



May 5, 2020

VIA U.S. MAIL

Chief Judge Beryl A. Howell
United States District Court for the District of Columbia
333 Constitution Avenue NW
Washington, DC 20001

Dear Chief Judge Howell:

We write regarding the Attorney General's February 3, 2020 appointment of Timothy Shea to serve as interim U.S. Attorney for the District of Columbia,¹ which will expire on or about June 2, 2020.² Given that President Donald J. Trump has not yet nominated anyone to fill this vacancy, it appears likely that after the expiration of Interim U.S. Attorney Shea's appointment by the Attorney General, the District Court will be called upon to exercise its statutory authority to appoint an interim U.S. Attorney to serve until the vacancy is filled.³

In light of troubling developments at the U.S. Attorney's Office around the time of Interim U.S. Attorney Shea's appointment, we urge you to consider appointing a veteran career prosecutor to serve as Interim U.S. Attorney until the vacancy is permanently filled to avoid even the appearance that the U.S. Attorney's Office is subject to improper political interference in the investigation and prosecution of criminal matters.⁴

Former U.S. Attorney for the District of Columbia Jessie K. Liu unexpectedly submitted her resignation earlier than planned on January 29, 2020, while her nomination to a position at the Department of the Treasury was pending before the U.S. Senate. Rather than allow former U.S. Attorney Liu's first assistant to take over, as is typical in such situations, on

¹ See Press Release, U.S. Dep't of Justice, Attorney General William P. Barr Appoints Timothy Shea Interim U.S. Attorney for the District of Columbia, Jan. 30, 2020, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-appoints-timothy-shea-interim-us-attorney-district-columbia>.

² 28 U.S.C. § 546(c)(2).

³ 28 U.S.C. § 546(d).

⁴ American Oversight is a nonpartisan, nonprofit organization that promotes transparency and accountability in government and educates the public about government activities, including through the use of Freedom of Information Act requests. We have sought to investigate numerous recent instances of apparent politicization of Department of Justice investigations and prosecutions. See American Oversight, *Politicization of the Justice Department*, Apr. 10, 2020, <https://www.americanoversight.org/investigation/trump-administrations-politicization-justice-department>.



January 30, 2020, the Department of Justice announced that the attorney general was appointing Timothy Shea—then an official in Attorney General Barr’s immediate office—to serve as interim U.S. Attorney, effective only two days later, on February 3, 2020.⁵

Shortly after Interim U.S. Attorney Shea’s appointment, President Trump publicly criticized as too harsh the sentencing recommendation filed by the U.S. Attorney’s Office in the case of Roger Stone—an associate and ally of the president convicted of lying to Congress and obstructing a congressional investigation.⁶ Shortly after the president’s criticism of the sentencing recommendation, Interim U.S. Attorney Shea’s office filed a supplemental sentencing memorandum arguing that the Court should impose a more lenient sentence than that initially recommended—a sentence lower, in fact, than the applicable federal sentencing guidelines range.⁷

In light of the new sentencing recommendation, all four career prosecutors who had represented the government in its prosecution of Mr. Stone moved to withdraw from the case, and one resigned from the Department altogether.⁸ At the same time, the president abruptly withdrew his nomination to serve in the Department of the Treasury of the former U.S. Attorney, Jessie Liu, who had overseen the prosecution of Mr. Stone.

These events overwhelmingly suggest that the U.S. Attorney’s Office for the District of Columbia was subject to improper political pressure in the prosecution of an individual matter. News reports indicate that other politically sensitive matters being handled by the same office, including the prosecution of former National Security Adviser Michael Flynn and the potential prosecution of former acting Director of the Federal Bureau of Investigation Andrew McCabe, have also been subjected to atypical external reviews and second-guessing.⁹

⁵ *Supra* note 1.

⁶ Ann E. Marimow, *Trump Takes on Judge Amy Berman Jackson Ahead of Roger Stone’s Sentencing*, WASH. POST (Feb. 12, 2020, 6:22 PM), https://www.washingtonpost.com/local/legal-issues/trump-takes-on-judge-amy-berman-jackson-ahead-of-roger-stones-sentencing/2020/02/12/753e2a6e-4db6-11ea-bf44-f5043eb3918a_story.html.

⁷ Gov’t Suppl. & Amended Sentencing Mem., *U.S. v. Stone*, Case No. 19-cr-18-ABJ, (D.D.C. Feb. 11, 2020), ECF No. 281.

⁸ Matt Zaposky et al., *Prosecutors Quit Amid Escalating Justice Dept. Fight Over Roger Stone’s Prison Term*, WASH. POST (Feb. 11, 2020, 8:44 PM), https://www.washingtonpost.com/national-security/justice-dept-to-reduce-sentencing-recommendation-for-trump-associate-roger-stone-official-says-after-president-calls-it-unfair/2020/02/11/ad81fd36-4cf0-11ea-bf44-f5043eb3918a_story.html.

⁹ Charlie Savage et al., *Barr Installs Outside Prosecutor to Review Case Against Michael Flynn, Ex-Trump Adviser*, N.Y. TIMES, Feb. 14, 2020, <https://www.nytimes.com/2020/02/14/us/politics/michael-flynn-prosecutors-barr.html>; Katie Benner & Adam Goldman, *D.C. Prosecutors’ Tensions With Justice Dept. Began Long Before Stone Sentencing*, N.Y. TIMES, Feb. 23, 2020 (Updated Apr. 29, 2020, 4:47 PM),

Politicization of our justice system is a grave danger to the functioning of our democracy and to ensuring impartial accountability through the rule of law. Indeed, over 1,100 former Department of Justice prosecutors and officials from both political parties signed a letter condemning President Trump and Attorney General Barr's political interference in the Roger Stone matter and objecting to the failure of the Department of Justice to comply with the Justice Department Manual's requirement that Department decisions "be impartial and insulated from political influence."¹⁰ In a separate letter, sixty former Assistant United States Attorneys from the U.S. Attorney's Office for the District of Columbia publicly urged Interim U.S. Attorney Shea to take affirmative steps to resist political interference or influence from President Trump or Attorney General Barr.¹¹

Commentators have long noted that the ability of the attorney general to appoint Interim U.S. Attorneys, who have not been vetted and confirmed by the U.S. Senate, creates a risk of politicization of the investigations and prosecutions conducted by U.S. Attorneys' offices.¹² In this instance, there is at least the appearance that Attorney General Barr's interim U.S. Attorney appointment was related to a matter affecting an associate and political ally of the president.

As of the writing of this letter, the president has yet to nominate anyone for the position of permanent U.S. Attorney for the District of Columbia. As a result, your honor likely will be required to appoint an interim U.S. Attorney when Interim U.S. Attorney Shea's appointment expires on June 2, 2020.

Even if the District Court believes that Interim U.S. Attorney Shea has acted competently and with integrity, the events surrounding his appointment will continue to raise questions regarding the impartial administration of justice by his office so long as he leads it. Accordingly, in the event that the vacancy in the U.S. Attorney's Office is not filled before Interim U.S. Attorney Shea's appointment expires, we respectfully urge you to appoint the

<https://www.nytimes.com/2020/02/23/us/politics/justice-department-dc-prosecutors.html>.

¹⁰ Katie Benner, *Former Justice Dept. Lawyers Press for Barr to Step Down*, N.Y. TIMES, Feb. 16, 2020, <https://www.nytimes.com/2020/02/16/us/politics/barr-trump-justice-department.html>; *DOJ Alumni Statement on the Events Surrounding the Sentencing of Roger Stone*, MEDIUM, Feb. 16, 2020, <https://medium.com/@dojalumni/doj-alumni-statement-on-the-events-surrounding-the-sentencing-of-roger-stone-c2cb75ae4937>.

¹¹ Spencer S. Hsu, *Former U.S. Prosecutors in Washington Call On New Head Tim Shea to Assert Independence from Barr, Trump*, WASH. POST (Feb. 27, 2020, 6:00 PM), https://www.washingtonpost.com/local/legal-issues/former-us-prosecutors-in-washington-call-on-new-head-tim-shea-to-assert-independence-from-barr-trump/2020/02/27/90c3f2b0-59a4-11ea-9000-f3cffee23036_story.html.

¹² Laurie L. Levenson, *Live and Learn. Depoliticizing the Interim Appointments of U.S. Attorneys*, 31 SEATTLE UNIV. L. REV. 297 (2007), <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1049&context=sulr>.

Principal Assistant U.S. Attorney for the District of Columbia at the time of U.S. Attorney Liu's departure, Alessio D. Evangelista, or another qualified, veteran career prosecutor, to serve as Interim U.S. Attorney until a permanent replacement is confirmed by the Senate.

The appointment of an experienced career prosecutor would ameliorate the appearance that decisions in individual criminal cases handled by the U.S. Attorney's Office may be affected by political considerations and not just by the facts, the law, and the prosecutor's judgment. It would help to insulate the administration of justice by the office from improper political pressure. And it would restore public confidence that the office is free to make decisions regarding individual criminal prosecutions without fear or favor.

Thank you for your consideration of this matter.

Respectfully,

A handwritten signature in blue ink, appearing to read "Austin Evers", with a long horizontal flourish extending to the left.

Austin Evers
Executive Director
American Oversight