



August 9, 2022

The Hon. Michael E. Horowitz, Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530-0001

Re: Request for Investigation of Department of Justice/FBI Politicization

Dear Inspector General Horowitz:

America First Legal Foundation (“AFL”) is a national, nonprofit organization, working to protect the rule of law, due process, and equal protection for all Americans. Whether the President and the agencies he directs—including the U.S. Department of Justice—respect citizens’ rights and faithfully execute the laws passed by the Congress are core AFL concerns.

On March 11, 2021, Attorney General Garland said “The only way we can succeed and retain the trust of the American people is to adhere to the norms that have become part of the DNA of every Justice Department employee. Those norms require that like cases be treated alike - that there not be one rule for Democrats and another for Republicans, one rule for friends and another for foes.”¹ On June 15, 2021, he assured Americans that the Department of Justice is “focused on *violence*, not ideology.” He continued: “We do not prosecute people for their beliefs. Across the world, ‘extremist’ or ‘terrorist’ labels have at times been affixed to those perceived as political threats to the ruling order. But there is no place for partisanship in the enforcement of the law.”²

The facts, however, belie the Attorney General’s assurances. In truth, there is substantial evidence that the Department and its components, including the Federal Bureau of Investigation (FBI), maintain a partisan, two-tier system of justice favoring Democrat party members and their allies. Accordingly, we write now to request that your office, consistent with Section 8e of the Inspector General Act, investigate whether political considerations have infected the Department’s decision making.

¹ Sarah N. Lynch, *Garland Pledges to Adhere to ‘Norms’ as U.S. Attorney General*, REUTERS (Mar. 11, 2021), <https://reut.rs/3QvGt8f>.

² U.S. DEP’T OF JUST., Att’y Gen. Merrick B. Garland Remarks: Domestic Terrorism Policy Address (June 15, 2021) (emphasis in original), <https://bit.ly/3dlT1Ra>.

I. There is substantial evidence of a partisan double standard

There is substantial evidence of a partisan double standard in the exercise of the Department's investigative and enforcement authorities. Examples include, but are certainly not limited to, the following:

- “Russian Collusion” v. Hunter Biden’s Laptop. The central role played by the Department and the FBI in creating and maintaining the Russian collusion hoax through, *inter alia*, false court filings, unauthorized media leaks, and other unlawful behavior, is indisputable.³ By contrast, Hunter Biden’s laptop contains substantial evidence of public corruption, including massive foreign kickbacks to President Biden and his family, collusion with the Chinese Communist Party, illegal drug use, and the use of prostitutes.⁴

The FBI has had possession of this laptop for over two years. However, except for a tax investigation of Hunter Biden, no government action has been taken. In fact, during the 2020 campaign, the very same FBI officials who played key roles in the Russian collusion hoax apparently attempted to discredit the Biden laptop as “disinformation.”⁵ This led Senator Grassley to write that he has “raised concerns for many years” about political considerations infecting the Department’s decision-making, and that “If these allegations are true and accurate, the Justice Department and FBI are – and have been – institutionally corrupted to their very core to the point in which the United States Congress and the American people will have no confidence in the equal application of the law.”⁶

- Targeting Parents v. BLM Rioters. On October 4, 2021, the Department unleashed federal law enforcement against parents protesting racial indoctrination and extreme gender ideology. This was the result of the Biden Administration effort to mitigate the potential electoral consequences of parent engage-

³ See *Interview of Supervisory Intelligence Analyst (Brian Auten) Before the U.S. Senate Comm. on the Judiciary*, at 57-59, 78-82, 85, 87-96, 105-107 (Oct. 29, 2020), <https://bit.ly/3vO0j6O>; Brief for America First Legal Foundation as *Amicus Curiae* in Support of Petitioner at 18-21, *Trump v. Thompson, et al*, No. 21-932 (Jan. 11, 2022) (<https://bit.ly/3JLecbO>); see also Ben Feuerherd and Mark Lungariello, *FBI Brass Were ‘Fired Up’ About Now-Debunked Trump-Russia Ties: Texts, Testimony*, THE NEW YORK POST (May 24, 2022), <https://bit.ly/3Q7p1HB>.

⁴ See Miranda Devine, *Hunter Biden’s Biz Partner Called Joe Biden ‘The Big Guy’ in Panicked Message After Post’s Laptop Story*, THE NEW YORK POST (July 27, 2022), <https://bit.ly/3BT94Ad>.

⁵ Letter from Sen. Charles Grassley to Merrick Garland and Christopher Wray at 2-3 (July 25, 2022) (<https://bit.ly/3BXpTKr>).

⁶ Senator Charles E. Grassley, among others, has raised concerns “for many years” about political considerations infecting the Department’s decision-making. “If these allegations are true and accurate, the Justice Department and FBI are – and have been – institutionally corrupted to their very core to the point in which the United States Congress and the American people will have no confidence in the equal application of the law.” *Id.*

ment with and mobilization against the use of Critical Race Theory-based indoctrination and extreme gender ideology in public schools.⁷ At the same time, the Department has refused to classify the BLM rioters who burned American cities during the summer of 2020 as “domestic terrorists” under 18 U.S.C. § 2331(5) and in accordance with standardized FBI protocols.⁸ In fact, the Department requested leniency for a BLM protestor who killed a man by arson in Minnesota, and breached its own procedures to arrange vastly reduced sentences for two New York lawyers who firebombed a police car.⁹

- Raiding former President Trump’s home. According to published reports, the FBI raided former President Trump’s residence yesterday, allegedly because of concerns records shipped to the residence from the White House might contain classified information.¹⁰ By all accounts, however, former President Trump and his attorneys had been working with the government to address all these concerns. During the FBI raid, many additional records, all separate and apart from the Presidential records supposedly at issue, were reportedly seized. Notably, former President Trump is the leading candidate for the Republican Party nomination to run for President in 2024. Especially when viewed within the context of the Russia collusion hoax, perpetrated by Democrat operatives with the active participation of FBI, the government’s action suggests deep partisan animus.
- Pro-Abortion Leftists Targeting Supreme Court Justices. To influence the decision in *Dobbs v. Jackson Women’s Health Organization* abortion case, pro-abortion leftists intentionally harassed Supreme Court Justices at their homes. 18 U.S.C. § 1507 provides that any person who, with the intent of influencing any judge, “pickets or parades” in or near the judge’s residence, shall

⁷ AMERICA FIRST LEGAL FOUNDATION, *America First Legal Seeks Two Federal Investigations on Attorney General Merrick Garland’s Infamous Oct. 4th Memo Siccing the FBI on Concerned Parents* (Mar. 14, 2022), <https://bit.ly/3Qc7LRp>; AMERICA FIRST LEGAL FOUNDATION, *DOJ Suppression of Parent’s Speech at Schools* (Oct 7, 2021), <https://bit.ly/3CaApyj>; AMERICA FIRST LEGAL FOUNDATION, *DOJ Suppression of Parent’s Speech at Schools (Crim)* (Oct 7, 2021), <https://bit.ly/3QzwcI2>; AMERICA FIRST LEGAL FOUNDATION, *DOJ Suppression of Parent’s Speech at Schools (Crt)* (Oct 7, 2021), <https://bit.ly/3PhsEsV>; AMERICA FIRST LEGAL FOUNDATION, *DOJ Suppression of Parent’s Speech at Schools (OLC)* (Oct 7, 2021), <https://bit.ly/3p82cHM>; AMERICA FIRST LEGAL FOUNDATION, *DOJ Suppression of Parent’s Speech at Schools (US Attorneys)* (Oct 7, 2021), <https://bit.ly/3zMdarp>.

⁸ FBI AND DEP’T OF HOMELAND SEC., *Strategic Intelligence Assessment and Data on Domestic Terrorism* at 13, 17 (May 2021), <https://bit.ly/3P12OJJ>.

⁹ See AMERICA FIRST LEGAL FOUNDATION, *AFL Continues Investigating Biden DOJ’s Double Standards* (June 13, 2022), <https://bit.ly/3Qua5Tx>; AMERICA FIRST LEGAL FOUNDATION, *AFL Seeks Records from DOJ Regarding Race-Based Leniency for a Minneapolis BLM Riot Arsonist* (Jan. 26, 2022), <https://bit.ly/3A950dS>.

¹⁰ Marc Caputo and Ryan Reilly, *FBI Search at Trump’s Mar-a-Lago Home Tied to Classified Material, Sources Say*, NBC NEWS (Aug. 8, 2022), <https://nbcnews.to/3A9a95G>.

be fined and imprisoned. However, to protect an important Biden Administration constituency, the Department refused to enforce the law. This, too, is evidence of political taint.

- “Domestic Terrorism.” The Department’s political echelon has made “domestic terrorism” a central talking point and a singular domestic intelligence, investigative, and enforcement priority.¹¹ Apparently, the Biden Administration defines “domestic terrorism” by reference to 18 U.S.C. § 2331(5).¹² Section 2331(5) provides that “domestic terrorism” is any act dangerous to human life that violates U.S. or State criminal laws; that appears to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and that occurs primarily within the territorial jurisdiction of the United States. The Federal Bureau of Investigation (FBI) claims § 2331(5) is “a definitional statute, not a charging statute.”¹³

Unlike “international terrorism”,¹⁴ “domestic terrorism” is not a crime. Nevertheless, on May 21, 2021, the FBI and the Department of Homeland Security (DHS) jointly reported to Congress that, generally speaking, “There are no differences in how the FBI reviews and prioritizes [domestic terrorism] and [international terrorism].”¹⁵ Among other things, the FBI/DHS report establishes that the criteria and methodology used to identify or assign a “domestic terrorism classification” are entirely subjective and necessarily partisan choices.¹⁶

¹¹ NAT’L SEC. COUNCIL, *National Strategy for Countering Domestic Terrorism* at 7 (June 2021), <https://bit.ly/3PSdw6G>; DEP’T OF JUST., *Domestic Terrorism Backgrounder* (Feb. 26, 2021), <https://bit.ly/3vKsGD2>; see also Letter from Rep. Jim Jordan to Christopher A. Wray (July 27, 2022), <https://bit.ly/3BPUt8P>; Katie Benner, *Justice Dept. Forms Domestic Terrorism Unit*, THE NEW YORK TIMES (Jan. 11, 2022), <https://nyti.ms/3A794M0>; DEP’T OF JUST., *Attorney General Merrick B. Garland Remarks: Domestic Terrorism Policy Address* (June 15, 2021), <https://bit.ly/3SB32uc>

¹² *Domestic Terrorism Backgrounder* at 1; *National Strategy for Countering Domestic Terrorism* at 7.

¹³ See FBI, *Domestic Terrorism: Definitions, Terminology, and Methodology* at 1 (Nov. 2020), <https://bit.ly/3BKPCza>. What the Department means by this claim, precisely, is unclear.

¹⁴ See 18 U.S.C. §§ 2332b, 2339(A-D).

¹⁵ F.B.I. AND DEP’T OF HOMELAND SEC., *Strategic Intelligence Assessment and Data on Domestic Terrorism* at 13, 17 (May 2021), <https://bit.ly/3P12OJJ>. In §§ 5602(b)(3)(A) and (B) of Title LVI of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, Congress mandated that FBI and DHS report to Congress on, *inter alia*, the criteria for opening, managing, and closing domestic terrorism investigations and the FBI’s standards and procedures with respect to the review, prioritization, and mitigation of domestic terrorism threats.

¹⁶ *Id.* at 15-16. According to the FBI, “As a matter of FBI policy, law enforcement activities within the scope of [domestic terrorism] investigations are particularly subject to heightened internal legal review and supervisory approvals to ensure Constitutional rights, privacy, and civil liberties are protected at each juncture. [Domestic terrorism] investigations receive more scrutiny through such legal reviews due to the greater likelihood these investigations may need to navigate First Amendment-protected activities.” *Id.* at 17. However, the mountain of evidence demonstrating the FBI’s central role in creating and advancing the Russia Collusion hoax targeting former President Trump, his presidential campaign, and Administration, suggests strong reason to doubt these assurances. See *Interview of Supervisory Intelligence Analyst (Brian Auten) Before the U.S. Senate Comm. on the Judiciary*, at 57-

Critically, although the FBI has repeatedly acknowledged that § 2331(5) sweeps up constitutionally protected activity,¹⁷ and despite the obvious infirmity of this statute on overbreadth and vagueness grounds,¹⁸ it appears the Department uses the “domestic terrorism” label selectively to single out politically disfavored citizens for heightened legal scrutiny and consequences.¹⁹ For example, the Biden Administration has characterized all January 6 protestors as “domestic terrorists.”²⁰ However, as noted above, it has not applied the same label to politically favored leftist groups, notwithstanding the fact that these groups have engaged in violent conduct that precisely meets the statutory definition of “domestic terrorism.” As AFL pointed out in Supreme Court advocacy, the January 6 riot was not comparable in organization, funding, sophistication, size, scope, or damage, to the riots of the preceding months in Minneapolis, New York City, Kenosha, and other cities.²¹ Nevertheless, the Department’s charging decisions and sentencing recommendations for peaceful January 6 protestors are far more onerous than the treatment afforded to violent leftists such as BLM and Antifa, or the members of other leftist groups who have occupied Congressional offices and damaged federal property. Although we are certainly respectful of the need for and role played by prosecutorial discretion in the efficient administration of justice, the sheer extent of the disparity raises very significant questions of improper political taint.²²

59, 78-82, 85, 87-96, 105-107 (Oct. 29, 2020), <https://bit.ly/3vO0j6O>; Brief for America First Legal Foundation as *Amicus Curiae* in Support of Petitioner at 18-21, *Trump v. Thompson, et al.*, No. 21-932 (Jan. 11, 2022), <https://bit.ly/3JLecbO>; see also Ben Feuerherd and Mark Lungariello, *FBI Brass Were ‘Fired Up’ About Now-Debunked Trump-Russia Ties: Texts, Testimony*, THE NEW YORK POST (May 24, 2022), <https://bit.ly/3Q7p1HB>.

¹⁷ *Strategic Intelligence Assessment* at 16-17; see also *Domestic Terrorism Backgrounder* at 1.

¹⁸ See *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018); *Kolender v. Lawson*, 461 U.S. 352, 357-58 (1982); *Winters v. New York*, 333 U.S. 507, 519 (1948). A statute purportedly criminalizing behavior must be clear and provide fair notice through discernable standards.

¹⁹ NAT’L SEC. COUNCIL, *National Strategy for Countering Domestic Terrorism*, pp. 15-16, 20, 22, 26-28, 30 (June 2021), <https://bit.ly/3PSdw6G>.

²⁰ *National Strategy for Countering Domestic Terrorism* at 5.

²¹ Brief for America First Legal Foundation as *Amicus Curiae* in Support of Petitioner, *Trump v. Thompson, et al.*, No. 21-932 (Jan. 11, 2022) (<https://bit.ly/3JLecbO>); Brief for America First Legal Foundation as *Amicus Curiae* in Support of Petitioner, *Page v. Oath Inc.*, No. 21-932 (Apr. 19, 2022) (<https://bit.ly/3JHwYk5>).

²² The evidence that the Department has, for political reasons, singled out the January 6, 2021, rioters for disproportionately harsh treatment relative to far more violent and destructive leftist rioters who attacked, injured, and killed hundreds of law enforcement personnel; burned and looted cities nationwide causing billions of dollars in damages; desecrated religious buildings; and besieged federal buildings, is substantial and suggestive. See Andrew McCarthy, *DOJ’s Politicized Double-Standard for Prosecuting Protesters*, THE HILL (June 10, 2022), <https://bit.ly/3P7b3nv>; America First Legal Foundation, *AFL FOIAS DOJ for Records of its Politically Motivated “Domestic Terrorism” Unit to Target and Silence Conservatives* (Jan. 21, 2022), <https://bit.ly/3C23X0C>; *Updated and Reposted: RCI’s Jan. 6-BLM Riots Side-by-Side Comparison*, REAL CLEAR INVESTIGATIONS (Jan. 4, 2022), <https://bit.ly/3bKF8Ma>; Byron York, “‘Armed insurrection’: What Weapons Did the Capitol Rioters

- Disparate treatment of Jeffrey Clarke, Peter Navarro, and Roger Stone. On Wednesday, June 22, 2022, federal investigators raided the home of Jeffrey Clark, the former acting head of the Civil Division.²³ He was left in the street, for hours, in his shorts. Peter Navarro’s treatment led a federal judge to say that “It is curious to me why the government treated Mr. Navarro's arrest in the way that it did.”²⁴ Roger Stone was arrested by armed agents, in “an unusual show of force” in the early morning, in front of a tipped off CNN camera crew.²⁵ However, defendants such as Michael Sussman and Igor Danchenko, both aligned with Biden Administration allies, were not subjected to similar treatment.
- Clinton Emails. To unlawfully avoid her Freedom of Information Act obligations, Hillary Clinton carried out federal business on a private server. She lied about storing classified information. Then, after a Congressional subpoena, an additional 30,000 of her emails were reportedly deleted using “BleachBit.”²⁶ Yet neither Clinton nor her advisors were ever raided by the FBI. In fact, in a highly unusual action, the former head of the FBI declared that “no reasonable prosecutor” would bring a case against her or anyone else involved, notwithstanding the plain statutory language and the strong evidence of her intentional and willful destruction of government emails.²⁷

Carry?”, THE WASHINGTON EXAMINER (Oct. 11, 2021), <https://washex.am/3p55tri>; Mark Hosenball and Sarah N. Lynch, “*Exclusive: FBI Finds Scant Evidence U.S. Capitol Attack Was Coordinated – Sources*”, REUTERS (Aug. 20, 2021), <https://reut.rs/3bITLzq>; Major Cities Chiefs Association Intelligence and Commanders Group, “Report on the 2020 Protests & Civil Unrest” (Oct. 2020), <https://bit.ly/3zluFZy>; Jennifer A. Kingson, *Exclusive: \$1 Billion-Plus Riot Damage is Most Expensive in Insurance History*, AXIOS (Sept. 20, 2020), <https://bit.ly/3A9669y>; Mike Balsamo and Gillian Flaccus, *On Portland's Streets, Anger, Fear, and a Fence That Divides*, ASSOCIATED PRESS (July 27, 2020), <https://bit.ly/3SFNQMc>; see also HOUSE JUDICIARY GOP, *The Video Chairman Nadler Doesn't Want You to See!*, YOUTUBE (Jul. 28, 2020), <https://bit.ly/3bGBPpl>; Daniel Greenfield, *‘God is Dead’: Leftist Rioters Vandalize Churches and Synagogues*, JNS (June 4, 2020), <https://bit.ly/3p5wZor>; Katherine Macintire Peters, *Weekend of Violent Protests Leaves Trail of Damage for Feds*, GOVERNMENT EXECUTIVE (May 31, 2020), <https://bit.ly/3bLxotl>; ASSOCIATED PRESS, *Government Drops Charges Against All Inauguration Protesters* (July 6, 2018), <https://nbcnews.to/3zK8PF5>.

²³ Alan Feuer, Adam Goldman, and Maggie Haberman, *Federal Authorities Search Home of Trump Justice Dept. Official*, THE NEW YORK TIMES (June 23, 2022), <https://nyti.ms/3QeuWdU>.

²⁴ Hannah Rabinowitz and Tierney Sneed, *Former Trump White House Trade Adviser [sic] Peter Navarro Rejects Plea Deal in Contempt of Congress Case*, CNN (July 15, 2022), <https://cnn.it/3dljBu0>.

²⁵ Deana Paul, *FBI! Open the Door*, THE WASHINGTON POST (Jan. 26, 2019), <https://wapo.st/3BV4gui>.

²⁶ Louis Nelson, *Gowdy: Clinton Used Special Tool to Wipe Email Server*, POLITICO (Aug. 25, 2016), <https://politi.co/2LaPyTe>; Louis Nelson, *The 7 Key Findings in the FBI’s Clinton Email Probe*, POLITICO (July 5, 2016), <https://politi.co/3dnPT7K>.

²⁷ “Although there is evidence of potential violations of the statutes regarding the handling of classified information, our judgment is that no reasonable prosecutor would bring such a case.” FBI, *Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton’s Use of a Personal E-Mail System* (July 5, 2016), <https://bit.ly/3dkH0vl>. Notably, the FBI Director made this statement at precisely the same time that the FBI was pursuing the Russia collusion hoax.

- Biden Records Violations. Former Senator Biden’s records were transferred to the University of Delaware in violation of federal law clearly requiring all non-current legislative records to be transferred to the National Archives.²⁸ However, neither the Biden library nor his residence, have been raided by the FBI.

II. Request for investigation

AFL respectfully requests that you open an investigation to determine whether improper political considerations have, in Sen. Grassley’s words, “infected” the Department’s decision making with respect to the following:

1. The Department’s treatment of the Hunter Biden laptop, including but not limited to the activities of FBI employees Brian Auten and Timothy Thiebault referenced in Sen. Grassley’s letter of July 25, 2022.
2. The Department’s disparate treatment of non-violent January 6 protestors relative to violent leftist rioters.
3. The FBI’s apparent use of partisan political considerations in the application of “domestic terrorism” methodology and classification protocols.
4. The Department’s failure to enforce 18 U.S.C. § 1507 with respect to pro-abortion protests and harassment at the residences of Supreme Court Justices involved in the *Dobbs* decision.
5. The Department’s decision to mobilize federal law enforcement against American parents through the October 4, 2021, Garland Memorandum.

In 1951, Justice Hugo Black warned that two things only are certain: first, that power is abused in much the same way in every age and country; and second, that what has happened before can happen again.²⁹ Your work on Crossfire Hurricane uncovered important facts and led to necessary corrective action, slowing the erosion of public and Congressional trust in the efficacy of the Department’s internal checks and balances. Given that it is almost certain that the political pendulum will swing back, and that it may swing back hard, there is a critical need *now* for your fair, honest, and independent oversight to uncover the facts, map a path forward for reform, and

²⁸ 44 U.S.C. § 2118 provides that the Secretary of the Senate and the Clerk of the House of Representatives, acting jointly, “shall obtain at the close of each Congress all the noncurrent records of the Congress and of each congressional committee and transfer them to the National Archives and Records Administration for preservation, subject to the orders of the Senate or the House of Representatives, respectively.” Senate Resolution 474 makes clear that the National Archives controls these records, making them agency records, by authorizing the Archives to make these congressional records “available for public use”. S. Res. 474, 96th Cong. (1980) <https://bit.ly/3BRVeOE>.

²⁹ *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 145 (1951).

begin the process of restoring public and Congressional faith and confidence in the Department's commitment to equal justice under the law.

Sincerely,

Reed D. Rubinstein
America First Legal Foundation

Cc: The Hon. Sen. Richard J. Durban, Chairman, U.S. Senate Committee on the Judiciary

The Hon. Sen. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary

The Hon. Rep. Jerold Nadler, Chairman, U.S. House Committee on the Judiciary

The Hon. Rep. Jim Jordan, Ranking Member, U.S. House Committee on the Judiciary