



October 1, 2019

Michael Horowitz
Inspector General
U.S. Department of Justice
Suite 4706
950 Pennsylvania Ave N.W.
Washington, DC 20530

Re: Democracy 21 complaint requesting Inspector General to investigate Attorney General Barr's activities relating to the Ukraine affair

Dear Inspector General Horowitz:

Attorney General William Barr is prominently named in the [complaint](#) filed by a whistleblower alleging that President Trump, working with others, solicited and sought to pressure the government of Ukraine into intervening in the 2020 presidential election by providing derogatory information about former Vice President Joe Biden, a potential Democratic Party presidential nominee in the 2020 election in which President Trump is running for reelection.

The second paragraph of the whistleblower complaint states that “the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election.” The complaint then says, “Attorney General Barr appears to be involved as well.”

The complaint describes a July 25, 2019 telephone call that President Trump had with Ukrainian President Volodymyr Zelensky in which President Trump “sought to pressure the Ukrainian leader to take actions to help the President’s 2020 reelection bid.” According to the complaint, President Trump urged Zelensky to meet or speak with Attorney General Barr, whom the President referred to multiple times during the call.

Thus, according to the whistleblower complaint, Attorney General Barr was named by President Trump to serve as the president’s personal representative in his effort to solicit a foreign government to intervene in the 2020 election.

The principal allegations in the complaint are confirmed by the [memorandum](#) released by the White House on September 25, 2019 describing the contents of the July 25 phone call between President Trump and President Zelensky.

Both the whistleblower complaint and the White House report describing the Zelensky call contain multiple references to statements by President Trump saying that he is involving Attorney General Barr in his efforts to press a foreign country to investigate his political opponent. For that reason, the allegations in the complaint directly implicate the institutional integrity of the Justice Department and raise the question of whether the Attorney General, named by the President as a participant in this matter, has failed to carry out the [mission](#) of the Justice Department “to ensure fair and impartial administration of justice for all Americans.”

Accordingly, Democracy 21 calls on you to promptly conduct an investigation to determine what role Attorney General William Barr played in President Trump’s efforts to pressure Ukraine to interfere in the 2020 presidential election by gathering derogatory information on President Trump’s potential opponent in that election.

This investigation also needs to determine if Attorney General Barr engaged in improper conduct by failing to immediately and formally recuse himself from *any* role in the Department’s subsequent actions and decisions on the whistleblower complaint as soon as Attorney General Barr learned that he was named in the complaint.

Further, the investigation needs to determine whether Attorney General Barr played any role in attempting to cover up the whistleblower complaint by participating in the discussions or decisions by the Justice Department that initially prevented the complaint from being transmitted to Congress, as the Inspector General of the Intelligence Community apparently believed was required by law, or in [determining](#) that the complaint presented no violations of federal law that warranted further investigation.

In particular, the investigation by your office should examine:

- Whether and to what extent Attorney General Barr has discussed with President Trump, his attorney Rudy Giuliani or with any other White House, Justice Department or Trump campaign official the subject of encouraging, soliciting or pressuring the government of Ukraine to investigate and provide derogatory information about Vice President Biden or his family.
- Whether Attorney General Barr has had any contact, in person, by telephone or by other means, with any official or agent of the government of Ukraine about an investigation of Vice President Biden or his family.
- Whether Attorney General Barr or the Justice Department has conducted or is conducting any investigation of Vice President Biden or his family, and whether Attorney General Barr has discussed with President Trump, with his attorney Rudy Giuliani or with any other White House or Trump campaign official, or with any officer or employee of the Justice Department, the subject of having the Justice Department open and/or conduct an investigation of Vice President Biden or his family.

- When and under what circumstances Attorney General Barr learned of the existence of the whistleblower complaint about President Trump’s efforts to solicit Ukraine to provide derogatory information about Vice President Biden or his family, and whether Attorney General Barr should have formally recused himself from any Departmental consideration of or decisions about the complaint upon learning that he is named in the complaint.
- Whether and to what extent Attorney General Barr or the office of the Attorney General was involved in the Department’s discussions or decision-making process regarding the whistleblower complaint, including whether the complaint should have been transmitted to Congress by the Acting Director of National Intelligence.
- Whether and to what extent Attorney General Barr or the office of the Attorney General was involved in the Department’s discussions or decision-making process regarding the issue of whether efforts by President Trump and others to solicit or pressure the government of Ukraine to provide derogatory information about Vice President Biden or his family constituted a violation of the federal campaign finance laws.

The fact that the whistleblower complaint and the White House summary of the President’s call to President Zelensky both state that the President identified Attorney General Barr as a participant in what appears to be a gross abuse of power by the President makes this a matter of urgent institutional importance for the Department of Justice.

A prompt investigation by your office to determine the facts in this matter and to determine whether the Attorney General was involved in any improper conduct is essential in order for the American people to have confidence in the Department of Justice and in Attorney General Barr’s integrity and ability to credibly conduct the impartial administration of the law as the nation’s chief law enforcement officer.

Additional Background and Issues

The statement in the whistleblower complaint that President Trump named Attorney General Barr as a participant in his effort to solicit the government of Ukraine to provide derogatory information about Vice President Biden is confirmed by the White House summary of the July 25 telephone call between President Trump and President Zelensky.

According to the official White House account, President Trump specifically mentioned Attorney General Barr five times during that call (emphases added):

“I would like to have *the Attorney General* call you or your people and I would like you to get to the bottom of it.”

“I will ask him [Giuliani] to call you along with *the Attorney General*.”

“There’s a lot of talk about Biden’s son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with *the Attorney General* would be great.”

“I will have Mr. Giuliani give you a call and I am also going to have *Attorney General Barr* call and we will get to the bottom of it.”

“I will tell Rudy and *Attorney General Barr* to call. . . .”

These quotes—from the *official White House memorandum on the July 25 call*—by themselves raise a host of questions that require investigation about the role that Attorney General Barr may have played in President Trump’s efforts to use a foreign government to obtain derogatory information about a political opponent. Your office should determine whether the President, the White House or any agent of the President or White House at any time communicated to the Attorney General any instruction or suggestion that the Attorney General call President Zelensky or his “people” about investigating Vice President Biden.

If you determine that any such communication was made to the Attorney General, you should then determine what instructions or suggestions were given and whether Attorney General Barr took any actions in response to such instructions or suggestions. Beyond the question of whether the Attorney General was asked or instructed to call any Ukrainian official or agent following the July 25 call, your office should more broadly investigate whether the Attorney General has participated in any discussions or taken any actions related to soliciting the government of Ukraine to investigate Vice President Biden or to provide derogatory information about him, either before or after the July 25 call.

The investigation also should determine whether the Attorney General has authorized or participated in any investigation of Vice President Biden or his son, Hunter Biden; whether President Trump or his agents requested or instructed the Attorney General or the Department to undertake any such investigation as well as whether any such investigation either was conducted or is currently being conducted, and if so, whether there are legitimate grounds for the Department to investigate a leading potential opponent of President Trump in the 2020 presidential election.

Your investigation should also determine whether Attorney General Barr complied with Justice Department recusal requirements by immediately and formally recusing himself from any discussions and decisions regarding the whistleblower complaint. 28 C.F.R. § 45.2, *see also* 25 C.F.R. § 2635.502. Because the complaint states that Attorney General Barr “appears to be involved” in the allegations made in the complaint, the Attorney General’s participation in or oversight of the Department’s handling of the complaint would, at a minimum, “create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.” 28 C.F.R. § 45.2(b)(2).

According to published [reports](#), the whistleblower complaint was initially filed with Michael K. Atkinson, the Inspector General of the Intelligence Community, on August 12, 2019. According to a [letter](#) dated September 17, 2019 to the chairman and vice chairman of the House Permanent

Select Committee on Intelligence, Mr. Atkinson determined that the complaint met the statutory definition of expressing an “urgent concern” as set forth in 50 U.S.C. § 3033(k)(5)(G)(i). This triggered Mr. Atkinson’s statutory obligation to forward the complaint to Acting DNI Joseph Maguire, along with his “urgent concern” determination, [which he did](#) on August 26, 2019. This transmittal in turn triggered the DNI’s obligation, within seven days, to forward the complaint to the congressional intelligence committees along with any comments he considers appropriate. *Id.* § 3033(k)(5)(C).

The Acting DNI, however, did not forward the complaint to Congress, as required by statute. Instead he sought guidance from the White House and the Department of Justice as to whether he should do so. According to a [report](#) in *The Washington Post*:

Maguire said he first sought guidance from the White House Counsel’s Office and next from the Office of Legal Counsel at the Justice Department. Officials raised the possibility that the complaint could be covered by executive privilege, but no one reached a definitive ruling on that, Maguire said.

In an [opinion](#) released on September 24, 2019 but initially made on September 3, 2019, the Office of Legal Counsel (OLC) concluded that the whistleblower complaint did not meet the statutory definition of an “urgent concern” and therefore that the Acting DNI did not have a statutory obligation to transmit the complaint to the Congress. Instead, the OLC determined that the complaint should be referred to the Department’s Criminal Division for review of whether the actions described in the complaint constituted violations of the federal campaign finance laws. The Department [announced](#) that the Criminal Division subsequently concluded that the complaint did not present any violations of federal law that warranted further investigation.

According to a [report](#) in *The Washington Post*:

Senior Justice Department officials said the director of national intelligence referred concerns about the [Zelensky] call to the Justice Department in late August, after the intelligence community inspector general found that it was a possible violation of campaign finance laws. Days later, the inspector general referred the matter to the FBI.

Career prosecutors and officials in the Justice Department’s criminal division reviewed the rough transcript, which they obtained voluntarily from the White House, and determined the facts “could not make” the appropriate basis for an investigation, a senior Justice Department official said Wednesday. The final decision was made by Brian Benczkowski, who leads the Justice Department’s criminal division. As part of their reasoning, Justice Department lawyers determined that help with a government investigation could not be quantified as “a thing of value” under the law, officials said. . . .

Thus, by determining both that the law did not require the whistleblower complaint to be forwarded to Congress and that the complaint did not present any potential violations of federal law that warranted investigation, the Department of Justice took two separate actions that

collectively had the result of shielding the complaint from public or congressional scrutiny and which, if successful, would have ensured that there would not be a full investigation of the allegations in the complaint. The fact that Congress subsequently learned of the complaint and that congressional and public pressure led to its ultimate disclosure does not mitigate the impact of the Department's prior decisions to shield the complaint from public scrutiny and to quickly terminate any investigation of the allegations made in the complaint.

While in the normal case there should be a presumption of regularity given to decisions made by the Department, this is not a normal case. Here, as set forth multiple times in the White House summary of the Zelensky call, President Trump names Attorney General Barr as a participant in the activities that form the substance of the whistleblower complaint. The naming of the Attorney General in the allegations of the complaint overcomes any presumption of regularity for decisions about the complaint that were made by either the Attorney General or by his subordinates in the Department. It requires that there be an investigation of those decisions, especially where those decisions initially had the effect of blocking the transmittal of the complaint to Congress by the Acting DNI, and then terminating any investigation into the complaint by the Justice Department.

Accordingly, we believe it is essential that you investigate the process followed by the OLC in issuing its ruling that the complaint did not constitute an "urgent matter" under the whistleblower statute. We also urge you to investigate the process followed by the Criminal Division in concluding that the complaint did not present any violation of federal law that required a full investigation by the Department.

In both instances, you should determine whether Attorney General Barr, or any member of his office, participated in discussions relating to the complaint or had any input into the decisions reached by the Department about the complaint, and whether the Department's decision-making process was in any way tainted by the Attorney General's self-interest in the matter.

According to a published [report](#), "Department officials played down Barr's role [in this matter], saying that he was 'generally knowledgeable' of the discussions about the O.L.C. decision to find the complaint not urgent, but was not involved in the Criminal Division's decision to decline to investigate the allegations."

These characterizations by "Department officials" should not be accepted at face value and should be subject to careful scrutiny, including whether under DOJ recusal requirements, Attorney General Barr should not have been even "generally knowledgeable" about any Justice Department discussions relating to the OLC decision. You should also determine what role, if any, the President and the White House, or their agents, played in these Justice Department decisions, given the fact that President Trump is the subject of the whistleblower complaint.

As noted earlier, a core [mission](#) of the Department of Justice is "to ensure fair and impartial administration of justice for all Americans." President Trump's repeated statements to a foreign leader that he will have Attorney General Barr work directly with that leader to obtain derogatory information about a U.S. presidential candidate implicates the Attorney General in a gross abuse of power by the President. It also casts public doubt on the institutional integrity and

fairness of the Department itself with regard to the Department's decisions about the handling of the whistleblower complaint, and decisions with regard to the criminal referral made to the Justice Department in this matter.

Democracy 21 calls on you to promptly investigate the matters raised in our complaint and to determine whether the Attorney General engaged in improper conduct in the actions he took (or failed to take) regarding President Trump's efforts to have a foreign country interfere in the 2020 presidential election for the President's personal political benefit, at the expense of the integrity of our elections and the national security of our country.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred Wertheimer", followed by a horizontal line extending to the right.

Fred Wertheimer
President