

# DOJ Antitrust Chief Refutes Whistleblower's Testimony Accusing AG Barr of Bias

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**Allegations that enforcers are enlisting antitrust agencies to satisfy personal grudges. That's new.**

One of U.S. Attorney General Bill Barr's team has come to his defense against allegations that he has mismanaged the Department of Justice. Assistant Attorney General for the Antitrust Division Makan Delrahim sent a letter to ranking House Judiciary Committee members on July 1, 2020, rebuking the [testimony given by DOJ trial attorney John Elias](#) a week earlier that the AG used DOJ resources for political and personal reasons.

[Elias testified](#) after receiving a subpoena from House Judiciary Committee Chairman Jerrold Nadler in a hearing titled "Oversight of the Department of Justice: Political Interference and Threats to Prosecutorial Independence." Chairman Nadler set the stage for a provocative hearing in his opening remarks. After recounting the events leading to the Attorney General's fraught announcement that Geoffrey Berman, the United States Attorney for the Southern District of New York, was stepping down, Nadler commented, "[t]he effort to remove Mr. Berman is part of a clear and dangerous pattern of conduct that began when Mr. Barr took office and continues to this day."

Calls for testimony also came from Senator Amy Klobuchar (D-MN) and others in June. "The impression that federal law enforcement is a tool to serve the political and personal interests of our leaders is corrosive to our entire system of government, which is based on the rule of law," [Klobuchar's letter said](#).

## **'Abuse of authority, gross mismanagement'**

John Elias, a career employee with the Antitrust Division, reported his concerns about Barr's misconduct to the Department of Justice Inspector General. According to Elias, Barr's "abuse of authority, [] gross waste of funds, and gross mismanagement," resulted in ten unjustified "full-scale merger reviews" of medical and recreation cannabis companies, among other transgressions, sapping the agency's resources. Elias stated that the cannabis merger inquiries were not prompted by genuine antitrust concern, but, instead, were motivated by "personal dislike" for the industry. Elias also mentioned an apparently politically-interested inquiry, that Barr spearheaded. The probe looked into four California car makers after the manufacturers said that they were not interested in following

President Trump's new, lower fuel economy and tailpipe emission standards, and would adhere to the more stringent Obama-enacted regulations instead.

Assistant Attorney General Delrahim's July 1 letter knocked Elias's credibility and rebutted his testimony. Delrahim opened, "Mr. Elias's testimony is misleading and lacks critical facts." Seeking to clarify the record by "provid[ing] important context and additional, first-hand facts," Delrahim wrote that Elias "did not work on, oversee, or otherwise have any first-hand involvement" in the cannabis industry merger reviews because Elias had previously been transferred to a criminal investigation division.

Delrahim went on to explain the propriety of the merger investigations and dressed down Elias's testimony on the California automaker probe. Delrahim concluded that public servants like Barr should not face "[b]aseless accusations that [they] cannot leave their politics at the door."

Nearly two weeks later, the House Judiciary Committee released the transcript of an interview with former prosecutor Geoffrey Berman. According to the Committee's July 13, 2020 press release, Chairman Nadler remarked, "[Mr. Berman] was adamant that Attorney General Barr's scheme to force him out of office and replace him with an outsider raised serious concerns for him, and was designed to disrupt and delay the work of the office—including those implicating the President."

Under threat of subpoena, Attorney General Barr has agreed to testify before Congress. According to DOJ Spokesperson Kerri Kupec, Barr has accepted an invitation to appear before the House Judiciary Committee for a general oversight hearing on July 28th.

## **A 'serious threat' to enforcement credibility**

Perhaps politics has to some degree always been present in antitrust enforcement—after all, the enforcers are human—but we have never seen allegations that individual enforcers are using antitrust agencies to execute upon personal grudges.

If these second requests were not good faith efforts to enforce the antitrust laws this is a serious threat to the credibility of U.S. merger enforcement and antitrust enforcement as a whole. Casting doubt on the good faith nature of these proceedings may also negatively affect firms' willingness to comply with second requests in the future, making the process even more costly and burdensome and further clogging the court system with challenges.

I hope Congress will conduct a thorough investigation of these allegations, including an inquiry into how the Federal Trade Commission viewed the competitive threats in the DOJ's merger reviews in the cannabis industry. Conducting pretextual fraudulent investigations against U.S. firms amounts to unlawful surveillance and must be remedied to preserve the legitimacy of U.S. antitrust enforcement.

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