

Claire O. Finkelstein and Richard W. Painter

October 26, 2020

Mr. Corey R. Amundson
Chief, Public Integrity Section
United States Department of Justice

Dear Mr. Amundson:

This letter is a request to initiate a criminal investigation under 18 U.S. Code § 610 known as “the Hatch Act” against President Donald J. Trump and any individuals who in coordination with President Trump or at the direction of President Trump may have violated the aforesaid provision. This provision is a supplementary provision to the civil Hatch Act provisions at 5 U.S. Code § 7323. 18 U.S. Code § 610 entitled Coercion of Political Activity, provides:

It shall be unlawful for any person to intimidate, threaten, command, or coerce, or attempt to intimidate, threaten, command, or coerce, any employee of the Federal Government as defined in section 7322(1) of title 5, United States Code, to engage in, or not to engage in, any political activity, including, but not limited to, voting or refusing to vote for any candidate or measure in any election, making or refusing to make any political contribution, or working or refusing to work on behalf of any candidate. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

Although the president and vice-president are exempt from the civil Hatch Act provisions, they are not exempt from the coercion of political activity provision. Nevertheless, this is a case of first impression under the statute, as a sitting president has not previously been charged with a Hatch Act violation under this provision.¹ The principle on which this provision is based is of critical importance to democracy and the rule of law. Allowing those in office to marshal the full weight of their authority to coerce and intimidate their subordinates into lending support to political campaigns would corrupt U.S. elections and damage the democratic process. Allowing political superiors in the federal government to coerce their political inferiors would also violate the basic rights of political freedom and independence that are critical to ensure the integrity of the executive branch.

The public record alone contains overwhelming evidence of instances in which President Trump has or has attempted to “intimidate, threaten, command or coerce” his subordinates in the executive branch to engage in partisan political activity on behalf of his reelection campaign, as well as other instances in which he has pressured federal employees to render assistance with his campaign. These public reports alone suggest a prima facie case that Mr. Trump has violated

¹ There are also no reported convictions under the statute in its current form. For a helpful discussion of the provision, however, see Gary Stein, “The Hatch Act,” in *Federal Criminal Offenses and the Impeachment of Donald Trump*, *Just Security*, December 16, 2019.

18 U.S.C. §610. Nonpublic records likely contain further evidence that either personally or through his subordinates President Trump has applied such illegal pressure to employees of the executive branch who are covered by this provision of the Hatch Act.

We request that your office open a criminal investigation, and through all available means obtain relevant evidence necessary to make a determination regarding President Trump's potential violation of this provision of the Hatch Act. The Department of Justice should also investigate whether other individuals acted in conjunction with the president to bring pressure to bear on federal employees to assist in the president's reelection campaign. Under 18 U.S.C. § 371, entitled Conspiracy to Commit Offense or to Defraud United States, if the president engaged in his pressure of federal employees in conjunction with another person or persons, each would in addition be guilty of a conspiracy to commit the criminal Hatch Act violation.

Below we describe some of the specific facts in the public record that raise significant concerns that President Trump has violated, and is continuing to violate, 18 U.S. Code § 610 by pressuring and intimidating his subordinates to participate in political activity on behalf of his reelection campaign. Ordinarily it might be most prudent to wait until after the election to initiate a complaint such as this one, but unfortunately addressing potential violations of the political coercion statute is a matter of great urgency as we approach the election. The potential violations of 18 U.S. Code § 610 we describe in this letter threaten grave harm to the integrity of the impending U.S. election and may well accelerate in the week prior to the election. Moreover, if there is a disputed election, such violations could continue after election day and could impact the integrity of the ballot count or the dispute process. We are concerned about the continued effort by the Trump Administration to discourage and frustrate mail in voting and interfere with the counting of ballots as well as the potential participation of the Department of Justice in litigation over the election after the election. In a worst case scenario, President Trump could order federal officers to take violent actions against Americans who peacefully protest attempts by him or his Administration to interfere with certification of the results of the election, the proceedings of the Electoral College or the peaceful transfer of power to a new president. Such abuse of office must not be permitted to occur.

A. Attorney General William Barr

President Trump has publicly pressured Attorney General Barr to assist with his reelection campaign. Numerous news stories have been published suggesting that the Attorney General is "weaponizing" the DOJ to assist with the president's reelection campaign.² Our concern about this conduct is particularly acute in the immediate run up to the election.

First, President Trump has pressured Mr. Barr in public media comments to investigate and prosecute his political opponents in both the 2016 election and the 2020 election. Often President Trump has applied such pressure in conjunction with pressure on other federal officials, such as Secretary of State Michael Pompeo, to release records that President Trump believes could be used by Mr. Barr to prosecute his political opponents. This was made clear in President Trump's

² Peter Stone, How William Barr is Weaponizing the Justice Department to Help Trump Win, The Intercept, August 29, 2020, <https://theintercept.com/2020/08/29/william-barr-trump-justice-department/>.

remarks on Fox Business with Maria Bartiromo on October 8, 2020.³ A transcript of a portion of that interview is attached to this letter as Exhibit A.

Among other things Trump said in that interview:

Unless Bill Barr indicts these people for crimes, the greatest political crime in the history of our country, then we're going to get little satisfaction unless I win. And we'll just have to go. Because I won't forget it. But these people should be indicted. This was the greatest political crime in the history of our country. And that includes Obama. And it includes Biden. These are people that spied on my campaign. And we have everything. Now they say they have much more. Ok? And I say, "Bill we got plenty. You don't need anymore."⁴

As President Trump again said in an interview:

To be honest, Bill Barr is going to go down as either the greatest attorney general in the history of the country or he's going to go down as, you know, a very sad situation ... I'll be honest with you. He's got all the information he needs. They want to get more, more, more. They keep getting more. I said, you don't need any more.⁵

Further details about this pressure from President Trump were reported in the *New York Times*: which said that "President Trump forced the State Department on Friday to commit to releasing at least some of Hillary Clinton's emails before next month's election, resurrecting a four-year-old issue in hopes that it would prove as helpful to his political prospects as it was when he defeated her in 2016."⁶ As the *New York Times* further reported:

Trailing badly in the polls and eager to change the subject from the coronavirus, Mr. Trump succeeded in compelling Secretary of State Mike Pompeo to announce that he would make public the emails even as Attorney General William P. Barr resisted pressure from the president to prosecute Democrats like former Vice President Joseph R. Biden Jr., this year's Democratic nominee.⁷

The Washington Post reported:

³ Interview: Maria Bartiromo Interviews Donald Trump on Fox Business - October 8, 2020 <https://vimeo.com/466413086>. See Exhibit A.

⁴ Id.

⁵ See Ian Schwartz, *Trump: Bill Barr's Going to Go Down as Either the Greatest Attorney General of a Very Sad Situation*, Real Clear Politics, October 8, 2020 https://www.realclearpolitics.com/video/2020/10/08/trump_bill_barrs_going_to_go_down_as_either_the_greatest_attorney_general_or_a_very_sad_situation.html

⁶ Peter Baker, Maggie Haberman, Katie Benner, Lara Jakes and Michael S. Schmidt [Election Less Than a Month Away, Trump Leans on Barr and Pompeo for a Lift, New York Times, October 9, 2020.](#)

⁷ Id.

President Trump publicly pressured the Justice Department on Friday to move against his political adversaries and complained that Attorney General William P. Barr is not doing enough to deliver results of a probe into how the Obama administration investigated possible collusion between Russia and the 2016 Trump campaign.

The delayed report is 'a disgrace,' and Trump's 2016 Democratic opponent, Hillary Clinton, should be jailed, Trump said in a rambling radio interview, one day after he argued on Twitter that his current Democratic opponent, Joe Biden, is a criminal who should be barred from running.⁸

Again the New York Times reported:

"President Trump took a step even Richard M. Nixon avoided in his most desperate days: openly ordering direct, immediate government action against specific opponents, timed to serve his re-election campaign."⁹

Second, President Trump, has pressured Mr. Barr to investigate and prosecute individuals in the Obama Administration who began the investigation of Russian interference in the 2016 campaign and possible connections between his campaign and the Russians. President Trump's pressure campaign on Mr. Barr appears to be visible not only based on Trump's public remarks, but also from public remarks made by Mr. Barr on a number of occasions. Recent public disagreements between Mr. Trump and Mr. Barr with regard to the investigation of John Durham have made clear that the President tried to force the Attorney General's hand to produce a report that would implicate individuals in the Obama intelligence community responsible for launching "Crossfire Hurricane," namely the investigation by the FBI into Mr. Trump's ties with Russia during the 2016 campaign. Mr. Trump has publicly pressured Mr. Barr to reach findings that would enable the Department of Justice to seek indictments against Obama-era intelligence officials. On the Rush Limbaugh show, for example, Trump specifically tied these efforts to prosecute political opponents to his desire to get "satisfaction" by winning the 2020 election: "Unless Bill Barr indicts these people for crimes – the greatest political crimes in the history of our country – then we're going to get little satisfaction unless I win. . . . But these people should be indicted, this was the greatest political crime in the history of our country. And that includes Obama and it includes Biden."¹⁰

⁸ Anne Gearan Matt Zaptosky, Karoun Demirjian, and Josh Dawsey, [Trump, lagging in polls, pressures Justice Dept. to target Democrats and criticizes Barr, Washington Post, October 9, 2020](#)

⁹ David Sanger, [Taking Page From Authoritarians, Trump Turns Power of State Against Political Rivals, New York Times, October 10, 2020.](#)

¹⁰ Kevin Breuninger and Dan Mangan, Trump gets angry when told that findings from Durham Probe might not come out before election, CNBC, October 9, 2020, <https://www.cnbc.com/2020/10/09/trump-fumes-when-told-durham-probe-findings-might-not-come-out-before-election-day.html> (reporting on President Trump's interview with Rush Limbaugh)

Third, President Trump has pressured Mr. Barr to coordinate with foreign governments in investigating his political opponents. President Trump likely asked Mr. Barr to assist in his efforts to coerce the Ukrainian government into investigating former Vice President and 2020 presidential candidate Joe Biden and his son Hunter. Mr. Barr's name was mentioned specifically in President Trump's phone call with the President of Ukraine. There is evidence that this same pattern has been repeated with regard to other foreign governments, such as Australia and Italy.¹¹ In September, 2019, for example, Donald Trump had William Barr fly to Italy to help substantiate reports that the FBI had improperly targeted members of the Trump campaign in 2016. As reported in multiple news outlets, this trip was organized "with help from Trump himself," who had introduced Barr to the Italian prime minister and other "appropriate officials," as was described by a DOJ spokeswoman.¹² These matters should be investigated to determine the extent, if any, of Mr. Barr's involvement in outreach to foreign governments on Donald Trump's behalf. It is worthy of note that the meeting that took place between William Barr and senior Italian intelligence officials was also attended by John Durham, following a conversation between President Trump and Prime Minister Giuseppe Conte on September 5, 2019.¹³ Although these events pertain to Mr. Trump's 2016 presidential campaign, this advocacy on the Trump campaign's behalf is political activity in 2020. President Trump is using much of the same campaign infrastructure he had in 2016 and most important, the entire point of the counter investigations is to put spin on what happened in 2016 as a way to message to voters in 2020. When President Trump puts pressure on federal employees to pursue these investigations on behalf of his own campaign he violates 18 U.S. Code § 610.

Fourth, President Trump asked Attorney General Barr to assist him in clearing Lafayette Park of peaceful protestors in order to enable the president to stage a campaign-style photo op in front of St. John's Church. On this occasion, the D.C. police, with the assistance of the National Guard, cleared the square of peaceful demonstrators using excessive force. It is probable -- indeed highly likely -- that President Trump did command or coerce Attorney General Barr into these violations of the Hatch Act. At one of them -- the Lafayette Park campaign photo op -- President Trump and Attorney General Barr were both physically present. This conduct was the basis for a separate Hatch Act complaint against Attorney General Barr that one of us filed in June.¹⁴

Fifth, statements by Mr. Barr himself reveal that he is torn between his role as Attorney General and pressure to support President Trump's reelection campaign, Additional public remarks on the part of Mr. Barr that should be scrutinized and investigated suggest frequent verbal support for

¹¹ Mike Levine, "Why has AG Barr Enlisted Italy and Australia to review the origins of the Russia probe?" <https://abcnews.go.com/Politics/ag-barr-enlisted-italy-australia-review-origins-russia/story?id=65979014>, ABC News, October 1, 2019.

¹² Id.

¹³ See Alexander Mallin and Jonathan Karl, "Barr asked Trump for introductions to Italy, Australia in Russia probe review," <https://abcnews.go.com/Politics/barr-asked-trump-introductions-australia-italy-review-russia/story?id=65964849>, ABC News, September 30, 2019

¹⁴ See <https://www.law.upenn.edu/live/files/10561-painter-complaint-hatch-act>.

Donald Trump's reelection campaign. For example, on or around September 11, 2020 Mr. Barr gave a media interview that was later broadcast as a podcast entitled "The Chicago Way with John Kass," that aired on September 14. During the interview, after acknowledging the impropriety of an Attorney General engaging in politics, William Barr made remarks of a political nature promoting Donald Trump's campaign as well as criticizing Joe Biden. This interview was the subject of a Hatch Act complaint filed by Citizens for Responsibility and Ethics in Washington (CREW). Other Hatch Act violations by Mr. Barr are described in a lengthy report on the Department of Justice that was released on October 12 by the Center for Ethics and the Rule of Law (CERL) at the University of Pennsylvania and by CREW.¹⁵ The two of us were co-reporters for the CERL/CREW Report.

Finally, the Department of Justice should take immediate steps to identify and put a stop to any pressure on the part of Mr. Trump to Mr. Barr regarding interference in the upcoming election and its immediate aftermath. According to a law suit filed by a non-governmental watchdog group, "President Donald J. Trump and his political appointees are trying to prevent a free and fair 2020 election by intimidating and threatening eligible voters who want to vote, support and advocate on behalf of certain political candidates, and express their political beliefs."¹⁶ The law suit alleges that the defendants have

threatened to send law enforcement to polling places; encouraged activist Trump supporters and white supremacist groups with a history of violence to go to polling locations to serve as 'poll watchers;' proposed to delay the 2020 general election; publicly discredited voting by mail; sabotaged mail delivery for the purpose of making voting by mail less reliable; threatened to ban voting by mail or prevent mailed-in votes from being counted; and rejected the nation's unbroken 231-year history of peaceful transfers of power by refusing to commit to honor or recognize the legitimacy of the results of the presidential election.

....

This pattern of violently suppressing opposition, sabotaging a free and fair election, and rejecting a peaceful transfer of power has the purpose and effect of intimidating Americans from voting, trying to vote, helping others to vote, supporting or advocating for the election of Trump's opponents, or exercising the right to speak, peaceably assemble, or petition the government for redress of grievances . . ."¹⁷

¹⁵ A copy of this Report is posted on the CERL website: <https://www.law.upenn.edu/institutes/cerl/>

¹⁶ Mi Familia Vota Education Fund; Sara Schwartz; and Marla Lopez v. Donald J. Trump; William P. Barr; and Chad F. Wolf, Complaint for Declaratory and Injunctive Relief, District Court of the District of Columbia, filed 10/21/2020. https://www.scribd.com/document/481048728/Mi-Familia-v-Trump-Complaint#download&from_embed.

¹⁷ Id. At 2.

We do not have independent confirmation that the allegations in this complaint are true, but if they are true it is extremely serious, and if federal employees are involved and any of this political activity by federal employees was ordered by President Trump he would likely violate 18 U.S. Code § 610. With only slightly more than a week until election day, and early voting and mail-in voting underway all across the country, it is imperative that the president and his campaign be prevented from drafting the Department of Justice into efforts to engage in political activities. In particular, there is a risk that Mr. Trump will pressure the Department of Justice to engage in efforts to suppress voter turnout and limit the effectiveness of mail-in balloting, to intimidate voters by sending federal agents to polling sites on election day or creating unrest while voting or ballot counting are taking place. While we do not know with certainty whether Mr. Trump is indeed pressuring Mr. Barr to use the Department of Justice for these purposes, such conduct would be consistent with Mr. Trump's other attempts to influence Department of Justice activity and to marshal support for his reelection campaign.

For present purposes, it is critical for the Department of Justice to investigate the president's encouragement and pressure of Mr. Barr to engage in these alleged violations. Your office should investigate these and any other instances in which President Trump pressured Mr. Barr to engage in partisan political activity. If Mr. Barr was a more than willing participant in these political activities, and if, moreover, he placed pressure on other Department of Justice employees to assist with these highly partisan political activities, Mr. Barr would be complicit in the president's violation of 18 U.S. Code § 610 and a conspiracy to violate that provision could be found to exist under 18 U.S.C. § 371.

For the purposes of the present Hatch Act complaint, it is critical that Mr. Barr recuse himself from any and all investigations of these allegations. As detailed in the CERL/CREW Report on the Department of Justice and the Rule of Law, Mr. Barr has failed to recuse himself in the past, such as with regard to the Russia investigation as well as with regard to the Ukraine matter. In both instances, it would have been fully warranted for him to do so,¹⁸ and in this instance it is required beyond any doubt. We would like Mr. Barr's assurance that he intends to obey this basic conflict of interest rule and he should publicly announce his commitment to the same upon receipt of the present complaint.

B. Secretary of State Mike Pompeo and the State Department

In August, we filed a Hatch Act complaint with the Office of Special Counsel (OSC) against Secretary Pompeo in connection with his reported involvement in President Trump's effort to coerce the Ukrainian government into investigating 2020 presidential candidate Joe Biden and his son Hunter. Our complaint also alleged that Secretary Pompeo's August 2020 speech from Jerusalem to the Republican National Convention during an official diplomatic mission violated the Hatch Act.¹⁹

¹⁸ See <https://www.law.upenn.edu/live/files/10900-report-on-the-doj-and-the-rule-of-law>.

¹⁹ <https://www.law.upenn.edu/live/files/10769-pompeo-hatch-act>

Particularly shocking is President Trump's May 23 meeting in the Oval Office where he put pressure on U.S. Ambassador to the E.U. Gordon Sondland, Special Envoy Kurt Volker and Secretary of Energy Rick Perry to engage in political activity in their official interactions with Ukraine. According to Sondland, Trump "express[ly] direct[ed]" them to coordinate with Rudy Giuliani to induce Ukraine to open investigations into Joe Biden and Hunter Biden's connection with Ukrainian gas company Burisma as well as allegations of Ukrainian interference in the 2016 election. Sondland testified that he, Volker and Perry were "follow[ing] the President's orders."²⁰

Just this year, Secretary of State Mike Pompeo has said that he expects his agency will release more of Hillary Clinton's emails in the coming weeks after President Trump publicly urged him to be more aggressive in going after the former secretary of State and other political rivals. "We've got the emails, we're getting them out. We're going to get all this information out so the American people can see it. ... We're doing it as fast as we can. I certainly think there'll be more to see before the election," Secretary Pompeo added when pressed about the timing in an interview with Fox News' Dana Perino.²¹

This development comes on the heels of President Trump's public castigation of Pompeo for not releasing the emails before the election. He said: "They're in the State Department, but Mike Pompeo has been unable to get them out, which is very sad, actually I'm not happy about him for that reason. He was unable to get them out. I don't know why. You're running the State Department, you get them out."²²

Although Clinton is not the Democratic nominee in the 2020 election, the legitimacy of the 2016 election continues to be a hot political issue in 2020 and the reference to release of the emails "before the election" can only be interpreted to be an admission of intent to use the State Department to influence the 2020 election in Donald Trump's favor.

It is probable -- indeed highly likely -- that President Trump did command or coerce Secretary Pompeo into these violations of the Hatch Act. Your office should investigate this and any other instances in which President Trump pressured Secretary Pompeo to engage in partisan political activity. Moreover, if Secretary Pompeo placed pressure on other Department of State employees to assist with these highly partisan political activities, Secretary Pompeo would be complicit in the

²⁰ See Federal Criminal Offenses and the Impeachment of Donald J. Trump, *Just Security Section 6*, Gary Stein "The Hatch Act", December 16, 2019. <https://www.justsecurity.org/67738/federal-criminal-offenses-and-the-impeachment-of-donald-j-trump/#HatchAct>

²¹ See [Tal Axelrod, *Pompeo Says He Expects More Clinton Emails to be Released Before Election*, The Hill, October 9, 2020.](#)

²² Brett Samuels, *Trump Swipes at Barr, Pompeo, Wray in Return to Russia Investigation, Clinton Emails*, The Hill, October 8, 2020 (reporting on the Fox News interview) <https://thehill.com/homenews/administration/520160-trump-swipes-at-barr-pompeo-wray-in-fox-business-interview>.

president's violation of 18 U.S. Code § 610 and a conspiracy to violate that provision could be found to exist under 18 U.S.C. § 371.

C. Postmaster General Louis DeJoy

Citizens for Responsibility and Ethics in Washington (CREW) has filed a criminal Hatch Act complaint against Postmaster General Louis DeJoy.²³ On September 14, 2020, one of us, Richard Painter testified before the Operations subcommittee of the United States House of Representatives Oversight Committee on the conduct of Mr. DeJoy. Together we submitted a detailed letter regarding the conduct of Mr. DeJoy.²⁴ An important theme of Painter's testimony, and even more so of our joint letter, was Mr. DeJoy's efforts to interfere with mail in voting by making fundamental changes at the United States Postal Service that degraded mail service in the months leading up to the election. This is in keeping with efforts by President Trump and his reelection campaign to disparage and discourage mail in voting in the November elections.

It is probable -- indeed highly likely -- that President Trump did command or coerce Postmaster General DeJoy into these violations of the Hatch Act. Your office should investigate these and any other instances in which President Trump pressured Mr. DeJoy to engage in partisan political activity. And once again, if Mr. DeJoy was a more than willing participant in these political activities, and if, moreover, he placed pressure on other employees in the USPS to assist with these highly partisan political activities, Mr. DeJoy would be complicit in the president's violation of 18 U.S. Code § 610 and a conspiracy to violate that provision could be found to exist under 18 U.S.C. § 371.

D. FBI Director Christopher Wray

President Trump and his allies have also directed significant public pressure at FBI Director Chris Wray "for what they believe is slow-walking efforts to find wrongdoing in the Obama administration."²⁵ In early October, Wray, who is currently serving a ten-year term as FBI Director that began in 2017, reaffirmed that he has no plans to resign his post despite the president's efforts. As Bloomberg reported:

FBI Director Christopher Wray has no plans to resign, a bureau official said, as President Donald Trump and his supporters step up demands for the release of sensitive files that they say will show "spying" on Trump's 2016 campaign. ... With Trump falling behind Democrat Joe Biden in polls ahead of the Nov. 3 election, the president and his political

²³ file:///C:/Users/cfinkels/Downloads/2020-08-20-DeJoy-Letter-to-Wray-FINAL.docx.pdf.

²⁴ <https://docs.house.gov/meetings/GO/GO24/20200914/110994/HHRG-116-GO24-Wstate-PainterR-20200914-SD005.pdf>.

²⁵ Brett Samuels, *Trump Swipes at Barr, Pompeo, Wray in Return to Russia Investigation, Clinton Emails*, The Hill, October 8, 2020 (reporting on the Fox News interview)

<https://thehill.com/homenews/administration/520160-trump-swipes-at-barr-pompeo-wray-in-fox-business-interview>.

allies have renewed criticism of the Federal Bureau of Investigation as being too slow to release information that they say will show anti-Trump bias in its investigation into whether Trump or any of his associates conspired with Russia to interfere in the 2016 election.²⁶

Days later, President Trump sat for the aforementioned interview with Fox Business host Maria Bartiromo in which she accused the FBI of lying to Congress and Trump attacked Mr. Wray directly for not taking action that Trump believed could be useful in the election. According to CNN's reporting on the interview:

Trump railed against Wray, who he said should provide more documents to John Durham, who was tapped by Barr to lead the review into the origins of the Russia investigation. "So Christopher Wray was put there. We have an election coming up. I wish he was more forthcoming, he certainly hasn't been. There are documents that they want to get, and we have said we want to get. We're going to find out if he's going to give those documents. But certainly he's been very, very protective," the President said on Fox Business.²⁷

More recently, the Washington Post has reported that President Trump and his advisers "have repeatedly discussed whether to fire FBI Director Christopher A. Wray after Election Day" because "federal law enforcement has not delivered his campaign the kind of last-minute boost that the FBI provided in 2016."²⁸ According to the Post:

The conversations among the president and senior aides stem in part from their disappointment that Wray in particular but Barr as well have not done what Trump had hoped — indicate that Democratic presidential candidate Joe Biden, his son Hunter Biden or other Biden associates are under investigation, these people say. ... In the campaign's closing weeks, the president has intensified public calls for jailing his challenger, much as he did for Hillary Clinton, his opponent in 2016. Trump has called Biden a "criminal" without articulating what laws he believes the former vice president has broken. People familiar with the discussions say Trump wants official action similar to the announcement made 11 days before the last presidential election by then-FBI Director James B. Comey, who informed Congress he had reopened an investigation into Clinton's use of a private email

²⁶ Chris Strohm, *FBI's Wray Has No Plans to Quit as Trump Pressures the Bureau*, Bloomberg, October 7, 2020
<https://www.bloomberg.com/news/articles/2020-10-07/fbi-s-wray-has-no-plans-to-quit-as-trump-pressures-the-bureau>

²⁷ Betsy Klein and Evan Perez, *Trump Goes After FBI Director Wray, Whom He Appointed, and Issues Warning to Barr*, CNN, October 14, 2020 (reporting on the Fox News interview)
<https://www.cnn.com/2020/08/13/politics/trump-bill-barr-chris-wray/index.html>.

²⁸ Devlin Barrett and Josh Dawsey, *Trump Weighs Firing FBI Director after Election as Frustration with Wray, Barr Grows*, The Washington Post, October 21, 2020
https://www.washingtonpost.com/national-security/trump-wray-biden-barr/2020/10/21/6ce69f02-13b0-11eb-ad6f-36c93e6e94fb_story.html.

server while she was secretary of state after potential new evidence had been discovered.²⁹

Vanity Fair and other outlets have reported that President Trump is frustrated with Christopher Wray for refusing to help steal the election.³⁰ There was apparently an expectation that Wray would help to deliver the kind of “last minute boost” that the FBI was able to provide in 2016, when James Comey announced 11 days before the election that Hilary Clinton was “under investigation” for her use of a private email server. President Trump had apparently had hopes that a similar announcement would be made regarding Joe and Hunter Biden with regard to Hunter’s position with Ukrainian company Burisma.

It is probable -- indeed highly likely -- that President Trump has commanded or attempted to coerce Director Wray into violations of the Hatch Act. Your office should investigate this and any other instances in which President Trump pressured Director Wray to engage in partisan political activity. President Trump’s behavior is a violation of 18 U.S. Code § 610 and, if anyone else participated in such efforts to pressure Mr. Wray or anyone else in the FBI, there also could be evidence of a potential conspiracy to violate that provision under 18 U.S.C. § 371.

E. Previous Employees

President Trump has routinely threatened and fired senior appointees who have frustrated his electoral goals. Two are mentioned below.

1. Attorney General Jeff Sessions

According to CNN, in July 2017 President Trump began targeting Sessions in a sustained public shaming campaign and appeared to try to pressure the attorney general into opening an investigation into Trump’s 2016 political opponent, Hillary Clinton. On July 25, 2017 Trump tweeted: “Attorney General Jeff Sessions has taken a VERY weak position on Hillary Clinton crimes (where are E-mails & DNC server) & Intel leakers!” On June 5, 2018 Trump tweeted: “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. So much time and money wasted, so many lives ruined...and Sessions knew better than most that there was No Collusion!” On August 25, 2018 Trump tweeted: “Every President deserves an Attorney General they have confidence in. I believe every President has a right to their Cabinet, these are not lifetime appointments. You serve at the pleasure of the President.” On November 8, right after the 2018 midterm elections, Trump fired Attorney General Sessions.

2. Inspector General Michael Atkinson

²⁹ Id.

³⁰ <https://www.vanityfair.com/news/2020/10/donald-trump-christopher-wray-firing>

In 2019, the NYT reported that President Trump discussed firing the inspector general for the intelligence community, Michael Atkinson. The president believes Atkinson was disloyal when he deemed the Ukraine whistleblower's complaint credible and reported it to Congress. Then in January 2020, President Trump tweeted: "House Republicans investigating origins of the Ukraine Whistleblower complaint. ICIG Michael Atkinson facing serious questions. "The Democrats know the ICIG is a major problem-didn't release his testimony. Looks so much like everything else we've seen, from the Russia Hoax, to . . . the Ukraine Hoax that became the Impeachment Scam. Must get the ICIG answers by Friday because this is the guy who lit the fuse. So if he wants to clear his name, prove that his office is indeed incompetent." Finally, in April 2020, Trump fired Atkinson, explaining later that Atkinson's role in reporting the Ukraine whistleblower complaint to Congress and precipitating his impeachment by the House of Representatives was part of the basis for his retaliation. President Trump remarked with regard to Michael Atkinson: "I thought he did a terrible job. Absolutely terrible. He took a whistleblower report, which turned out to be a fake report...it was about my conversation with the president of Ukraine. He took a fake report and he brought it to Congress."³¹

It is clear from the publicly reported comments on the part of Bill Barr that Barr played a role in advising the president to fire Michael Atkinson. If Mr. Barr was part of the overall plan to pressure Mr. Atkinson into withholding the whistleblower's complaint, and if this was done for political purposes, namely, to further Mr. Trump's reelection campaign, then a conspiracy might exist under 18 U.S.C. § 371 to pressure Mr. Atkinson for the purpose of advancing a partisan political aim.

F. Investigation and Prosecution Under 18 U.S.C. § 610

In this letter we describe some of the most egregious Hatch Act violations by agency heads and President Trump's attempts to pressure agency heads to engage in political activity. Other agency heads, including Chad Wolf the Acting Secretary of Homeland Security, have been accused of violating the Hatch Act,³² and may have done so under pressure from President Trump. These matters also should be investigated.

Unlike much of the Hatch Act 18 U.S.C. § 610 is a criminal provision. Unlike much of the Hatch Act this provision also applies to the President and Vice President. As Citizens for Responsibility and Ethics in Washington (CREW) pointed out in its DeJoy Complaint:

As the Department of Justice ("DOJ") has explained, 18 U.S.C. § 610, bars the coercion of political activity and "was enacted as part of the 1993 Hatch Act reform amendments to provide increased protection against political manipulation of federal employees in the

³¹ <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-19/>.

³² See Citizens for Responsibility and Ethics in Washington (CREW) Hatch Act Complaint Against Chad Wolf, Acting Secretary of Homeland Security, August 27, 2020. <https://www.citizensforethics.org/news/press-releases/chad-wolf-hatch-act-complaint/>

executive branch.” The statute prohibits intimidating or coercing a federal employee to induce or discourage “any political activity” by the employee and is among the body of statutes directed at the “use [of] government-funded jobs or programs to advance a partisan political agenda rather than to serve the public interest.” DOJ notes that “[a]lthough the class of persons covered by Section 610 is limited to federal employees, the conduct covered by this statute is broad: it reaches political activity that relates to any public office or election, whether federal, state, or local.” DOJ notes that the “phrase ‘political activity’ in Section 610 expressly includes, but is not limited to, ‘voting or refusing to vote for any candidate or measure,’ ‘making or refusing to make any political contribution,’ and ‘working or refusing to work on behalf of any candidate.’”³³

The Department of Justice has conducted criminal investigations of violations of 18 U.S.C. § 610 in the recent past. In 2013, then-Secretary of Labor Hilda Solis came under investigation by OSC after leaving a voicemail on a subordinate’s government issued phone, soliciting donations for a fundraiser for the reelection campaign of President Obama. Solis resigned from the government, but the OSC referred their investigation to the FBI for a criminal Hatch Act investigation. Though a grand jury was convened, criminal charges against Secretary Solis were never brought.³⁴

In sum, the Department of Justice is charged with enforcing all of the criminal laws of the United States, including 18 U.S. Code § 610. This includes investigating and prosecuting all persons who violate those laws. Because this is a criminal statute, investigation and prosecution should continue whether or not President Trump leaves office. If he remains in office, you should also consult with the Office of Legal Counsel (OLC) about reversal of its prior position in two OLC opinions issued in 1973 and 2000 concluding that a sitting president should not be indicted by the Department of Justice. The position is now untenable in view of the ruling of the 2020 Supreme Court in *Trump v. Vance* that a sitting president is subject to criminal process. The Supreme Court has unequivocally rejected President Trump’s contention that he has constitutional immunity from accountability under state or federal criminal laws.

Your office should proceed with this criminal investigation of President Trump under 18 U.S.C. § 610 accordingly.

Respectfully,



Claire O. Finkelstein
Algernon Biddle Professor of Law and Professor of Philosophy
University of Pennsylvania*

³³ Id. citing [Federal Prosecution of Election Offenses](#) 53 (Richard C. Pilger et al. eds., 8th ed. 2017).

³⁴ See Paul Pringle & Abby Sewell, [Complaint over Obama fundraiser triggered Solis probe](#), L.A. Times, (May 9, 2014), <https://www.latimes.com/local/la-me-solis-investigation-20140510-story.html>.



Richard W. Painter

S. Walter Richey Professor of Corporate Law
University of Minnesota Law School*

* institutional affiliation for identification purposes only.

EXHIBIT A:

Bartiromo Interview

(14:30) Bartiromo: You've been facing incredible resistance your entire term and you've taken some real bold action this week, authorizing the disclosure of all of the documents related to the Russia hoax. Mr. President, we now know from all of these documents that John Ratcliffe unveiled that it was Hillary Clinton's idea to tie you to Russia in some way. It was successful. The whole country was talking about it for two and a half years. But what comes next, Mr. President? We can have all of these documents, we can see exactly what happened but unless John Durham comes out with a report or indictments. Unless Bill Barr comes out with some kind of ruling here, do you think this is resonating on the American people?

Trump: Unless Bill Barr indicts these people for crimes, the greatest political crime in the history of our country, then we're going to get little satisfaction unless I win. And we'll just have to go. Because I won't forget it. But these people should be indicted. This was the greatest political crime in the history of our country. And that includes Obama. And it includes Biden. These are people that spied on my campaign. And we have everything. Now they say they have much more. Ok? And I say, "Bill we got plenty. You don't need anymore." We've got so much Maria. He just take a look the Comey report. 78 pages of [kill?] Done by Horowitz. And I have a lot of respect for Horowitz. And he said prosecute. He recommended prosecute and they didn't prosecute. I was - I couldn't believe it. But they didn't do it. Because they say we have much bigger fish to fry.

(17:15) Bartiromo: Address Christopher Wray. Will you replace him in a second term?

Trump: Well I don't want to say that yet. He's been disappointing. He talks about you know even the voting thing. He doesn't see the voting ballots as a problem. There are thousands ballots right there. You pick up any paper in the country practically and they're cheating all over the place on the ballots so how is that not a problem. That's a much bigger problem than China or Russia if you look at it. So when you're saying that I don't see that as problem, pick up the newspaper and read. They lost a thousands of ballots or were defrauded in North Carolina. 500 ballots were sent to Virginia erroneously [sic] erroneously.

(19:21) Trump: He's [Nevada Governor Stephen Sisolak] in charge of the ballots, and there's bad things happening out there. Now, we have law enforcement watching him. Very strong, the U.S. Attorney is watching him very strongly. The U.S. Marshall is watching. In New Mexico, a state that I think we can win, we have the U.S. Marshall and the U.S. attorney watching him. So it's not easy for them because we've got people watching. Nobody ever had. But its a corrupt system because they are sending out millions of ballots.

