

## The Department of Justice

The Department of Justice has a long and noble history. It began with the creation of the Office of the Attorney General through the Judiciary Act of 1789,<sup>1</sup> continued through the creation of the Department of Justice itself in 1870,<sup>2</sup> the formation of the Federal Bureau of Investigation in 1908,<sup>3</sup> the terrorist attacks of September 11, 2001, and into modern times. Properly understood within the framework of a constitutional republic that values ordered liberty, the Department of Justice has two primary functions: (1) protecting public safety, and (2) defending the rule of law.

Unfortunately, in recent years, the Department of Justice has lost its way and forfeited the trust of large segments of the American people. This is due in large part to its capture by an unaccountable bureaucratic managerial class and radical leftwing ideologues embedded throughout its offices and components, as well as institutional inattentiveness to the Department's core functions. Instead of a Department perceived as possessing the utmost impartiality and fairness as it advances the national interest on behalf of the American people—fighting crime and defending the rule of law—it has become a department that 46% of Americans recently indicated was “too political, corrupt, and not to be trusted.”<sup>4</sup>

Among its actions in recent years:

- The FBI, knowing that claims of Russia collusion were false,<sup>5</sup> worked with Democratic operatives to inject the story into the 2016 election through strategic media leaks, falsified FISA warrant applications, and lied to Congress.<sup>6</sup>
- Personnel within the FBI engaged in a campaign to convince social media companies and the media generally that the story about the

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<sup>1</sup> Judiciary Act of 1789, ch. 20, sec. 35, 1 Stat. 93 (1789).

<sup>2</sup> An Act to Establish the Department of Justice, P.L. 41-97, 16 Stat. 162 (1870).

<sup>3</sup> John F. Fox, *The Birth of the Federal Bureau of Investigation*, FEDERAL BUREAU OF INVESTIGATION, (July 2003), <https://bit.ly/3G4LmD0>.

<sup>4</sup> *Nationwide Issues Survey August 2022*, 3, TRAFALGAR GRP., [bit.ly/3VeTHrP](https://bit.ly/3VeTHrP).

<sup>5</sup> John Solomon, *FBI Email Chain May Provide Most Damning Evidence of FISA Abuses Yet*, THE HILL (Dec. 5, 2018) <https://bit.ly/3jewkS6>; Post Editorial Board, *The FBI Knew RussiaGate Was a Lie – But Hid That Truth*, NEW YORK POST (Jun. 11, 2022), <https://bit.ly/3YDIqnT>.

<sup>6</sup> John Solomon, *Collusion Bombshell: DNC Lawyers Met With FBI on Russia Allegations Before Surveillance Warrant*, THE HILL (Oct. 3, 2018) <https://bit.ly/3jfPKpL>; Eric Tucker, *Ex-FBI Lawyer Admits to False Statement During Russia Probe*, AP NEWS (Aug. 19, 2020), <https://bit.ly/3G2KYVv>.

contents of Hunter Biden’s laptop was the result of a Russian misinformation campaign—when the FBI had possession of the laptop the whole time.<sup>7</sup>

- The Department engaged in conduct to chill the free speech rights of parents across the United States, supposedly in response to “threats” against school boards, yet failed to engage in any concerted campaign to protect the rights of Americans terrorized by violence, such as the violence perpetrated against pregnancy care centers.<sup>8</sup>
- The Federal Bureau of Investigation tasked agents with monitoring social media and flagging content they deemed to be “misinformation” or “disinformation” (not associated with any plausible criminal conspiracy to deprive anyone of any rights) for platforms to remove.<sup>9</sup>
- The Federal Bureau of Investigation engaged in a domestic influence operation to pressure social media companies to: 1) report more “foreign influence” than the FBI was actually seeing; and 2) stop the dissemination of and censor true information directly related to the 2020 Presidential Election.<sup>10</sup>
- The Department devoted inordinate resources to prosecuting American citizens for misdemeanor trespassing offenses, or violations of the FACE

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<sup>7</sup> Jesse O’Neil, *FBI Pressured Twitter, Sent Trove of Docs Hours Before Post Broke Hunter Laptop Story*, AP NEWS (Aug. 19, 2020), <https://bit.ly/3FENKis>.

<sup>8</sup> Memorandum from the Attorney General, October 4, 2021, to the Director of the Federal Bureau of Investigation, the Director of the Executive Office for U.S. Attorneys, the Assistant Attorney General for the Criminal Division, and the United States Attorneys, titled, “Partnership among federal, state, local, tribal, and territorial law enforcement to address threats against school administrators, board members, teachers, and staff” available at <https://www.justice.gov/ag/page/file/1438986/download>; Dillon Burroughs, *25 States Have Now Left National School Boards Association As Nebraska Departs*, DAILY WIRE (Jun. 13, 2022) <https://bit.ly/3PJ9LB7>.

<sup>9</sup> Brianna Herlily, *FBI Met Weekly With Big Tech Ahead of the 2020 Election, Agent Testifies*, FOX NEWS (Dec. 3, 2022), [bit.ly/3HNogSH](https://bit.ly/3HNogSH); Allie Griffin, *Latest ‘Twitter Files’ Show FBI Bullied Executives Over Not Reporting ‘State Propaganda’ Enough*, NEW YORK POST (Dec. 18, 2022), <https://bit.ly/3v0qiaf>.

<sup>10</sup> Michael Shellenberger (@ShellenbergerMD), TWITTER, (Dec. 19, 2022, 1:35PM) <https://bit.ly/3G4Mtm8> (“In the end, the FBI’s influence campaign aimed at executives at news media, Twitter, & other social media companies worked: they censored & discredited the Hunter Biden laptop story. By Dec. 2020, Baker and his colleagues even sent a note of thanks to the FBI for its work.”).

Act,<sup>11</sup> while dismissing prosecutions against radical agents of the left, like ANTIFA.<sup>12</sup>

- The Department has consistently threatened that any conduct not aligning with the liberal agenda “could” violate federal law—without actually taking a position that the conduct in question is illegal—using the prospect of protracted litigation and federal sanctions to chill disfavored, even legal behavior, such as with abortion,<sup>13</sup> or with efforts by states to prevent genital mutilation of children.<sup>14</sup>
- The Department sued multiple states regarding their efforts to enhance election integrity.<sup>15</sup>
- The Department has failed to do its part to stop the flood of fentanyl and other deadly drugs flowing across our borders and decimating families and communities across the United States.<sup>16</sup>
- The Department has abdicated its responsibility to assist in the enforcement of our immigration laws and engaged in wholesale abandonment of its duty to actually adjudicate cases in the immigration court system.

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<sup>11</sup> United States Attorney’s Office, *Eleven Charged with FACE Act Violations Stemming from 2021 Blockage of Mount Juliet Reproductive Health Clinic*, DEP’T. OF JUST., (Oct. 5, 2022), <https://bit.ly/3WcVMWD>; Kaelan Deese, *DOJ Official Touts Prosecution of Anti-Abortion Advocates While Vandalized Pregnancy Centers Await Justice*, WASHINGTON EXAMINER, (Dec. 14, 2022) <https://bit.ly/3YzXwLe>.

<sup>12</sup> Aruna Viswanatha and Sadie Gurman, *Almost Half of Federal Cases Against Portland Rioters Have Been Dismissed*, WALL STREET JOURNAL, (Updated Apr. 15, 2021), <https://bit.ly/3FE3ceB>; Just the News Staff, *Antifa-led Portland Rioter Charged with Assault of Police Has Case Dismissed After Community Service*, JUST THE NEWS, (Dec. 30, 2021), <https://bit.ly/3FAUqOq>.

<sup>13</sup> DEP’T. OF JUST. OFF. OF PUB. AFF., *Justice Department Sues Texas Over Senate Bill 8, Complaint Alleges Senate Bill 8 Violates the Constitution by Effectively Banning Most Abortions*, DEP’T. OF JUST., (Sept. 9, 2021), <http://bit.ly/3W7bKBE>.

<sup>14</sup> Dorian Geiger, *DOJ Warns States Over Blocking Access to Gender-affirming Treatment*, AXIOS (Mar. 31, 2022), <https://bit.ly/3G6NTN3>.

<sup>15</sup> Joyce White Vance, *The Justice Department Is Suing Georgia. Don’t Expect Garland to End There*, WASHINGTON POST (Jun. 29, 2021), <https://bit.ly/3jhSWRP>; David Nakamura & Devlin Barrett, *Justice Dept. Sues Texas Over State Redistricting Maps, Citing Discrimination Against Latinos*, WASHINGTON POST (Dec. 6, 2021), <https://bit.ly/3HNwBp9>; Holmes Lybrand & Paul LeBlanc, *Justice Department Sues Arizona Over New Election Law Requiring Proof of Citizenship*, CNN (Jul. 5, 2022), <https://bit.ly/3G4pzv7>.

<sup>16</sup> Zachary Pottle, *America’s Fentanyl Crisis Is Getting Worse*, ADDICTION CENTER (Aug. 26, 2022), <bit.ly/3BLFhsq>.

These actions stand in stark contrast to Attorney General Merrick Garland's assertion before taking office, that "there not be one rule for Democrats and another for Republicans, one rule for friends and another for foes."<sup>17</sup>

While it is true—as with other federal departments and agencies—that there are committed career personnel across the Department who perform their duties faithfully and with the best intentions, this small sampling of scandals illustrates that the Department has become a bloated bureaucracy with a critical core of personnel who are infatuated with the perpetuation of a radical liberal agenda upon the American people—and the defeat of political enemies. It has become a cabinet-level department whose leadership appears to care more about how they are perceived in the next *Politico* or *Washington Post* article, or how any number of radical leftist organizations perceive their actions, than with doing justice and advancing the national interest for the American people.

The next conservative administration *must* place a high priority on reforming the Department and its culture—including, and especially, the Federal Bureau of Investigation—to align it with its core purposes and to advance the national interest. Anything other than a top-to-bottom overhaul will only further erode the trust of significant portions of the American people and, in turn, harm the very fabric that holds together our constitutional republic. And at a practical level, not reforming the Department of Justice will guarantee failure of that conservative administration's agenda in countless other ways.

Reform is not something that can be successfully achieved through minor adjustments around the periphery of the Department. Rather, a holistic, energetic, leadership-driven effort is necessary to begin to remedy the damage that has been done and to advance the national interest. And some needed reforms will not be possible without legislative changes from Congress. While it is true that certain offices and components require more attention than others—like the FBI or the Civil Rights Division—reforming the Department requires a committed direction from its political leadership to restore its focus and resources on its two core functions: (1) protecting public safety, and (2) defending the rule of law.

Additional important reforms for the Department do not necessarily fit within either of those two areas, so this chapter includes an additional section to address those areas. But recommitting the Department's efforts along the first two core functions will focus its efforts, curtail abuses, and restore the Department's integrity

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<sup>17</sup> Emily Jacobs, *Merrick Garland Speaks at DOJ Before Swearing-in by VP Kamala Harris*, NEW YORK POST (Mar. 11, 2021), <https://bit.ly/3V4IVoh>.

in ways that will make the American people proud. Below, we examine the general contours of a renewed focus on those issues and the way those core issues should be pursued at the Department.

### **I. Prioritizing the Department's Focus on Protecting Public Safety.**

When our citizens lack physical safety, career criminals do not fear the law; foreign cartels move narcotics and illegal aliens into our Nation at will, and political leaders call citizens “domestic terrorists” for exercising their constitutional rights, “ordered liberty” is at risk. The Department of Justice *must*—in partnership with state and local partners—recommit in both word and deed to protecting public safety.

The overwhelming majority of crimes in the United States are properly handled at the state and local level.<sup>18</sup> Here, the Department must provide critical technical support for local law enforcement and play a critical agenda-setting role. In contrast, for the Department's core responsibilities—enforcing our immigration laws, combatting domestic and international criminal enterprises, protecting federal civil rights, and combatting foreign espionage—the federal government alone has authority and, accordingly, accountability.

The evidence shows that the Biden Administration's Department of Justice has failed to protect law-abiding citizens and ignored its most basic obligations. It has become at once utterly unserious and dangerously politicized. Prosecution and charging decisions are infused with racial and partisan political double standards.<sup>19</sup> Immigration laws are ignored.<sup>20</sup> The FBI harasses protesting parents and labels them (“domestic terrorists”) while working diligently to shut down politically disfavored speech on the pretext of it being “disinformation.”<sup>21</sup> A Department that prosecutes

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<sup>18</sup> Eliot H. Lumbard, *State and Local Government Crime Control*, 43 NOTRE DAME L. REV. 889 (1968).

<sup>19</sup> Emma Colton, *Chip Roy Demands DOJ Explain Light Sentence for Floyd Riot Arsonist Who Killed Father of 5*, FOX NEWS, (Feb. 10, 2022), <https://bit.ly/3WiAKGb>; Chris Enloe, *DOJ Asked for Lenient Sentence for 2020 Rioter Who Burned Down Pawn Shop, Killing One Man. Prosecutors Even Cited MLK*, BLAZE MEDIA NEWS, (Jan. 29, 2022), <https://bit.ly/3Vbj0LG>; Chris Pandolfo, *House Republicans Release 1,000-Page Report Alleging Politicization in the FBI, DOJ*, FOX NEWS, (Nov. 4, 2022), <https://bit.ly/3HQwadK>; Brooke Singman, *Cruz Slams “Politicized” Biden DOJ for Appointing Trump Special Counsel: “Absolutely Disgraceful,”* FOX NEWS, (Nov. 19, 2022), <https://bit.ly/3FI1mt9>.

<sup>20</sup> 8 U.S.C. §§ 1325 (Improper entry by Alien), 1326 (Reentry of Removed Alien), 1327 (Aiding or assisting certain aliens to enter), 1328 (Importation of alien for immoral purpose); AMERICA FIRST LEGAL, *In Brief Filed With Supreme Court, AFL Hammers Biden Administration's Termination of MPP—Cites Alarming Statistic That Biden Administration Has Already Released More Than 750,000 Illegal Aliens Into the United States From the Border*, America First Legal (Apr. 14, 2022) (providing statistics for how many illegal aliens were released and limited deportation), <https://bit.ly/3PWxEFH>.

<sup>21</sup> The Editorial Board, *About Those Domestic-Terrorist Parents*, WALL STREET JOURNAL, (October 26, 2021), <https://bit.ly/3WdLi9A>; John Malcom, *Are Parents Being Tagged as “Domestic Terrorists” by the FBI? Justice Department Needs to Show Its Cards*, The Heritage Foundation, (November 18, 2021),

FACE Act cases while ignoring dozens of violent attacks on pregnancy care centers and/or the coordinated violation of laws prohibiting parading outside of the homes of Supreme Court Justices,<sup>22</sup> has clearly lost its way. A Department that has twice engaged in covert domestic election interference and propaganda operations—the Russian collusion hoax in 2016 and the Hunter Biden laptop suppression in 2020—is a threat to the Republic.<sup>23</sup>

Restoring the Department’s focus on public safety and a culture of respect for the rule of law is a gargantuan task, but at minimum, it involves: (a) restoring the FBI’s integrity; (b) renewing the Department’s focus on violent crime; (c) dismantling domestic and international criminal enterprises; and, (d) pursuing a national security agenda aimed at external state and non-state actors, not U.S. citizens exercising their constitutional rights.

#### **a. Restoring the Federal Bureau of Investigation’s Integrity.**

The FBI was founded in 1908 to “tackle national crime and security issues” when “there was hardly any systematic way of enforcing the law across this now broad landscape of America.”<sup>24</sup> It best serves the American people when it dedicates its resources and energies towards attacking violent crime,<sup>25</sup> criminal organizations,<sup>26</sup> child predators,<sup>27</sup> cyber-crime, and other uniquely federal interests.<sup>28</sup>

Revelations regarding the FBI’s role in the Russia hoax of 2016, Big Tech collusion, and suppression of Hunter Biden’s laptop in 2020 strongly suggest that the Bureau is, especially at its upper echelons, completely out of control. To protect the Constitution, effectively fight crime, and protect the Nation from foreign adversaries,

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<https://bit.ly/3FHBFc8>; Victor Nava, *FBI Treated Twitter as a “Subsidiary,” Flagged Tweets and Accounts for “Misinformation,”* NEW YORK POST, (December 16, 2022), <https://bit.ly/3WtpQgw>.

<sup>22</sup> Mary Margaret Olohan, *DOJ’s Kristen Clarke: A Pro-Abortion Activist Enforcing the Law Against Pro-Lifers*, DAILY SIGNAL (Oct. 26, 2022), <https://dailysign.al/3G3OT4l>; Josh Gerstein, *DOJ Official Pressed on Targeting of Supreme Court Justices*, POLITICO (Jul. 28, 2022), <https://politi.co/3WvKDQr>.

<sup>23</sup> John Solomon, *FBI Email Chain May Provide Most Damning Evidence of FISA Abuses Yet*, THE HILL (Dec. 5, 2018) <https://bit.ly/3jewkS6>, Post Editorial Board, *The FBI Knew RussiaGate Was a Lie – But Hid That Truth*, NEW YORK POST (June 11, 2022) <https://bit.ly/3YDIqnT>; Jesse O’Neil, *FBI Pressured Twitter, Sent Trove of Docs Hours Before Post Broke Hunter Laptop Story*, AP NEWS (Aug. 19, 2020), <https://bit.ly/3FENKis>.

<sup>24</sup> FBI, *The Nation Calls, 1908-1923*, <https://bit.ly/3GgG734>, (last visited Dec. 19, 2022).

<sup>25</sup> Press Release, *FBI and Law Enforcement Partners Arrest Nearly 6,000 Violent Criminals This Summer*, FED. BUREAU OF INVESTIGATION, (Sep. 13, 2022), <https://bit.ly/3WbQYRg>.

<sup>26</sup> E.g., Joseph Goldstein, *As Seen in ‘Goodfellas’: Arrest Is Made in ‘78 Lufthansa Robbery*, NEW YORK TIMES (Jan. 23, 2014), <https://bit.ly/3FHoZls>.

<sup>27</sup> Danielle Wallace, *FBI Nationwide Operation Locates 121 Actively Missing Kids, Child Sex Trafficking Victims*, FOX NEWS (Aug. 15, 2022), <https://bit.ly/3hwJXf6>.

<sup>28</sup> Adam Shaw, *FBI Stepped in After Suspected Chinese Spy Got Close to Swalwell, Other Politicians, Report Finds*, FOX NEWS (Dec. 8, 2020), <https://bit.ly/3HKRlhl>.

the next Republican administration should pursue *at least* the following measures to begin to restore the Bureau's domestic reputation and integrity and to enhance its effectiveness at meeting foreign threats.

- i. Conducting an Immediate, Comprehensive Review of all Active Investigations and Activities, and Terminating Anything Unlawful or Contrary to the National Interest.

The next conservative administration must conduct a review of all major active investigations and activities ongoing at the FBI and stop anything unlawful or contrary to the national interest.<sup>29</sup> This is an enormous task, but a necessary one to earn back the trust of the American people about the nature of the FBI's continued work. To conduct this review, the Department should detail attorney appointees with criminal, national security, or homeland security backgrounds to catalogue any questionable activities and elevate them to appropriate Department leadership, consistent with the new chain of command in subsection (ii) below. The Department should also consider issuing a public report of the findings from this review, as appropriate.

- ii. Aligning the FBI's Placement Within the Department and the Federal Government with Its Law Enforcement and National Security Purposes.

Veterans of the Department often opine that the FBI views itself as an independent agency—accountable to no one other than the President of the United States, and on par with the Attorney General in terms of practical stature. But the simple fact remains, “the Federal Bureau of Investigation is located *in* the Department of Justice.”<sup>30</sup> It is not independent from the Department (just like ICE is not independent from the Department of Homeland Security) and does not deserve to be treated as if it was.

The next conservative administration should direct that the Attorney General remove the FBI from the Deputy Attorney General's direct supervision within the Department's organization chart,<sup>31</sup> and instead place it under the general supervision of the Assistant Attorney General for the Criminal Division, and the supervision of

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<sup>29</sup> The precise scope and countours of this review warrant special consideration. A review of all ongoing drug trafficking investigations or specific violent crime investigations may not warrant the Department's attention in the same way as high profile, politically sensitive investigations likely will. But the goal should be as comprehensive a review as possible.

<sup>30</sup> 28 U.S.C. § 531.

<sup>31</sup> See Section III, *infra*.

the Assistant Attorney General for the National Security Division, as applicable.<sup>32</sup> This can be accomplished through a simple internal departmental reorganization and does not need approval from the Congress.

Under such a structure, the FBI could continue to play an important role in advising the Department's leadership of emerging threats and on updates to notable investigations through daily briefings conducted *with* the leadership of CRM or NSD, but it would place the FBI under the direct report of a politically-accountable leader with fewer things to manage than the Deputy Attorney General or the Attorney General. All notifications and approvals that currently run to the Deputy Attorney General or the Attorney General should be evaluated and redirected in the first instance, where appropriate, to the relevant AAG.

Such a move would better align the FBI with the mission of the divisions it most often interacts with and emphasize the need for the areas in which it should place its focus. But under no circumstances should the FBI ever be able to go around the Attorney General or the Department's leadership, generally, on any matter within its area of responsibility.

iii. Prohibiting the FBI from Engaging in General Activities Related to Combating the Spread of So-Called Mis- and Disinformation by Americans Not Tied to Any Plausible Criminal Activity.

The FBI, along with the rest of the government, needs a hard reset on the appropriate scope of its legitimate activities. It cannot look to, nor rely on, the past decade as precedent or legitimization for continued action in certain spaces. This is especially true with respect to what the FBI (and USG writ large) terms "combatting" "mis- dis- or mal- information."

The United States Government, and by extension the FBI, *has absolutely no business policing speech*, whether in the public square, in print, or online. The First Amendment prohibits it. And the United States is the last best hope for self-government in the history of the world.<sup>33</sup> The continuation of our society relies on the ability to have healthy debate free from government intervention and censorship. The government, through its officials, is certainly able to speak and provide information to the public; indeed, this is a healthy component of an informed society. But government must not, in any circumstances, manipulate the scales and censor

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<sup>32</sup> The same could be said to apply to the Bureau of Alcohol, Tobacco, and Firearms, and potentially for the U.S. Marshals Service (although the USMS mission protecting the federal courts could present compelling reasons why the Department should maintain it as a direct report to the DAG), but this chapter does not expound upon the reasons why due to space constraints.

<sup>33</sup> *The Federalist Papers*, No. 1.



information that is potentially harmful to it or its political leadership. This is the way of totalitarian dictatorships, not of free constitutional republics.

The Department needs a hard firewall between its legitimate activities (monitoring online activity for potential threats in its mission space, looking at social media profiles for evidence of intent or other criminal activity, etc.) and those in which it must not engage (asking or demanding public forums or publishers to remove material based on the content and/or viewpoints expressed or itself censoring speech).

iv. Streamlining the Non-Law Enforcement Functions Within the FBI—Such as Its Office of General Counsel—and Obtaining Those Services from Other Offices Within the Department.

The FBI is bloated. For example, few Americans know that the FBI maintains a core of 300-something attorneys within its Office of General Counsel, an office that has been involved in some of the FBI's most damaging recent scandals.<sup>34</sup> These attorneys are not necessary to the functioning of the FBI in their current capacity. Legal advice must come from attorneys at the Department—whether those attorneys are within the Criminal Division, the National Security Division, the Justice Management Division, and the Office of Legal Counsel. Moving legal review *outside* the FBI will serve a crucial check on an agency that has recently pushed past legal boundary after legal boundary. Similarly, the FBI does not need its own Office of Congressional Affairs separate and apart from the Office of Legislative Affairs at the Department nor does it need its own Office of Public Affairs.

The next conservative administration should eliminate any offices within the FBI that it has the power to eliminate without any action from Congress.<sup>35</sup>

v. Emphasizing, Funding, and Rewarding Field Offices While Shrinking Headquarters Staff.

While the FBI, of course, has essential headquarters functions that must be fulfilled, and should likely be fulfilled by a team in Washington, D.C., the next conservative administration should make a priority of deploying, funding, and rewarding the work of the field offices to the greatest extent possible. The

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<sup>34</sup> DEPT' OF JUST., OFF. OF THE INSPECTOR GENERAL, *Audit of the Roles and Responsibilities of the Federal Bureau of Investigations Office of the General Counsel in National Security Matters*, No. 22-116 (2022), <https://bit.ly/3WcSK4P>.

<sup>35</sup> An argument could also be made that the upper echelons of the FBI's leadership should physically relocate *back* to the Robert F. Kennedy building to ensure proper accountability and to emphasize organizational reality: the FBI is a component of the Department, not its equal, as outlined above.

Department must value badges over bureaucracy, it must rethink its internal reporting structures, and it should aim to realign the FBI's resources accordingly.

vi. Submitting a Legislative Proposal to Congress to Eliminate the 10-Year Term for the Director.

After J. Edgar Hoover's decades-long term as FBI Director came to an end following his death in 1972, and in light of oversight conducted by Congress into intelligence community and FBI abuses in the 1970s, Congress limited the Director's tenure to one "ten-year term."<sup>36</sup> This limitation was a good first step. But the realities of the FBI's abuses and overreach in recent years demonstrate that reform is still necessary.

The Director of the FBI must remain politically accountable in the same manner as any other head of a federal department or agency. To ensure prompt political accountability and to rein in perceived or actual abuses, the next conservative administration should seek a legislative change to align the FBI Director's position with that of all other major departments and agencies.

**b. Focusing the Department's Resources on Reducing Violent Crime.**

Despite its pronouncements that violent crime continues to be a top priority for the Department, violent crime has increased across the United States. The Department's leadership must make actually reducing violent crime a priority across the United States—and it must do so in partnership with state and local officials in a manner tailored to the needs and conditions in those states and localities.

i. Targeting Violent and Career Criminals, Not Parents.

The next conservative administration must ensure that the Department of Justice devotes considerable efforts towards the reduction of violent crime nationwide. The Attorney General should require all U.S. Attorneys to develop a jurisdictional-specific plan—in coordination with state and local law enforcement—to reduce violent crime within each of their districts. And then the Attorney General must hold each U.S. Attorney accountable for achieving actual results.

In recent years, federal and state officials have succumbed to calls from anti-law enforcement advocates for so-called criminal justice reform. The pleasant-sounding terminology of reform masks the darker reality of this movement, which is

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<sup>36</sup> Crime Control Act of 1976, Pub. L. No. 94-503, § 203, 90 Stat. 2407, 2427 (1976) (codified as amended at 28 U.S.C. § 532).

one that has supported dismantling effective federal, state, and local law enforcement and stripped away some of the most fundamental tools that law enforcement has long had at its disposal. This criminal justice reform push was not just ill-advised but has clearly had real-world consequences in the form of catastrophic increases in crime, particularly violent crime, nationwide.

Yet juxtaposed against this increase in violent crime are things like Attorney General Merrick Garland's October 4, 2021, memorandum directing the commitment of significant resources and energies towards combating an imaginary, politically convenient threat during the heat of the Virginia gubernatorial race: supposed threats of violence towards members of school boards and their staffs.<sup>37</sup>

Meanwhile, as Attorney General Garland targeted parents exercising their First Amendment rights, there was no similar effort towards elected officials and other public officers who conspired with outside allies to target and harass parents exercising their constitutional and statutory rights.<sup>38</sup> There has been no similar effort to investigate those actions designed to chill such exercise of rights under applicable laws. To continue to have informed and civil dialogue in the United States on issues of public concern, the Department must enforce applicable civil rights laws in an even-handed way when citizens' livelihoods are threatened merely for exercising their rights.

ii. Enhancing Federal Focus and Resources in Jurisdictions Suffering from Rule of Law Deficiencies.

A disturbing number of state and local jurisdictions have enacted policies that directly undermine public safety, leave doubt about whether criminals will be punished, and weaken the rule of law. While the prosecution of criminal offenses in most jurisdictions across the country must remain the responsibility of state and local governments, the federal government owes a special responsibility to the American citizens of jurisdictions whose state and local prosecutors have abdicated this duty.<sup>39</sup>

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<sup>37</sup> Memorandum from the Attorney General, October 4, 2021, to the Director of the Federal Bureau of Investigation, the Director of the Executive Office for U.S. Attorneys, the Assistant Attorney General for the Criminal Division, and the United States Attorneys, titled, "Partnership among federal, state, local, tribal, and territorial law enforcement to address threats against school administrators, board members, teachers, and staff" available at <https://bit.ly/3jlblNm>; Press Release, *America First Legal Seeks Two Federal Investigations on Attorney General Merrick Garland's Infamous Oct. 4th Memo Sicking the FBI on Concerned Parents*, America First Legal (Mar. 14, 2022), <https://bit.ly/3FMpevT>.

<sup>38</sup> Luke Rosiak, *In Aftermath Of Enemies List, School Committee Pledges To 'Silence The Opposition*, DAILY WIRE (Mar. 27, 2021), <https://bit.ly/3hOtlzq>.

<sup>39</sup> The language of the Equal Protection Clause "reflects that 'achieving equal protection against lawbreakers was at the core of the Clause's objectives.'" *Lefebure v. D'Aquilla*, 15 F.4th 650, 669 (5th

Jurisdictions suffering from deficiencies in the rule of law warrant, as appropriate within our federal system, greater attention and additional federal resources sufficient to protect the rights of American citizens and federal interests.

In the next conservative administration, the Department, acting primarily through its U.S. Attorneys, must use applicable federal laws to bring federal charges against criminals when local jurisdictions wrongfully allow them to evade responsibility for their conduct.<sup>40</sup> The Department should also increase the federal law enforcement presence in such jurisdictions, and investigate innovative, new solutions to bring meaningful charges against criminals and criminal organizations in such jurisdictions.

Further, where warranted and appropriate under federal law, the Department of Justice should initiate legal action against local officials—including District Attorneys—who deny American citizens the “equal protection of the laws” by refusing to prosecute criminal offenses in their jurisdictions. This holds particularly true for jurisdictions that refuse to enforce the law against criminals based on immutable characteristics (i.e., race, so-called ‘gender identity,’ sexual orientation, etc.) or other political considerations (i.e., immigration status).

iii. Issuing Policies and Pursuing Legislation That Encourage Prosecution of Violent Crimes, and Pursuing Appropriate Sentences for Such Offenses.

The Biden Administration has adopted policies that do not prevent armed career criminals, who actually commit violent crimes, from committing those crimes. A recent Sentencing Commission report shows that armed career criminals are consistently sentenced below their minimum sentencing guidelines range (see fig. 4).<sup>41</sup>

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Cir. 2021) (Graves, J. dissenting) (quoting Lawrence Rosenthal, *Policing and Equal Protection*, 21 YALE L. & POL'Y REV. 53, 70 (2003)) cert. denied, 212 L. Ed. 2d 791, 142 S. Ct. 2732 (2022).

<sup>40</sup> See, e.g., Portland Mayor Ted Wheeler’s actions in 2020, calling on federal officials—executing their mission to protect federal property and officials—to leave the city saying, “They’re not wanted here,” *Portland Protests: Mayor Demands Federal Officers Leave City*, BBC (Jul. 20, 2020) <https://bbc.in/3j6Eko2>, despite the fact that local reports found that “Out of more than a thousand arrests reported by the Portland Police Bureau and other local law enforcement since late May 2020, only about 8.4% of the cases are still open” and that the “rest have been dismissed or listed as no complaint, which means authorities are not currently pursuing charges.” Hannah Lambert, *91% of Portland Protest Arrests Not Being Prosecuted*, PORTLAND TRIBUNE (Jan. 5, 2021), <https://archive.ph/OSDbz>.

<sup>41</sup> U.S. Sentencing Comm’n, *Federal Armed Career Criminals: Prevalence, Patterns, and Pathways*, (March 2021), <https://bit.ly/3vfnjuE>.

There are valid reasons for sentence reductions in particular cases, if, for example, the defendant has provided substantial assistance in prosecuting other offenders. At the same time, the Department must ensure that its line attorneys are consistently using the tools at their disposal in cases with violent offenders, including pursuing mandatory minimum sentences under the Armed Career Criminal Act (ACCA).<sup>42</sup> The Department should also support legislative efforts to provide further tools, such as the Restoring Armed Career Criminal Act legislation that Republican legislators proposed in response to the Supreme Court's decisions neutering the ACCA.

iv. Enforcing the Death Penalty Where Appropriate and Applicable.

Capital punishment is a sensitive matter, as it should be. But the current crime wave makes deterrence vital, at the federal, state, and local levels. And providing this punishment without ever *enforcing* it provides justice neither to the victims' families nor to the defendant.

The next conservative administration should do everything possible to obtain finality for the forty-four prisoners currently on federal death row. And it should ensure that it pursues the death penalty for applicable crimes until Congress says otherwise through legislation, particularly in heinous crimes involving violence and sexual abuse of children.<sup>43</sup>

**c. Eradicating Criminal Networks and Organizations, Domestic and Transnational.**

Criminal organizations are as old as crime itself, but are today more extensive, more sophisticated, and more dangerous than at any point in history. The Department of Justice has a key role in tackling transnational criminal organizations (TCO)—such as Mara Salvatrucha (MS-13) and Mexican drug cartels, as well as purely domestic criminal organizations, such as those built on the more traditional mafia crime model—as part of its obligation to ensure the safety and security of the American people.

The primary directive of the Department under the next administration must be to return to an unapologetic focus on dismantling these criminal organizations and incarcerating their membership. Once this re-prioritization occurs, the Department's political leadership should take concrete steps to use agency reach and resources to prevent these criminal organizations from operating and surviving. Assaulting the

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<sup>42</sup> Armed Career Criminal Act, 18 U.S.C. § 924(e).

<sup>43</sup> This could require seeking the Supreme Court to overrule *Kennedy v. Louisiana*, 554 U.S. 407 (2008) in applicable cases, but the Department should place a priority on doing so.

business model of these criminal organizations—which are massive, diversified corporations with nationwide or international operations—is essential for success.

The next administration will need to revitalize the Department of Justice’s use of the array of existing statutory tools that exist for dealing with the threat of criminal organizations.

The most potent ones are the simplest. For example, the Department of Justice should rigorously prosecute as much interstate drug activity as possible, including simple possession of *distributable* quantities.<sup>44</sup> Recent efforts to create the impression that drug possession crimes are not serious offenses has contributed to the explosion in criminal organization activities in the United States. The Department should also aggressively deploy the Racketeer Influenced and Corrupt Organizations Act (RICO),<sup>45</sup> which Congress expressly created to empower the Department of Justice to treat patterns of intrastate-level crimes, such as robbery, extortion, and murder, as federal criminal conduct for criminal organizations and networks. The next administration can use existing tools while it works with Congress to develop new tools.

The next administration is also going to need to secure the border,<sup>46</sup> which is the key entry point for many criminal organizations, their supplies, their products, and their employees. Mexico—which is arguably functioning as a failed state run by drug cartels—is the main point of transit for illegal drugs produced in Central and South America, fentanyl precursors from the Chinese Communist Party-led People’s Republic of China,<sup>47</sup> weapons, human smuggling and trafficking, and other contraband. Mexican drug cartels, including the dominant Sinaloa Cartel and the Jalisco New Generation Cartel (CJNG), are the main drivers of fentanyl production and distribution in the United States. The southwestern land border is sufficiently porous that Mexican drug cartels have operational control of large sections of the border, which facilitates easy movement of product and personnel. These cartels are also violent and not afraid to demonstrate force on both sides of the border. Their conduct represents a clear and present danger to the United States and its citizens.

In addition to finalizing the southwestern land border wall, the next administration should take a creative and aggressive approach to tackling these dangerous criminal organizations at the border. This could include use of active-duty

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<sup>44</sup> 21 U.S.C. § 801 et seq.

<sup>45</sup> 18 U.S.C. §§ 1961-1968

<sup>46</sup> More on this topic generally is in section II(j), *infra*.

<sup>47</sup> See Paul J. Larkin, *Twenty-First Century Illicit Drugs and Their Discontents: The Scourge of Fentanyl*, HERITAGE FOUND., LEGAL MEMORANDUM No. 313 (Nov. 1, 2022).

military personnel and National Guardsmen to assist in arrest operations along the border, which has not been done to date. A new and forceful approach to interdiction will cause necessary ripple effects to the operations of these criminal organizations, who currently operate freely without concern for criminal prosecution, and will lay the necessary groundwork for initial prosecutions of these organizations and their leadership.

It is critical for the federal government to staunch the flow of such drugs by preventing the far-too-easy access to the United States that now exists. There can be no serious dispute that the Biden Administration has opened the Southwest Border to whomever wants to enter, and some of those entrants smuggle fentanyl into the republic. The states cannot enforce the federal immigration laws, the U.S. Supreme Court has ruled, because federal immigration laws preempt any authority that the states might have to regulate entry into this nation.<sup>48</sup> More than 100,000 Americans died in a one-year period from opioid overdoses, and many of them from having used fentanyl.<sup>49</sup> The federal government should treat this problem as aggressively as necessary. Enforcing the customs and immigration laws is a matter of life and death.

#### **d. Pursuing National Security for the National Interest.**

The Department of Justice plays a vital role in protecting our national security. And it must not refrain from engaging in public initiatives that identify our adversaries and educate the American people about their activities.

The Department's China Initiative under President Trump reflected the Department's priority of combating Chinese national security threats.<sup>50</sup> Because China was accountable for approximately 80 percent of all economic espionage prosecutions and approximately 60 percent of all trade secret thefts, then-Attorney General Sessions set key goals for the Initiative, including the development of an enforcement strategy concerning researchers in labs and universities being coopted into stealing critical U.S. technologies, the identification of opportunities to better address supply chain threats, and the education of colleges and universities about potential threats from influence efforts on campus.

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<sup>48</sup> See *Arizona v. United States*, 567 U.S. 387 (2012).

<sup>49</sup> Jessica Rendall, *100,000 people died from drug overdoses in the US in one year, a record*, CNET (Nov. 18, 2021) <https://cnet.co/3HSKjaG>

<sup>50</sup> National Security Division., *Information About the Department of Justice's China Initiative and a Compilation of China-Related Prosecutions Since 2018*, DEP'T. OF JUST. (updated Nov. 19, 2022), <https://bit.ly/3Wcmmzp>.

In February 2022, the Biden Administration terminated the Department's China Initiative largely out of a concern for poor "optics."<sup>51</sup> While the Biden Administration correctly identified China as America's "only competitor with both the intent to reshape the international order and, increasingly, the ... power to do it,"<sup>52</sup> it folded in the face of political correctness and sent the message that liberal sensitivities trumped bringing justice to threats from China.

The next conservative administration should restart the China Initiative and pursue other programs that educate the American people about the real and dangerous threats to our national security and economic security posed by actors across the globe, most notably, China and Iran.

**e. Ensuring the Allocation of Adequate Resources to Other Emerging Threats.**

The next conservative administration must also ensure that it is agile enough to devote sufficient resources and attention to other emerging threats with federal interests at stake, such as with increases in incidents in "sextortion," ransomware, and the continued proliferation of child pornography.

**II. Defending the Rule of Law**

The Department's actions over the course of the Biden Administration exhibit its scorn for the Department's stated mission, which is "to uphold the rule of law, to keep our country safe, and to protect civil rights."<sup>53</sup> The Biden Administration's unprecedented politicization and weaponization of the Department therefore demands a comprehensive response from the next administration.

Restoration of the Department's values of independence, impartiality, honesty, integrity, respect, and excellence must serve as first principles for the Department's efforts on all fronts. Concretely, the Department must identify and address all individuals, policies, and directives that have fueled the destruction of these core values and the American people's loss of trust in the Department and its officials. The next administration will need to exert significant energy to dismantle the two-tiered system of justice currently in place at the Department while simultaneously applying the rule of law evenly and with neutrality so as not to weaponize the system against those who have wielded its power as a weapon against conservatives.

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<sup>51</sup> Ronn Blitzer and Jake Gibson, *Biden DOJ ending national security initiative aimed at countering China amid complaints about bias*, FOX NEWS (Feb. 23, 2022), <https://fxn.ws/3hHcizb>.

<sup>52</sup> National Security Strategy, WHITE HOUSE (October 2022), <https://bit.ly/3PF8A5O>.

<sup>53</sup> *About DOJ*, DEP'T. of Just. <https://bit.ly/3jlAgk9>.



Specific examples of Department corruption, such as the Russia collusion hoax, will need to be tackled, exposed, and addressed head-on. This will require winning not just in a court of law, but also demonstrating culpability to the public and the media in a concrete, non-refutable manner. These efforts will require commitment and willpower, but they will be essential to restore trust with the American people.

**a. Promptly and Properly Eliminating Lawless Policies, Investigations, and Cases—Including All Existing Consent Decrees.**

Few things undermine the Department's credibility more than brazenly partisan and ideologically driven prosecution of an administration's perceived political enemies. And yet, the Department has readily indulged in such misadventures during the Biden Administration.

Before even entering the Robert F. Kennedy building on January 20, 2025, the next administration must engage in a thorough review of all publicly available policies, investigations, and cases. And it must then, in a manner consistent with applicable law, prepare a plan to immediately end any policies, investigations, or cases that run contrary to law or administration policies. And upon the next President's inauguration, appointees at the Department must then obtain information about anything that was unable to be learned before taking office and engage in the same analysis as was done for things that were publicly known.

An egregious example is provided by the Department's use of the Freedom of Access to Clinic Entrances (FACE) Act<sup>54</sup> to harass pro-life demonstrators while failing to pursue similar investigations of shocking acts of violence committed against pro-life pregnancy resource centers. On the morning of September 23, 2022, pro-life activist Mark Houck was arrested by more than 15 FBI agents at his home in Pennsylvania in front of his wife and small children. The agents came to his door with guns drawn to arrest the 48-year-old father of seven whose alleged crime involved a minor altercation with an activist who was harassing one of his children in front of an abortion clinic almost one year prior to Mr. Houck's arrest by the FBI.<sup>55</sup> Similarly, Paul Vaughn, a 55-year-old father of 11, was arrested at his home in Mt. Juliet, Tennessee, by armed FBI agents for allegedly participating in a peaceful protest at an abortion clinic one year before.<sup>56</sup>

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<sup>54</sup> 18 U.S.C. § 248.

<sup>55</sup> Danielle Wallace, *Pro-life activist Mark Houck Pleads Not Guilty to Federal Charges After FBI Arrest*, FOXNEWS (Sept. 27, 2022), <https://fxn.ws/3FFYqNF>.

<sup>56</sup> Patty Knap, *Paul Vaughn, Pro-life Father of 11 Arrested by FBI Speaks Out*, NATIONAL CATHOLIC REGISTER (Oct. 18, 2022), <https://bit.ly/3WzIR0Z>.

These arrests stand in stark contrast to the Department’s virtual silence on the wave of vandalism and violence directed at religiously affiliated institutions, including pregnancy resource centers, following the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*.<sup>57</sup> Catholic News Agency has reported over one hundred such incidents as of September 2022.<sup>58</sup>

By engaging in disparate and seemingly viewpoint-based enforcement of an already controversial law like the FACE Act against pro-life activists, the Department has needlessly undermined its credibility with law-abiding people of faith. The Department should make every effort to uphold equal protection of the law and avoid politically motivated and viewpoint-based prosecutions.

The Department’s review must extend beyond ending the absurd double standards embodied by the ongoing campaign of FACE Act prosecutions—a thorough and holistic review of all the Department’s activities, including a review of all consent decrees and settlement agreements currently in force, is necessary. The Department should also seek to terminate any unnecessary or outdated consent decree to which the United States is a party, and it should consider pursuing intervention in other matters where consent decrees or settlement agreements continue to bind parties years or decades after the fact.

And as that review concludes, the Department must—consistent with applicable law—take appropriate action in all cases, including those on appeal.

**b. Engaging in Zealous Advocacy for and Defense of the Constitution and Lawful Administration Regulations and Policies.**

The Department of Justice has the exclusive responsibility for the “conduct of litigation in which the United States, an agency, or officer thereof,”<sup>59</sup> is involved and has been charged with the supervision of “all litigation to which the United States, an agency, or officer thereof is a party.”<sup>60</sup> However, in politically contentious cases, Assistant United States Attorneys and other line prosecutors during conservative administrations seek to influence outcomes of cases—not because of any legal deficiency in the case or policy being defended—but by refusing to take certain positions; writing public letters of protest; and engaging in faux-resignations from certain internal appointments. This can result in the Department taking positions

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<sup>57</sup> 142 S. Ct. 2228 (2022).

<sup>58</sup> Jonah McKeown, *TRACKER: Pro-Abortion Attacks in the U.S. Continue (updated)*, CATHOLIC NEWS AGENCY (Sept. 22, 2022), <https://bit.ly/3HNqmlg>.

<sup>59</sup> 28 U.S.C. § 516.

<sup>60</sup> U.S.C. § 519.

inconsistent with the interests of the President and his appointees in other places throughout the Administration.

While the supervision of litigation is a responsibility of the Department, the Department, of course, falls under the direct supervision and control of the President of the United States as a component of the Executive Branch.

As such, and putting aside criminal prosecutions that often warrant different treatment, litigation decisions must be made consistent with the President's agenda. This can mean line attorneys being forced to take uncomfortable positions in civil cases because those positions are more closely aligned with the President's policy agenda. Ultimately, the Department will have tough calls to make as it manages its litigation—but those calls *must* always be consistent with the President's policy agenda and the rule of law. Again, while litigation decisions remain within the purview of the Department, a line attorney should not directly or indirectly pursue a *policy* agenda through litigation that is inconsistent with the agenda of his or her client agency or the President. The Department should also be cognizant of any attempts to slow litigation and outlast the administration to avoid finality.

The next conservative administration should issue guidance to ensure litigation decisions are consistent with the President's agenda and the rule of law. Consistent with this, the Department's leadership must be prepared to impose appropriate disciplinary action as circumstances arise.

### **c. Affirming the Separation of Powers.**

Federal courts have jurisdiction to deal with a wide array of issues in law and equity in the United States. The increasingly aggressive posture of federal courts does not change one constitutionally immutable fact: namely, that all three branches of the federal government retain not just the right, but the *obligation*, to assess constitutionality. It is this obligation that is the foundation of the separation of powers.

The next conservative administration must embrace the Constitution and an understanding of the obligation of the executive branch to use its independent resources and authorities to restrain the excesses of both the legislative *and* the judicial branches. This will mean ensuring that the leadership of the Department of Justice and its components understand separation of powers, that pushback among the branches is a feature and not a bug of our system, and that the federal system is strengthened, not weakened, by disagreement among the branches.

One example includes potentially seeking the overruling of *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). This case approved so-called

“independent” agencies, whose directors are not removable by the President at will. The Supreme Court has chipped away at *Humphrey's Executor* in cases like *Seila Law v. CFPB*, 591 U.S. \_\_ (2020), but the precedent remains. The next conservative administration should formally take the position that *Humphrey's Executor* violates the Constitution's separation of powers.

#### **d. Zealously Guarding Other Constitutional Protections.**

The next conservative administration must ensure that the Department zealously guards the constitutional rights of all Americans in all that it does. This extends, of course, not only to rights implicated in the Department's criminal activities, but to *all* rights enjoyed by the American people—such as the First Amendment. The Department should reject any invitation to limit these fundamental promises based on the political ideology of the speech at issue.

Further, a recent Supreme Court case illustrates the problems when the Department takes a cramped interpretation of the First Amendment in service of a political ideology. In *303 Creative LLC v. Elenis*, the Department argued in favor of the government's ability to coerce and compel what the lower courts all found to be pure speech.<sup>61</sup>

The oral argument made clear the Department's view that it was the *viewpoint* expressed that gave the government power to censor and compel speech. During oral argument, the United States took the remarkable position that government can compel a Christian website designer to imagine, create, and publish a custom website celebrating same-sex marriage but cannot compel a LGBT person to design a similar website celebrating opposite-sex marriage.<sup>62</sup> In the government's view, declining to create the latter website was based on an objection to the message, while the former was based on status rather than message.

But this argument inevitably turns on the viewpoint expressed. It means that the government gets to decide which viewpoints are protected and which are not. And that is a frightening (and blatantly unconstitutional) proposition.

Just as troubling, the government's arguments against free speech are not limited to the facts of *303 Creative*. As Colorado admitted to the lower courts, all sorts of artists and speakers like speechwriters, photographers, and videographers, can be

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<sup>61</sup> See Br. of the United States, *303 Creative v. Elenis*, No. 21-476 (2022) (available at <https://bit.ly/3v5vqtP>).

<sup>62</sup> Oral Arg. Tr., *303 Creative v. Elenis*, No. 21-476 (December 5, 2022) (available at <https://bit.ly/3hHRYas>).

compelled to design custom messages that violate their most fundamental convictions, as long as it serves a certain viewpoint the government wants to promote.

Indeed, it was only a few years ago, in *Masterpiece Cakeshop*, that the government acknowledged the constitutional problems with compelling artists to speak government-favored messages. In that case, the United States acknowledged that “a basic First Amendment principle that ‘freedom of speech prohibits the government from telling people what they must say.’”<sup>63</sup> The Department had it right when it argued that the government may not “compel the dissemination of its own preferred message” because the First Amendment protects the “individual freedom of mind.”<sup>64</sup> It was also correct when it argued that “[a]n artist cannot be forced to paint, a musician cannot be forced to play, and a poet cannot be forced to write.”<sup>65</sup> The United States’ directly contrary position in *303 Creative* is hard to explain based on anything other than its support for the message the State of Colorado was attempting to compel.

It is blackletter law that no official “can prescribe what shall be orthodox ... or force citizens to confess by word or act their faith therein.”<sup>66</sup> Rather, the First Amendment places “the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity.”<sup>67</sup>

As the Supreme Court has noted, government officials have frequently sought to “coerce uniformity of sentiment in support of some end thought essential to their time and country.”<sup>68</sup> In the face of such attempts to coerce orthodoxy, the Department should maintain its commitment to uphold the Constitution’s neutral principles of free speech which commit the government “to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.”<sup>69</sup>

**e. Pursuing Equal Protection for All Americans Through Vigorous Enforcement of Applicable Federal Civil Rights Laws—In Government, Education, and the Private Sector.**

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<sup>63</sup> Brief of the United States at 9, *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Com’n*, 138 S.Ct. 1719 (2018) available at <https://bit.ly/3VfXjdj>, (quoting *Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc.*, 133 S. Ct. 2321, 2327 (2013) (quoting in turn *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006)).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

<sup>67</sup> *Cohen v. California*, 403 U.S. 15, 24 (1971).

<sup>68</sup> *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 640 (1943).

<sup>69</sup> *McCullen v. Coakley*, 573 U.S. 464, 476 (2014) (cleaned up).

Entities across the private and public sectors in the United States have been besieged in recent years by an unholy alliance of special interests, radicals in government, and the far left. This unholy alliance speaks in platitudes towards advancing the interests of certain segments of American society, but those advancements come at the expense of other Americans and in nearly all cases violate longstanding federal law.

Even though numerous federal laws prohibit discrimination based on notable immutable characteristics such as race and sex,<sup>70</sup> the Biden Administration—through the Department of Justice’s Civil Rights Division and other federal entities—has enshrined affirmative discrimination into all aspects of their operations under the guise of “equity.” Indeed, federal agencies and their components have established so-called diversity and inclusion offices that have become the vehicles for this unlawful discrimination, and all departments and agencies have created “equity” plans to carry out these invidious schemes.<sup>71</sup>

The next conservative administration should focus on ensuring that the Department spearheads an initiative demonstrating the federal government’s commitment to non-discrimination. The Department should also lead a whole-of-government re-commitment to non-discrimination, and should be working with all other federal agencies, boards, and commissions to ensure that they are both complying with constitutional and legal requirements and using their authorities and funding to prevent discrimination not only internally, but also at the state, local, and private-sector levels. This will require particularly close coordination with several key agencies, including obvious candidates such as the Equal Employment Opportunity Commission, as well as departments and agencies like the Departments of Defense, Education, and Housing and Urban Development, and the Securities and Exchange Commission. It will also require enforcing contractual requirements that prohibit discrimination on federal contractors.

The Department’s Civil Rights Division should also be reorganized and refocused to serve as the vanguard for this return to lawfulness. The Attorney General and other political leadership of the Department should provide the resources and moral support needed for these efforts. The Civil Rights Division should spend its first year under the next administration using the full force of federal prosecutorial resources to investigate and prosecute all state and local governments,

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<sup>70</sup> 42 U.S.C. § 2000d *et. seq.*; 42 U.S.C. § 2000e *et. seq.*; 20 U.S.C. §1681 *et seq.*

<sup>71</sup> WHITE HOUSE, *Advancing Equity and Racial Justice Through the Federal Government*, <https://bit.ly/3jk3LCQ>.

institutions of higher education, corporations, and any other private employers who are engaged in discrimination in violation of constitutional and legal requirements.

**f. Announcing a Campaign to Enforce the Criminal Prohibitions in 18 U.S.C. §§ 1461 and 1462 Against Providers and Distributors of Abortion Pills That Use the Mail.**

Federal law prohibits mailing every “article, instrument, substance, drug, medicine, or other thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion.” 18 U.S.C. § 1461. Following the Supreme Court’s decision in *Dobbs*, there is no federal prohibition on the enforcement of this statute, and the Department of Justice should announce its intent to enforce federal law against providers and distributors of such pills.

**g. Assigning Responsibility for Prosecuting Election-Related Offenses from the Civil Rights Division to the Criminal Division.**

The Attorney General in the next conservative administration should reassign responsibility for prosecuting violations of 18 U.S.C. § 241 out of the Civil Rights Division and over to the Criminal Division, where it belongs. Otherwise, voter registration fraud and unlawful ballot correction will remain federal election offenses that are never appropriately investigated and prosecuted.<sup>72</sup>

Voter fraud includes unlawful practices concerning voter registration and ballot correction. When state legislatures are silent as to procedures for absentee ballot curing or provide specific rules governing that curing, neither counties nor courts may create a cure right where one does not exist, may not modify the law on curing, and certainly cannot engage in creating consent orders with the force of law that are inconsistent with the orders of other similarly situated counties.

The Department has ceded substantial discretion concerning voter suppression to the Civil Rights Division. Since the Bush Administration, Department leadership has determined that using the Election Crimes division to prosecute voter registration, including mail-in ballot fraud was too politically costly.<sup>73</sup> Craig Donsanto, the former head of Election Crimes at the Department’s Public Integrity Division within the Criminal Division, has advised that schemes which violated equal protection constituted “voter suppression” prosecutable under 18 U.S.C. § 241 as part of the guidelines for which the Department’s criminal

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<sup>72</sup> A similar argument could be advanced for the Department’s other criminal law enforcement responsibilities, such as those within the Environmental and Natural Resources Division.

<sup>73</sup> See e.g., Paul Kiel, *Controversial USA Delivered “Voter Fraud” Indictments Right on Time*, TPMUCKRAKER (May 1, 2007), <https://bit.ly/3HM3zqa> (retrieved from web archive).

prosecutors were trained.<sup>74</sup> The December 2017 handbook for prosecution of election crime offenses has not been updated since 2007.<sup>75</sup> State-based investigations of election crimes are supposed to be referred to the Department's Public Integrity Section for review. Historically, 18 U.S.C. § 241 (conspiracy to violate civil rights) was used as a basis for investigating state officials whose statements or orders violated the equal protection rights of voters or deliberately misinformed voters concerning the eligibility of their ballots.

The Department of Justice has formalized the Civil Rights Division's (as opposed to the Criminal Division's) jurisdiction over 18 U.S.C. § 241 investigations and prosecutions. The Department's Criminal Division is no longer involved in consultation or review of 18 U.S.C. § 241 investigations.<sup>76</sup> The Criminal Division has accordingly advised states that voter intimidation was a "state" issue,<sup>77</sup> despite clearly applicable federal law.

In 2012, now-Senate Majority Leader Chuck Schumer introduced legislation to clarify criminal prosecution against state officials under 18 U.S.C. § 241. In a hearing concerning the legislation, a witness from the left-leaning organization Common Cause supported the legislation because federal investigators had effectively stopped prosecuting voter suppression through misinformation.<sup>78</sup> It is likely that no Trump era Civil Rights Division criminal indictments under 18 U.S.C. § 241 concerned voter suppression.<sup>79</sup>

Concerning the 2020 presidential election, there were no Department investigations of the appropriateness or lawfulness of state election guidance. Consider the state of Pennsylvania. The Secretary of State sent guidance to the counties stating, "This revised guidance addresses the issuance,

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<sup>74</sup> See DEP'T. OF JUST., *Federal Prosecution of Election Offenses* at 79, (Aug. 2007), <https://bit.ly/3BMU3PG>.

<sup>75</sup> See DEP'T. OF JUST., *Federal Prosecution of Election Offenses* at 79, (Dec. 2017), <https://bit.ly/3WuQWUs>.

<sup>76</sup> Note the jurisdictional assignment where the Civil Rights Division, not the Criminal Division, has jurisdiction over 18 U.S.C. § 241 even though the multi-decade Election Crime handbook trained criminal division public integrity lawyers on 18 U.S.C. § 241 violations.

DEP'T. OF JUST., *Capital Eligible Statutes Assigned by Section*, <https://bit.ly/3hEH3Vz>.

<sup>77</sup> See DEP'T. OF JUST., *District Election Officers*, (October 31, 2022), <https://bit.ly/3PJr8Sq>, ("Report . . . voter intimidation or violence").

<sup>78</sup> See Responses for the Record; Prohibiting the Use of Deceptive Practices and Voter Intimidation Tactics in Federal Elections: S.1994 Before the S. Comm. on the Jud., 112th Cong. (2012) (statement of Jenny Rose Flanagan), <https://bit.ly/3YyGH3v>.

<sup>79</sup> Virtually all indictments are publicly posted by U.S. Attorney offices or Main Justice. Here are all press releases containing 18 U.S.C. 241 from 1/2017 to the present. Indictment, *U.S. v. Gladstone*, No. CCB-19-094 (D. Md., 2019), Criminal Complaint, *U.S. v. Barasneh*, No. 20m861 (E.D. Wis. 2019); Brief of the United States, *U.S. v. Porter*, No. 18-4081, No. 18-4099 (10th Cir. 2018).



voting and examination of provisional ballots under the Election Code. Provisional ballots were originally mandated by section 302 of the Help America Vote Act of 2002 (HAVA). Provisional ballot amendments included in Act 77 of 2019 went into effect for the 2020 Primary election. Provisional ballot amendments included in Act 12 of 2020 go into effect for the first time on November 3, 2020.”<sup>80</sup>

HAVA, however, only mandates provisional ballots for eligible voters who were not on a state's voter registration list.<sup>81</sup> HAVA does not apply to those who registered for mail-in voting but whose ballots were rejected due to some form of spoliation. Pennsylvania Act 12 (amended in 2020) does not authorize curing by providing provisional ballots for mail-in voters whose ballots were rejected. Act 12 requires an affidavit as part of the mail-in application process that the elector “shall not be eligible to vote at a polling place on election day unless the elector brings the elector's mail-in ballot to the elector's polling place, remits the ballot and the envelope containing the declaration of the elector to the judge of elections to be spoiled and signs a statement subject to the penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) to the same effect.”<sup>82</sup> The law in Pennsylvania clearly states that no county may affirmatively provide provisional ballots—the mail-in voter must vote in person and sign a new affidavit.

In the 2020 election, the Pennsylvania Supreme Court recognized, “the Election Code contains no requirement that voters whose ballots are deemed inadequately verified be apprised of this fact. Thus, unlike in-person voters, mail-in or absentee voters are not provided any opportunity to cure perceived defects in a timely manner.”<sup>83</sup>

Given the Pennsylvania Secretary of State’s use of guidance to circumvent state law, the Pennsylvania Secretary of State should have been (and still should be) investigated and prosecuted for potential violations of 18 U.S.C. § 241.

18 U.S.C. § 241 investigations and prosecutions are currently within the jurisdictional oversight of the Civil Rights Division, not the Criminal Division.<sup>84</sup> Only by moving authority over 18 U.S.C. § 241 investigations and prosecutions back to the Criminal Division will the rule of law be appropriately enforced.

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<sup>80</sup> *E.g.*, PENNSYLVANIA DEPARTMENT OF STATE, *Pennsylvania Provisional Voting Guidelines*, (Oct. 21, 2020), <https://bit.ly/3Wg7kZp>.

<sup>81</sup> 52 U.S.C. § 21082.

<sup>82</sup> 2020 PA Laws, Act 12, Section 1302-D.

<sup>83</sup> *E.g.*, *In re Nov. 3, 2020 General Election*, 240 A.3d 591 (Pa. 2020).

<sup>84</sup> *E.g.*, DEP’T. OF JUST., *Enforcement of Civil Rights Criminal Statutes*, (Dec. 2022), <https://bit.ly/3FKWfs1>; DEP’T. OF JUST., *Capital Eligible Statutes Assigned by Section*, <https://bit.ly/3hEH3Vz>.

#### **h. Rejecting Third-Party Requests for Politically Motivated Investigations or Prosecutions.**

The Department should reject demands from third-party groups that ask it to threaten politically motivated investigation or prosecution of those engaging in lawful and, in many cases, constitutionally protected activity. By acceding to such demands, the Department risks diminishing its credibility with the American public. This risk is exacerbated by the fact that communications between government officials and third-party groups are generally unprotected by privilege and subject to disclosure, whether via subpoena to the third-party group, via request made pursuant to the Freedom of Information Act. These communications can even be made public voluntarily by the third-party group.

A recent example illustrates the risks posed by such activity. On October 4, 2021, Attorney General Garland issued a memorandum to the Director of the FBI, the Executive Office for U.S. Attorneys, and the Assistant Attorney General, Criminal Division, calling on the Bureau to work with each U.S. Attorney to “convene meetings with federal, state, local, Tribal, and territorial leaders” to discuss strategies for addressing “threats against school administrators, board members, teachers, and staff.”<sup>85</sup> Subsequent reporting and investigation revealed that the memorandum was prompted by a November 29, 2021 letter sent by the National School Boards Association (NSBA) to President Biden demanding a federal law enforcement response to perceived threats to school board members and public-school employees.

The NSBA letter made outlandish demands in response to protests that were then occurring at school board meetings in response to COVID policies and revelations about the use of critical theory infused curricula in classrooms. Among the letter’s demands was a call for federal investigation into parents’ actions under a variety of federal laws including the “Gun-Free Zones Act, the PATRIOT Act’s domestic terrorism provisions, the Matthew Shephard and James Byrd Jr. Hate Crimes and Prevention Act, the Violent Interference with Federally Protected Rights statute, and the Conspiracy Against Rights statute.”<sup>86</sup>

Both the Department’s memorandum and the NSBA letter drew swift public condemnation, including by fourteen sitting state attorneys general.<sup>87</sup> A subsequent internal investigation by the NSBA revealed that officials at the White House had been in discussions with NSBA officials about the contents of the letter *weeks* before

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<sup>85</sup> Attorney General Merrick Garland, Oct. 4, 2021, Memorandum, available at <https://bit.ly/3WfCekn>.

<sup>86</sup> See Viola Garcia and Chip Slavin, Sept. 29, 2021, Letter, available at <https://bit.ly/3WuVGJM>.

<sup>87</sup> See Todd Rokita *et al.*, Sept. 26, 2021, Letter, available at <https://bit.ly/3BMvrGD>.

it was issued. The investigation also revealed that White House officials indicated they planned to raise the contents of the draft letter with Department officials a full week before the NSBA's letter issued.<sup>88</sup>

This cooperation between a third-party group, the White House, and the Department to craft and coordinate a response to an ill-advised and politically motivated letter undermines the Department's credibility as an impartial law enforcement agency. In the words of the fourteen state attorneys general who wrote to oppose the Department's memorandum, "potential collusion between the White House, the Department, and the NSBA in the actual creation of the September 29 letter—as a pretext for threats against parents—raises serious concerns."<sup>89</sup>

The Department should carefully scrutinize all requests for law enforcement assistance and should reject requests by third parties to engage in political grandstanding that ignores the Department's traditional jurisdictional limits and that would trample politically controversial, but constitutionally protected, activity.

**i. Ensuring Proper Distribution of Taxpayer Dollars Entrusted to the Department to Distribute.**

The Department's grants are an under-utilized asset in most conservative administrations. When used properly, they can be a highly effective tool in implementing the President's priorities. The Office of Justice Programs is comprised of six components and is responsible for most Department of Justice grants to local law enforcement, juvenile justice, victims of crime, as well as criminal justice research and statistics. The opportunity to support a President's agenda is greater through OJP grant funding than perhaps any other grant making component in the federal government.

Consistent with appropriations from Congress, OJP dispenses approximately \$7 billion in various grants. "Block grants" are given to the state to be awarded pursuant to federal regulations. Some funds to support law enforcement and victims of crime are awarded pursuant to block grants. But most of OJP's funds are awarded through "discretionary" grants—specific programs written into the budget by Congress.

While Congress dictates the way in which much of the grant awards are to be made, there is a tremendous amount of discretion left with federal staff to add "conditions" and "priority points." Grants operate with a carrot and a stick. To receive

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<sup>88</sup> See Philip G. Kiko, Final Report, NAT'L SCHOOL BOARDS ASS'N., available at <https://bit.ly/3VmFuti>.

<sup>89</sup> See Todd Rokita *et al.*, Sept. 26, 2021, Letter, available at <https://bit.ly/3BMvrGD>.

grant funding, a recipient must agree to certain conditions. These conditions, in many instances, include the priorities of the President. For instance, under a President Obama human trafficking grant (approximately \$110 million in 2020) an awardee would have to show a partnership with an LGBTQ organization and always have an interpreter on site. These conditions worked to change culture and overlaid President Obama's priorities; support of the LGBTQ community and for more of the funding to go to areas with large immigrant populations.

Under President Trump's administration, a condition added to grants stated an awardee had to comply with all federal law (stock language), including federal law regarding the exchange of information between federal and local authorities about an individual's immigration status. In short, this condition blocked law enforcement in "sanctuary cities" from receiving grant awards. While the Trump Administration suffered a series of setbacks from several hostile courts, it obtained from the Second Circuit Court of Appeals a decision upholding the Department's authority to impose the conditions.<sup>90</sup>

The next conservative administration must conduct an immediate, comprehensive review of all federal grant disbursements to ensure not only that the programs are being properly administered by the Department, but also to ensure that the grant funding is properly being received and used by recipients. The next conservative administration must also order an overhaul of the Department's grant application process, to include more rigorous vetting of state, local, and private grant applicants and inclusion of more pre-application criteria to ensure baseline fitness and eligibility for federal grant dollars. This long-overdue enhancement of the grant application and issuance process will ensure hard-earned taxpayer dollars are only going to lawful actors who support federal law enforcement and demonstrate ability and willingness to engage in lawful activities.

#### **j. Ensuring Enforcement and Administration of Our Immigration Laws.**

While its role has changed over the years, most notably following the passage of the Homeland Security Act of 2002,<sup>91</sup> the Department of Justice plays a crucial role in the enforcement and adjudication of our immigration laws.<sup>92</sup> The Department's leadership and energy, however, has not always reflected the importance placed by Congress on the execution of that crucial mission. With a few notable exceptions, successful fulfillment of the Department's responsibilities with respect to

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<sup>90</sup> *State v. United States Dep't of Just.*, 964 F.3d 150 (2d Cir. 2020).

<sup>91</sup> Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135.

<sup>92</sup> *See, e.g.*, 8 U.S.C. §§ 1103(a)(1), (g).

immigration was largely neglected until the Trump Administration. The Department of Homeland Security may be the largest department with immigration responsibilities in the federal government, but successful fulfillment of the responsibilities ascribed by the immigration laws is not possible without bold and dedicated action by the Department of Justice.

The Department and its leadership *must* intentionally prioritize fulfillment of its immigration-related responsibilities in the next conservative administration. This will be no small task, as the Department's immigration-related responsibilities play out across nearly every office and component. While this chapter is not suitable to go into precise details about every specific necessary action, the Department *must* pursue the following actions and policies in the next conservative administration if it hopes to fulfill its responsibilities assigned by Congress and to deliver results for the American people:

- The Department must issue guidance to all U.S. Attorneys emphasizing the importance of prosecuting immigration offenses,<sup>93</sup> and immigration-related offenses. The brunt of these offenses is born by districts along the southwestern border with Mexico, but the simple fact remains that immigration and immigration-related offenses are present in every district across the country. Indeed, successfully pursuing the priorities outlined in sections (I)(c) and (d) above requires creative use of the various immigration and immigration-related authorities in close partnership with the Department of Homeland Security, the Department of State, and other appropriate federal entities depending on the situation.
- The Department must pursue appropriate steps to assist the Department of Homeland Security with obtaining information about criminal aliens in jurisdictions across the United States, particularly those inside sanctuary jurisdictions.
- The Attorney General should examine and consider the appropriateness of withdrawing or overturning every immigration decision rendered by Attorney General Merrick Garland (and any successor Attorney General during President Biden's term). And the Attorney General should pick up where the Attorneys General under President Trump left off, and exercise his or her authority to adjudicate cases and provide guidance in appropriate cases to correct erroneous decisions, provide clarity, and align the Executive Office for Immigration Review's (EOIR) decisions with the law.

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<sup>93</sup> See, e.g., 8 U.S.C. §§ 1324-26.

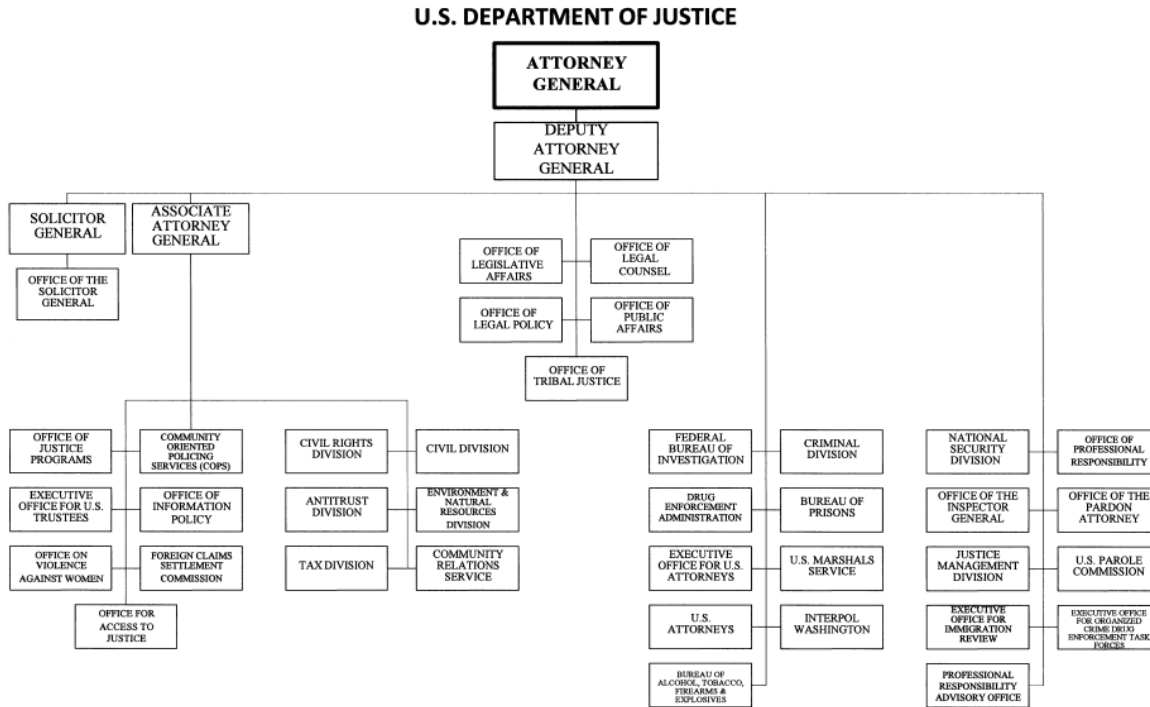
- At minimum, the Department must pursue through rulemaking—and in partnership with the Department of Homeland Security, where appropriate—the promulgation of every rule related to immigration issued during the Trump Administration. Such rulemakings include guidance on continuances in immigration court cases, eligibility for asylum, and other related matters. But the Department must not stop there—it must continually evaluate its authorities and operational reality within the immigration court system and promulgate regulations accordingly.
- The Department must also commit to sufficient resources to adjudicate cases in the immigration court system in different environments, such as in the context of the Migrant Protection Protocols.
- The Department should also pursue a strategy or proactive litigation to advance the federal government’s interests in areas where erroneous precedent curtails authorities provided by Congress, such as pursuing the overturning of the *Flores* Settlement Agreement.
- The Department must also pursue aggressive enforcement of the immigration laws within the Immigrant and Employee Rights section of the Civil Rights Division, to ensure that no American citizen is discriminated against in the employment context in favor of a temporary worker.<sup>94</sup>
- The next conservative administration must ensure the deployment and utilization of appointees throughout the Department committed to successful achievement of the Department’s immigration-related missions. This of course includes personnel in or overseeing EOIR, but also in the Office of the Attorney General, Office of the Deputy Attorney General, Office of the Associate Attorney General, the Office of the Solicitor General, and nearly every other component/office across throughout the Department.
- The Department should also explore the pursuit of a more vigorous anti-fraud program within EOIR. In perhaps no area of law are there more attorneys who commit acts of fraud upon their clients—advancing completely meritless arguments (foreclosed by any plausible precedent or good-faith argument) in exchange for exorbitant fees than in the area of immigration. Fraud and unethical behavior is rampant in the immigration system and must be addressed—not only for the federal government, but for the sake of the aliens involved in the process, and for the integrity/credibility of the members of the private immigration bar who do not engage in such conduct.

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<sup>94</sup> DEP’T. OF JUST. OFF. OF PUB. AFF., *Justice, Labor Departments Reach Settlements with Facebook Resolving Claims of Discrimination Against U.S. Workers and Potential Regulatory Recruitment Violations*, DEP’T. OF JUST., (Oct. 19, 2021), <https://bit.ly/3WDGXfv>.

### III. Further Essential Reforms for the Department

We assume basic familiarity with the general layout of the Department of Justice. For ease of reference in the following subsections, the Department’s current organizational chart is below:



Approved by:  Date: 10-28-21  
MERRICK B. GARLAND  
Attorney General

#### a. **Aligning Departmental Resources with Leadership Priorities Across All Components and All United States Attorneys’ Offices.**

As the next administration engages in its substantive policy and legal-based reforms of the Department of Justice, it must ensure that the Department’s resources are efficiently used in a manner that delivers results for the American people. While this topic could warrant the devotion of an entire chapter unto itself, the manner in which this is accomplished involves the following core issues:

- i. Ensuring the Assignment of Sufficient Political Appointees Throughout the Department.

Ensuring adequate accountability throughout the Department requires the intentional devotion of sufficient resources by the administration—not simply replicating what was done under prior administrations and reflected in the Plum Book.<sup>95</sup> Indeed, the number of appointees serving throughout the Department in prior administrations—particularly during the Trump Administration—has simply been insufficient to stop bad things from happening through proper management and to promote the President’s agenda.

Political appointees must not only serve in obvious offices, like the Office of the Attorney General or the Office of the Deputy Attorney General, the next conservative administration must make every effort to obtain sufficient resources to vastly expand the number of appointees in every office and component across the Department—especially in the Civil Rights Division, the Federal Bureau of Investigation, and the Executive Office for Immigration Review.

- ii. Ending All Details of Department Personnel—Particularly Those Detailed to Congressional Offices—Until the Department Can Conduct a Thorough Review of Its Personnel Needs.

Considering all of the many challenges facing the Department, the next conservative administration should terminate and recall all details of its personnel shortly after the President’s inauguration. After a thorough analysis of the Department’s resources and priorities is completed, details to other portions of the Executive Branch and to Congress can resume.

- iii. Ensure Accountability for Personnel Sanctioned or Referred for Discipline After a Misconduct Finding.

The next conservative administration should complete a thorough review of any sanctions or misconduct findings issued over the four years preceding the inauguration to ensure that the Biden Administration acted appropriately in response to any such sanctions or misconduct findings.

- iv. Undertake a Comprehensive Review of Hiring Practices in the Department.

The next conservative administration should conduct a holistic review of hiring practices employed across all offices and components across the Department to ensure

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<sup>95</sup> *E.g.*, Sen. Comm. on Homeland Sec. & Gov’t. Affs., 114th Cong., U.S. Gov’t. Policy and Supp. Positions (The Plum Book), (Comm. Print 2016), available at <https://bit.ly/3BUUiII>. Every four years, just after the Presidential election, the “United States Government Policy and Supporting Positions,” commonly known as the Plum Book, is published, alternately, by the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Reform.



that those practices comply with applicable law and policy. All hiring committees associated with hiring for career positions across the Department must be assessed for impartiality to ensure that individuals are hired based on merit, aptitude, and legal skill and not based on association with or membership in certain ideologically aligned groups or based on illegal considerations, such as race, religion, or sex.

**b. Eliminating Redundant Offices and Consolidating Functions to Increase Efficiencies Across the Department.**

The next conservative administration should explore the possibility of consolidating and aligning the functions of its various components and offices in areas such as human resources, legal counsel, public relations, and other related matters. While local access in a component to appropriate personnel and resources is important, there are inefficiencies and redundancies across the Department that result in a bureaucratic, Rube Goldberg-esque design that ultimately hinder the Department's mission. From IT infrastructure to management functions, to public relations, the Department's leadership should explore consolidation and intra-departmental efficiencies to obtain the best possible support for its critical missions.

For example, the Department of Public Affairs has a dual structure of public information officers where there are some political appointees that lead the office and provide support, but also career appointees that serve as public information officers for individual divisions, e.g., Criminal Division, National Security Division, etc. The career officials handle the day-to-day work of the division, which is often nothing more than monitoring important cases, assisting in editing, and distributing press releases, while the political appointees will step in for larger issues that advance the administration's initiatives. This could be made more efficient by having political appointees for each division under the supervision of the Director of Public Affairs.

Additionally, given the interplay of function between the Office of Legislative Affairs and the Office of Public Affairs, and the fact that OLA is a Senate-confirmed position, the two offices should be folded into one for more efficiency and proper coordination. Under an Office of Public and Legislative Affairs, the Assistant Attorney General's portfolio would encompass both, with one Director/Deputy for Public Affairs and one Director/Deputy for Legislative Affairs.

**c. Pursuing Other Reforms to the Justice Manual and Changes to Reporting Chains to Ensure Consistency with the Law and the Administration's Priorities.**

The next conservative administration should also undertake a comprehensive review of the Department's current organizational chart and make decisions about

its structure—consistent with any authority to do so outside of Congressional action—to ensure the most efficient accomplishment of the Department’s missions. For example, is the current reporting structure for the Associate Attorney General’s Office the best and optimal for the achievement of the Department’s mission? Should all of the Deputy Attorney General’s direct reports continue to be direct reports, or would a different structure achieve a better, more efficient outcome in terms of fulfilling the Department’s mission? What is the role of the Office of Legal Policy in the next conservative administration? Should the Office of Legal Policy continue to be responsible for assisting with judicial nominations, or should that function be assigned to the Office of Legislative Affairs, which interacts with Congress on a daily basis?

**d. Pursuing Legislative Changes for Assistant United States Attorneys’ Compensation.**

To ensure that the Department can attract and retain top legal talent away from Washington, D.C., the next conservative administration should seek congressional reform of the pay scale used for Assistant United States Attorneys in the field. That reform should include, at a minimum, a proposal to compensate Assistant United States Attorneys on at least the same basis as attorneys employed by Main Justice who are compensated under the GS scale. Ensuring that the Department can attract and retain top legal talent outside of the DC market is essential and will help to emphasize the importance of the field’s work to achieve the Department’s various missions.

**e. Protecting the Integrity of the Bureau of Justice Statistics and the National Institute of Justice.**

The statistical and research arms of the Department should serve the American people and not special interests. The Director of the Bureau of Justice Statistics (BJS) should focus the Bureau on producing the statistics of greatest interest to everyday Americans, and hence of policymakers, rather than those of particular interest to criminal-justice academics. The Director should insist that such statistics be as accurate as possible and be presented as clearly as possible. The intellectually engaged, everyday American citizen should be able to read and understand BJS's published statistics and reports, rather than having to “trust to experts” because the statistics are not clear.

BJS should focus on the core statistics involving crime and punishment, such as those relating to serious crimes committed, imprisonment, time served, recidivism, and the like. It should not pursue the niche political agendas of academics or

advocates. Moreover, a clear line should be kept between official government statistics and third-party contractor reports. There should be no reports that look like official BJS reports but are authored by private entities such as the Urban Institute, as happened under the Obama administration.

Research funded by the National Institute of Justice should follow similar principles. NIJ should fund high-quality, unbiased research on the topics of greatest interest to everyday Americans and policymakers, rather than agenda-driven research desired by advocates or academics.

The National Crime Victimization Survey, which is the nation's largest crime survey and predates BJS (it dates to the Nixon administration), is of particular importance and the Department should prioritize and sufficiently fund it. It provides the only comprehensive and credible alternative to police reports for showing who commits crimes. The demographic information that crime victims provide through the survey about who commits crimes against them enables such reports as “Race and Ethnicity of Violent Crime Offenders and Arrestees, 2018,”<sup>96</sup> which was published in January of 2021 and finds that police are arresting those who (victims say) actually commit crimes.

The statutorily granted independence of BJS and NIJ should be respected by the entire Department, both to ensure the integrity of the statistics and research and because that statutory grant of power, which is vested mostly in the two respective political-appointee Directors, serves the Department and the Attorney General far better than having the Office of Management and Budget attempt to exercise such power on an one-size-fits-all, Executive branch-wide basis.

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<sup>96</sup> DEPT. OF JUST., *Race and Ethnicity of Violent Crime Offenders and Arrestees*, 2018, BUREAU OF JUSTICE STATISTICS (Jan. 2021), <https://bit.ly/3jrtmK8>.