasked John Durham, the U.S. Attorney for the District of Connecticut, with leading the investigation.

Although Barr put Durham in charge of this duplicative and aggressive review of the FBI, he nevertheless took a hands-on role, even going so far as to travel to [Italy](#), for example, to conduct his own fact-finding mission in contradiction of the IG's conclusions. Barr himself met with the Italian, British, and Australian governments in his attempt to discredit the origins of the investigation into the Trump campaign. These foreign countries are links in a discredited Trump conspiracy [theory](#) alleging that Ukraine, rather than Russia, interfered in the 2016 presidential elections, and that they did so to benefit Hillary Clinton, rather than Trump. Trump has repeatedly promoted this bogus theory.

During an interview with Fox News in April 2020, Barr [explained](#) that Durham's "primary focus isn't to prepare a report. He is looking to bring to justice people who are engaged in abuses if he can show that they were criminal violations, and that's what the focus is on . . . My own view is that the evidence shows that we're not dealing with just mistakes or sloppiness. There is something far more troubling here, and we're going to get to the bottom of it. And if people broke the law, and we can establish that with the evidence, they will be prosecuted." In a radio interview around the same time, Barr was [asked](#) if he was shocked by the investigations findings thus far. In response he said, "I'm very troubled by it, but . . . I think the reason that we have this investigation is because there are a lot of things that are unexplained."

As Deputy Attorney General Ayers [noted](#), "Barr's repeated public reliance on information supposedly unearthed by this ongoing investigation violates Rule 1-7.400 of the Justice Manual, which prohibits comment on 'the existence of an ongoing [criminal] investigation' or on 'its nature or progress before charges are publicly filed.'"

## **BARR'S JUSTICE DEPARTMENT UNDERMINED THE WHISTLEBLOWER COMPLAINT REGARDING PRESIDENT TRUMP'S EXTORTION OF UKRAINE**

After Barr successfully stymied the impact of the Mueller report, he again used his power to cover up presidential wrongdoing. In the Ukraine [whistleblower](#) complaint, an intelligence official revealed the details of the now-infamous call between Trump and Ukrainian President Zelensky, in which Trump asked Zelensky to announce an investigation into Hunter Biden.

According to the complaint and a [summary](#) of the call, Trump told Zelensky that Barr “would be in touch with him” to follow up on the president’s requests. Other individuals also [confirmed](#) that Barr had direct knowledge of Trump’s efforts to pressure Ukraine to investigate the Bidens. Lev Parnas, a Ukrainian associate of Trump’s personal lawyer Rudy Giuliani, alleged that Barr was “basically on the team” as it related to Trump’s actions in Ukraine.

Barr, however, [refused](#) to recuse himself from the Justice Department’s review and investigation into the Ukraine whistleblower complaint, ignoring widespread calls for him to do so. In calling for his recusal, the New York Bar Association [wrote](#) that “[i]f [Barr] fails to do so, he should resign or, failing that, be subject to sanctions, including possible removal, by Congress.”

The whistleblower filed his complaint as an “urgent concern” under a 1998 law that provides whistleblowers with protection from retaliation. The law defines an urgent concern as a “[serious or flagrant problem](#), abuse or violation of law or Executive Order...” Under the law, an urgent concern complaint must be transmitted to Congress within three weeks of its filing.

That timely submission did not occur largely because of the Barr Justice Department’s effort to suppress the complaint and resist congressional efforts to obtain the document. Barr’s OLC issued a memo that permitted the Trump Administration to ignore clear law and withhold the Ukraine whistleblower complaint from Congress. As government agency watchdog groups noted in a [letter](#) criticizing OLC’s determination that the complaint could be withheld: “OLC did not find that production to Congress was limited due to a valid constitutional concern. Rather, OLC substituted its judgement and reversed a determination the statute specifically entrusted to the [Inspector General] because of its independence, objectivity, and expertise to credibly assess the information.” It also warned that “the OLC opinion, if not withdrawn or modified, could seriously undermine the critical role whistleblowers play in coming forward to report waste, fraud, abuse, and misconduct across the federal government.” OLC’s opinion helped President Trump effectively stymie the congressional investigation into his dealings with Ukraine.

In addition, although Trump stood accused of soliciting a “thing of value” from a foreign country to aid his political campaign in violation of federal law, Barr’s

Department issued a statement announcing that it had determined, without opening an investigation, [that](#) “there was no campaign finance violation and that no further action was warranted.” Barr’s Department insisted [incorrectly](#) that dirt on a political opponent is not a “thing of value” and therefore, Trump had not violated campaign finance law in his inappropriate call with Zelensky.

On April 3, 2020, Trump fired Michael Atkinson, Inspector General of the Intelligence Community, who had been responsible for alerting Congress of the Ukraine whistleblower complaint. When asked about his decision during a press conference, Trump [stated](#) that he had lost confidence in Atkinson and that he had done “a terrible job” handling the whistleblower complaint. Following his abrupt dismissal, Atkinson released a [statement](#) explaining, “As an Inspector General, I was legally obligated to ensure that whistleblowers had an effective and authorized means to disclose urgent matters involving classified information to the congressional intelligence committees, and that when they did blow the whistle in an authorized manner, their identities would be protected as a guard against reprisals.”

Despite widespread criticism, Barr again [defended](#) Trump on Fox News, arguing that Trump “did the right thing” by removing Atkinson: “From the vantage point of the Department of Justice, he had interpreted his statute, which is a fairly narrow statute, that gave him jurisdiction over wrongdoing by Intelligence people, and tried to turn it in to a commission to explore anything in the government and immediately reported to Congress without letting the Executive Branch look at it and determine whether there was any problem. He was told this in a letter from the Department of Justice, and he is obliged to follow the interpretation of the Department of Justice, and he ignored it. So, I think the president was correct in firing him.”

In response, Representatives Adam Schiff and Jerrold Nadler [urged](#) the Justice Department IG and Office of Professional Responsibility to investigate Barr’s “misleading” comments, describing them as “part of a disturbing pattern of misrepresenting facts and falsely alleging misconduct by other government officials in order to defend the President’s own misconduct.” They joined a chorus of other government officials, including the Justice Department’s current inspector general, Michael Horowitz, who [reiterated](#) that Atkinson had handled the complaint “by the book” and in accordance with the law and his obligations as an IG.

## **BARR’S JUSTICE DEPARTMENT SUED TRUMP’S FORMER NATIONAL SECURITY ADVISOR TO BLOCK PUBLICATION OF HIS BOOK**

In June 2020, the Justice Department [filed](#) a lawsuit against John R. Bolton, Trump’s former national security advisor, to prevent publication of his memoir, [The Room Where It Happened](#), about his time working in the White House. Early reports indicate the book contains troubling allegations against

Trump, including that he would “give personal [favours](#) to dictators he liked,” that he [asked](#) Chinese President Xi Jinping to help with his re-election, and that he wanted Attorney General Barr to go after CNN, [stating](#) that DOJ should “arrest the reporters, force them to serve time in jail, and then demand they disclose their sources.”

According to the Justice Department, the book [contains](#) classified information that would jeopardize national security if it became public. The complaint asks the court to seize Bolton’s proceeds from the book deal and order him to convince the book’s publisher, Simon & Schuster, to halt publication and destroy any copies until the Justice Department has finished reviewing its contents. The Justice Department has also [requested](#) a Temporary Restraining Order, which would block Bolton, Simon & Schuster, and “[c]ommercial resellers further down the distribution chain, such as booksellers,” from selling or distributing the book. In [response](#), Simon & Schuster said that the lawsuit was “nothing more than the latest in a long-running series of efforts by the administration to quash publication of a book it deems unflattering to the president.”

In addition to the lawsuit, Barr also personally [criticized](#) Bolton for publishing his book while Trump is still in office, falsely claiming that doing so is “unprecedented.” Former White House officials, however, have [frequently](#) published memoirs about their experiences working in the White House while the president they worked for was still in office. In fact, what is [unprecedented](#) is the White House taking legal action to try to block the publication of a memoir by an insider. According to the *New York Times*, “Several former White House lawyers from Democratic and Republican administrations said they could not recall a similar legal effort to stop a book by a former White House official.”

On June 20, 2020, a federal judge [denied](#) the Justice Department’s efforts to block the publication of Bolton’s book, although kept open the possibility that Bolton may be required to forfeit royalties or could face criminal prosecution for allowing publication of the book before receiving final review of classified information.

## **Barr has Undermined the Independence of the Justice Department to Reward Trump’s Friends and Allies**

Shortly after taking office, Trump [fired](#) Acting Attorney General Sally Yates because she acted independently, based on the law, when she refused to defend Trump’s initial unconstitutional Muslim Ban (which only passed muster on its third iteration). He then [appointed](#) Attorney General Jeff Sessions, whose most notable legacy will be the ways he eroded civil rights and curtailed legal immigration. Trump later [fired](#) Sessions because he refused to abuse the power

of his office to quash the Mueller probe. As Trump [said](#), “The Russian Witch Hunt Hoax continues all because Jeff Sessions didn’t tell me he was going to recuse himself...I would have quickly picked someone else.” Trump lamented that the attorney general was not sufficiently protecting him, [saying](#), “I don’t have a lawyer.”

Indeed, the president believes that law enforcement exists to serve his personal interests, not those of the nation. Trump called himself the country’s “[chief law enforcement officer](#)” and made it clear that he thinks it is [appropriate](#) for him to discuss individual investigations with the attorney general. He [asserted](#) that he has an “[absolute right](#)” to intervene in criminal cases, undermining the important principle that law enforcement be insulated from politics.

Not surprisingly, when Senator Kamala Harris [asked](#) Barr whether Trump or anyone in the White House had ever asked or suggested that he launch an investigation, Barr could not say “No.” He eventually replied to Senator Harris, “I’m trying to grapple with the word ‘suggest.’ I mean there have been discussions of, of matters out there that... they have not asked me to open an investigation but...” Harris followed up, attempting to secure a full answer by asking if anyone at the White House had hinted at an investigation, but Barr simply replied, “I don’t know.”

The following are examples of Barr using the Justice Department to serve Donald Trump’s personal purposes, and those of Trump’s associates, not the cause of justice.

### **BARR REMOVED THE TOP FEDERAL PROSECUTOR OF THE SOUTHERN DISTRICT OF NEW YORK WHO WAS OVERSEEING INVESTIGATIONS INTO TRUMP’S CLOSE ASSOCIATES AND ALLIES**

In June 2020, Barr [asked](#) Geoffrey S. Berman to resign from his post as the U.S. Attorney for the Southern District of New York (“S.D.N.Y.”). When Berman refused, the Justice Department [issued](#) a press release announcing his resignation and the intent to nominate Jay Clayton, Chairman of the Securities and Exchange Commission, to be his replacement. According to [reports](#), Clayton is friendly with Trump and they went golfing together the weekend before his intended nomination was announced.

Following the Justice Department’s announcement, Berman immediately released a [counterstatement](#) making clear Barr lied: “I have not resigned, and have no intention of resigning, my position.” He added that he would step down when a replacement was confirmed by the Senate and, until then, his “investigations will move forward without delay or interruption.” Given uncertainties whether under the law Barr himself could even fire Berman (who had been put in place as U.S. Attorney by judges of the Southern District of New York), Barr then asked Trump to remove Berman. The following day, Trump

formally fired Berman, although the president made clear, “I’m not involved.” He added, “That’s all up to the Attorney General. That’s all [Barr’s] department, not my department.”

Berman’s dismissal is part of a broader effort by the administration to remove government officials who have served as an independent check on the President and his inner circle. Under Berman, S.D.N.Y. has overseen a number of high profile major investigations into Trump’s close associates, many discussed in greater detail below, including [Michael Cohen](#), who ultimately pled guilty to a number of charges, and [Rudy Giuliani](#). At the time of Berman’s removal, an investigation into whether Giuliani had violated laws in his effort to dig up dirt on Trump’s political rivals was purportedly still ongoing.

The firing also came on the heels of damaging [revelations](#) from Trump’s former national security advisor, John Bolton, about the president’s dealings with foreign dictators. In his [book](#), *The Room Where It Happened*, Bolton alleges that in 2018, Trump promised Turkish President, Recep Tayyip Erdogan, that he would intervene in an investigation into Halkbank, a Turkish state-owned bank. At the time, Halkbank was being investigated by the S.D.N.Y. for violating sanctions against Iran. In October 2019, Berman’s office indicted Halkbank. According to [reports](#), the Trump administration was frustrated with Berman for his handling of this investigation, and there is speculation that this was among the issues that led to his removal.

Before attempting to quietly push out Berman with a Friday evening news release, Barr discussed the move with Trump. Berman’s public defiance of his removal, however, led to a backlash against the attorney general, with over 100 former prosecutors [condemning](#) Berman’s removal and calling it “an attack on the concept that investigations should be conducted in a nonpartisan manner.” Even some Republicans expressed their discontent. Senator Lindsay Graham [suggested](#) that he would not automatically support Berman’s proposed replacement. This criticism led Trump to [distance](#) himself from the move, and [forced](#) Barr to agree to install Audrey Strauss, Berman’s deputy, as acting U.S. Attorney.

## MICHAEL FLYNN

Michael Flynn, former national security advisor and Trump associate, pleaded guilty to federal crimes. As Chuck Rosenberg, former U.S. Attorney, senior FBI official, and acting head of the Drug Enforcement Administration (DEA), [noted](#):

Flynn had previously traveled to Russia; received payments from Russia-related companies, including more than \$40,000 from a Russian state-backed entity; dined with the Russian president; intervened in sanctions levied by the outgoing Obama Administration punishing Russia for its 2016 election interference; and then lied to the incoming vice president — among other senior White House officials — about his intervention.

When Flynn then lied to the FBI about his December 2016 telephone conversation with a Russian diplomat, he was charged with a federal crime, and

he subsequently [pleaded guilty](#) to making false statements in connection with the lies he told the FBI. As President Trump [tweeted](#), he “had to fire General Flynn because he lied to the Vice President and the FBI.”

Indeed, Flynn twice admitted under oath that he had committed the crime and a trial judge [upheld](#) the plea, noting that Flynn (who was represented by experienced counsel) did so knowingly, voluntarily, and intelligently.

Originally, Flynn agreed to cooperate with prosecutors and, in exchange, they recommended he get no prison time. The judge presiding over the case, Judge Emmet Sullivan, hinted that he might sentence Flynn to jail time anyway, due to the seriousness of his crimes. He ultimately [offered](#) Flynn the opportunity to delay his sentencing, cooperate further with the government, and earn additional credit to avoid jail time — and Flynn agreed. However, Flynn changed his mind soon after and took a far different approach to his legal strategy. He [hired](#) new attorneys, moved to withdraw his guilty plea, and refused to cooperate further.

In response, prosecutors [recommended](#) six months of jail time for Flynn. Yet, just as they did in the Roger Stone case (discussed below), senior Department officials intervened to change the sentencing recommendation, and prosecutors recommended only probation. Then Barr [brought](#) in an outside team to examine the Flynn case, challenged the work of his own DOJ prosecutors, and President Trump [said](#) he was “strongly considering a full pardon” of Flynn. Trump, in fact, repeatedly claimed that Flynn was a victim of a “[witch hunt](#).”

In May 2020, the Justice Department [notified](#) the court that it was dropping its case against Flynn altogether, arguing that Flynn’s lie to the FBI was not material and “was untethered to, and unjustified by, the FBI’s counterintelligence investigation.” Barr’s Justice Department [argued](#) in court that “based on an extensive review and careful consideration of the circumstances...continued prosecution of this case would not serve the interests of justice.” Moreover, the Justice Department did not just argue that Flynn should be allowed to withdraw his plea, but that the entire case should be dismissed *with prejudice* to preclude the case being refiled.

In other words, despite the fact that Flynn lied to the FBI (which raised the concern that he might be compromised by a foreign power) and admitted under oath in open court that he told a material lie, Barr claimed that the FBI and the federal prosecutors should have ignored that lie. As Donald Ayers, Deputy Attorney General under George H.W. Bush, [wrote](#), “The government’s supposed justification for the motion to dismiss — that it is no longer able to prove its case against Flynn for false statements made to the FBI — fails the laugh test.” He added, “After bringing charges and securing guilty pleas that were carefully scrutinized by the court, Barr’s Justice Department insists that the case is legally defective. This claim is larded with legalisms, but at its root, it is empty.”

As over 2,000 former Justice Department officials [wrote](#):

Make no mistake: The Department's action is extraordinarily rare, if not unprecedented. If any of us, or anyone reading this statement who is not a friend of the President, were to lie to federal investigators in the course of a properly predicated counterintelligence investigation, and admit we did so under oath, we would be prosecuted for it.

The *New York Times* also [noted](#), “[a] range of former prosecutors struggled to point to any previous instance in which the Justice Department had abandoned its own case after obtaining a guilty plea.” Barr’s action essentially granted an ally of the President immunity that no ordinary criminal in the United States would ever receive.

None of the career prosecutors who handled Flynn’s case signed the motion. As Mary McCord, the former acting assistant attorney for national security, [emphasized](#), “The FBI’s interview of Mr. Flynn was constitutional, lawful and for a legitimate counterintelligence purpose.” When Judge Sullivan accepted Flynn’s guilty plea, he told Flynn in open court [that](#) “arguably, you sold your country out.”

In June 2020, John Gleeson, a retired judge and former mafia prosecutor who was appointed to argue against the Justice Department’s request to drop the charges, filed a scathing 73-page [brief](#) that eviscerated the government’s position. According to Gleeson, “the facts surrounding the filing of the government’s motion constitute clear evidence of gross prosecutorial abuse. They reveal an unconvincing effort to disguise as legitimate a decision to dismiss that is based solely on the fact that Flynn is a political ally of President Trump.”

Because U.S. national security can be compromised when a hostile foreign power has damaging information on a government official, like in this case where Russia knew Flynn was not being truthful, such an investigation was particularly important. As former FBI agent Asha Rangappa [wrote](#), “If Barr prevails, though, the most fundamental building blocks of counterintelligence investigations — such as ensuring that the FBI can question people about contacts with hostile foreign agents and hold them accountable if they conceal them — are no longer things we can count on. Barr wants to create a twilight zone where such things can occur with legal impunity.”

## **ROGER STONE**

Roger Stone, a longtime friend and advisor to Donald Trump, was [indicted](#) in 2019 for witness tampering, obstructing an official proceeding, and five counts of making false statements to a congressional committee investigating Russian

interference in the 2016 election. At the end of his trial, he was [convicted](#) on all seven counts. Originally, prosecutors from the D.C. U.S. Attorney's Office suggested a [sentence](#) of seven to nine years in prison for his crimes.

In federal court last year, federal prosecutors [recommended](#) less than the sentencing guidelines in fewer than two percent of the nearly 75,000 criminal defendants who were sentenced. It is Justice Department policy to recommend sentences within the range provided by the sentencing guidelines, and Stone's prosecutors originally did just that. In fact, the Stone prosecution team followed Department policy laid out in the "[Sessions Memo](#)," which required them to seek the most severe sentence that the facts of the case allowed within the advisory guidelines ranges in order to achieve "just and consistent results in federal cases." As a former federal prosecutor [noted](#), "In my experience, the Justice Department staunchly defends sentences within the guidelines range, particularly for defendants (such as Stone) who are convicted at trial, and especially for defendants (such as Stone) who repeatedly demonstrate disrespect for the judicial system."

When President Trump got word of the sentencing recommendation, however, he [tweeted](#) that it was a "horrible and very unfair situation," and, "Cannot allow this miscarriage of justice!" The very next morning, the Justice Department announced that it would reverse itself, instead [recommending](#) a lighter sentence for Stone. The Department filed a revised sentencing memo, insisting that their initial recommendation could be "considered excessive and unwarranted." In response, Trump [asserted](#) that he had an "absolute right" to intervene in criminal cases, and praised Barr for "taking charge" of the case.

All four of the original prosecutors on the case withdrew, and Jonathan Kravis even resigned from the U.S. Attorney's Office, [writing](#) "I resigned because I was not willing to serve a department that would so easily abdicate its responsibility to dispense impartial justice."

It should not be lost that the same day the Justice Department asked for special treatment for Stone, Barr gave a [speech](#) criticizing prosecutors devoted to criminal justice reform. He denounced lower sentences for non-violent low-level offenders, saying "these DAs are putting everyone in danger."

Barr's interference has been widely denounced as untoward, including by over [2,000](#) former Justice Department officials who served in both Republican and Democratic administrations. Those officials signed a letter urging Barr to resign and described his conduct as "a grave threat to the fair administration of justice."

In June 2020, Aaron S.J. Zelinsky, one of the career Justice Department prosecutors who quit the case, agreed to testify under subpoena before the House Judiciary Committee. The hearing, scheduled for June 24, 2020, coincides with the publication of this report. In [advanced testimony](#), Zelinsky

made clear the decision to seek a lesser sentence was “political,” not based on “the facts of the case, the law, or Department policy,” but rather “wrongful political pressure.”

## MICHAEL COHEN

Michael Cohen, President Trump’s former personal lawyer, was [sentenced](#) to three years in prison for his involvement in a hush-money scandal that was designed to subvert campaign finance law to benefit Trump’s presidential campaign. Cohen pleaded guilty to several crimes, including coordinating a hush money payment to adult film star Stormy Daniels in order to prevent her from speaking about her affair with Trump before the election. Trump was Individual One in the indictment, essentially an unindicted co-conspirator.

Although this crime benefited Trump, and involved several other members of the Trump organization, Cohen was the only one prosecuted for the scheme. Cohen and his attorneys allege that Barr [refused](#) to credit him for his cooperation with prosecutors because “his testimony leads directly down a pathway to possible indictment” of Trump and members of the Trump organization.

When Cohen was sentenced, prosecutors made it [clear](#) that they were not finished with the investigation. Executives of the Trump organization appeared to be under investigation for their roles in the scheme as well, and in January 2019, prosecutors made requests for interviews with those involved. Barr was confirmed in February 2019, and only a month later, the prosecutor overseeing the hush-money case [left](#) the government. Since then, the investigation appears to have fizzled without any follow-up on the interview requests. The House Oversight Committee has begun [looking](#) into the suspicious conclusion of this case.

## ERIK PRINCE

Erik Prince — a Trump donor and ally, founder of scandal-prone private security company Blackwater USA, and the brother of Secretary of Education Betsy DeVos — [faces](#) potential charges of lying to Congress in the Russia investigation. As the House Intelligence Committee [noted](#): “Another associate of Trump, Erik Prince, misled our Committee about his efforts to take part in a secret backchannel with a senior Russian government official while he was unofficially supporting the Trump campaign.”

Just ten days before Barr’s confirmation, the Department announced it was opening an investigation into Prince’s conduct. Since Barr’s confirmation, however, the case languished, and the Department is now reportedly nearing a [decision](#) as to whether to even charge Prince. Citizens for Responsibility and Ethics in Washington has [requested](#) records concerning Barr’s potential interference in this deliberation, hoping to “shed light on whether Barr and

DOJ's ten month delay was politically calculated and part of a pattern to appease Trump.”

## DMITRY FIRTASH

Dmitry Firtash is a Ukrainian oligarch with alleged [ties](#) to the Russian mob. He lives in Austria and is currently [fighting](#) extradition to the United States where he faces bribery charges. Firtash previously did business with the now-incarcerated Paul Manafort and has financial ties to Lev Parnas, the former Trump donor and associate of Rudy Giuliani. Parnas alleges that Firtash had a relationship with Giuliani, wherein Firtash provided Giuliani with key documents used to further Giuliani's false claim of wrongdoing by the Biden family.

Reportedly, Firtash sent dirt on the Bidens in exchange for assurances that his prosecution in the United States would be dropped.

Firtash [told](#) the *New York Times* that he hired attorneys Victoria Toensing and Joseph diGenova because they bragged about their ties to Trump and Giuliani. Toensing and diGenova promised Firtash that they would leverage their ties to the Administration to help [resolve](#) his “extradition problems” by securing a private meeting with Barr. In August, they made good on their promise to Firtash and met with Barr about the case. Although the extradition effort has not been dropped, the situation suggests that Barr's Justice Department grants inappropriate access to the president's allies.

## HALKBANK/REZA ZARRAB

Halkbank is a large Turkish bank facing [charges](#) out of the Southern District of New York for fraud, money laundering, and other offenses related to their evasion of U.S. sanctions on Iran. These charges are part of a larger criminal case that also resulted in the arrest of Reza Zarrab, a Turkish-Iranian gold trader who allegedly played a central role in the sanctions evasion scheme run through Halkbank. Zarrab ultimately pleaded guilty in the case and has cooperated with U.S. prosecutors, but not before [hiring](#) Rudy Giuliani to negotiate a deal between the U.S. and Turkish governments to secure his release.

Because of Zarrab's relationship with Giuliani and Trump's embrace of Turkish President Recep Tayyip Erdogan, there has long been suspicion that Trump and Barr have attempted to interfere in the case to appease Trump's allies. Trump reportedly [sought](#) to get then-Secretary of State Rex Tillerson to work with Giuliani to halt the prosecution of Zarrab, which Tillerson rejected. Trump also [reportedly](#) offered President Erdogan assurances that Treasury Secretary Steven Mnuchin and Barr would personally handle the Halkbank issue.

The fallout from reports on former national security advisor John Bolton's recent book add legitimacy to these suspicions. In his book, Bolton wrote that he [told](#) Barr that he was concerned about Trump's conversations with President Erdogan. Barr reportedly responded that he was concerned that Trump's conduct was casting doubt on the independence of the S.D.N.Y.'s inquiry into Halkbank. Attorney General Barr, however, adamantly denied this conversation with Bolton. And, in yet another stunning example of his loyalty to Trump over the rule of law, Barr [pushed](#) for the removal of Geoffrey S. Berman, the top federal prosecutor at S.D.N.Y., just a few days after reports on his comments about Trump's conversations with foreign leaders came to light. There is speculation that Trump's frustration with Berman's handling of investigations into Halkbank was one of the reasons behind Barr's move to push out Berman and install a Trump loyalist.

## PARDONS/CLEMENCY

Historically, the Office of the Pardon Attorney, a unit of the Justice Department, carries out the process for those seeking presidential clemency. The pardon attorney staff reviews the case, asks for an FBI investigation, and seeks comments from prosecutors and the judge who sentenced the individual seeking clemency. Only after a thorough review from a DOJ staff attorney, the pardon attorney, the deputy attorney general, an associate White House counsel, and the White House counsel has a pardon request historically made its way to the president. Under Trump, however, the office's role is significantly [diminished](#).

Moreover, President Obama, working in conjunction with the Department of Justice, [prioritized](#) clemency applications from inmates who were currently serving federal drug sentences, were non-violent, low-level offenders without significant ties to criminal organizations, and had served at least 10 years of their prison sentence. In contrast President Trump's use of the power has been motivated by self-interest and has largely not been justified on grounds of mercy, procedural fairness, evidentiary issues, or statutory problems. Rather, Trump has largely used presidential pardons to benefit wealthy donors and as a personal "get out of jail card" for allies.

Before Barr was confirmed, Trump had already abused his pardon power, giving reprieves to Joe Arpaio, Dinesh D'Souza, and Lewis "Scooter" Libby. Then, with Barr's acquiescence, Trump granted reprieves to even more well-connected convicts:

- [Rod Blagojevich](#), the former Illinois governor who tried to sell the Senate seat vacated by Barack Obama when he became president, and who extorted a wide range of businesses, including a children's hospital. Before this trial, Blagojevich appeared as a contestant on Trump's *The Celebrity Apprentice*.

- [Eddie Gallagher](#), a war criminal, whose heinous crimes were brought to light by his fellow Iraq war veterans in extraordinary testimony in which they described him as “toxic,” “freaking evil,” and “OK with killing anybody that was moving.” Members of Gallagher’s platoon described watching him murder civilians in cold blood, including shooting one adolescent girl in a floral hijab, and stabbing to death a sedated captive. He took a selfie posing with the dead body.
- [Edward DeBartolo](#), who bribed the Governor of Louisiana to obtain approval for a casino.
- [Michael Milken](#), the “junk bond king” who was indicted for racketeering and securities fraud.
- [Bernie Kerik](#), former New York Police Commissioner and business partner of Rudy Giuliani, who helped secure government contracts for organized crime figures.

These pardons are an affront to the Justice Department, which has a process to ensure that pardons are issued to those who are truly worthy, and not just the politically connected. The process allows victims, prosecutors, and the court an opportunity to be heard. The president’s decisions to go outside this established process, without any apparent objection from Barr, shows their mutual contempt for the Department, its career prosecutors, and the rule of law.

## **Barr Has Undermined the Independence of DOJ to Attack Trump’s Political Foes**

### **BARR IS PREPARING TO ATTACK TRUMP’S ALLEGED POLITICAL OPPONENTS TO INFLUENCE THE ELECTION**

Barr is weaponizing the Justice Department to play a potentially key role in aiding Trump’s reelection campaign.

First, as discussed above, Barr is using Durham’s investigation to target former Obama Administration officials that were involved in investigating Russia’s interference in the 2016 election, giving DOJ support to Trump’s “ObamaGate” conspiracy theory.

Second, Barr [reported](#) that the Justice Department was accepting information that Trump’s personal lawyer, Rudy Giuliani, was gathering in Ukraine in an attempt to politically damage Joe Biden and his son. Senator Lindsey Graham, chair of the Senate Judiciary Committee, [confirmed](#) this, stating that Barr told him the DOJ had “created a process that Rudy could give information and they would see if it’s verified.”

Although Giuliani himself is under [investigation](#) by federal prosecutors and advances conspiracy theories that have been widely discredited, Barr is willing to [accept](#) Giuliani's reports of potentially damaging information about the president's political rival. The fact that Giuliani has Barr's ear to discuss his discredited crusade against the Biden family has added to the mountain of evidence demonstrating that Barr considers himself to be the president's personal lawyer, not the attorney general of the United States.

Third, Barr issued new [restrictions](#) regarding the opening of politically sensitive investigations in advance of the 2020 elections. The memo states that the FBI and all other divisions of DOJ must get Barr's approval before investigating any of the presidential candidates, including investigating illegal campaign contributions by foreign nationals. Barr's stated purpose for this requirement is to avoid another situation like 2016, when former FBI Director James Comey may have [influenced](#) the outcome of the election by making public [comments](#) about the investigation into Hillary Clinton. Contrary to this claim, Barr's memo does not require DOJ officials to consult with him before publicly commenting on an investigation, but before even opening an investigation.

This change in procedures will give Barr enormous power in determining which investigations are brought and, more importantly, which investigations are not brought ahead of the 2020 presidential election. It is hard to imagine an agent or prosecutor asking Barr's permission to investigate Trump — a man Barr has spent over a year protecting. Even if they have the courage to do so, Barr could block investigations into nefarious election activities by the Trump campaign, while green-lighting investigations into Trump's political opponents. That means, for example, that Trump and his campaign can again solicit assistance from foreign adversaries without legal consequences.

## ANDREW MCCABE

During his time at the FBI, Andrew McCabe was involved with investigations into senior Trump officials, Russian election interference, and possible obstruction of justice by President Trump. Because of his role, he has been one of Trump's regular targets on Twitter. The attacks [began](#) in the lead up to the 2016 election. As part of Trump's efforts to make the FBI's decision to clear Hillary Clinton of any wrongdoing look political, he tried to paint McCabe as politically motivated and biased. In May 2017, after James Comey was fired, the FBI announced its investigation into Trump's contacts with Russia during 2016. This prompted Trump to resume his Twitter attacks against McCabe and his wife. McCabe was [fired](#) in March 2018, just days before his scheduled retirement, and the Justice Department announced the beginning of what would be a nearly two-year investigation into him.

Even though a team of prosecutors had already concluded that they could not win a conviction against McCabe, Jessie Liu, who Trump appointed as U.S. Attorney for the District of Columbia, [pursued](#) the McCabe case. Prosecutors

failed to obtain a grand jury indictment.

When Liu left the U.S. Attorney's Office, it was widely [suspected](#) that Barr was behind her departure because of her failure to indict McCabe. Shortly after Liu left, the Department announced that after two years of investigation, it was dropping charges against McCabe.

On May 18, 2020, Barr [installed](#) Associate Deputy Attorney Michael Sherwin as acting U.S. Attorney for the District of Columbia. Stuart Gerson, a Republican and former Barr aide who served as acting attorney general under George H.W. Bush and Bill Clinton, [told](#) the Washington Post that Sherwin's appointment "represents a politization of the U.S. attorney's office of the District of Columbia that is remarkable, and unique, and unprecedented." As one author [noted](#), Barr "has placed a pliable Republican in charge of the Washington, D.C. office, giving Trump loyalists control over prosecutions in the capital."

## **Barr Has Advanced Extreme Views of Unchecked Executive Power**

William Barr auditioned for the job of attorney general by submitting a private, unsolicited [memo](#) arguing that the Mueller investigation was improper and could have "grave consequences" for the executive branch. Barr was particularly outraged that Mueller was considering obstruction of justice charges against Trump. Barr believed the president could not, by definition, obstruct justice: "Constitutionally, it is wrong to conceive of the President as simply the highest officer within the Executive branch hierarchy. He alone is the Executive Branch. As such, he is the sole repository of all Executive powers conferred by the Constitution."

Trump liked what he saw in Barr and [appointed](#) him to be attorney general. Since his confirmation, Barr has not only acquiesced to, but helped advance President Trump's most outrageous views of executive power. He has [supported](#) the president's attacks on Congress's legitimate constitutional oversight powers, including its power of impeachment. He [denied](#) Congress access to crucial documents and witnesses, including John Bolton, Mick Mulvaney and Don McGahn. As attorney general, Barr has stood by as President Trump obstructed justice, openly intimidated and retaliated against witnesses, threatened retaliation against whistleblowers, and attacked judges and jurors.

Indeed, in a 2019 keynote [address](#) to the Federalist Society, Barr offered a revisionist history of the Constitution in support of unchecked presidential power, suggesting that the Founders were not concerned with King George III, but with the more pressing need to check a too powerful legislature. He likewise bemoaned any efforts to constrain executive power. "Since the mid-60s," he said, "there has been a steady grinding down of the executive branch's authority, that accelerated after Watergate. More and more, the President's ability to act in areas in which he has discretion has become smothered by the

encroachments of the other branches.”

Barr rejected the “notion” that “in a free republic” the legislature and the judicial branches “protect[] liberty by imposing restrictions on the Executive.” He dismissed the “knee-jerk tendency to see the Legislative and Judicial branches as the good guys protecting society from a rapacious would-be autocrat” and lamented that the executive branch has had to face “demands for testimony and documents.” Barr criticized the Freedom of Information Act (FOIA) and the fact that “Congress has happily created a regime that allows the public to seek whatever documents it wants from the Executive Branch.” And, he was scathing of independent courts challenging the constitutionality of Trump Administrative policies, calling the “Judicial Branch” the “prime source of the erosions of . . . Executive Branch authority.”

President Trump has embraced Barr’s monarchic theories of the presidency. Distilling Barr’s views to one sentence, Trump now [claims](#), “I have an Article II where I have the right to do whatever I want as President.” In April 2020, in the middle of the coronavirus pandemic, he [said](#) “When somebody is president of the United States, the authority is total. And that’s the way it’s got to be. It’s total.”

During a radio interview in April 2020, Barr was [asked](#) whether he felt Trump had ever done “anything at all to give rise in you to a concern that he does not respect the Constitution or intend to abide by its separation of powers?” Barr responded, “Never. Never at all...as I said in my Federalist Society speech and when you actually look at his record, his actions have been . . . well within the traditional rules of law and have been litigated patiently through the court system.”

## ENABLING PRESIDENT TRUMP TO HIDE HIS TAX RETURNS

In a decision by the Second Circuit rejecting Trump’s efforts to block a subpoena issued to his accounting firm, Robert Katzmann [wrote](#), “We note that the past six presidents, dating back to President Carter, all voluntarily released their tax returns to the public. While we do not place dispositive weight on this fact, it reinforces our conclusion that the disclosure of personal financial information, standing alone, is unlikely to impair the president in performing the duties of his office.”

Yet, Trump, aided by Barr’s Justice Department, has fiercely resisted efforts to obtain his returns in three cases [heard](#) by the Supreme Court on May 12, 2020. The Justice Department has [filed](#) a brief in the consolidated cases arguing that the financial firms in each case do not have to comply with the valid requests. As David Frum, former advisor to George W. Bush, [noted](#), the Department’s brief “is an astonishing document. It invites the Supreme Court to junk two centuries of precedent — and to substitute an entirely new system of judicial

review of congressional subpoenas that involve the president.” The three cases are as follows:

- New York prosecutors [subpoenaed](#) Trump’s accounting firm, Mazars USA, for eight years of Trump’s personal and business tax returns as part of an investigation into the illegal hush-money payments made to two women who said they had affairs with Trump. In New York, it can be illegal to file a false business record. Trump resisted their investigatory efforts and [sued](#) to block the subpoena. Under Barr, the Justice Department [argued](#), remarkably, that a sitting president is absolutely immune from criminal investigation while he remains in office. Citing *Nixon v. United States*, the Second Circuit unanimously [rejected](#) Trump’s claim that he was absolutely immune from state and local criminal investigations.
- On February 27, 2019, President Trump’s former attorney Michael Cohen [testified](#) before the House Committee on Oversight and Reform that Trump had changed the estimated value of his assets and liabilities on financial statements prepared by Mazars. The Committee also heard testimony that Trump may have failed to disclose certain financial holdings required by law. To further investigate “the accuracy of statements made by President Trump on various financial disclosures,” the committee [sought](#) financial documents and records from Mazars. Trump tried to quash the subpoena to Mazars, but the district court [held](#) that Mazars must comply with it. This ruling was affirmed by the D.C. Circuit, which [held](#) that the reasons given by the committee for the subpoena were indeed legitimate.
- The House Intelligence and Financial Services committees [issued](#) subpoenas for financial records to Trump lender Deutsche Bank. In that case, a panel of the Second Circuit [ruled](#) 2-1 that the subpoenas in question were valid, rejecting Trump’s argument that turning over the records would distract the president from carrying out his official duties and that the records serve no legitimate purpose.

Finally, the House of Representatives Ways and Means Committee also [requested](#) Trump’s tax returns pursuant to a [statute](#) that [states](#) that the Secretary of the Treasury “shall furnish” tax-return information “[u]pon written request from the chairman of the Committee on Ways and Means of the House of Representatives.”

In June 2019, OLC issued an [opinion](#) in support of Secretary Mnuchin’s refusal to release President Trump’s tax returns. The Justice Department [stated](#) that Mnuchin was correct in rejecting the request on the grounds that there was no legitimate legislative purpose for the request. In support of Mnuchin’s decision, OLC [found](#) that the Committee’s “true aim was to make the President’s tax returns public.”

The Treasury Department's request for legal advice from OLC was an unprecedented step in its review process of tax return requests. The Treasury Department [admitted](#) that it was not aware of any previous case where the Treasury Department consulted with OLC on a specific congressional request for tax returns. The House sued to enforce that subpoena, a suit a federal judge put on hold pending the other litigation related to Trump's tax returns.

## **ATTACKING CONGRESS'S ABILITY TO PERFORM APPROPRIATE OVERSIGHT**

Under Barr, OLC issued multiple memos [justifying](#) the Trump Administration's refusal to comply with congressional subpoenas and [supporting](#) the claims by Trump advisors that they are "absolutely immune" from being compelled to testify before Congress. President Trump used these opinions during impeachment to argue that he could not be impeached for obstructing Congress because he was following legal advice from OLC.

Multiple courts have [rejected](#) the claim that the president and his administration have "absolute immunity." As George W. Bush-appointed judge John Bates [wrote](#) in 2008 in holding that Harriet Miers, then White House Counsel, was not immune from congressional subpoenas: "Indeed, the aspect of this lawsuit that is unprecedented is the notion that Ms. Miers is absolutely immune from compelled congressional process. The Supreme Court has reserved absolute immunity for very narrow circumstances, involving the president's personal exposure to suits for money damages based on his official conduct or concerning matters of national security."

In *Committee on the Judiciary v. McGahn*, concerning a congressional subpoena of Don McGahn, the D.C. District Court [held](#) that absolute immunity "simply does not exist" and was part of an "effort to establish ways in which certain White House staff could prevail in any conflict with Congress over their legally enforceable duty to appear for testimony when subpoenaed." A panel on the D.C. Circuit ultimately [reversed](#) the case, without reaching a decision on the merits and on April 28, 2020, the full D.C. Circuit heard [oral arguments](#).

## **ENABLING TRUMP TO PROFIT FROM THE PRESIDENCY**

Under Barr's leadership, the Justice Department is placing Trump's personal financial interests before the interests of the nation as it defends the president against [multiple](#) lawsuits brought under the Constitution's Emoluments Clause. The Emoluments Clause prohibits the president from accepting any payment from a foreign government. The lawsuits brought against Trump challenge his private business dealings. They argue that Trump is violating the Emoluments Clause by accepting payments from foreign actors who pay to stay at the Trump International Hotel in Washington, D.C. and other Trump-owned hotels and resorts. In one example, a lobbying firm tied to Saudi Arabia that had pending business before the Trump Administration [paid](#) \$270,000 for 500

nights of rooms at Trump's D.C. hotel. Transactions like this demonstrate how foreign governments can easily buy influence with the president.

Barr's Department has defended these lawsuits. It has [argued](#) that the Emoluments Clause should not apply to these private transactions because they are commercial, and not "emoluments," as they've been treated in the [past](#). This argument flies in the face of the Constitution and history. Alexander Hamilton, explaining the [purpose](#) of the Clause in the Federalist Papers in 1788, wrote that it was meant to ensure that the president could not be persuaded by monetary payments to "renounce or desert" the independence of his office. According to Washington University law professor Kathleen Clark, who has studied and [written](#) about this issue in depth, DOJ's position upends more than 150 years of strict interpretation of emoluments.

In December 2019, Department lawyers [argued](#) that Congress would have to pass a law barring Trump from accepting foreign emoluments if it wants him to stop accepting them. This would render the Emoluments Clause meaningless as it will no longer prevent the president from accepting commercial bribes from foreign nations in exchange for access or favorable treatment.

In February, the D.C. Circuit [dismissed](#) a lawsuit brought by members of Congress accusing Trump of violating the Emoluments Clause. The court ruled that the lawmakers lacked standing. On May 14, 2020, the Fourth Circuit [allowed](#) a lawsuit filed by D.C. and Maryland to go forward.

On June 12, 2020, Barr's Department [argued](#) to extend the stay blocking disclosure of the President's foreign business dealings and announced its intention to appeal any decision allowing such discovery to the Supreme Court.

Part II:

# Assault on our Rights and Legal Protections

## Barr is Undermining the Health and Well-Being of the American People

### REFUSAL TO DEFEND THE AFFORDABLE CARE ACT (ACA)

As Alliance for Justice [noted](#) in opposing Barr's confirmation to lead the Justice Department, Barr signed a brief arguing the ACA was unconstitutional before he became attorney general.

It is no surprise, therefore, that under Barr, the Justice Department has taken the position that the Affordable Care Act is unconstitutional. In a [case](#) being heard by the Supreme Court this fall, Republican opponents of the law, including the Department of Justice, argue that because the 2017 Republican tax bill — the Tax Cuts and Jobs Act of 2017 — eliminated the tax penalty in the ACA, the individual mandate is now unconstitutional; that provision cannot not be severed from the entire law; and thus the entire Act is invalid. If the Justice Department succeeds, some [21 million](#) Americans could lose health insurance, and [135 million](#) Americans with pre-existing conditions could be denied coverage.

The Constitution [requires](#) the executive branch to “take care that the law be faithfully executed.” As the Justice Department has previously [stated](#), the “Attorney General has a duty to defend and enforce both the Acts of Congress and the Constitution; when there is a conflict between the requirements of the one and the requirements of the other, it is almost always the case that he can best discharge the responsibilities of his office by defending and enforcing Acts of Congress.” Attorney General Jeff Sessions [made clear](#) that laws “should be defended vigorously, whether or not the solicitor general agrees with them or not, unless it can't be reasonably defended.” As a former DOJ lawyer [said](#), “The Justice Department has a long-standing, durable, bipartisan commitment to defend acts of Congress. It's a cornerstone of what they do.”

Yet, to advance a partisan agenda, Barr has weakened the integrity of American democracy and separation of powers by undermining the ability of Congress to enact laws under its Article I authority. And, in doing so, he has directly threatened the health of millions.

Three career Justice Department lawyers [refused](#) to sign DOJ's original brief in the ACA case, and a veteran Justice Department lawyer resigned in protest. As former Solicitor General Donald Verrilli [said](#), DOJ's position was "a sad moment...I find it impossible to believe that the many talented lawyers at the Department could not come up with any arguments to defend the ACA's insurance market reforms, which have made a difference to millions of Americans." An ideologically diverse group of legal scholars filed an amicus brief, [saying](#) the Justice Department was arguing for an "unlawful usurpation of congressional power" that "violate[d] basic black-letter principles" of law. Even Senator Lamar Alexander, the Republican Chairman of the Senate Committee on Health, Education, Labor, and Pensions [called](#) DOJ's position "as far-fetched as any I've ever heard." Alexander [said](#) DOJ "is arguing that when we voted to get rid of the individual mandate, we voted to get rid of Obamacare. I don't know one single senator that thought that."

Remarkably, Barr has not argued that the Department's decision was based on its belief the Act could not be "reasonably defended." He couldn't. The decision not to defend the legality of the law came [after](#) "the president's acting chief of staff and others convinced [Trump] that he could do through the courts what he could not do through Congress: repeal his predecessor's signature achievement." And, in fact, on May 4, 2020, in the middle of a pandemic, senior Administration officials, including Vice President Pence and Barr, [met](#) to discuss the Administration's position in the litigation. Again, according to reports, the main topic of concern was the political ramifications of the case, not whether the law was in fact constitutional and DOJ's duty to defend duly enacted acts of Congress.

Indeed, in response to a question from Republican Senator Susan Collins (R-ME), Barr [said](#) he carried out Trump's demand to attack the ACA because the arguments against the legality of the statute were "defensible and reasonable." And, when pressed, Barr said supporters of the ACA have "nothing to worry about ... [i]f this is such a wacky position that the Administration is taking, then there's nothing to fear. Then the law will be upheld. Let the courts do their job."

In other words, Barr created a new standard for deciding when the executive branch can ignore an act of Congress. In his view, it is not the executive branch's job to defend an act of Congress, to "take care that the law be faithfully executed." If the president merely does not like a validly enacted law and can come up with a theory of why it might be unconstitutional, he and his administration can simply ignore it and leave the issue up to the court.

Barr [admitted](#), moreover, that he serves the president and other "stakeholders" in the executive branch. Thus, if the president directs him to attack a statute, even one he considers constitutional and legal, Barr feels he must follow the president's order. Once again, Barr made clear he is the lawyer for Donald Trump and his whims, and not the attorney general of the United States with a duty to faithfully uphold and defend the laws of the United States.

## UNDERMINING DETAINEES' HEALTH DURING THE CORONAVIRUS PANDEMIC

In the middle of the AIDS crisis, Barr, speaking disparagingly of LGBTQ Americans, [wrote](#) that “Venereal disease is the price that we pay for sexual licentiousness.” While Attorney General under President George H.W. Bush, he [reportedly led](#) the effort to maintain a policy [preventing](#) HIV-positive non-citizens from entering the country. Barr was also reportedly a [proponent](#) of keeping HIV-positive Haitians housed at Guantanamo Bay, even though they were [approved](#) for asylum in the U.S.

It is no surprise, therefore, that in late March, 2020, when it became clear that the spread of coronavirus in the United States could create a serious public health emergency in overcrowded prisons, Barr’s response to the health emergency was severely lacking. Barr [ordered](#) the Bureau of Prisons (BOP) to allow of thousands of inmates to finish their sentences at home, however, the Department gave [inconsistent](#) guidance on who qualified for early-release under the new policy. Initially, inmates needed to have served at least half of their sentence to be eligible for release, but this threshold was later abandoned, which opened the door for thousands of additional inmates to be released. However, the requirement was later reinstated and then abandoned again, creating confusion in court rooms and prisons across the country.

As of June 17, 2020, BOP [reported](#) roughly 6,000 inmates and 600 staff testing positive for COVID-19 and the deaths of 85 inmates and 1 staff person.

According to [reports](#), in some cases, families showed up to pick up their relatives from prison only to learn that they were no longer eligible for release. In addition, prisoners who had been placed in quarantines for release were only returned to the general population a few days later. The confusion has led to a delay in releasing thousands of inmates who are considered “medically high risk” and are eligible for release under the U.S. Coronavirus Aid, Relief and Economic Security (CARES) Act. In addition, dozens of federal inmates have died as a result of COVID-19 outbreaks in prisons. Among them was a [mother](#) detained in a Texas prison who gave birth while on a ventilator.

As part of its response to the pandemic, BOP also [cut off](#) inmates’ access to email and phone lines at three federal prisons that collectively house nearly 4,000 prisoners. In a statement, the Bureau said the move was “solely to mitigate the spread of the virus from multiple people touching keyboards and handsets.” However, it also left family members of thousands of inmates unable to reach their loved ones during a national pandemic when concerns about deadly outbreaks of the virus in prisons were especially high. BOP’s response to complaints has been to suggest that prisoners and their families write letters.

## ABANDONING CRIMINAL CHARGES AGAINST COMPANIES RESPONSIBLE FOR THE OPIOID CRISIS

In March 2020, House Judiciary Committee Chairman Jerrold Nadler [wrote](#) to Barr expressing “concern regarding the Department’s inability to hold prescription opioid distributors and chain pharmacies accountable in the wake of the national opioid epidemic.” A few weeks later, a ProPublica [report](#) revealed that the Trump Administration had “killed an indictment” that would have criminally charged Walmart for its role in the opioid epidemic.

Federal prosecutors in Texas spent almost two years building a case to bring criminal charges against Walmart. The charges were based on an investigation that found that employees working at Walmart pharmacies in Texas were told by Walmart compliance officials that they had to continue to fill prescriptions that were coming from doctors running “pill mills.”

According to reports, political appointees at the Justice Department decided not to bring the case after Walmart appealed to the Trump Administration, including William Barr, to end it. In an attempt to salvage the case, the prosecutors looked into bringing civil claims instead. However, this strategy was also reportedly blocked after Walmart again appealed to Trump appointees.

While the Justice Department and Walmart have both denied having discussed the investigation when they met, the case continues to languish, despite an alleged trove of evidence.

## DEFENDING TRUMP’S FAILED RESPONSE TO THE CORONAVIRUS PANDEMIC

President Trump was reportedly first [briefed](#) on the potential spread of COVID-19 to the U.S. on January 3, 2020. In the ensuing weeks, he repeatedly [dismissed](#) dire warnings about the severity of the threat from the National Security Council, Health and Human Services, and other top public health officials who were tracking the virus. By late February, it was [clear](#) to members of Trump’s public health team that the U.S. would soon be hit hard by the pandemic and radical action would need to be taken to prevent the spread of hot spots across the country. Instead of heeding their advice, Trump refused to take proactive steps to address the crisis. On March 16, as the number of confirmed COVID-19 cases swelled, Trump finally announced guidelines for social distancing. Since then, the federal government’s response has lagged behind the relentless spread of the virus. Trump has ignored calls to take the more aggressive actions that are necessary to make sure frontline workers have the personal protective equipment they so desperately need and hospitals have sufficient resources to care for sick patients. As a result, the U.S. has seen [more deaths](#) than any other country in the world.

Despite Trump's botched response to the pandemic, and the over 100,000 people who have already died as a result of the federal government's lack of preparedness, Barr has fiercely defended the president's actions, [calling](#) his guidance "superb and very common-sensical."

During an interview on Fox News, Barr [complained](#) bitterly that the "stridency of the partisan attacks on [Trump] has gotten higher and higher and its really disappointing to see." He went on to call Trump's behavior "statesman-like" and praised him for "trying to bring people together, working with all the governors, [and] keeping his patience when he got these snarky, gotcha questions from the White House media pool."

Trump has spread [misinformation](#) about COVID-19, contradicted the guidance of his own team of medical experts, lauded his apparent popularity on [Facebook](#), and attacked Democrats, reporters, and other government officials, who he claims are [plotting](#) against him. In addition to denying states the lifesaving resources they so desperately needed, he has encouraged disobedience of "shelter in place" and social distancing measures. In one briefing, he suggested that [bleach](#) and other disinfectants might help kill the virus if ingested by people who were ill. He later denied saying this after his comments led to an uptick in calls to poison control.

Barr gave the president credit for saving lives by blocking travel from China to the U.S. after it became the first hotspot for COVID-19. In one interview, he [told](#) Fox's Laura Ingraham, "I think the president has made the right decisions for the right reasons. I think against the advice of many people, he closed the borders. And I think when the history of this is written, that's going to have saved a lot of lives." Not only did Barr's comments ignore all the well-documented failures by the Trump Administration to adequately address the emergency, they are a blatant misstatement of the widely reported facts. In reality, after Trump's "ban" on travel from China, 40,000 people [still flew](#) to the United States. Moreover, the coronavirus reportedly arrived in the U.S. from Europe.

Barr has also lashed out at the media for reporting that hydroxychloroquine was not an effective treatment for COVID-19. Beginning in mid-March, Trump repeatedly used his press briefings to promote its use, calling it a "[game-changer](#)," even though there was little evidence to support the claim. In April, scientists and researchers began warning that hydroxychloroquine was not an effective treatment for COVID-19 and that, in some cases, it caused fatal side effects. Yet, Barr defiantly defended the president on Fox News, [accusing](#) the media of being "on a jihad to discredit the drug."

## MOCKING AMERICANS AND THREATENING STATES THAT ARE PROTECTING THE HEALTH OF THEIR CITIZENS

Remarkably, while millions of people have sacrificed to protect their own health and that of their families and communities, Barr mocked his fellow Americans, criticizing them for “[hiding under the bed](#),” a remark that Republican Bill Kristol [noted](#) was “repulsive.” As Kristol said, “Those who are behaving responsibly deserve praise, as they’re slowing the spread not just for their own benefit but for others, including health care workers who are at great risk.”

Despite their best efforts, Barr also attacked governors who have implemented public health and safety measures to stem the spread. During an interview on Fox, he [called](#) state measures intended to prevent the deadly spread of the virus “draconian.” He also [threatened](#) to back lawsuits brought against states if he felt that the measures went too far:

We have to give businesses more freedom to operate in a way that’s reasonably safe. To the extent that governors don’t and impinge on either civil rights or on the national commerce — our common market that we have here — then we’ll have to address that. And if we think it’s, you know, justified, we would take a position. That’s what we’re doing now. We, you know, we’re looking carefully at a number of these rules that are being put into place. And if we think one goes too far, we initially try to jawbone the governors into rolling them back or adjusting them. And if they’re not and people bring lawsuits, we file a statement of interest and side with the plaintiffs.

Following up on these comments, Barr sent a two-page [memo](#) to federal prosecutors directing them to “be on the lookout” for public health measures taken to restrict the spread of COVID-19 that impinge on constitutional rights: “If a state or local ordinance crosses the line from an appropriate exercise of authority to stop the spread of COVID-19 into an overbearing infringement of constitutional and statutory protections, the Department of Justice may have an obligation to address that overreach in federal court.”

As Steve Vladeck, a professor at the University of Texas School of Law, pointed out, states have broad authority to impose restrictions in order to slow the spread of the virus to save lives and prevent the collapse of their healthcare systems. In response to Barr’s comments, Vladeck [wrote](#), “Legal action in the form of . . . what, exactly? Governors have the power under their state constitutions to take these measures, and the federal executive branch doesn’t have the power to stop them.”

Yet, Barr’s order is already impacting the health of the American people. In Michigan, following Trump’s vicious [attacks](#) on Democratic Governor Gretchen Whitmer (in one tweet he wrote “Gretchen ‘Half’ Whitmer is way in over

her head, she doesn't have a clue"), the Department of Justice Civil Rights Division [filed](#) a Statement of Interest in a lawsuit brought by seven businesses challenging the governor's executive orders to combat COVID-19. As Sam Bagenstos, former Principal Deputy Assistant Attorney General for Civil Rights, [wrote](#), "The Civil Rights Division can't find any real civil rights to enforce, so they're arguing that our Governor unconstitutionally discriminated against car washes? Embarrassing. As a DOJ Civil Rights alum, I'm ashamed."

Shortly thereafter the governor loosened restrictions. As the Detroit News [noted](#), "Trump's U.S. attorneys take credit for spurring Whitmer's reopening plan."

## **REFUSAL TO DEFEND THE FEDERAL LAW CRIMINALIZING THE PRACTICE OF FEMALE GENITAL MUTIATION AND CUTTING (FGM/C)**

In 1996, Congress outlawed female genital mutilation and cutting (FGM/C) or female circumcision on minors, except in cases where the operation is medically necessary. The acting director of the Department's Office on Violence Against Women [decried](#) the "horrific crimes of" FGM/C, noting that "at least 513,000 women and girls in the United States have suffered or are at risk of becoming victims" of it. Yet, in 2019, the Department of Justice ceased defending the constitutionality of the law.

## **Barr Has Undermined Critical Civil Rights**

In a [speech](#) shortly after his confirmation, Barr said, "It is an honor for all of us to continue this work of protecting the civil rights of the American people today." However, the Justice Department's record on civil rights under his leadership tells a far different story.

## **CONSTITUTIONAL POLICING AND CRIMINAL JUSTICE**

In opposing Barr's confirmation, Alliance for Justice [emphasized](#):

Barr has a troubling record with regard to persons of color. Barr served as attorney general during the so-called War on Drugs, which disproportionately impacted communities of color. Notably, he wrote a report titled "The Case for More Incarceration." In a 1992 speech, Barr said "The choice is clear. More prison space or more crime." He defended laws that made prison sentences for crack cocaine much harsher than prison sentences for powder cocaine, which had a significantly disparate impact on communities of color. He opposed the bipartisan Sentencing Reform and Corrections Act of 2015 and applauded Jeff Sessions's decision to revert to harsh charging policies.

It is, therefore, no surprise that Attorney General Barr's response to the tragic murders of George Floyd and Breonna Taylor — and the nationwide protests against police brutality and systemic racism that followed — was so egregious. Even before his recent attacks on peaceful protesters, Barr used his position as Attorney General to further injustices in the criminal justice system.

## **Murder of George Floyd and Attacks on Peaceful Protesters**

On a Monday morning phone call following the murder of George Floyd, President Trump [told](#) governors: "You have to dominate. If you don't dominate, you're wasting your time. They're going to run over you. You're going to look like a bunch of jerks." After advising the governors that "you've got to arrest people, you have to track people, you have to put them in jail for 10 years," Trump said, "We will activate Bill Barr and activate him very strongly."

In particular, despite Barr's efforts to deny responsibility, reports indicate that Barr himself led law enforcement's attack on peaceful protesters exercising their First Amendment rights in Lafayette Square on June 1, 2020 so President Trump could stage a political photo op at St. John's Church, a partisan event in which Barr participated.

As USA Today [noted](#), "Attorney General Barr ordered park protesters cleared before Trump's visit to St. John's church." Department of Justice and White House officials [said](#) that Barr gave the order to law enforcement to "get going" or "get it done." White House spokeswoman Kayleigh McEnany [told](#) reporters it was Barr who made the decision to push back the security perimeter outside the White House. She said, "So [Barr] said that we needed to get going with moving that perimeter. He told the officers that out there." According to [reports](#), "A person familiar with the matter also said . . . that Barr told law enforcement to take action to move the perimeter when he arrived in the park. While Barr tried to deflect responsibility (claiming "I'm not involved in giving tactical commands like that") he did admit, "My attitude was get it done, but I didn't say 'Go do it.'"

[According](#) to the *New York Times*, "Mr. Barr played a far more critical role in the law enforcement response than was initially understood, essentially assuming battlefield control over a hodgepodge of security forces in Washington for days from a command center he set up, according to people who received briefings inside the center. He was effectively the general overseeing the operation that allowed the president his photo op."

After the order was given, and before the start of a city-imposed curfew, federal law enforcement officers in riot gear fired rubber bullets, tear gas, smoke canisters, and stun grenades at protesters, injuring many. General Jim Mattis and many others criticized the assault on the peaceful protesters. As Mattis [wrote](#), "We know that we are better than the abuse of executive authority that we witnessed in Lafayette Square. We must reject and hold accountable those

in office who would make a mockery of our Constitution.”

In response to these actions, the American Civil Liberties Union (ACLU) and Black Lives Matter have [filed](#) a lawsuit against Barr. To deflect criticism, Barr has denied his role in calling for the violent removal of protesters. He has also [argued](#) that “pepper spray is not a chemical irritant. It’s not chemical.”

At the same time, Barr [deployed](#) law enforcement officials, without identification nor training in managing mass protests, throughout the country, the result of which was to quell First Amendment rights. According to a Department of Justice [press release](#), agents from the FBI, Bureau of Alcohol and Firearms, Drug Enforcement Agency (DEA), Bureau of Prisons, and U.S. Marshals Service participated. Indeed, one official credits Barr with coming up with the idea of putting federal prison riot officers on D.C. streets, which the official [described](#) as “outside the box” thinking. In fact, Bureau of Prisons riot teams are trained to deal with violent disturbances in prison facilities, not with protesters exercising their constitutional rights.

Further, Barr used his position as Attorney General to promote a false and divisive conspiracy theory that violence in many cities was caused by members of the Antifa movement. He issued a [statement](#) blaming unrests on “anarchistic and far left extremists, using Antifa-like tactics.” But Barr provided no evidence for the assertion. And, in fact, a leaked [FBI report](#) found no support for the idea that Antifa inspired any violence, making clear there was “no intel indicating Antifa involvement.” Nevertheless, to satisfy their boss, according to one [report](#), “protesters arrested by NYPD [were] being pulled aside by FBI at precincts & asked about anti-fascist sentiments or connections to Antifa.”

Moreover, the Justice Department has given the DEA — an agency whose mission is to “enforce the controlled substances laws and regulations of the United States” — [power](#) to “conduct covert surveillance” of and collect intelligence of people participating in lawful protests. And, there have already been [reports](#) of surveillance planes that can capture cellphone data over cities with protests. As a senior attorney for the ACLU [emphasized](#), “Drug enforcement agents should not be conducting covert surveillance of protests and First Amendment protected speech. That kind of monitoring and information sharing may well constitute unwarranted investigation of people exercising their constitutional rights to seek justice. The executive branch continues to run headlong in the wrong direction.”

### **Failing to Enforce Laws that Address Unconstitutional Policing**

In his last day in office, Attorney General Sessions [issued](#) a memorandum severely curtailing the use of consent decrees to address systemic constitutional violations by police departments. Barr — who after the recent murder of George Floyd said, “I think there’s racism in the United States still but I don’t think that the law enforcement system is systematically racist” — continued Sessions’

policy regarding consent decrees and settlement agreements with state and local agencies, including law enforcement officers that have violated the civil rights of the communities they serve. As the Leadership Conference on Civil and Human Rights has [noted](#), “These agreements are vital to bringing state and local government in compliance with the U.S. Constitution and civil rights laws the Department is authorized to enforce.” [Under](#) President Obama, the Justice Department was aggressive in combatting unconstitutional policing; DOJ and local police departments signed fourteen consent decrees.

Even after George Floyd’s murder, Barr [criticized](#) what CBS reporter Margaret Brennan said were “pattern-or-practice investigations into a place like Minneapolis where there are questions about the broader issues with policing, it wasn’t just one officer.” Despite a history of police abuse in [Minneapolis](#), Barr responded, “Well, that’s exactly the reaction that I think has been a problem in the past, which is just, again, just reacting to this incident by immediately putting the [police] department under investigation.”

Moreover, Barr has threatened communities that have been critical of police violence. He [said](#) that they have to be more deferential to the police, and that communities that do not show “support and respect” to law enforcement risk losing police presence in their neighborhoods. As Vanita Gupta, former head of the Civil Rights Division of the Department and current president of the Leadership Conference on Civil and Human Rights [said](#), “The idea that the attorney general of the United States, the nation’s chief law enforcement officer, is recommending abandoning communities as retribution for pushing for police reform or criticizing policing practices, is profoundly dangerous and irresponsible.”

On July 16, 2019, Barr [ignored](#) the recommendation of attorneys in the Civil Rights Division and declined to bring charges against the New York Police Department officer named in the death of Eric Garner, a man arrested for selling cigarettes who was killed by a police officer after saying he could not breathe eleven times during his arrest.

## **Undermining Criminal Justice**

President Trump has repeatedly claimed he supports criminal justice reform, touting the fact he [signed](#) the FIRST STEP Act, a bipartisan federal sentencing and prison reform bill. Yet, as the Center for American Progress [noted](#) in highlighting scores of actions taken by his Administration to erode reform, “These claims fly in the face of nearly every action this administration has taken, most of which are antithetical to reform efforts.”

In a memo to federal prosecutors, Attorney General Sessions issued an [order](#) to “charge and pursue the most serious, readily provable offense” against all criminal defendants. In a reversal of Obama-era Department policy, Sessions ordered staff to charge the offense carrying the most substantial guidelines

sentence and required them to obtain special approval if they sought a lesser sentence. This marked a return to the “tough on crime” policy of the ‘80s and ‘90s, which resulted in an explosion of the prison population and significant racial disparities in the criminal justice system.

Under Barr, the requirements of this memo continue to be enforced and he has made several public comments extolling the virtues of harsh sentencing. For example, the same day that the Department of Justice asked for special treatment for Trump’s friend Roger Stone, Barr gave a [speech](#) criticizing prosecutors devoted to criminal justice reform and claiming, “These DAs are putting everyone in danger.”

Barr also attacked reform-minded prosecutors as “anti-law enforcement.” He was particularly adamant that local prosecutors “throw the book” at young offenders, regardless of the severity of their crime. In his words:

By allowing young lawbreakers entirely off the hook the first time — or the second time or even the third time — these DAs are potentially placing them on a conveyor to further and heightened criminality, which puts them at greater peril — both on the street from other criminals and from law enforcement when these young offenders graduate from petty to serious offenses, as many will if there is no intervention early on.

In addition to these public attacks, Barr has also announced the [formation](#) of a presidential commission on law enforcement. It will focus on combating reformers and is made up of law enforcement officials with no participation from civil rights organizations or reform-minded criminologists.

In an op-ed he published in the New York Post, Barr [bemoaned](#) the difficulties faced by police officers in gaining the respect of the community. Barr wrote that the police must “look on as the criminals that they have risked their lives to apprehend get turned loose by ‘social-justice’ DAs and ‘progressive’ judges who no longer see their role as protecting the community from predators.” This language is a far cry from the mercy the Department asked the court to dole out to Roger Stone and Michael Flynn.

On February 13, 2020, thirty-nine prosecutors responded to Barr’s attacks. In a [statement](#), they criticized him for trying to go back to a time when “success was measured by how harsh the punishment was, and a fear-driven narrative prevailed.”

## **Death Penalty**

In July 2019, Barr [announced](#) that the federal government would resume executions of federal inmates on death row, including in the 21 states that prohibit the death penalty; and the executions would occur through the use of

a single drug, pentobarbital sodium.

This ended a nearly two-decade [freeze](#) that had been in effect since 2003, due in part to widespread shortages of lethal injection drugs involved in the so-called three-drug cocktail. In total, the federal government has only executed three people since 1988. Following Barr's announcement, the Justice Department [identified](#) five people for execution.

In November, Judge Tanya Chutkan of the district court in D.C. [sided](#) with several death row inmates who challenged Barr's decision, and she stayed their executions. The judge ruled that the federal government likely exceeded its authority by creating a single uniform method of execution. She held that the protocol likely violated the Federal Death Penalty Act ("FDPA"), which stipulates that the state where a capital crime was committed should determine the method of execution, including which drugs should be used.

In April 2020, the D.C. Circuit [lifted](#) a district court judge's order halting the executions. Judges Neomi Rao and Gregory Katsas, both Trump appointees, said the Justice Department's plan to execute death row inmates under the new drug protocol was allowed under federal law.

Judge David Tatel dissented, noting that the history of the FDPA, passed in 1994, shows that if Congress had wanted to enact a law that allowed DOJ to simply choose the overall method of execution used by states, "it knew exactly how to do so" because of Barr himself. When Barr was attorney general the first time, he issued a temporary regulation that put forth legal injection as the method to conduct federal executions, similar to the 2019 protocol. Tatel pointed out Barr recommended his approach to Congress, and "Congress didn't choose to pursue that known and readily available choice" when it passed the statute.

In June 2020, the Justice Department [scheduled](#) executions for four federal inmates to take place in July and August of 2020.

## **Office of Justice Programs**

Under Attorney General Barr, the Department of Justice has [redirected](#) grant funding that Congress appropriated to support justice related programs away from reputable charities and instead to less established groups that were not recommended by career DOJ officials. Whistleblower complaints [emerged](#) after two long-established nonprofits, Catholic Charities of Palm Beach and Chicanos Por La Causa, were removed from the list of recommended grant winners receiving high marks from application reviewers.

Instead, the DOJ [awarded](#) more than \$1 million to "Hookers for Jesus" and the "Lincoln Tubman Foundation," which both received lower ratings than the original grantee organizations. Office of Justice Programs ("OJP") defended

the process as proper, [stating](#) “Our funding decisions are based on a merit-based review system.” This explanation seems to contradict the fact that two organizations in Tier I of said merit-based review system were replaced with two organizations in Tier II.

The evidence points to another explanation. Chicanos Por La Causa has [opposed](#) the Trump administration’s immigration policies, and the head of Catholic Charities in Palm Beach has [served](#) as a delegate at past Democratic National Conventions. Additionally, the Lincoln Tubman Foundation was [launched](#) by Brooke Burris, the daughter of a prominent South Carolina Republican who was a delegate for Trump at the 2016 Republican Party Convention. Her father is also close with South Carolina Senator Tim Scott, who wrote a letter calling upon OJP to do a “prompt review” of Ms. Burris’ application. OJP again [denied](#) that anything untoward occurred and insisted that a letter from a U.S. senator “would not influence a funding decision.”

This redirection of funding is just another clear representation of the DOJ using its influence and resources to help the president’s political allies and friends, while punishing worthy groups.

## VOTING RIGHTS

Donald Trump and Republicans have been brazen in their opposition to voting rights. Trump recently [said](#), “You’d never have a Republican elected in this country again” if voting access is expanded, a claim he has since tripled down on in the context of voting by mail. After California announced statewide voting by mail, Trump [argued](#) that “these votes must not count.” President Trump [threatened](#) to withhold federal funding to Michigan after its secretary of state announced that all the state’s registered voters would receive applications for absentee ballots in the mail this year.

The Department under Barr has cut back on enforcing important voting rights protections and has not filed a [single](#) new Voting Rights Act (VRA) case. As the Lawyers’ Committee for Civil Rights Under Law [noted](#): “It is very striking that today’s Department of Justice has been largely absent in enforcing the nation’s voting rights laws. When the VRA was first enacted, it was with the expectation that the U.S. Attorney General would play an active role in enforcing the nation’s voting rights laws... Significantly, since January 20, 2017, the Department has not filed a single suit under Section 2 of the VRA.”

Instead, Barr has used the resources of the Department to fight efforts by civil rights advocates to make it easier to vote. For example, in May, the Justice Department filed Statements of Interest in both [South Carolina](#) and [Alabama](#) asserting that the states’ witness requirements for absentee ballots do not violate the Voting Rights Act.

The plaintiffs in both states, many of whom have health issues, argued that the

absentee ballot requirement puts them at risk of contracting the COVID-19 virus. The lawsuit claimed that the witness requirement forces voters to “choose between protecting their health or forfeiting their fundamental right” to vote.

A federal judge in South Carolina [agreed](#) with voters, holding that because of the dangers the coronavirus pandemic poses, the state cannot require voters sending in ballots to have their ballot mail-in envelopes signed by a witness. The court noted that the COVID-19 virus is the “worst pandemic this state, country, and planet has seen in over a century” and that the Centers for Disease Control and Prevention is calling for social distancing — something difficult to do if someone is getting a witness to sign a ballot envelope for an absentee voter.”

And on June 16, 2020, a federal district court judge in Alabama issued a [preliminary injunction](#) on Alabama’s restrictions on absentee ballots. In his ruling, Judge Abdul K. Kallon noted that, if the state’s election laws were allowed to stand, “individual plaintiffs and similarly-situated voters could likely face a painful and difficult choice between exercising their fundamental right to vote and safeguarding their health.” The state’s appeal of the injunction is currently pending before the Eleventh Circuit Court of Appeals.

Finally, like Trump, Barr has also [tried](#) to sow doubt about the legitimacy of our elections and efforts to make it easier for Americans to exercise their right to vote. When asked about Trump’s allegations of voting fraud, he said, “I haven’t looked into that.” Yet, without offering any evidence to substantiate his claims, he called voter fraud through mail-in ballots “one of the issues that I’m real worried about.” He added, again with no evidence, “We’ve been talking about how, in terms of foreign influence, there are a number of foreign countries that could easily make counterfeit ballots, put names on them, send them in. And it’d be very hard to sort out what’s happening.”

In a later interview, he echoed these unfounded claims, [stating](#), “When state governments start adopting these practices like mail-in ballots, that open the floodgates of potential fraud, then people’s confidence in the outcome of the election is going to be undermined.”

## **LGBTQ+ EQUALITY**

As Alliance for Justice [noted](#) in opposing Barr’s confirmation, “Barr has a troubling record on the protection of rights of LGBTQ Americans. He has spoken disparagingly of gays and lesbians. He led the effort to maintain a policy of preventing HIV-positive non-citizens from entering the country and was reportedly a proponent of keeping HIV-positive Haitians housed at Guantanamo Bay, even though they were approved for asylum. And, Barr praised Jeff Sessions’s decision to rescind guidance protecting transgender

Americans.”

Not surprisingly, since being confirmed, Barr has aggressively used the levers of the federal government to curtail LGBTQ rights. The Justice Department has taken the position that employers should be able to discriminate against employees based on their sexual orientation and gender identity. In an action [described](#) by the American Civil Liberties Union as a “gratuitous and extraordinary attack on LGBT people’s civil rights,” the Department submitted amicus briefs to the Supreme Court insisting that Title VII of the Civil Rights Act does not cover discrimination against LGBTQ people. On June 15, 2020, that position was [rejected](#) by the Supreme Court.

Barr’s Department has also weighed in on a [lawsuit](#) filed by a photographer in Kentucky who is challenging a city ordinance banning businesses from discriminating against LGBTQ customers. And, it is [defending](#) the decision to fire a gay teacher at an archdiocese’s school in Indiana.

DOJ Pride, a group that represents LGBTQ employees at the Department, said in a [letter](#) that some employees have expressed “concern, dismay and even distress” about DOJ’s position in these cases. The group said employees have reached out to say they are “afraid their jobs could be in jeopardy.”

The Justice Department has also [intervened](#) in a federal civil rights lawsuit in Connecticut that would ban transgender student athletes from participating on the sports teams that aligned with their gender identity. The lawsuit was brought against the Connecticut Interscholastic Athletic Conference after it adopted a policy that allowed transgender students to join gender-specific sports teams in accordance with their gender identities. In March 2020, the Justice Department filed a statement of interest in the case. The brief argues that Title IX, which prohibits sex discrimination, does not apply to transgender athletes — again in contradiction to the new precedent set by the Supreme Court.

The Justice Department [filed](#) a Statement of Interest defending Idaho’s Fairness in Women’s Sports Act, which bars transgender students who identify as female from participating in women’s sports.

## CENSUS

Barr’s Justice Department also aided Trump in his effort to under-represent regions of the country that lean Democrat by [defending](#) the Trump Administration’s effort to place a citizenship question on the 2020 census. The citizenship question was [designed](#) to discourage over 11 million undocumented immigrants who are living in the U.S. from responding to the census. This action would have reduced the number of Electoral College votes, federal funding, and congressional representation in states with large numbers of noncitizens, which are typically Democratic strongholds.

In April 2019, Barr [directed](#) then-Acting Assistant Attorney General John Gore of the Civil Rights Division to defy a subpoena from the House Oversight and Reform Committee pertaining to its investigation of the 2020 Census. The administration claimed, moreover, that it wanted to add this question because it would aid its efforts to enforce the Voting Rights Act. This was a transparent excuse, and the Supreme Court ultimately ruled that the administration's purported reason for adding the question was "contrived."

Further, the Justice Department repeatedly [told](#) courts that "the census forms must be finalized for printing by the end of June 2019." Yet, after the deadline passed, Justice Department attorneys signaled to federal courts that they would continue to fight to include a citizenship question.

After its defeat at the Supreme Court, the Justice Department announced that it would be dropping the question. However, Trump [called](#) the statement "fake," forcing the DOJ to reverse course at the President's behest. The team working on the case was then [replaced](#), leading to strong speculation that the career lawyers on the case were no longer willing to defend the administration's position. The Trump administration ultimately [abandoned](#) its effort to add a citizenship question, in part because two lower courts refused to allow the Justice Department to replace its legal team without a proper explanation. Many [fear](#), however, that immigrant communities will still be discouraged from responding to the census due to misinformation and concern over the government collecting their information.

## REPRODUCTIVE FREEDOM

In opposing Barr's confirmation, Alliance for Justice noted:

Barr also has a troubling record on women's rights; he has repeatedly called for overturning *Roe v. Wade*. As just one example, after the Supreme Court decided *Planned Parenthood v. Casey*, Barr said, "I think *Roe v. Wade* should be overturned," and he reaffirmed that the Justice Department "will continue to do what it's done for the past 10 years and call for the overturning of *Roe v. Wade* in future litigation."

Under Barr's leadership, the Trump Administration filed a [brief](#) in *June Medical Services v. Gee*, now known as *June Medical Services v. Russo*, urging the Supreme Court to allow restrictive anti-choice laws to go into effect in Louisiana. The law is identical to one struck down only a few years ago in *Whole Woman's Health v. Hellerstedt*, which the Supreme Court [ruled](#) created an "undue burden" on individuals seeking an abortion. Since an identical case was decided in 2016, the Department's urging of the Supreme Court to reverse itself is troubling and represents a lack of respect for legal precedent. If the Louisiana restrictions are allowed to go into effect, other states would surely follow the state's lead, forcing the closures of reproductive health clinics all over the

country.

Additionally, Barr's Justice Department has [supported](#) the Trump Administration's "gag rule," which withholds Title X funding from any clinic that discusses abortion care or refers patients to abortion providers.

## Barr has Undermined Rights of Immigrants

In opposing Barr's confirmation, Alliance for Justice [emphasized](#):

Barr also has a disturbing record on the rights of immigrants. He supported President Trump's discriminatory Muslim Ban. He has argued that "[o]ne of the biggest problems we have with immigration . . . is the abuse of the asylum laws." He tried to prevent Haitian asylum seekers from reaching the U.S. After the Rodney King riots in LA, Barr stated that "the problem of immigration enforcement — making sure we have a fair set of rules and then enforce them — I think that's certainly relevant to the problems we're seeing in Los Angeles."

The Justice Department, under Barr's leadership, has exploited its position as the superintendent of our nation's immigration courts to advance the Trump Administration's anti-immigrant agenda. Its actions have turned what was supposed to be a fair adjudicatory system into one heavily weighted against immigrants. Its pursuit of short-term political objectives has increased backlogs, produced vacancies that have further exacerbated congestion in the courts, contributed to the demoralization of judges, lawyers, and participants in the court system, and resulted in widespread suffering.

Perhaps most illustrative is the Justice Department's handling of a case in the Seventh Circuit. In his opinion, Reagan appointee Judge Frank Easterbrook [rebuked](#) Attorney General Barr for declaring in a letter that a Seventh Circuit decision in an immigration case was "incorrect" and did not need to be followed. Barr's letter was used as justification by the Board of Immigration Appeals to ignore the court's ruling not to deport a man who had applied for a visa to remain in the country.

The [case](#) involved an undocumented immigrant, Jorge Baez-Sanchez, who was subject to removal from the United States after being convicted of a crime. Baez-Sanchez applied for a visa eligible to crime victims. An immigration judge twice granted Baez-Sanchez a waiver. The Board of Immigration Appeals reversed the immigration judge's decision, claiming that only the attorney general personally could grant waivers. Baez-Sanchez appealed to the Seventh Circuit, which disagreed and remanded the case with a directive that the Department of Homeland Security comply with the immigration judge's waiver. When it refused, Easterbrook, a 35-year veteran of the court, expressed his dismay at the willful disregard for judicial authority. "We have never before

encountered defiance of a remand order, and we hope never to see it again,” Easterbrook wrote. “Members of the Board must count themselves lucky that Baez-Sanchez has not asked us to hold them in contempt, with all the consequences that possibility entails.”

## CONTINUING JEFF SESSIONS’ ATTACKS ON IMMIGRANTS

Under Sessions, the Justice Department removed resources from the Immigration Court system and stripped immigration judges of their authority. Judges are now being [assigned](#) upwards of 60–80 cases a day, which gives them only one to three minutes per case. There is also an increased use of teleconferencing so immigrants might not even see their judge face-to-face, depriving many immigrants of their Due Process [right](#) to a reasonable “opportunity to be heard.” Barr has continued the quota policy started under Sessions. This policy [imposes](#) arbitrary quotas to clear [700](#) cases a year and deadlines as a condition for the continued employment of immigration judges in order to speed up deportations. The impact of these new policies is already being felt, with some immigration judges [admitting](#) that they have “issued decisions on an immigrant’s ability to enter or stay in the United States based on whether the decision would get them fired.”

## DEFENDING THE MUSLIM BAN

Barr [supports](#) the Trump Administration’s Muslim ban, which began during Sessions’ tenure at the Department. In February 2017, Barr wrote an op-ed defending Trump’s original travel ban for people from seven majority-Muslim countries. As attorney general, he has continued to defend the president’s “constitutional authority” to impose such a ban. Just this year, the Trump administration [announced](#) that it was expanding the ban to include restrictions on additional countries including Myanmar, Eritrea, Kyrgyzstan, Nigeria, Sudan, and Tanzania.

## POLITICIZING IMMIGRATION CASES

In August 2019, Barr [issued](#) an interim rule that would allow the Director of the Executive Office of Immigration Review (“EOIR”), a political appointee who evaluates the performance of judges, to decide immigration appeals. Prior to this, federal regulations had [never](#) allowed the director of EOIR to decide cases. In order to ensure that immigration court is free from political interference, there has always been a separation between administrative and policy-making responsibilities within EOIR. This new authority will allow the director to signal to judges how she wants them to rule and enforce this new power through the threat of an unfavorable performance review. This severely undercuts the independence of the court system.

## UNDERMINING PROTECTIONS FOR ASYLUM SEEKERS

Prior to his confirmation, Barr [argued](#) that “[o]ne of the biggest problems we have with immigration . . . is the abuse of the asylum laws.” It comes as no surprise then that he has made a number of [changes](#) to asylum procedures that have severely undermined protections for those fleeing persecution. Barr has used a process known as “certification,” the power to overrule decisions made by the Board of Immigration Appeals (“BIA”) and set binding precedent. Recently, he used it to narrow the definition of “torture.” He [ruled](#) that people fleeing persecution due to threats against their family are no longer eligible for asylum. He has [issued](#) two decisions to make it harder for immigrants to fight deportation.

As the Washington Post [noted](#), “Immigration lawyers and judges say that the Trump administration is using the power with greater frequency — to the point of abuse — as it seeks to severely limit the number of immigrants who can remain in the United States.” According to experts, Barr’s frequent use of certification also serves as a “warning” to the BIA that their decisions will be overturned if they do not conform to the Trump administration’s anti-immigration agenda.

Additionally, on June 15, 2020, the Departments of Justice and Homeland Security published [a joint notice](#) for proposed rulemaking that would severely limit the ability of persecuted individuals to seek asylum in the United States. Among other restrictions, the [proposed rules](#) would deny asylum claims based on gender persecution and empower immigration judges to reject applications for asylum without hearing testimony from the applicant.

Barr has also fought to [continue](#) Sessions’ Migrant Protection Protocols (“Remain in Mexico” policy), which requires asylum seekers to remain in Mexico until their case is decided, a process that can take years. As a result, over [59,000](#) people fleeing violence have been forced to camp out in Mexican border cities, which has led to a surge in violence, rapes, and kidnappings. The Ninth Circuit enjoined the policy, noting, “Uncontested evidence in the record establishes that non-Mexicans returned to Mexico” will “risk substantial harm, even death, while they await adjudication of their applications of asylum.” On March 11, 2020, the Supreme Court stayed the injunction pending appeal.

## **UNDERMINING THE INDEPENDENCE OF STATE AND LOCAL LAW ENFORCEMENT**

Barr has led the Trump administration’s assault on so-called “sanctuary cities.” He [ordered](#) prosecutors to hold news conferences, make statements, and use social media to promote his initiative to crack down on sanctuary cities. In addition, he [brought](#) multiple lawsuits against sanctuary cities over alleged interference with federal enforcement of immigration laws and removals. Barr announced lawsuits against New Jersey, California, and King County, Washington, in a [speech](#) before the National Sheriff’s Association in which he

claimed that “[i]nnocent people are routinely threatened and hurt by illegal aliens who local jurisdictions have set free.” It bears noting that data do [not](#) support his claims and in [fact](#) “crime rates are lower among immigrant groups than they are among native-born Americans.”

Barr has also failed to defend judges, prosecutors, and jurors who the president has attacked. Trump has [frequently](#) gone after judges that produce rulings he disagrees with. [Recently](#), Trump targeted the prosecutors working on Roger Stone’s case, as well as the presiding judge, the Hon. Amy Berman Jackson, and even a member of the jury. Barr remained silent in the face of these attacks.

## **ATTACKING LEGAL IMMIGRANTS**

The Justice Department [announced](#) the creation of a section dedicated to investigating and litigating revocation of naturalization. The news that DOJ will now be prioritizing denaturalization cases has raised [concern](#) among immigration advocates. Prior to this announcement, there had been just over [300](#) denaturalization cases since 1990. This new focus means the administration can arbitrarily [subject](#) legal immigrants to background checks in order to find cause to strip them of their status.

## **ATTACKING DREAMERS**

Barr’s Justice Department [argued](#) that the Trump administration acted lawfully when it rescinded the Deferred Action for Childhood Arrivals (“DACA”) program in September 2017. DACA is a federal program that allows children of undocumented immigrants to remain in the United States if they were under sixteen by 2007 when their parents brought them to the country. On June 18, 2020, the Supreme Court [ruled](#) against the Trump Administration, holding that the decision was arbitrary and capricious. DACA has [protected](#) nearly 700,000 young people, known as “Dreamers,” from deportation.

## **DECERTIFYING THE UNION FOR IMMIGRATION JUDGES**

Under Barr’s leadership, the Justice Department began efforts to [decertify](#) the National Association of Immigration Judges (NAIJ), the union that has represented immigration judges since 1979. NAIJ serves as one of the last bulwarks against a complete and total takeover of the Immigration Court system by the Executive Branch. Without union representation, immigration judges will lose their collective voice and be unable to push back against policies and procedures that undermine the fairness and transparency of the system.

## **ADVANCING ANTI-IMMIGRATION AGENDA DURING CORONAVIRUS**

## PANDEMIC

Barr has used the pandemic as an opportunity to further restrict immigration and foment anti-immigrant sentiment. During an interview on Fox News, he [told](#) host Laura Ingraham, “As horrible as this is, and as tragic as it is, there are a couple of good things that could flow from this experience. And one is to once again appreciate the importance of borders and controlling who is coming into the country. I’ve felt for a long time, as much as people talk about global warming, that the real threat to human beings is microbes and being able to control disease and that starts with controlling your border. So, I think people will be more attune to more protective measures.”

When Ingraham then asked why the U.S. was allowing Chinese researchers to come into the U.S. when COVID-19 had originated there, Barr responded, “I think we are trying to tighten up on those programs, and a number of the universities are working closely with the government to understand what the nature of the threat is. But it’s not just universities... A lot of American businesses just for short-term profit... they are perhaps not doing what’s in the long-term interest of the United States.”

## Barr Has Undermined Clean Air and Water

Barr’s Justice Department has led the Trump Administration’s assault on protections for clean air and water. Environmental enforcement actions against violations of the Clean Air and Clean Water Acts have dropped in the last three years. According to one [study](#), there were only 75 criminal prosecutions for environmental crimes in 2019, the lowest level since 1994. Likewise, conviction levels are at their lowest since 1995 and down 50% from five years ago.

Barr has been at the center of fighting efforts to improve the environment. Illustrative is a battle between the Trump Administration and California over environmental policies. In September 2019, the Trump administration [revoked](#) California’s right to set its own emissions standards for automobiles, leading California and twenty-two other states and cities to file a lawsuit against the federal government. The Justice Department, in [defending](#) the suit, has claimed novel arguments of preemption that, if ultimately successful, would greatly undermine the ability of local governments to protect clean air.

In October 2019, the Justice Department also [sued](#) California, claiming that the state bypassed federal authority when it entered into an environmental agreement with Quebec to combat air pollution. It argued that the collaborative agreement was akin to an international treaty beyond the scope of a state’s power. On March 13, 2020, George H.W. Bush appointee Judge William Shubb [rejected](#) Barr’s arguments.

Under Barr, the Justice Department also showed its willingness to aid Trump’s

political agenda when it [launched](#) an investigation into Ford, Volkswagen, BMW, and Honda after they agreed to follow the emissions standards set by California, which are stricter than the federal government's standard. Shortly before the Justice Department announced its investigation, Trump unleashed a series of [attacks](#) on Twitter that called out the "foolish executives" of the "politically correct automobile companies."

The Environmental and Natural Resources Division of the Department has defended a number of high-profile [lawsuits](#) involving the Trump administration's efforts to accelerate energy development on public lands. These lawsuits include litigation over oil and gas development near New Mexico's Chaco Canyon, federal royalty rates for production of federal fossil fuels, and the Bureau of Safety and Environmental Enforcement's rollback of some safety rules for offshore drilling. The Justice Department is also defending against a [lawsuit](#) brought by the Sierra Club and the State of California against the Bureau of Land Management for its decision to revoke hydraulic fracturing (fracking) regulations on federal and tribal lands that the Obama Administration put in place.

In addition, the Department is defending the Trump administration against multiple [lawsuits](#) brought by environmental groups who are suing the government for its decision to reopen the Keystone Pipeline project. The groups claim that the U.S. Army Corps of Engineers failed to review the potential for oil spills and other environmental damage before signing off on plans submitted by the pipeline developer.

Among other legal positions, the Department of Justice has taken extreme positions with respect to standing. For example, in [Center for Biological Diversity v. EPA](#), environmental groups challenged EPA's issuance of a general permit for various oil and gas operators to discharge pollutants in federal waters. DOJ joined the American Petroleum Institute in arguing, contrary to years of established law, that the groups could not challenge the policy. The Fifth Circuit, in an opinion by Trump-appointed judge Andrew Oldham, (who before becoming a judge argued that the entire EPA was unconstitutional), [agreed](#) with DOJ's position.

Finally, on August 21, 2019, DOJ [issued](#) a memorandum that prohibited Justice Department lawyers from utilizing Supplemental Environmental Projects (SEPs) in settlement agreements with state and local governments. SEPs are environmentally beneficial projects that a party agrees to undertake as part of a negotiated settlement of an enforcement action. As the EPA itself [notes](#), "As part of a settlement, an alleged violator may propose to undertake a project to provide tangible environmental or public health benefits to the affected community or environment, that is closely related to the violation being resolved, but goes beyond what is required under federal, state or local laws." On March 13, 2020, the Justice Department extended the prohibition to all settlement agreements, [ending](#) its thirty-year practice of letting companies

make amends for pollution-related violations by performing environmentally beneficial projects.

## Barr Has Undermined Consumer Protections

### FAILURE TO PROSECUTE FINANCIAL FRAUD

The unprecedented crisis created by the COVID-19 pandemic has led to an uptick in financial fraud across the country. According to [CBS News](#), there has been a “significant spike” in email and telephone scams perpetrated by individuals who largely reside outside of the U.S. This has included efforts “to hijack government relief checks, sell fake vaccines and test kits, or pose as charities claiming to help victims.” Criminals have targeted residents in states hit hardest by coronavirus, including New York and California.

The recent wave of financial fraud has shed light on the Justice Department’s [failure](#) to prosecute such crimes over the past few years. According to Ankush Khardori, a former financial fraud prosecutor, “The federal government has steadily lost interest in these types of crimes,” and the number of cases brought is currently at its lowest point ever. The decline comes at the same time as financial losses resulting from financial fraud “have [soared](#) over the past five years.” The Wall Street Journal has reported that estimated losses in 2019 reached \$1.7 billion. In an article flagging the problem, Khardori [wrote](#) that, while Barr has publicly promised to address the problem, he has failed to provide U.S. Attorney’s offices with the resources and support to do so. As a result, criminals have been able to commit fraud “in plain sight” of the Justice Department.

### UNDERMINING EFFORTS TO LITIGATE CLAIMS OF FRAUD

The False Claims Act (FCA) prohibits defrauding government programs. Before becoming attorney general, Barr [argued](#) the FCA was unconstitutional and called the statute an “abomination.” Not surprisingly, Barr’s Justice Department has encouraged government lawyers to be more aggressive about blocking whistleblowers from litigating claims against companies that have defrauded the U.S. government. As Senator Chuck Grassley [wrote](#), the Department has “dismiss[ed] greater number of *qui tem* cases for reasons that appear primarily unrelated to the merits of individual cases. Those efforts rely in part on vague and, at times, questionable concerns over prerogatives or limited government resources to handle the cases. Such actions could undermine the purposes of the False Claims Act by discouraging whistleblowers and dismissing potentially serious fraud on the taxpayers.”

In 2018, the Justice Department released a [memo](#) advising government lawyers

to move for dismissal in cases brought by whistleblowers under the False Claims Act. Under the FCA, if DOJ has decided not to intervene on behalf of a whistleblower alleging fraud, it can move to have the case dismissed, even if the whistleblower wants to continue litigating the case. According to the memo, the power to move for dismissal has generally been used “sparingly” by the Department. Under the new guidance, however, government lawyers have been advised to be more aggressive about urging the court to throw out FCA lawsuits.

Barr’s Justice Department [relied](#) on this memo to ask a lower court judge to dismiss a lawsuit brought by whistleblowers against the pharmaceutical giant, Gilead. The lawsuit alleges that the Gilead defrauded the Food and Drug Administration and government insurance programs by using an ingredient obtained from an unapproved Chinese manufacturer. The Justice Department is now arguing that the case should be dismissed because it is a waste of the Department’s resources and time, even though the whistleblowers, who are former employees of Gilead, want to continue to litigate their claims. DOJ also contends that it has broad authority to have FCA cases dismissed over the objection of whistleblowers.

This new approach by the Justice Department will lead to less accountability for corporations that defraud the U.S. government. Even when DOJ decides not to intervene in an FCA case, whistleblowers can successfully litigate claims on the government’s behalf. In 2017, for example, the pharmaceutical company Celgene [agreed](#) to pay \$280 million after a whistleblower brought a lawsuit claiming that it had falsely promoted two cancer drugs.

## **REFUSAL TO DEFEND THE CONSUMER FINANCIAL PROTECTION BUREAU**

The Consumer Financial Protection Bureau (CFPB) is the agency in charge of enforcing federal consumer financial laws and protecting consumers in the financial marketplace from unfair, deceptive, or abusive practices. It was created in the wake of the 2008 financial crisis, which resulted in part from predatory and reckless financial loans. To protect its political independence, the director of the CFPB cannot be removed by the president without good cause.

Shortly before Trump took office, a lawsuit was brought [arguing](#) that the structure of the CFPB was unconstitutional. The argument put forth was that the agency did not have enough accountability to the president because the director could only be removed for cause. Following Trump’s election, the Justice Department [announced](#) that it would no longer be defending the law establishing the structure of the CFPB. In fact, it went a step further and filed a brief in the case in support of the corporation bringing the lawsuit. The case, *PHH Corporation v. CFPB*, is now [before](#) the Supreme Court, with the Justice Department arguing that the structure of the CFPB violates separation of

powers doctrine by interfering with executive power.

## FAILURE TO DEFEND THE FTC'S AUTHORITY

The Federal Trade Commission (FTC) is designed to protect consumers from fraud. It polices fraudulent behavior and makes sure consumers can get their money back — to the tune of billions of dollars in restitution. A well-known recent example is the \$575 million settlement with Equifax after its 2017 data breach.

Nine different courts of appeals, [including](#) the Seventh Circuit, have uniformly agreed that federal law empowers the FTC to force schemers to pay back the money they swindle. Yet, in *FTC v. Credit Bureau Center*, Republican-appointed judges on the Seventh Circuit [reversed](#) their own 30-year precedent and hampered the FTC's ability to pursue restitution, taking away the primary enforcement mechanism to prevent companies from lying to consumers and stealing their money.

The FTC, an independent agency, responded by [asking the Supreme Court](#) to consider the case. Barr's Justice Department, however, [chose not to appeal](#) on its behalf. In the [FTC's petition](#), it notes how disastrous the Seventh Circuit's precedent would be for its enforcement, highlighting that from 2016 to 2019, it personally returned approximately \$977 million to consumers. That's in addition to billions more that companies had to return directly to consumers because of FTC enforcement against illegal scams. "The issue is critically important," the FTC wrote. Without the ability to pursue restitution, the law would be reduced "to a stop sign and would effectively reward fraudsters for their illegal conduct."

A group of 23 state attorneys general [filed a separate brief](#) urging the Supreme Court to reconsider the case on the FTC's behalf. Illinois Attorney General Kwame Raoul, whose state would be impacted by the Seventh Circuit precedent, [explained that](#) "obtaining restitution is critical in enforcing consumer protections," and allowing the precedent to stand would "ultimately benefit businesses that profit by misleading people."

# Conclusion

Attorney General Barr has abandoned the notion of an independent Department of Justice and failed to ensure the impartial administration of justice. He has defended Trump's outrageous actions, placing the president's personal interests before the interests of the nation he is charged with representing. He has gutted the rule of law and the critical checks and balances that reinforce our democracy. And, he has helped advance the Trump administration's assault on health care, civil rights, LGBTQ equality, rights of women and immigrants, and protections for consumers and for clean air and water.

AFJ hopes that this report will serve as an important historical record of the destruction of the trust and faith that the American people have traditionally put in their attorney general. Attorney General Barr has said, "History is written by the winners, so it largely depends on who's writing the history." But, at some point, Barr will leave the Robert F. Kennedy Justice Department Building. And there will be lawyers, agents and employees who are indeed committed to the cause of justice — and not the cause of Donald Trump — who will rebuild the independence of the Department and the trust of the American people. The challenge will be daunting, but essential to preserving our democracy.