



Public Integrity Section

August 20, 2020

MEMORANDUM

TO: Attorney General Advisory Committee

FROM: Corey R. Amundson
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Criminal Division

SUBJECT: Summary of Significant Election Related Policies

This memorandum summarizes certain Department policy guidance on handling matters, during an election year, that involve (1) alleged election crimes,¹ (2) political candidates, campaigns, and other politically sensitive individuals and organizations, and/or (3) concern about the timing of statements, investigative steps, charges, or other actions near the time of an election. Below is a brief description of (1) the election non-interference policy, (2) the sensitive matters policy, (3) the election year sensitivities policy, and (4) the Justice Manual policies.²

I. Election Non-Interference Policy

The election non-interference policy is a longstanding Department policy reflected in the *Federal Prosecution of Election Offenses*, Eighth Edition, 2017, as well as every previous edition since first published in 1980. Importantly, the policy relates solely to allegations of election fraud. It provides that “overt criminal investigative measures should not ordinarily be taken in matters involving alleged fraud in the manner in which votes were cast or counted until the election in question has been concluded, its results certified, and all recounts and election contests concluded.”³ This includes false or fraudulent voter registration allegations.

¹ The term “election crimes” refers to election fraud, patronage crimes, campaign financing crimes, and certain civil rights crimes.

² This summary is intended as a brief overview of the most salient policies relevant to the issues that confront the Public Integrity Section and its Election Crimes Branch. It does not purport to be exhaustive and other policies may be relevant, particularly regarding issues handled by the Civil Rights and National Security Divisions.

³ *Id.* at 84; *see also id.* at 9 (“Because the federal prosecutor’s function in the area of election fraud is not primarily preventative, any criminal investigation by the Department must be conducted in a way that minimizes the likelihood that the investigation itself may become a factor in the election Accordingly, it is the general policy of the Department not to conduct overt investigations, including interviews with individual voters, until after the outcome of the election allegedly affected by the fraud is certified.”).

The policy is limited. As mentioned, it applies only to election fraud.⁴ It does not apply to other crimes, including other types of election crimes, such as campaign finance violations, patronage crimes, and certain civil rights violations. Nor does it apply to covert investigative techniques. Allegations of foreign influence and violence also fall outside the policy.

Exceptions may be appropriate where “it is possible to both complete an investigation and file criminal charges against an offender prior to the period immediately before an election.”⁵ This exception usually involves a single wrongdoer in a discrete incident, such as an illegal alien fraudulently registering to vote. An exception may also be appropriate where a federal official entrusted to facilitate the voting process, such as a postal carrier, allegedly engages in election fraud using his or her official position.

II. Sensitive Investigations Policy

The sensitive investigations policy is reflected in the Attorney General’s *Memorandum Regarding Additional Requirements of Certain Sensitive Investigations*, February 5, 2020. It provides that certain sensitive matters that relate to political candidates, campaigns, or other politically sensitive individuals and organizations must be raised with Department leadership before being pursued.⁶

Several aspects of the policy are notable. First, its scope is determined by the people and organizations involved in the matter, as opposed to the subject matter or potential crime at issue. Second, the policy is designed to ensure that Department leadership has appropriate situational awareness and involvement in certain sensitive matters. As such, it establishes reporting, consultation, and approval requirements. The policy does not provide substantive guidance apart from directing prosecutors to exercise care and caution in such matters.

⁴ The policy does not apply where the allegation concerns an election held in a previous year (as opposed to an election during the current election year). It is nevertheless prudent to ensure that such a matter is handled with sensitivity and care in order to avoid affecting or having the perception of affecting a future election.

⁵ *Id.*

⁶ Such matters include: (1) investigations of a declared candidate for resident or vice-president, a presidential campaign, or a senior presidential campaign staff member or advisor (includes any person who has been publicly announced by a campaign as a staffer or member of an official campaign advisory committee or group); (2) investigations of a declared candidate for U.S. Senate or U.S. House of Representatives, or his or her campaign; and (3) investigations relating to illegal contributions, donations, or expenditures by foreign nationals to a presidential or congressional campaign.

III. Election Year Sensitivities Policy

The election year sensitivities policy is a longstanding Department policy and reflected in the Attorney General's *Memorandum Regarding Election Year Sensitivities*, May 15, 2020.⁷ All matters are within the scope of this memorandum. It provides that prosecutors and investigators "may never select the timing of public statements (attributed or not), investigative steps, criminal charges, or any other action in any matter or case for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party."⁸ It also directs prosecutors and investigators to take care to mitigate against the appearance that such actions are timed to affect an election. The memorandum requires consultation with the Public Integrity Section when such an issue arises.

IV. Justice Manual Policies

The Justice Manual includes several provisions containing relevant approval and consultation requirements that involve the Public Integrity Section. *See* JM 9-16.110 (prior approval from PIN is required for plea agreements with defendants who are candidates or members of Congress or federal judges) 9-85.100 (consultation with PIN is required in all investigations involving a Member of Congress or congressional staff member); 9-85.210 (consultation with PIN is required in all federal criminal matters that focus on violations of federal or state campaign financing laws, federal patronage crimes, and corruption of the electoral process). The JM provisions provide process requirements. They do not provide direction on how such matters should be resolved substantively.

⁷ A version of this memorandum is traditionally sent by the Attorney General every election year. The memorandum sent this year expanded the policy to include public statements.

⁸ *See* Attorney General William Barr, Election Year Sensitivities Memorandum for All Department of Justice Employees, May 15, 2020, at 1.