



July 7, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue, N.W.
Washington D.C., 20500

Dear President Biden:

Survivors of sexual assault were hurt to learn that the Department of Justice chose to continue to defend Donald Trump in E. Jean Carroll's defamation suit against the former president. Unfortunately, this is but one example of many in which Merrick Garland's Justice Department has maintained flawed legal positions of the Trump administration which contravene not only the administration's goals, but basic norms of American democracy. While the Attorney General may be motivated by an attempt to maintain the appearance of impartiality at the DOJ, the institutional goal must be to achieve just outcomes; deference to the Trump DOJ under the guise of impartiality is not only unwarranted, it is unjust. The flawed legal positions the Department has been adopting or maintaining in case after case contravene this goal. These positions have already had disastrous repercussions.

The Justice Department must immediately change course or allow for new leadership that will act in a manner consistent with the Administration's stated values.

From the environment to immigration, and from criminal justice to presidential accountability, Garland has effectively continued the disastrous legacy of the Trump Administration in the name of maintaining the fiction of a DOJ independent of politics. This misguided objective is most

glaring when it leads Garland to commit the DOJ to Trump-era positions which themselves are purely political. For example, the Department has moved to hide from public review the “Barr Memo,” which facilitated the stifling of the Mueller investigation. Garland’s DOJ also attempted to shield Trump Education Secretary Betsy DeVos from testifying about her refusal to forgive student loans for those defrauded by for-profit colleges.

On environmental issues, Garland’s DOJ has been pushing forward with much of Trump’s incredibly destructive legacy. His Justice Department’s Environmental and Natural Resources Division is continuing a number of the Trump Administration’s policies, including arguing in court on behalf of ConocoPhillips’ Willow oil project in Alaska and in defense of continuing other harmful projects like the Dakota Access Pipeline and the Resolution Copper Mining Project in Arizona. Garland’s acting Solicitor General, Elizabeth Prelogar, just defended the construction of a 116 mile pipeline in PennEast Pipeline Co. v. New Jersey. The DOJ’s defense of the Willow oil project is especially egregious because the Biden Administration won praise from environmental activists for its decision to suspend drilling leases in Alaska’s Arctic National Wildlife Refuge earlier this year, further highlighting how Garland’s DOJ is undermining the President’s values on environmental issues.

Garland’s DOJ is still seizing land through eminent domain for Trump’s border wall, despite Biden’s promises to reverse Trump’s racist immigration policies. As recently as April, Garland’s DOJ found itself on the other side of members of Congress, Human Rights Watch, the American Immigration Lawyers Association, OxFam, and others when it argued before the Supreme Court in Sanchez v. Mayorkas to block lawful permanent residency for individuals who have been granted Temporary Protected Status if they entered the country unlawfully. Before that, Biden’s DOJ defended a Trump rule that limited the evidence migrants could present in court, making them more likely to be deported.

The DOJ has continued to defend the exclusion of Puerto Ricans from major benefits of Social Security. Biden himself announced that the exclusion of Puerto Ricans was “inconsistent with my Administration’s policies and values.” Nonetheless, Garland proceeded to defend the exclusion.

Even more shockingly, Garland’s DOJ has endorsed an expansion of the powers of police to engage in warrantless searches and seizures. Garland also has failed to restore the long-defunct Arrest-Related Deaths program, which would track police killings. These unforced errors on criminal justice reform stand in stark contrast to the administration’s stated values with respect to racial justice.

On June 9th, the acting head of the DOJ’s Civil Division, Brian Boynton, filed a brief making clear the Department’s intent to defend schools’ right to discriminate against LGBTQ students. This is at odds with a March memo from Garland and a day one executive order from President Biden himself stating that all “persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.” The Department should not make arguments that are at odds with core constitutional values.

Again, we believe what is driving Garland's decision-making is an attempt to maintain the appearance that the DOJ is independent and remains consistent across administrations. This makes no sense for the transition from the Trump administration to your own. As you made clear on the campaign trail, Trump treated the Department as his personal legal defense firm. He installed, in Jeff Sessions and William Barr, Attorneys General who sought to tear down equal protection under the law. They prioritized guarding the 45th President over serving the American people. To maintain consistency from this administration is to solidify Trump, Sessions, and Barr's efforts to undermine the rule of law, not to mention other core constitutional commitments which they disdained. It is entirely short-sighted to prioritize maintaining consistency with the policies of a demagogue simply for consistency's sake. And in consideration of the abrupt shifts in policy and litigation position brought about by the ascensions of Presidents Ronald Reagan, George W. Bush, and Donald Trump, it is hard to take seriously the idea that there exists a powerful norm requiring such foolish consistency after a change in administration at all.

Garland's hesitance to reverse Trump positions may have something to do with the Trump holdovers and corporate law attorneys still staffing his department. The DOJ's Antitrust Division is a particularly clear example. It is currently led by career official Richard Powers, who himself was elevated to the head of the Antitrust Division by Trump political appointees. Like him, his senior staff includes officials hand-picked by Trump's former corrupt and ineffective antitrust head Makan Delrahim. Chief of Staff James Attridge was chosen by former Trump officials. His corporate background and the timing of his hiring and ascent casts doubt on his status as a career employee. Additionally, many of the acting officials across the DOJ, who often serve for years without scrutiny, share the same white-collar criminal defense backgrounds that characterized Trump's DOJ.

In testimony before Congress given on Wednesday, June 9th, Garland said that his "job is to represent the American people" by "ensur[ing] adherence to the rule of law." He is correct. His tenure as Attorney General, however, shows that he deeply misunderstands what that means in practice. In order to build back better, your administration needs an Attorney General who understands that it is not reversing Trump-era positions that endangers the credibility of the DOJ; rather it is timidity in reversing bad-faith arguments that undermine the rule of law. Garland has revealed deep flaws in judgment and allowed effective impunity for Trump and the Trump administration. It appears that Garland values the appearance of "nonpartisan commitment" above all else.

Attorney General Merrick Garland is treating the Trump presidency as if it were business as usual. In reality, it was deeply anti-democratic, consistently undermining accountability and the rule of law. Garland's DOJ should not defer to the legal judgments made by such a lawless administration.

Signed,

Demand Progress Education Fund

Climate Hawks Vote

People's Parity Project

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Project Blueprint

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UltraViolet