

DEPARTMENT OF JUSTICE

Gene Hamilton

The Department of Justice (DOJ) has a long and noble history. That history began with the creation of the Office of the Attorney General pursuant to the Judiciary Act of 1789¹ and has continued through the creation of the department in 1870,² the formation of the Federal Bureau of Investigation (FBI) in 1908,³ reforms following the terrorist attacks of September 11, 2001, and to the present day. Properly understood within the framework of a constitutional republic that values ordered liberty, the Department of Justice has two primary functions: protecting public safety and defending the rule of law.

Unfortunately, the department has lost its way in recent years and has forfeited the trust of large segments of the American people. Large swaths of the department have been captured by an unaccountable bureaucratic managerial class and radical Left ideologues who have embedded themselves throughout its offices and components. The department also suffers from institutional inattentiveness to its core functions. Instead of being 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—the DOJ has become a department that 46.6 percent of Americans recently indicated is, in their view, “too political, corrupt, and not to be trusted.”⁴

The weight of the publicly available evidence indicates that there are many reasons for this lack of trust. For example:

- The Federal Bureau of Investigation, knowing that claims of collusion with Russia were false,⁵ collaborated with Democratic operatives to inject

Mandate for Leadership: The Conservative Promise

the story into the 2016 election through strategic media leaks, falsified Foreign Intelligence Surveillance Act (FISA) warrant applications, and lied to Congress.⁶

- Personnel within the FBI engaged in a campaign to convince social media companies and the media generally that the story about the contents of Hunter Biden’s laptop was the result of a Russian misinformation campaign—while the FBI had possession of the laptop the entire time and could have clarified the authenticity of the source.⁷
- The DOJ engaged in conduct to chill the free speech rights of parents across the United States in response to supposed “threats” against school boards,⁸ yet it failed to engage in any concerted campaign to protect the rights of Americans who actually *were* terrorized by acts of violence like those perpetrated against pregnancy care centers.⁹
- The FBI 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.¹⁰
- The FBI engaged in a domestic influence operation to pressure social media companies to report more “foreign influence” than the FBI was actually seeing and stop the dissemination of and censor true information directly related to the 2020 presidential election.¹¹
- The department has devoted unprecedented resources to prosecuting American citizens for misdemeanor trespassing offenses or violations of the FACE Act¹² while dismissing prosecutions against radical agents of the Left like Antifa.¹³
- 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 behavior such as with state efforts to restrict abortion¹⁴ or prevent genital mutilation of children.¹⁵
- The department has sued multiple states regarding their efforts to enhance election integrity.¹⁶

Department of Justice

- The department has failed to do its part to stop the flood of fentanyl and other deadly drugs that are flowing across our borders and decimating families and communities across the United States.¹⁷
- The department has abdicated its responsibility to assist in the enforcement of our immigration laws and has engaged in wholesale abandonment of its duty to adjudicate cases in the immigration court system.

These actions stand in stark contrast to Attorney General Merrick Garland's assertion before taking office that "there [must] not be one rule for Democrats and another for Republicans, one rule for friends and another for foes."¹⁸

While it is true, as it is 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 DOJ has become a bloated bureaucracy with a critical core of personnel who are infatuated with the perpetuation of a radical liberal agenda and the defeat of perceived 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 their stature with any number of radical leftist organizations, than they do about justice and advancing the interests of the American people.

It is essential that the next conservative Administration place a high priority on reforming the DOJ and its culture to align the department with its core purposes and advance the national interest. Critically, this must include the FBI. Anything other than a top-to-bottom overhaul will only further erode the trust of significant portions of the American people and harm the very fabric that holds together our constitutional republic. At a practical level, not reforming the Department of Justice will also guarantee the failure of that conservative Administration's agenda in countless other ways.

Successful reform will require more than minor peripheral adjustments. It will require a holistic, energetic, leadership-driven effort to remedy the damage that has been done and advance the national interest. Additionally, some needed reforms will not be possible without legislative changes from Congress. While it is true that certain offices and components—like the FBI or the Civil Rights Division—will require more attention than others, committed direction from the department's political leadership can restore the department's focus on its two core functions: protecting public safety and defending the rule of law.

This chapter features prominently the things the department must do to restore its focus on these functions. Of course, there are other important reforms that do not necessarily fit within either of those core functions, so this chapter includes an additional section to address those areas.

PRIORITIZING THE PROTECTION OF PUBLIC SAFETY

Ordered liberty is at risk when our citizens lack physical safety, when career criminals do not fear the law, when foreign cartels move narcotics and illegal aliens into our nation at will, and when political leaders call citizens “domestic terrorists” for exercising their constitutional rights. The Department of Justice—in partnership with state and local partners—must 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 levels,¹⁹ but the DOJ can provide critical technical support for local law enforcement and play a critical agenda-setting role. With respect to the Department’s core responsibilities—enforcing our immigration laws, combating domestic and international criminal enterprises, protecting federal civil rights, and combating foreign espionage—the federal government has primary authority and, accordingly, accountability.

The evidence shows that the Biden Administration’s Department of Justice has failed to protect law-abiding citizens and has 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.²⁰ Immigration laws are ignored.²¹ The FBI harasses protesting parents (branded “domestic terrorists” by some partisans) while working diligently to shut down politically disfavored speech on the pretext of its being “misinformation” or “disinformation.”²² A department that prosecutes FACE Act cases while ignoring dozens of violent attacks on pregnancy care centers and/or the coordinated violation of laws that prohibit attempts to intimidate Supreme Court Justices by parading outside of their homes²³ 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.²⁴

- Restoring the department’s focus on public safety and a culture of respect for the rule of law is a gargantuan task that will involve at minimum four overriding actions:
- Restoring the FBI’s integrity.
- Renewing the DOJ’s focus on violent crime.
- Dismantling domestic and international criminal enterprises.
- Pursuing a national security agenda aimed at external state and non-state actors, not U.S. citizens exercising their constitutional rights.

RESTORING THE FBI'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.”²⁵ It best serves the American people when it dedicates its resources and energies to attacking violent crime,²⁶ criminal organizations,²⁷ child predators,²⁸ cyber-crime, and other uniquely federal interests.²⁹

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 FBI is completely out of control. To protect the Constitution, fight crime effectively, and protect the nation from foreign adversaries, the next conservative Administration should begin to restore the FBI's domestic reputation and integrity and enhance its effectiveness in meeting actual foreign threats. To do so, the next conservative Administration should:

- **Conduct an immediate, comprehensive review of all major active FBI investigations and activities and terminate any that are unlawful or contrary to the national interest.**³⁰ This is an enormous task, but it is necessary to re-earn the American people's trust in the FBI and its 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 DOJ leadership consistent with the new chain of command (discussed below). The department should also consider issuing a public report of the findings from this review as appropriate.
- **Align the FBI's placement within the department and the federal government with its law enforcement and national security purposes.** DOJ veterans often opine that the FBI views itself as an independent agency—accountable to no one and on par with the Attorney General in terms of stature—but the fact remains that “[t]he Federal Bureau of Investigation is located *in* the Department of Justice.”³¹ It is not independent from the department (just as Immigration and Customs Enforcement is not independent from the Department of Homeland Security) and does not deserve to be treated as if it were.

The next conservative Administration should direct the Attorney General to remove the FBI from the Deputy Attorney General's direct supervision within the department's organizational chart and instead place it under the general supervision of the Assistant Attorney General for the Criminal Division and the supervision of the Assistant Attorney General for the National Security Division, as applicable.³² This can be accomplished

Mandate for Leadership: The Conservative Promise

through a simple internal departmental reorganization and does not need to be approved by Congress.

Such a structure would allow the FBI to play an important role in advising the department's leadership on emerging threats and updating notable investigations through daily briefings conducted with the Criminal Division and National Security Division leadership, but it would also place the FBI under a politically accountable leader with fewer things to manage than the Deputy Attorney General or the Attorney General have. 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 Assistant Attorney General.

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

- **Prohibit the FBI from engaging, in general, in activities related to combating the spread of so-called misinformation and disinformation by Americans who are 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 must not look to or rely on the past decade as precedent or legitimization for continued action in certain spaces. This is especially true with respect to activities that the FBI and the U.S. government writ large claim are efforts to combat “misinformation,” “disinformation,” or “malinformation.”

The United States government and, by extension, the FBI have absolutely no business policing speech, whether in the public square, in print, or online. The First Amendment prohibits it. The United States is the world's last best hope for self-government,³³ and its survival relies on the ability of our people 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. That is a healthy component of an informed society. But government must *never* manipulate the scales and censor information that is potentially harmful to it or its political leadership. This is the way of totalitarian dictatorships, not of free constitutional republics.

Department of Justice

The DOJ 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).

- **Streamline the non-law enforcement functions within the FBI, such as its Office of General Counsel, and obtain those services from other offices within the department.** The next conservative Administration should eliminate any offices within the FBI that it has the power to eliminate without any action from Congress.³⁴ For example, few Americans know that the FBI maintains a core of approximately 300 attorneys within its Office of General Counsel, an office that has been involved in some of the FBI's most damaging recent scandals.³⁵ These attorneys are not necessary to the functioning of the FBI in their current capacity. Legal advice should come from attorneys at the DOJ, whether those attorneys are within the Criminal Division, the National Security Division, the Justice Management Division, or the Office of Legal Counsel. Moving legal review outside the FBI would serve as 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 DOJ Office of Legislative Affairs, nor does it need its own Office of Public Affairs.
- **Emphasize, fund, and reward field offices while shrinking headquarters staff.** While the FBI 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 Department of Justice must value badges over bureaucracy, must rethink its internal reporting structures, and should aim to realign the FBI's resources accordingly.
- **Submit 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 alleged Intelligence Community and FBI abuses in the 1970s, Congress limited the Director's tenure to one "ten-year term."³⁶ The realities of the FBI's abuses and overreach in recent years demonstrate that further reform is still necessary.

Mandate for Leadership: The Conservative Promise

The Director of the FBI must remain politically accountable to the President in the same manner as the head of any other 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 those of the heads of all other major departments and agencies.

RENEWING THE DEPARTMENT'S FOCUS ON VIOLENT CRIME

Despite the DOJ's pronouncements that violent crime continues to be a top priority, it 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 that is tailored to the needs and conditions in those states and localities.

Targeting Violent and Career Criminals, Not Parents. The next conservative Administration must ensure that the Department of Justice devotes significant effort to reducing violent crime nationwide. The Attorney General should require all U.S. Attorneys to develop a jurisdictional-specific plan—whenever possible in coordination with state and local law enforcement—to reduce violent crime within each of their districts. Then the Attorney General should 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 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 campaign is not just ill-advised; it has clearly had real-world consequences in the form of catastrophic increases in crime—particularly violent crime—nationwide. As discussed in the next section, the Department of Justice has a special obligation to restore law and order in such districts.³⁷

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 to combating imaginary, politically convenient threats of violence toward members of school boards and their staffs during the heat of the Virginia gubernatorial race.³⁸ There was no similar effort to investigate elected officials and other public officers who conspired with outside allies to target and harass parents who were merely exercising their constitutional and statutory rights.³⁹ If we are to continue to have informed and civil dialogue in the United States on issues of public concern, the DOJ must enforce applicable civil rights laws in an even-handed way when citizens' livelihoods are threatened merely because they have exercised their rights.

Enhancing the Federal Focus on and Resources in Jurisdictions with 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 Americans in jurisdictions where state and local prosecutors have abdicated this duty.⁴⁰

Jurisdictions suffering from deficiencies in the rule of law warrant, as appropriate within our federal system, greater attention and additional federal resources that are sufficient to protect the rights of American citizens and federal interests. In the next conservative Administration, the DOJ, acting primarily through its U.S. Attorneys, should therefore:

- **Use applicable federal laws to bring federal charges against criminals when local jurisdictions wrongfully allow them to evade responsibility for their conduct.**⁴¹ The department should also increase the federal law enforcement presence in such jurisdictions and explore innovative solutions to bring meaningful charges against criminals and criminal organizations in such jurisdictions.
- **Where warranted and proper under federal law, 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 true particularly for jurisdictions that refuse to enforce the law against criminals based on the Left’s favored defining characteristics of the would-be offender (race, so-called gender identity, sexual orientation, etc.) or other political considerations (e.g., immigration status).
- **Pursue policies and legislation that encourage prosecution of violent crimes as well as 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 U.S. Sentencing Commission report shows that armed career criminals are consistently sentenced below their minimum sentencing guidelines range.⁴²

There are valid reasons for sentence reductions in particular cases (for example, if the defendant has provided substantial assistance in prosecuting other offenders). At the same time, the DOJ must ensure that its line

Mandate for Leadership: The Conservative Promise

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).⁴³ The department should also support legislative efforts to provide further tools, such as the Restoring the Armed Career Criminal Act, which Senators Tom Cotton (R-AR), Marsha Blackburn (R-TN), and Cindy Hyde-Smith (R-MS) introduced in 2021 in response to U.S. Supreme Court decisions neutering the ACCA.⁴⁴

- **Enforce 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. However, providing this punishment without ever enforcing it provides justice neither for the victims' families nor for the defendant. The next conservative Administration should therefore do everything possible to obtain finality for the 44 prisoners currently on federal death row. It should also pursue the death penalty for applicable crimes—particularly heinous crimes involving violence and sexual abuse of children—until Congress says otherwise through legislation.⁴⁵

DISMANTLING DOMESTIC AND INTERNATIONAL CRIMINAL ENTERPRISES

Criminal organizations are as old as crime itself, but are more extensive, sophisticated, and dangerous today than at any other point in history. The Department of Justice has a key role in tackling transnational criminal organizations like Mara Salvatrucha (MS-13) and Mexican drug cartels as well as purely domestic criminal organizations like 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 department's primary directive under the next Administration should be to return to an unapologetic focus on dismantling these criminal organizations and incarcerating their membership. Once this reprioritization 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 business model of these criminal organizations—which are massive, diversified enterprises with nationwide or international operations—is essential for success. The next Administration will therefore need to:

- **Revitalize the DOJ's use of the array of statutory tools that exist for dealing with the threat of criminal organizations.** The most potent ones are the simplest. For example, the department should:

Department of Justice

1. Rigorously prosecute as much interstate drug activity as possible, including simple possession of distributable quantities.⁴⁶ Recent efforts to create the impression that drug possession crimes are not serious offenses has contributed to the explosion of criminal organization activities in the United States.
 2. Aggressively deploy the Racketeer Influenced and Corrupt Organizations Act (RICO),⁴⁷ 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.
- **Secure the border,**⁴⁸ **which is the key entry point for many criminal organizations and their supplies, products, and 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,⁴⁹ 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 military personnel and National Guardsmen to assist in arrest operations along the border—something that has not yet been done. A new and forceful approach to interdiction will have a ripple effect on the operations of these criminal organizations, which currently operate freely without concern for criminal prosecution, and will lay the necessary groundwork for initial prosecutions of these organizations and their leaders.

It is critical that the federal government staunch the flow of drugs by preventing the far-too-easy access to the United States that now exists.

Mandate for Leadership: The Conservative Promise

There can be no serious dispute that the Biden Administration has opened the southwest border to whomever wants to enter and that some of those entrants are smuggling fentanyl into the country. More than 100,000 Americans died in a one-year period from opioid overdoses, and many of them died specifically from having used fentanyl.⁵⁰ The federal government should treat this problem as aggressively as necessary. Enforcing the customs and immigration laws is a matter of life and death.

PURSUING A NATIONAL SECURITY AGENDA AIMED AT EXTERNAL STATE AND NON-STATE ACTORS, NOT U.S. CITIZENS EXERCISING THEIR CONSTITUTIONAL RIGHTS

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 DOJ's China Initiative under President Trump reflected the department's priority of combating Chinese threats to our national security.⁵¹ Because China was accountable for approximately 80 percent of all prosecutions for economic espionage and approximately 60 percent of all thefts of trade secrets, then-Attorney General Jeff Sessions set key goals for the China Initiative that included development of an enforcement strategy concerning researchers in labs and universities who were being coopted into stealing critical U.S. technologies, identification of opportunities to address supply-chain threats more effectively, and education of colleges and universities about potential threats from Chinese influence efforts on campus.

In February 2022, the Biden Administration terminated the department's China Initiative largely out of a concern for poor "optics."⁵² While the Biden Administration correctly identified China as America's "only competitor with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to do it,"⁵³ it folded in the face of political correctness and sent the message that liberal sensitivities outweighed bringing justice to threats from China. The next conservative Administration should therefore:

- **Restart the China Initiative.**
- **Pursue other programs to educate the American people about the real and dangerous threats to our national security and economic security that are posed by actors across the globe, most notably China and Iran.**
- **Ensure that it is agile enough to devote sufficient resources and attention to other emerging threats that involve federal interests**

such as increases in “sextortion,” ransomware, and the continued proliferation of child pornography.

DEFENDING THE RULE OF LAW

The DOJ’s actions over the course of the Biden Administration exhibit scorn for its stated mission: “to uphold the rule of law, to keep our country safe, and to protect civil rights.”⁵⁴ The Biden Administration’s unprecedented politicization and weaponization of the department therefore demand 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 its efforts on all fronts. Concretely, the DOJ 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.

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

Promptly and Properly Eliminating Lawless Policies, Investigations, and Cases, Including All Existing Consent Decrees. Few things undermine the DOJ’s credibility more than brazenly partisan and ideologically driven prosecution of an Administration’s perceived political enemies, 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 should:

- **Conduct a thorough review of all publicly available policies, investigations, and cases.**
- **In a manner consistent with applicable law, prepare a plan to end immediately any policies, investigations, or cases that run contrary to law or Administration policies.**
- **Ensure that upon the next President’s inauguration, appointees at the department obtain information about anything that was not learned before taking office and conduct the same analysis.**

Mandate for Leadership: The Conservative Promise

An egregious example of the need for such a review is provided by the department's use of the Freedom of Access to Clinic Entrances (FACE) Act⁵⁵ to harass pro-life demonstrators while not pursuing 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. 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 before Mr. Houck's arrest by the FBI.⁵⁶ 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 earlier.⁵⁷

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*.⁵⁸ The Catholic News Agency reported more than one hundred such incidents as of September 2022.⁵⁹

By engaging in disparate and viewpoint-based enforcement of an already controversial law like the FACE Act against pro-life activists, the DOJ 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. Specifically, it should:

- **Ensure that its review extends beyond ending the absurd double standards embodied in the ongoing campaign of FACE Act prosecutions and instead be a thorough and holistic review of all DOJ activities, including all consent decrees and settlement agreements currently in force.**
- **Seek to terminate any unnecessary or outdated consent decree to which the United States is a party.**
- **Consider pursuing intervention in other matters where consent decrees or settlement agreements continue to bind parties years or decades after the fact.**
- **As its review concludes, and consistent with applicable law, take appropriate action in all cases, including those on appeal.**
- **Enact policies and regulations that prohibit settlement payments to third parties.**

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”⁶⁰ 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.”⁶¹ 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, by writing public letters of protest, and by engaging in faux resignations from certain internal appointments. This can cause the department to take positions that are inconsistent with the interests of the President and his appointees in other places throughout the Administration.

While the supervision of litigation is a DOJ responsibility, the department falls under the direct supervision and control of the President of the United States as a component of the executive branch. Thus, and putting aside criminal prosecutions that can warrant different treatment, litigation decisions must be made consistent with the President’s agenda. This can force line attorneys 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 to make tough calls as it manages its litigation, but those calls must always be consistent with the President’s policy agenda and the rule of law. A line attorney should never either 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 therefore:

- **Issue guidance to ensure that litigation decisions are consistent with the President’s agenda and the rule of law.**
- **Ensure that, consistent with this principle, the department’s leadership is prepared to impose appropriate disciplinary action as circumstances arise.**

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: 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.

Mandate for Leadership: The Conservative Promise

The next conservative Administration should embrace the Constitution and understand the obligation of the executive branch to use its independent resources and authorities to restrain the excesses of both the legislative and judicial branches. This will mean ensuring that the leadership of the Department of Justice and its components understand the separation of powers, that pushback among the branches is a positive feature and not a defect 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*.⁶² 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. Consumer Financial Protection Bureau*,⁶³ but the precedent remains. The next conservative Administration should formally take the position that *Humphrey's Executor* violates the Constitution's separation of powers.

Zealously Guarding Other Constitutional Protections. The next conservative Administration must ensure that the DOJ zealously guards the constitutional rights of all Americans in all that it does. This extends 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.

A recent Supreme Court case illustrates the problems that arise when the DOJ 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.⁶⁴ 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 an LGBT person to design a similar website celebrating opposite-sex marriage.⁶⁵ 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—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 compelled to design custom messages that violate their most fundamental convictions as long as it serves a certain viewpoint that the government wants to promote.

In fact, it was only a few years ago, in *Masterpiece Cakeshop*, that the government acknowledged the constitutional problems involved in compelling artists to speak government-favored messages. In that case, the United States acknowledged “a basic First Amendment principle that ‘freedom of speech prohibits the government from telling people what they must say.’”⁶⁶ 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.”⁶⁷ 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.”⁶⁸ 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 black letter law that no official “can prescribe what shall be orthodox...or force citizens to confess by word or act their faith therein.”⁶⁹ 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.”⁷⁰ 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.”⁷¹ In the face of such attempts to coerce orthodoxy, the DOJ should maintain its commitment to upholding 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.”⁷²

Pursuing Equal Protection for All Americans by Vigorously Enforcing Applicable Federal Civil Rights Laws in Government, Education, and the Private Sector. 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 about advancing the interests of certain segments of American society, but that advancement comes at the expense of other Americans and in nearly all cases violates long-standing federal law.

Even though numerous federal laws prohibit discrimination based on notable immutable characteristics such as race and sex,⁷³ the Biden Administration—through the DOJ’s Civil Rights Division and other federal entities—has enshrined affirmative discrimination in all aspects of its operations under the guise of “equity.” Federal agencies and their components have established so-called diversity, equity, and inclusion (DEI) 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.⁷⁴ To reverse this trend, the next conservative Administration should:

Mandate for Leadership: The Conservative Promise

- **Ensure that the DOJ spearheads an initiative demonstrating the federal government’s commitment to nondiscrimination.** The department should also lead a whole-of-government recommitment to nondiscrimination 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 such obvious candidates as the Equal Employment Opportunity Commission; 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.
- **Reorganize and refocus the DOJ’s Civil Rights Division to serve as the vanguard for this return to lawfulness.** The Attorney General and other DOJ political leadership 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, institutions of higher education, corporations, and any other private employers who are engaged in discrimination in violation of constitutional and legal requirements.

Announcing a Campaign to Enforce the Criminal Prohibitions in 18 U.S. Code §§ 1461 and 1462 Against Providers and Distributors of Abortion Pills That Use the Mail. Federal law prohibits mailing “[e]very article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion.”⁷⁵ Following the Supreme Court’s decision in *Dobbs*, there is now no federal prohibition on the enforcement of this statute. The Department of Justice in the next conservative Administration should therefore announce its intent to enforce federal law against providers and distributors of such pills.

Reassigning 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. Code § 241⁷⁶ from the Civil Rights Division 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.⁷⁷

Department of Justice

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 DOJ has ceded substantial discretion concerning voter suppression to the Civil Rights Division. Since the Bush Administration, DOJ leadership has determined that using the Election Crimes Branch to prosecute fraudulent voter registration, including mail-in ballot fraud, was too politically costly.⁷⁸ The Criminal Division's *Federal Prosecution of Election Offenses* handbook advised that schemes that violated equal protection constituted "voter suppression" prosecutable under 18 U.S. Code § 241 as part of the guidelines for which the department's criminal prosecutors were trained.⁷⁹ State-based investigations of election crimes are supposed to be referred to the Public Integrity Section for review. Historically, 18 U.S. Code § 241 (conspiracy against 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.

Nevertheless, the Department of Justice has formalized the Civil Rights Division's (as opposed to the Criminal Division's) jurisdiction over 18 U.S. Code § 241 investigations and prosecutions. The Criminal Division is no longer involved in consultation or review of 18 U.S. Code § 241 investigations.⁸⁰ The Criminal Division has accordingly advised states that "[i]n the case of a crime of violence or intimidation," they should "call 911 immediately and before contacting federal authorities" because "[s]tate and local police have primary jurisdiction over polling places,"⁸¹ despite clearly applicable federal law.

This is a mistake. With respect to the 2020 presidential election, there were no DOJ 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 that:

This revised guidance addresses the issuance, 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, 2020.⁸²

HAVA, however, mandates provisional ballots only for eligible voters who were not on a state's voter registration list.⁸³ It does not apply to those who registered for mail-in voting but whose ballots were rejected due to some form of spoliation.

Mandate for Leadership: The Conservative Promise

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, as part of the mail-in application process, an affidavit 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.⁸⁴

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 that “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.”⁸⁵ 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. Code § 241.

Investigations and prosecutions under 18 U.S. Code § 241 are currently within the jurisdictional oversight of the Civil Rights Division, not the Criminal Division.⁸⁶ Only by moving authority for 18 U.S. Code § 241 investigations and prosecutions back to the Criminal Division will the rule of law be appropriately enforced.

Rejecting Third-Party Requests for Politically Motivated Investigations or Prosecutions. The DOJ 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 or 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 Merrick 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 FBI 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.”⁸⁷ Subsequent reporting and investigation revealed that the

memorandum was prompted by a September 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 race theory–infused curricula in classrooms. Among the letter’s demands was a call for a federal investigation into parents’ actions (“heinous actions” that “could be the equivalent to a form of domestic terrorism and hate crimes”) under a variety of federal laws including the “Gun-Free Zones Act, the PATRIOT Act in regards to domestic terrorism, the Matthew Shepard and James Byrd Jr. Hate Crimes and Prevention Act, the Violent Interference with Federally Protected Rights statute, and the Conspiracy Against Rights statute” and “an Executive Order to enforce all applicable federal laws for the protection of students and public school district personnel, and any related measure.”⁸⁸

Both the Attorney General’s memorandum and the NSBA letter drew swift public condemnation, including from 14 sitting state Attorneys General.⁸⁹ A subsequent internal investigation commissioned 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 it was issued. The investigation also revealed that White House officials indicated they planned to raise the contents of the draft letter with DOJ officials a full week before the NSBA’s letter was issued.⁹⁰

This cooperation by a third-party group, the White House, and the DOJ 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 14 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.”⁹¹

The DOJ should carefully scrutinize all requests for law enforcement assistance and 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.

Ensuring Proper Distribution of DOJ Grant Funds. DOJ grants are an underutilized asset in most conservative Administrations. When used properly, they can be highly effective in implementing the President’s priorities. The Office of Justice Programs (OJP) is comprised of six components and is responsible for most DOJ grants to local law enforcement, juvenile justice, and victims of crime as well as for criminal justice research and statistics. The opportunity to support a President’s agenda may be greater through OJP grant funding than it is through any of the federal government’s other grant-making components.

Mandate for Leadership: The Conservative Promise

Consistent with appropriations from Congress, the OJP dispenses approximately \$7 billion in various grants. Block grants are given to a 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 OJP funds are awarded through discretionary grants—specific programs written into the budget by Congress.

Although Congress dictates the way in which many grant awards are to be made, federal staff enjoy a tremendous amount of discretion in adding “conditions” and “priority points.” Grants operate with a carrot and a stick. To receive grant funding, a recipient must agree to certain conditions, which in many instances include the President’s priorities. For instance, under an anti-human trafficking grant during the Obama Administration (approximately \$110 million in 2020), an awardee had 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 for the LGBTQ community and for more of the funding to go to areas with large immigrant populations.

During the Trump Administration, a condition added to grants stated that 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. This condition prevented 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 these conditions.⁹²

To ensure that taxpayer-funded grants are prioritized and distributed properly, the next conservative Administration should:

- **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 that the grant funding is being received and used properly by recipients.**
- **Order an overhaul of the DOJ 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 that hard-earned taxpayer dollars are going only to lawful actors who support federal law enforcement and demonstrate the ability and willingness to engage in lawful activities.

Ensuring Proper Enforcement and Administration of Our Immigration Laws. Although its role has changed over the years, most notably following the passage of the Homeland Security Act of 2002,⁹³ the Department of Justice plays a crucial role in the enforcement and adjudication of our immigration laws.⁹⁴ Its leadership and energy, however, have 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 immigration was largely neglected until the Trump Administration. The Department of Homeland Security may be the largest federal department with immigration responsibilities, but successful fulfillment of the responsibilities prescribed by the immigration laws is not possible without bold and dedicated action by the Department of Justice.

The DOJ and its leadership must intentionally prioritize fulfillment of the department's immigration-related responsibilities in the next conservative Administration. This will be no small task, as these responsibilities play out across nearly every DOJ office and component. If they hope to fulfill their responsibilities as assigned by Congress and deliver results for the American people, the department and the Attorney General should:

- **Issue guidance to all U.S. Attorneys emphasizing the importance of prosecuting immigration offenses,⁹⁵ 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. Successfully pursuing the priorities outlined in this chapter will require 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.
- **Pursue appropriate steps to assist the Department of Homeland Security in obtaining information about criminal aliens in jurisdictions across the United States, particularly those inside “sanctuary” jurisdictions.**
- **Examine and consider the appropriateness of withdrawing or overturning every immigration decision rendered by Attorney General Garland (and any successor Attorney General during President Biden's term).** 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

Mandate for Leadership: The Conservative Promise

correct erroneous decisions, provide clarity, and align Executive Office for Immigration Review (EOIR) decisions with the law.

- **At a minimum, pursue through rulemaking—and in partnership with the Department of Homeland Security where appropriate—the promulgation of every rule related to immigration that was issued during the Trump Administration.** Such rulemakings include guidance on continuances in immigration court cases, eligibility for asylum, and other related matters. However, the DOJ should not stop there: It should continually evaluate its authorities and operational reality within the immigration court system and promulgate regulations accordingly.
- **Commit sufficient resources to the adjudication of cases in the immigration court system in different environments (for example, in the context of the Migrant Protection Protocols).**
- **Pursue proactive litigation to advance the federal government’s interests in areas where erroneous precedent curtails authorities provided by Congress (for example, by pursuing the overturning of the *Flores* Settlement Agreement).**
- **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 or foreign worker.**⁹⁶
- **Ensure the deployment and use of appointees throughout the department who are committed to successful achievement of the department’s immigration-related missions.** This includes personnel in or overseeing not only the EOIR, but also the Office of the Attorney General, Office of the Deputy Attorney General, Office of the Associate Attorney General, Office of the Solicitor General, and nearly every other component/office throughout the department.
- **Pursue a more vigorous anti-fraud program within the EOIR.** In perhaps no other area of law are there more attorneys who commit acts of fraud against their clients—advancing completely meritless arguments in exchange for exorbitant fees—than there are in the area of immigration. Fraud and unethical behavior are rampant in the immigration system and must be addressed—not only to ensure that the federal government is operating in a proper manner, but also for the sake of the aliens involved in

the process as well as the integrity/credibility of the members of the private immigration bar who do not engage in such conduct.

ADDITIONAL ESSENTIAL REFORMS

Aligning Departmental Resources with Leadership Priorities Across All Components and U.S. Attorneys' Offices. As the next Administration pursues its objectives, it should use the department's resources efficiently in a manner that delivers results for the American people. To accomplish this goal, it will be necessary to:

- **Ensure the assignment of sufficient political appointees throughout the department.** Ensuring adequate accountability throughout the DOJ 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.⁹⁷ The number of appointees serving throughout the department in prior Administrations—particularly during the Trump Administration—has not been sufficient either to stop bad things from happening through proper management or to promote the President's agenda.

It is not enough for political appointees to 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 the resources to support a vast expansion of the number of appointees in every office and component across the department—especially in the Civil Rights Division, the FBI, and the EOIR.

- **End all nonessential 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 DOJ, the next conservative Administration should terminate and recall all details of DOJ 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.
- **Ensure accountability for personnel sanctioned or referred for discipline after a finding of misconduct.** The next conservative Administration should complete a thorough review of any sanctions or findings of misconduct issued over the four years preceding the inauguration to ensure that the Biden Administration acted appropriately in response to any such sanctions or findings.

Mandate for Leadership: The Conservative Promise

- **Undertake a comprehensive review of DOJ hiring practices.** The next conservative Administration should conduct a holistic review of hiring practices employed across all DOJ offices and components to ensure that those practices comply with applicable law and policy. All hiring committees associated with hiring for career positions across the department should 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.

Eliminating Redundant Offices and Consolidating Functions to Increase Efficiencies. The next conservative Administration should explore the possibility of consolidating and aligning the functions of the DOJ's various components and offices in human resources, legal counsel, public relations, and other related areas. While local access to appropriate personnel and resources is important, there are inefficiencies and redundancies across the department that result in a bureaucratic, Rube Goldberg–style design that ultimately hinders the department's mission. From IT infrastructure to management functions to public relations, DOJ leadership should explore consolidation and intradepartmental 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 in which there are some political appointees who lead the office and provide support, but also career appointees who serve as public information officers for individual divisions (Criminal Division, National Security Division, etc.). The career officials handle the day-to-day work of the division, which entails monitoring important cases, assisting in editing, and distributing press releases, and 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 (OLA) and the Office of Public Affairs, as well as the fact that the Assistant Attorney General for the 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.

Pursuing Other Changes in Reporting Chains to Ensure Consistency with the Law and Administration Priorities. The next conservative Administration should undertake a comprehensive review of the DOJ's current organizational chart and make decisions about its structure—consistent with any authority to do

Department of Justice

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 fulfilling the department’s mission?
- What should the Office of Legal Policy’s role be in the next conservative Administration? Should it 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?

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. At a minimum, that reform should include 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 D.C. market is essential and will help to emphasize the importance of the field’s work in achieving the department’s various missions.

Protecting the Integrity of the Bureau of Justice Statistics and the National Institute of Justice. The DOJ’s statistical and research arms should serve the American people and not special interests. The Director of the Bureau of Justice Statistics should focus the BJS 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 presented as clearly as possible. The intellectually engaged, everyday American citizen should be able to read and understand the BJS’s published statistics and reports rather than having to trust “experts” because the statistics are not clear.

The 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 maintained 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.

Mandate for Leadership: The Conservative Promise

Research funded by the National Institute of Justice should follow similar principles. The 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 the BJS (it dates to the Nixon Administration), is of particular importance, and the department should prioritize and sufficiently fund it. This survey 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,”⁹⁸ which was published in January 2021 and finds that police are arresting those who, according to victims, actually commit crimes.

AUTHOR'S NOTE: The preparation of this chapter involved contributions from members of the 2025 Presidential Transition Project. Most contributors to this chapter are listed at the front of this volume—and in the perfect cancel-proof world, all contributors of ideas would be listed—but the staff at America First Legal Foundation deserves special mention for their assistance while juggling other responsibilities. The author alone assumes responsibility for the content of this chapter, and no views expressed herein should be attributed to any other individual.

Department of Justice

ENDNOTES

1. Judiciary Act of 1789, ch. 20, sec. 35, 1 Stat. 73 (1789), https://judicial-discipline-reform.org/docs/Judiciary_Act_1789.pdf (accessed February 3, 2023).
2. An Act to Establish the Department of Justice, Public Law No. 41-97, 16 Stat. 162 (1870), <https://www.justice.gov/sites/default/files/jmd/legacy/2013/10/23/act-pl41-97.pdf> (accessed February 3, 2023).
3. John F. Fox, Jr., “The Birth of the Federal Bureau of Investigation,” U.S. Department of Justice, Federal Bureau of Investigation, “History,” July 2003, <https://bit.ly/3G4LmDO> (accessed February 3, 2023).
4. Trafalgar Group, “Nationwide Issues Survey August 2022,” pp. 19, 22, and 25, https://www.thetrafalgargroup.org/wp-content/uploads/2022/08/COSA-FBI_DOJ-Opinion-Full-Report-0824.pdf (accessed February 3, 2023).
5. John Solomon, “FBI Email Chain May Provide Most Damning Evidence of FISA Abuses Yet,” *The Hill*, December 5, 2018, <https://thehill.com/hilltv/rising/419901-fbi-email-chain-may-provide-most-damning-evidence-of-fisa-abuses-yet/> (accessed February 3, 2023); Post Editorial Board, “The FBI Knew RussiaGate Was a Lie—But Hid That Truth,” *New York Post*, June 11, 2022, <https://nypost.com/2022/06/11/the-fbi-knew-russiasgate-was-a-lie-but-hid-that-truth/> (accessed February 3, 2023).
6. John Solomon, “Collusion Bombshell: DNC Lawyers Met with FBI on Russia Allegations Before Surveillance Warrant,” *The Hill*, October 3, 2018, <https://thehill.com/hilltv/rising/409817-russia-collusion-bombshell-dnc-lawyers-met-with-fbi-on-dossier-before/> (accessed February 3, 2023); Eric Tucker, “Ex-FBI Lawyer Admits to False Statement During Russia Probe,” AP News, August 19, 2020, <https://apnews.com/article/election-2020-b9b3c7ef398d00d5dfee9170d66cefec> (accessed February 3, 2023).
7. Jesse O'Neill, “FBI Pressured Twitter, Sent Trove of Docs Hours Before Post Broke Hunter Laptop Story,” *New York Post*, December 19, 2022, <https://nypost.com/2022/12/19/fbi-reached-out-to-twitter-before-post-broke-hunter-biden-laptop-story/> (accessed February 3, 2023).
8. Memorandum from Attorney General Merrick Garland to Director, Federal Bureau of Investigation; Director of the Executive Office for U.S. Attorneys; Assistant Attorney General, Criminal Division; and United States Attorneys, “Subject: Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff,” October 4, 2021, <https://www.justice.gov/ag/page/file/1438986/download> (accessed February 3, 2023) (cited hereafter as Garland Memorandum, October 4, 2021).
9. Dillon Burroughs, “25 States Have Now Left National School Boards Association as Nebraska Departs,” *Daily Wire*, June 13, 2022, <https://www.dailywire.com/news/25-states-have-now-left-national-school-boards-association-as-nebraska-departs> (accessed February 3, 2023).
10. Brianna Herlihy, “FBI Met Weekly with Big Tech Ahead of the 2020 Election, Agent Testifies,” *Fox News*, December 3, 2022, <https://www.foxnews.com/politics/fbi-weekly-big-tech-ahead-2020-election-agent-testifies> (accessed February 3, 2023); Allie Griffin, “Latest ‘Twitter Files’ Show FBI Bullied Executives Over Not Reporting ‘State Propaganda’ Enough,” *New York Post*, December 18, 2022, <https://nypost.com/2022/12/18/latest-twitter-files-show-fbi-questioned-executives-over-users-spouting-state-propaganda/> (accessed February 3, 2023).
11. Michael Shellenberger (@ShellenbergerMD), “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,” Twitter, December 19, 2022, 1:35 PM, <https://twitter.com/ShellenbergerMD/status/1604908212628598784> (accessed February 3, 2023).
12. Press release, “Eleven Charged with FACE Act Violations Stemming from 2021 Blockade of Mount Juliet Reproductive Health Clinic,” U.S. Department of Justice, United States Attorney’s Office, Middle District of Tennessee, October 5, 2022, <https://www.justice.gov/usao-mdtn/pr/eleven-charged-face-act-violations-stemming-2021-blockade-mount-juliet-reproductive> (accessed February 3, 2023); Kaelan Deese, “DOJ Official Touts Prosecution of Anti-Abortion Advocates While Vandalized Pregnancy Centers Await Justice,” *Washington Examiner*, December 14, 2022, <https://www.washingtonexaminer.com/news/justice/doj-official-admits-to-prosecuting-pro-life-advocates> (accessed February 3, 2023); S. 636, Freedom of Access to Clinic Entrances Act of 1994, Public Law No. 103-259, 103rd Congress, May 26, 1994, <https://www.congress.gov/103/statute/STATUTE-108/STATUTE-108-Pg694.pdf> (accessed February 5, 2023).

Mandate for Leadership: The Conservative Promise

13. Aruna Viswanatha and Sadie Gurman, “Almost Half of Federal Cases Against Portland Rioters Have Been Dismissed,” *The Wall Street Journal*, updated April 15, 2021, <https://www.wsj.com/articles/almost-half-of-federal-cases-against-portland-rioters-have-been-dismissed-11618501979> (accessed February 3, 2023); Just the News Staff, “Antifa-led Portland Rioter Charged with Assault Police [sic] Has Case Dismissed After Community Service,” Just the News, updated December 30, 2021, <https://justthenews.com/government/courts-law/antifa-led-portland-rioter-charge-assault-police-has-case-dismissed-after> (accessed February 3, 2023).
14. Press release, “Justice Department Sues Texas Over Senate Bill 8: Complaint Alleges Senate Bill 8 Violates the Constitution by Effectively Banning Most Abortions,” U.S. Department of Justice, September 9, 2021, <https://www.justice.gov/opa/pr/justice-department-sues-texas-over-senate-bill-8> (accessed February 3, 2023).
15. Dorian Geiger, “DOJ Warns States Over Blocking Access to Gender-Affirming Treatment,” Axios, March 31, 2022, <https://www.axios.com/2022/03/31/doj-warns-states-blocking-gender-affirming-care> (accessed February 3, 2023).
16. Joyce White Vance, “The Justice Department Is Suing Georgia. Don’t Expect Garland to End There,” *The Washington Post*, June 29, 2021, <https://www.washingtonpost.com/outlook/2021/06/29/merrick-garland-suing-georgia-voting/> (accessed February 3, 2023); David Nakamura and Devlin Barrett, “Justice Dept. Sues Texas Over State Redistricting Maps, Citing Discrimination Against Latinos,” *The Washington Post*, December 6, 2021, https://www.washingtonpost.com/national-security/texas-maps-garland-latinos-justice/2021/12/06/4011ce78-56aa-11ec-9a18-a506cf3aa31d_story.html (accessed February 3, 2023); Holmes Lybrand and Paul LeBlanc, “Justice Department Sues Arizona Over New Election Law Requiring Proof of Citizenship,” CNN, updated July 5, 2022, <https://www.cnn.com/2022/07/05/politics/arizona-election-law-justice-department/index.html> (accessed February 3, 2023).
17. Zachary Pottle, “America’s Fentanyl Crisis Is Getting Worse,” Addiction Center, August 26, 2022, <https://www.addictioncenter.com/news/2022/08/americas-fentanyl-crisis/> (accessed February 3, 2023).
18. Emily Jacobs, “Merrick Garland Speaks at DOJ Before Swearing-in by VP Kamala Harris,” *New York Post*, updated March 11, 2021, <https://nypost.com/2021/03/11/merrick-garland-speaks-at-doj-before-swearing-in-by-kamala-harris/> (accessed February 3, 2023).
19. Eliot H. Lumbard, “State and Local Government Crime Control,” *Notre Dame Law Review*, Vol. 43, Issue 6 (1968), pp. 899–907, <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?httpsredir=1&article=3119&context=ndlr> (accessed February 3, 2023).
20. Emma Colton, “Chip Roy Demands DOJ Explain Light Sentence for Floyd Riot Arsonist Who Killed Father of 5,” Fox News, February 10, 2022, <https://www.foxnews.com/politics/chip-roy-light-sentence-george-floyd-arsonist-riots-2020> (accessed February 3, 2023); 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, January 29, 2022, <https://www.theblaze.com/news/doj-lenient-sentence-rioter-arson#toggle-gdpr> (accessed February 3, 2023); Chris Pandolfo, “House Republicans Release 1,000-Page Report Alleging Politicization in the FBI, DOJ,” Fox News, November 4, 2022, <https://www.foxnews.com/politics/house-republicans-release-1000-page-report-alleging-politicization-fbi-doj> (accessed February 3, 2023); Brooke Singman, “Cruz Slams ‘Politicized’ Biden DOJ for Appointing Trump Special Counsel: ‘Absolutely Disgraceful,’” Fox News, November 19, 2022, <https://www.foxnews.com/politics/cruz-slams-biden-doj-appointing-special-counsel-investigate-trump-absolutely-disgraceful> (accessed February 3, 2023).
21. 8 U.S. Code § 1324 (Bringing in and harboring certain aliens), <https://www.law.cornell.edu/uscode/text/8/1324> (accessed March 9, 2023); 8 U.S. Code § 1325 (Improper entry by alien), <https://www.law.cornell.edu/uscode/text/8/1325> (accessed February 5, 2023); 8 U.S. Code § 1326 (Reentry of removed aliens), <https://www.law.cornell.edu/uscode/text/8/1326> (accessed February 5, 2023); 8 U.S. Code § 1327 (Aiding or assisting certain aliens to enter), <https://www.law.cornell.edu/uscode/text/8/1327> (accessed February 5, 2023); 8 U.S. Code § 1328 (Importation of alien for immoral purpose), <https://www.law.cornell.edu/uscode/text/8/1328> (accessed February 5, 2023); press release, “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 Foundation, April 14, 2022, <https://aflegal.org/in-brief-filed-with-supreme-court-afl-hammers-biden-administrations-termination-of-mpp-citing-alarming-statistic-that-biden-administration-has-already-released-more-than-750000-illegal/> (accessed February 5, 2023).

Department of Justice

22. Editorial Board, “About Those Domestic-Terrorist Parents,” *The Wall Street Journal*, October 26, 2021, <https://www.wsj.com/articles/about-those-domestic-terrorists-national-school-boards-association-merrick-garland-memo-fbi-11635285900> (accessed February 3, 2023); John Malcom, “Are Parents Being Tagged as ‘Domestic Terrorists’ by the FBI? Justice Department Needs to Show Its Cards,” Heritage Foundation *Commentary*, November 18, 2021, <https://www.heritage.org/crime-and-justice/commentary/are-parents-being-tagged-domestic-terrorists-the-fbi-justice> (accessed February 3, 2023); Victor Nava, “FBI Treated Twitter as a ‘Subsidiary,’ Flagged Tweets and Accounts for ‘Misinformation,’” *New York Post*, updated December 16, 2022, <https://nypost.com/2022/12/16/fbi-treated-twitter-as-subsidiary-flagged-tweets-for-misinformation/> (accessed February 3, 2023).
23. Mary Margaret Olohan, “DOJ’s Kristen Clarke: A Pro-Abortion Activist Enforcing the Law Against Pro-Lifers,” *The Daily Signal*, October 26, 2022, <https://www.dailysignal.com/2022/10/26/dojs-kristen-clarke-pro-abortion-activist-enforcing-law-pro-lifers/>; Josh Gerstein, “DOJ Official Pressed on Targeting of Supreme Court Justices,” *Politico*, July 28, 2022, <https://www.politico.com/news/2022/07/28/doj-official-pressed-on-targeting-of-supreme-court-justices-00048506> (accessed February 3, 2023).
24. Solomon, “FBI Email Chain May Provide Most Damning Evidence of FISA Abuses Yet”; Post Editorial Board, “The FBI Knew RussiaGate Was a Lie—But Hid That Truth”; O’Neill, “FBI Pressured Twitter, Sent Trove of Docs Hours Before Post Broke Hunter Laptop Story.”
25. U.S. Department of Justice, Federal Bureau of Investigation, “History: The Nation Calls, 1908–1923,” <https://www.fbi.gov/history/brief-history/the-nation-calls> (accessed February 3, 2023).
26. Press release, “FBI and Law Enforcement Partners Arrest Nearly 6,000 Violent Criminals This Summer,” U.S. Department of Justice, Federal Bureau of Investigation, September 13, 2022, <https://www.fbi.gov/news/press-releases/press-releases/fbi-and-law-enforcement-partners-arrest-nearly-6000-violent-criminals-this-summer> (accessed February 3, 2023).
27. See, for example, Joseph Goldstein, “As Seen in ‘Goodfellas’: Arrest Is Made in ‘78 Lufthansa Robbery,” *The New York Times*, January 23, 2014, <https://www.nytimes.com/2014/01/24/nyregion/arrests-in-cold-case-investigation-including-78-lufthansa-heist.html> (accessed February 3, 2023).
28. Danielle Wallace, “FBI Nationwide Operation Locates 121 Actively Missing Kids, Child Sex Trafficking Victims,” *Fox News*, August 15, 2022, <https://www.foxnews.com/us/fbi-nationwide-operation-locates-actively-missing-kids-child-sex-trafficking-victims> (accessed February 3, 2023).
29. Adam Shaw, “FBI Stepped in After Suspected Chinese Spy Got Close to Swalwell, Other Politicians, Report Finds,” *Fox News*, December 8, 2020, <https://www.foxnews.com/politics/fbi-chinese-spy-swalwell-other-politicians> (accessed February 3, 2023).
30. The precise scope and contours 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. Nevertheless, the goal should be as comprehensive a review as possible.
31. 28 U.S. Code § 531, <https://www.law.cornell.edu/uscode/text/28/531> (accessed February 3, 2023). Emphasis added.
32. The same could be said to apply to the Bureau of Alcohol, Tobacco, and Firearms and potentially to the U.S. Marshals Service, although the USMS’s mission protecting the federal courts could present compelling reasons why the department should maintain it as a direct report to the Deputy Attorney General.
33. See, for example, Alexander Hamilton, *The Federalist Papers* No. 1, October 27, 1787, <https://founders.archives.gov/documents/Hamilton/01-04-02-0152> (accessed February 3, 2023).
34. 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.
35. U.S. Department of Justice, Office of the Inspector General, *Audit of the Roles and Responsibilities of the Federal Bureau of Investigation’s Office of the General Counsel in National Security Matters*, Report No. 22-116, September 2022, <https://oig.justice.gov/sites/default/files/reports/22-116.pdf> (accessed February 3, 2023).
36. S. 2212, Crime Control Act of 1976, Public Law No. 94-503, October 15, 1976, § 203, 90 Stat. 2427 (codified as amended at 28 U.S. Code § 532), <https://www.congress.gov/94/statute/STATUTE-90/STATUTE-90-Pg2407.pdf> (accessed February 3, 2023).
37. See “Enhancing Federal Focus and Resources in Jurisdictions with Rule-of-Law Deficiencies,” *infra*.

Mandate for Leadership: The Conservative Promise

38. Garland Memorandum, October 4, 2021; 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 Foundation, March 14, 2022, <https://aflegal.org/america-first-legal-seeks-two-federal-investigations-on-attorney-general-merrick-garlands-infamous-oct-4th-memo-sicking-the-fbi-on-concerned-parents/> (accessed February 3, 2023).
39. Luke Rosiak, “In Aftermath of Enemies List, School Committee Pledges to ‘Silence the Opposition,’” Daily Wire, March 27, 2021, <https://www.dailywire.com/news/after-enemies-list-school-body-pledges-to-silence-the-opposition> (accessed February 3, 2023).
40. 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’Aquila*, 15 F.4th 650, 669 (5th Cir. 2021) (Graves, J. dissenting) (quoting Lawrence Rosenthal, “Policing and Equal Protection,” *Yale Law & Policy Review*, Vol. 21, No. 53 (2003), p. 70) cert. denied, 212 L. Ed. 2d 791, 142 S. Ct. 2732 (2022)), <https://casetext.com/case/lefebure-v-daquila-2> (accessed February 3, 2023).
41. See, for example, 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” despite the fact that local reports found that “[o]ut 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.” BBC News, “Portland Protests: Mayor Demands Federal Officers Leave City,” July 20, 2020, <https://www.bbc.com/news/world-us-canada-53466718> (accessed February 3, 2023), and Hannah Lambert, “91% of Portland Protest Arrests Not Being Prosecuted,” Portland Tribune, January 5, 2021, <https://archive.ph/OSDbz> (accessed February 3, 2023).
42. Figure 4, “Trend in Average Guideline Minimum and Average Sentence Imposed for Armed Career Criminals Fiscal Years 2010–2019,” in U.S. Sentencing Commission, *Federal Armed Career Criminals: Prevalence, Patterns, and Pathways*, March 2021, p. 26, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210303_ACCA-Report.pdf (accessed February 3, 2023).
43. 18 U.S. Code § 924(e), <https://www.law.cornell.edu/uscode/text/18/924> (accessed February 3, 2023).
44. S. 1586, Restoring the Armed Career Criminal Act, 117th Congress, introduced May 12, 2021, <https://www.congress.gov/bill/117th-congress/senate-bill/1586> (accessed February 6, 2023).
45. 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.
46. 21 U.S. Code § 801 et seq., <https://www.law.cornell.edu/uscode/text/21/chapter-13/subchapter-1/part-A> (accessed February 3, 2023).
47. 18 U.S. Code §§ 1961–1968, <https://www.law.cornell.edu/uscode/text/18/part-1/chapter-96> (accessed February 3, 2023).
48. For more on this topic generally, see “Ensuring Enforcement and Administration of Our Immigration Laws,” *infra*.
49. See Paul J. Larkin, “Twenty-First Century Illicit Drugs and Their Discontents: The Scourge of Illicit Fentanyl,” Heritage Foundation *Legal Memorandum* No. 313, November 1, 2022, <https://www.heritage.org/sites/default/files/2022-11/LM313.pdf>.
50. Jessica Rendall, “100,000 People Died from Drug Overdoses in the US in One Year, a Record,” CNET, November 18, 2021, <https://www.cnet.com/health/medical/100000-people-died-from-drug-overdoses-in-the-us-in-one-year-a-record/> (accessed February 3, 2023).
51. U.S. Department of Justice, National Security Division, “Information About the Department of Justice’s China Initiative and a Compilation of China-Related Prosecutions Since 2018,” last updated November 19, 2021, <https://www.justice.gov/archives/nsd/information-about-department-justice-s-china-initiative-and-compilation-china-related> (accessed February 3, 2023).
52. Ronn Blitzer and Jake Gibson, “Biden DOJ Ending National Security Initiative Aimed at Countering China amid Complaints About Bias,” Fox News, February 23, 2022, <https://www.foxnews.com/politics/doj-ending-china-initiative-national-security-program-bias> (accessed February 3, 2023).
53. *National Security Strategy*, The White House, October 2022, p. 23, <https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf> (accessed February 3, 2023). See also *ibid.*, p. 8.

Department of Justice

54. U.S. Department of Justice, “About DOJ: Our Mission,” <https://www.justice.gov/about> (accessed February 4, 2023).
55. 18 U.S. Code § 248, <https://www.law.cornell.edu/uscode/text/18/248> (accessed February 4, 2023).
56. Danielle Wallace and Jake Gibson, “Pro-life Activist Mark Houck Pleads Not Guilty to Federal Charges After FBI Arrest,” Fox News, September 27, 2022, <https://www.foxnews.com/us/pro-life-activist-mark-houck-pleads-not-guilty-federal-charges-fbi-arrest> (accessed February 4, 2023).
57. Patty Knap, “Paul Vaughn, Pro-life Father of 11 Arrested by FBI Speaks Out,” *National Catholic Register*, October 18, 2022, <https://www.ncregister.com/news/paul-vaughn-pro-life-father-of-11-arrested-by-fbi-speaks-out> (accessed February 4, 2023).
58. 597 U.S. ____ (2022), <https://supreme.justia.com/cases/federal/us/597/19-1392/case.pdf> (accessed February 4, 2023).
59. Jonah McKeown, “TRACKER: Pro-Abortion Attacks in the U.S. Continue (Updated),” Catholic News Agency, last updated September 22, 2022, <https://www.catholicnewsagency.com/news/251553/map-vandalism-attacks-continue-at-pro-life-centers-across-us> (accessed February 4, 2023).
60. 28 U.S. Code § 516, <https://www.law.cornell.edu/uscode/text/28/516> (accessed February 4, 2023).
61. 28 U.S. Code § 519, <https://www.law.cornell.edu/uscode/text/28/519> (accessed February 4, 2023).
62. 295 U.S. 602 (1935), <https://supreme.justia.com/cases/federal/us/295/602/> (accessed February 6, 2023).
63. 591 U.S. ____ (2020), https://www.supremecourt.gov/opinions/19pdf/19-7_new_Opm1.pdf (accessed February 6, 2023).
64. See Brief for the United States, *303 Creative v. Aubrey Elenis*, No. 21-476, August 2022, https://www.supremecourt.gov/DocketPDF/21/21-476/234119/20220819182151542_21-476%20303%20Creative%20LLC%20v.%20Elenis%20FINAL.pdf (accessed February 4, 2023).
65. Oral Argument Transcript, *303 Creative v. Aubrey Elenis*, No. 21-476, December 5, 2022, https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/21-476_8n59.pdf (accessed February 4, 2023).
66. Brief for the United States, *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission*, No. 16-111, September 2017, p. 9, <https://www.scotusblog.com/wp-content/uploads/2017/09/16-111-tsac-USA.pdf> (accessed February 4, 2023) (quoting *Agency for International Development v. Alliance for Open Society International, Inc.*, 133 S. Ct. 2321, 2327 (2013), quoting in turn *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006)).
67. *Ibid.*, p. 10.
68. *Ibid.*, pp. 10–11.
69. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), <https://tile.loc.gov/storage-services/service/ll/usrep/usrep319/usrep319624/usrep319624.pdf> (accessed February 4, 2023).
70. *Cohen v. California*, 403 U.S. 15, 24 (1971), https://constitutionallawreporter.com/wp-content/uploads/2014/07/Cohen-v_-California.pdf (accessed February 4, 2023).
71. *West Virginia State Board of Education v. Barnette*, 319 U.S. 640.
72. *McCullen v. Coakley*, 573 U.S. 464, 476 (2014), <https://supreme.justia.com/cases/federal/us/573/12-1168/case.pdf> (accessed February 4, 2023) (quoting *FCC v. League of Women Voters of California*, 468 U.S. 364, 377 (1984)).
73. See, for example, 42 U.S. Code § 2000d, <https://www.law.cornell.edu/uscode/text/42/2000d> (accessed February 4, 2023); 42 U.S. Code § 2000e, <https://www.law.cornell.edu/uscode/text/42/2000e> (accessed February 4, 2023); 20 U.S. Code § 1681, <https://www.law.cornell.edu/uscode/text/20/1681> (accessed February 4, 2023).
74. See “Advancing Equity and Racial Justice Through the Federal Government,” The White House, <https://www.whitehouse.gov/equity/> (accessed February 4, 2023).
75. 18 U.S. Code § 1461, <https://www.law.cornell.edu/uscode/text/18/1461> (accessed February 6, 2023). See also 18 U.S. Code § 1462, <https://www.law.cornell.edu/uscode/text/18/1462> (accessed February 6, 2023).
76. 18 U.S. Code § 241, <https://www.law.cornell.edu/uscode/text/18/241> (accessed February 6, 2023).
77. 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.
78. See, for example, Paul Kiel, “Controversial USA Delivered ‘Voter Fraud’ Indictments Right on Time,” TPM Muckraker, May 1, 2007, <https://web.archive.org/web/20070503021505/http://www.tpmmuckraker.com/archives/003107.php> (accessed February 4, 2023).

Mandate for Leadership: The Conservative Promise

79. See Craig C. Donsanto and Nancy L. Simmons, *Federal Prosecution of Election Offenses*, 7th Edition, U.S. Department of Justice, May 2007 (revised August 2007), pp. 61–63, <https://www.justice.gov/sites/default/files/criminal/legacy/2013/09/30/electbook-rvs0807.pdf#page=79> (accessed February 4, 2023). See also Richard C. Pilger, ed., *Federal Prosecution of Election Offenses*, 8th Edition, U.S. Department of Justice, December 2017, pp. 56–58, <https://www.justice.gov/criminal/file/1029066/download> (accessed February 4, 2023).
80. See U.S. Department of Justice, “Capital Eligible Statutes Assigned by Section,” <https://www.justice.gov/archives/jm/criminal-resource-manual-71-capital-eligible-statutes-assigned-section> (accessed February 5, 2023).
81. See U.S. Department of Justice, “Contact List: District Election Officers,” October 31, 2022, p. 1, <https://www.justice.gov/criminal/file/1329606/download> (accessed February 4, 2023).
82. Pennsylvania Department of State, “Pennsylvania Provisional Voting Guidelines,” October 21, 2020, Version 1.1, p. 2, https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_ProvisionalBallots_guidance_1.0.pdf#page=2 (accessed February 4, 2023).
83. 52 U.S. Code § 21082, <https://www.law.cornell.edu/uscode/text/52/21082> (accessed February 4, 2023).
84. Pennsylvania General Assembly, SB 422, Pennsylvania Election Code—Omnibus Amendments, Act of March 27, 2020, P.L. 41, No. 12, Section 1302-D, <https://www.legis.state.pa.us/cfdocs/Legis/LI/uconsCheck.cfm?txtType=HTM&yr=2020&sessInd=0&smthLwInd=0&act=12> (accessed February 4, 2023).
85. *In re November 3, 2020 General Election*, 240 A.3d 591 (Pa. 2020), <https://www.leagle.com/decision/inpaco20201026a01> (accessed February 4, 2023).
86. U.S. Department of Justice, “Enforcement of Civil Rights Criminal Statutes,” <https://www.justice.gov/jm/jm-8-3000-enforcement-civil-rights-criminal-statutes> (accessed February 4, 2023); U.S. Department of Justice, “Capital Eligible Statutes Assigned by Section,” updated January 17, 2020, <https://www.justice.gov/archives/jm/criminal-resource-manual-71-capital-eligible-statutes-assigned-section> (accessed February 4, 2023).
87. Garland Memorandum, October 4, 2021.
88. See Viola M. Garcia, President, NSBA, and Chip Slavin, Interim Executive Director and CEO, to President Joseph R. Biden, “Re: *Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators*,” September 29, 2021, <https://s3.documentcloud.org/documents/21098209/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-929211.pdf> (accessed February 4, 2023). Emphasis in original.
89. See letter from Todd Rokita, Indiana Attorney General; Steve Marshall, Alabama Attorney General; Treg R. Taylor, Alaska Attorney General; Mark Brnovich, Arizona Attorney General; Leslie Rutledge, Arkansas Attorney General; Christopher M. Carr, Georgia Attorney General; Derek Schmidt, Kansas Attorney General; Daniel Cameron, Kentucky Attorney General; Eric S. Schmitt, Missouri Attorney General; Austin Knudsen, Montana Attorney General; John M. O’Connor, Oklahoma Attorney General; Alan Wilson, South Carolina Attorney General; Jason R. Ravensborg, South Dakota Attorney General; and Ken Paxton, Texas Attorney General to President Joseph R. Biden, Jr., and Attorney General Merrick B. Garland, Attorney General, “Re: NSBA’s Fraud on the American People,” October 26, 2021, <https://www.texasattorneygeneral.gov/sites/default/files/global/images/DOJ%20Letter%20based%20on%20NSBA%20Apology%20Letter%20%2010.26.21%20final.pdf> (accessed February 4, 2023). Cited hereafter as Rokita et al. Letter, October 26, 2021.
90. Philip G. Kiko, *Final Report on the Events Surrounding the National School Boards Association’s September 29, 2021, Letter to the President*, n.d., <https://www.nsba.org/-/media/Files/NSBA-Report.pdf?la=en&hash=A001354D23C9AE88B54D398270C9790D91B01FF9> (accessed February 4, 2023); news release, “NSBA Announces Completion of Independent Review; Takes Action Based on Findings,” National School Boards Association, May 20, 2022, <https://www.nsba.org/News/2022/independent-review#:~:text=In%20February%202022%2C%20the%20National%20School%20Boards%20Association,and%20assistance%20with%20events%20at%20school%20board%20meetings.> (accessed February 4, 2023).
91. Rokita et al. Letter, October 26, 2021.
92. *State of New York, State of Connecticut, State of New Jersey, State of Washington, Commonwealth of Massachusetts, Commonwealth of Virginia, State of Rhode Island, City of New York v. United States Department of Justice*, 964 F.3d 150 (2d Cir. 2020), <https://casetext.com/case/new-york-v-us-dept-of-justice-1> (accessed February 4, 2023).

Department of Justice

93. H.R. 5005, Homeland Security Act of 2002, Public Law No. 107-296, 107th Congress, November 25, 2002, 116 Stat. 2135, <https://www.congress.gov/107/plaws/publ296/PLAW-107publ296.pdf> (accessed February 3, 2023).
94. See, for example, 8 U.S. Code §§ 1103(a)(1) and 1103(g), <https://www.law.cornell.edu/uscode/text/8/1103> (accessed February 3, 2023).
95. See, for example, 8 U.S. Code §§ 1324–1326, <https://www.law.cornell.edu/uscode/text/8/chapter-12/subchapter-II/part-VIII> (accessed February 3, 2023).
96. Press release, “Justice, Labor Departments Reach Settlements with Facebook Resolving Claims of Discrimination Against U.S. Workers and Potential Regulatory Recruitment Violations,” U.S. Department of Justice, October 19, 2021, <https://www.justice.gov/opa/pr/justice-labor-departments-reach-settlements-facebook-resolving-claims-discrimination-against> (accessed February 3, 2023).
97. “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 Government Reform.” Senate Committee Print No. 114-26, *United States Government Policy and Supporting Positions*, Committee on Homeland Security and Governmental Affairs, U.S. Senate, 114th Cong., 2nd Sess., December 1, 2016, p. iii, <https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf> (accessed February 5, 2023).
98. Allen J. Beck, “Race and Ethnicity of Violent Crime Offenders and Arrestees, 2018,” U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Statistical Brief* No. NCJ 255969, January 2021, <https://bjs.ojp.gov/content/pub/pdf/revcoa18.pdf> (accessed February 3, 2023).

