

# STATEMENT BY FORMER FEDERAL PROSECUTORS

We are former federal prosecutors. We served under both Republican and Democratic administrations at different levels of the federal system: as line attorneys, supervisors, special prosecutors, United States Attorneys, and senior officials at the Department of Justice. The offices in which we served were small, medium, and large; urban, suburban, and rural; and located in all parts of our country.

Each of us believes that the conduct of President Trump described in Special Counsel Robert Mueller's report would, in the case of any other person not covered by the Office of Legal Counsel policy against indicting a sitting President, result in multiple felony charges for obstruction of justice.

The Mueller report describes several acts that satisfy all of the elements for an obstruction charge: conduct that obstructed or attempted to obstruct the truth-finding process, as to which the evidence of corrupt intent and connection to pending proceedings is overwhelming. These include:

- The President's efforts to fire Mueller and to falsify evidence about that effort;
- The President's efforts to limit the scope of Mueller's investigation to exclude his conduct; and
- The President's efforts to prevent witnesses from cooperating with investigators probing him and his campaign.

## **Attempts to fire Mueller and then create false evidence**

Despite being advised by then-White House Counsel Don McGahn that he could face legal jeopardy for doing so, Trump directed McGahn on multiple occasions to fire Mueller or to gin up false conflicts of interest as a pretext for getting rid of the Special Counsel. When these acts began to come into public view, Trump made "repeated efforts to have McGahn deny the story" — going so far as to tell McGahn to write a letter "for our files" falsely denying that Trump had directed Mueller's termination.

Firing Mueller would have seriously impeded the investigation of the President and his associates — obstruction in its most literal sense. Directing the creation of false government records in order to prevent or discredit truthful testimony is similarly unlawful. The Special Counsel's report states: "Substantial evidence indicates that in repeatedly urging McGahn to dispute that he was ordered to have the Special Counsel terminated, the President acted for the purpose of influencing McGahn's account in order to deflect or prevent scrutiny of the President's conduct toward the investigation."

## **Attempts to limit the Mueller investigation**

The report describes multiple efforts by the president to curtail the scope of the Special Counsel's investigation.

First, the President repeatedly pressured then-Attorney General Jeff Sessions to reverse his legally-mandated decision to recuse himself from the investigation. The President's stated reason was that he wanted an attorney general who would "protect" him, including from the Special Counsel investigation. He also directed then-White House Chief of Staff Reince Priebus to fire Sessions and Priebus refused.

Second, after McGahn told the President that he could not contact Sessions himself to discuss the investigation, Trump went outside the White House, instructing his former campaign manager, Corey Lewandowski, to carry a demand to Sessions to direct Mueller to confine his investigation to future elections. Lewandowski tried and failed to contact Sessions in private. After a second meeting with Trump, Lewandowski passed Trump's message to senior White House official Rick Dearborn, who Lewandowski thought would be a better messenger because of his prior relationship with Sessions. Dearborn did not pass along Trump's message.

As the report explains, "[s]ubstantial evidence indicates that the President's effort to have Sessions limit the scope of the Special Counsel's investigation to future election interference was intended to prevent further investigative scrutiny of the President's and his campaign's conduct" — in other words, the President employed a private citizen to try to get the Attorney General to limit the scope of an ongoing investigation into the President and his associates.

All of this conduct — trying to control and impede the investigation against the President by leveraging his authority over others — is similar to conduct we have seen charged against other public officials and people in powerful positions.

## **Witness tampering and intimidation**

The Special Counsel's report establishes that the President tried to influence the decisions of both Michael Cohen and Paul Manafort with regard to cooperating with investigators. Some of this tampering and intimidation, including the dangling of pardons, was done in plain sight via tweets and public statements; other such behavior was done via private messages through private attorneys, such as Trump counsel Rudy Giuliani's message to Cohen's lawyer that Cohen should "[s]leep well tonight[], you have friends in high places."

Of course, these aren't the only acts of potential obstruction detailed by the Special Counsel. It would be well within the purview of normal prosecutorial judgment also to charge other acts detailed in the report.

We emphasize that these are not matters of close professional judgment. Of course, there are potential defenses or arguments that could be raised in response to an indictment of the

nature we describe here. In our system, every accused person is presumed innocent and it is always the government's burden to prove its case beyond a reasonable doubt. But, to look at these facts and say that a prosecutor could not probably sustain a conviction for obstruction of justice — the standard set out in Principles of Federal Prosecution — runs counter to logic and our experience.

As former federal prosecutors, we recognize that prosecuting obstruction of justice cases is critical because unchecked obstruction — which allows intentional interference with criminal investigations to go unpunished — puts our whole system of justice at risk. We believe strongly that, but for the OLC memo, the overwhelming weight of professional judgment would come down in favor of prosecution for the conduct outlined in the Mueller Report.

