



Office of the Attorney General
Washington, D. C. 20530

July 21, 2021

MEMORANDUM FOR ALL DEPARTMENT PERSONNEL

FROM: THE ATTORNEY GENERAL

A handwritten signature in black ink, reading "Merrick Garland".

SUBJECT: DEPARTMENT OF JUSTICE COMMUNICATIONS
WITH THE WHITE HOUSE

The success of the Department of Justice depends upon the trust of the American people. That trust must be earned every day. And we can do so only through our adherence to the longstanding Departmental norms of independence from inappropriate influences, the principled exercise of discretion, and the treatment of like cases alike.

Over the course of more than four decades, Attorneys General have issued policies governing communications between the Justice Department and the White House. The procedural safeguards that have long guided the Department's approach to such communications are designed to protect our criminal and civil law enforcement decisions, and our legal judgments, from partisan or other inappropriate influences, whether real or perceived, direct or indirect.

This memorandum sets out guidelines to govern all communications between Justice Department and White House personnel. (The "White House," for purposes of this memorandum, means all components within the Executive Office of the President.) As has traditionally been the case, these guidelines have been developed in consultation with, and have the full support of, the Counsel to the President.

A. Communications Concerning Pending or Contemplated Criminal or Civil Law Enforcement Investigations or Cases

1. In order to promote and protect the norms of Departmental independence and integrity in making decisions regarding criminal and civil law enforcement, while at the same time preserving the President's ability to perform his constitutional obligation to "take care that the laws be faithfully executed," the Justice Department will not advise the White House concerning pending or contemplated criminal or civil law enforcement investigations or cases unless doing so is important for the performance of the President's duties and appropriate from a law enforcement perspective.

2. The Assistant Attorneys General, the United States Attorneys, the heads of the investigative agencies, and their subordinates have the primary responsibility to initiate and supervise law enforcement investigations and cases. In order to insulate them from inappropriate influences, initial communications between the Department and the White House concerning

pending or contemplated law enforcement investigations or cases will involve only the Attorney General or Deputy Attorney General, and the Counsel or a Deputy Counsel to the President (or the President or Vice President). If the communications concern pending or contemplated civil law enforcement investigations or cases, the Associate Attorney General may also be involved. Communications about Department personnel regarding their handling of specific law enforcement investigations or cases are included within the requirements of this Part.

3. If further or continuing communications between the Department and the White House on a particular matter are required, the officials who participated in the initial communication may designate subordinates to carry on such communications. The designating officials must monitor subsequent communications, and the designated subordinates must keep their superiors regularly informed of any such communications.

4. This Part also applies to communications between the Justice Department and the White House concerning the Department's exercise of its adjudicatory authority, including within the Executive Office for Immigration Review.

5. This Part is not intended to interfere with the normal communications between the Department and other departments and agencies in their capacities as Department clients (including entities within the Executive Office of the President when they are Department clients) or any meetings or communications necessary to the proper conduct of investigations or litigation in that capacity. However, in matters where the Executive Office of the President is the Department client, Department personnel must keep the Office of the Attorney General or Deputy or Associate Attorney General advised of such communications.

6. This Part does not prevent officials in the communications, public affairs, or press offices of the Department and the White House from communicating with each other to coordinate communications efforts. However, the relevant offices (the Office of the Attorney General or Deputy or Associate Attorney General, and the Office of the White House Counsel) must be advised and approve of such coordination efforts in advance.

B. Communications Concerning National Security Matters

1. It is critically important to have frequent and expeditious communications between the Department and the White House in matters relating to foreign relations and national security, including counterterrorism and counterespionage. Therefore, communications from or to the Assistant to the President for National Security Affairs, the Principal Deputy National Security Advisor, the Deputy Counsel to the President for National Security Affairs, and the staff of the National Security Council that relate to such matters are not subject to the limitations set out in Part A above or Part F below. However, the Office of the Attorney General or Deputy Attorney General, and the Office of the White House Counsel, must be kept advised of such communications. Such communications may also be subject to further supervisory guidance designed by those Offices to safeguard both the Department's independence and national security responsibilities.

2. This exception for foreign relations and national security related matters does not extend to domestic matters unrelated to foreign actors or foreign influences when there are no exigent circumstances that would render infeasible the initial communication requirement of Part A. Nor does the exception extend to pending adversary cases in litigation that may have national security implications. Communications related to such domestic matters and pending cases are subject to the guidelines for pending or contemplated law enforcement investigations or cases described in Part A. If communications occur in the exigent circumstances described in this paragraph, the Office of the Attorney General or Deputy Attorney General, and the Office of the White House Counsel, must be notified as soon as feasible.

C. White House Requests for Legal Opinions

All requests from the White House for formal legal opinions will come from the Counsel or a Deputy Counsel to the President (or the President or Vice President), and will be directed to the Attorney General, Deputy Attorney General, or Assistant Attorney General for the Office of Legal Counsel. The Assistant Attorney General will advise the Attorney General and Deputy Attorney General of any such requests. If further or continuing communications on a particular matter are required, the Assistant Attorney General may designate subordinates to carry on such communications. The Assistant Attorney General will report to the Attorney General or Deputy Attorney General any communications that, in the Assistant Attorney General's view, constitute improper attempts to influence the Office of Legal Counsel's legal judgment. All other White House communications with Office of Legal Counsel personnel must be in accordance with the other parts of this memorandum. The Office of the Attorney General or Deputy Attorney General, and the Office of the White House Counsel, must be kept advised of such communications.

D. Communications with the Office of the Solicitor General

Communications between the White House and the Office of the Solicitor General concerning Supreme Court and appellate matters are often appropriate. Any initial such communication will involve only the Counsel or a Deputy Counsel to the President, and the Attorney General, Deputy Attorney General, or Solicitor General. If further or continuing communications on a particular matter are required, the officials who participated in the initial communication may designate subordinates from each side to carry on such communications. The Solicitor General must keep the Office of the Attorney General or Deputy Attorney General advised regarding such communications. All other White House communications with Office of the Solicitor General personnel must be in accordance with the other parts of this memorandum.

E. Communications with the Pardon Attorney

The Pardon Attorney may communicate directly with the Counsel and Deputy Counsels to the President concerning clemency matters. The Pardon Attorney and the Counsel to the President may designate additional subordinates to carry on further communications after the initial communication is made. The Pardon Attorney must keep the Office of the Deputy Attorney General informed of all such communications.

F. Communications Concerning Policy and Intergovernmental Relations

As a department within the Executive Branch, the Justice Department appropriately works to advance the Administration's policies and intergovernmental relations. Thus, communications between the Department and the White House that are limited to these subjects, and that do not relate to pending or contemplated law enforcement investigations or cases, are appropriate. In order to ensure that such communications do not touch upon the latter (which are the subject of Part A), initial communications between the Department and the White House concerning policies and intergovernmental relations will involve the Office of the Attorney General or Deputy or Associate Attorney General, and the Office of the Counsel to the President. If further or continuing communications are appropriate, the officials who participated in the initial communication may authorize other personnel to carry on such communications, who must keep those Offices advised.

G. Communications Concerning Procurement and Grantmaking

Communications between the White House and the Department regarding procurement and grantmaking policies and priorities are appropriate. However, the award of specific contracts and grants are subject to the norm of independence in decision-making.

In order to insulate the Department's procurement and grantmaking functions from potentially inappropriate influences, initial communications between the Department and the White House concerning procurement and grantmaking will involve only the Offices of the Attorney General or Deputy or Associate Attorney General, and the Office of the Counsel to the President. If further or continuing communications are appropriate, the officials who participated in the initial communication may authorize other personnel to carry on such communications, who must keep those Offices advised.

H. Other Communications Not Relating to Pending or Contemplated Investigations or Criminal or Civil Cases

Communications between the Department and the White House that are limited to legislation, budgeting, political appointments, public affairs, or administrative matters that do not relate to pending or contemplated law enforcement investigations or cases may be handled directly by the personnel concerned. Such communications are appropriate, but they must take place with the knowledge of the Department's lead point of contact regarding the subject, who must keep the Office of the Attorney General or Deputy or Associate Attorney General advised of such communications.

I. Personnel Decisions Concerning Positions in the Civil Service

All personnel decisions regarding career positions in the Department must be made without regard to the applicant's or occupant's actual or perceived partisan affiliation. Thus, although the Department regularly receives communications from the White House (as well as from Senators and Members of Congress and their staffs) concerning political appointments,

communications regarding positions in the career service are not proper when they concern a job applicant's or a job holder's partisan affiliation. Efforts to influence personnel decisions concerning career positions on partisan grounds must be immediately reported to the Deputy Attorney General.

J. Redirection of Communications

Employees of Department components who receive communications outside of these guidelines must immediately redirect those communications to the appropriate official or office under these guidelines, and so advise the relevant official or office.

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As Attorney General Benjamin Civiletti noted in issuing the Department's first White House communications memorandum in 1979, these guidelines are not intended to wall off the Department from legitimate communications with the Administration. Rather, they are intended to route communications to the appropriate officials so that the communications can be adequately reviewed and considered, free from the appearance or reality of inappropriate influence. As such, these guidelines are an essential element of the norms that ensure the Department's adherence to the rule of law.

This memorandum supersedes all previous Attorneys General memoranda regarding communications with the White House. The *Justice Manual* will be amended to incorporate these guidelines.