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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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April 28, 2021

The Honorable David S. Ferriero
Archivist of the United States
U.S. National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408

Dear Mr. Ferriero:

We write to request records relevant to our investigation related to the policies and procedures maintained by the White House, the Internal Revenue Service (IRS), and the Department of Justice (DOJ) to protect the integrity of the enforcement of our nation's tax laws. As the Chairmen of the Senate Finance Committee and Senate Judiciary Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights; we seek to ensure that tax proceedings handled by DOJ and the IRS are not influenced by conflicts of interest or improper political interference.

As you are aware, the DOJ and IRS hold significant compliance and enforcement powers with respect to taxation in the United States. Through both civil and criminal proceedings, the agencies have the power to conduct investigations into violations of tax laws and fraud as well as seek the collection of unpaid taxes owed to the federal government. Accordingly, the DOJ and IRS have long taken steps to maintain a standard of impartiality and prevent political interference from undermining public confidence in the integrity of the tax system.

For decades, to prevent even the appearance of political interference in federal law enforcement, both Democratic and Republican administrations have maintained written policies governing White House contacts with agencies and offices that have investigatory and enforcement responsibilities, including the DOJ. These policies have extended to White House contacts with any executive branch agency or office regarding investigations, enforcement actions, and regulatory decisions involving specific parties.¹ However, because several of these policies have never been codified into law and remain simply norms, it is unclear how consistently these

¹ Counsel to the President Donald F. McGahn II, *Communications Restrictions with Personnel at the Department of Justice*, Jan. 27, 2017, [<https://www.politico.com/f/?id=0000015a-dde8-d23c-a7ff-dfef4d530000>].
https://www.justice.gov/oip/foia-library/communications_with_the_white_house_and_congress_2009.pdf/download

policies have been enforced. While the Attorney General is generally exempt from prohibitions on executive branch influence on taxpayer audits and other investigations, conflict of interest laws and regulations restrict federal employees from participating in any matters involving former clients, personal or political relationships, or personal financial interests.²

In recent years, a series of high-profile federal tax disputes involving powerful and well-connected corporations have raised important questions regarding the enforcement of conflict of interest statutes and policies to prevent political meddling in criminal investigations. Of particular concern is the handling of a federal criminal investigation into the tax practices of Caterpillar Inc. (Caterpillar), a company that was represented by William P. Barr prior to his appointment as United States Attorney General.

In 2015, Caterpillar disclosed that a federal grand jury in Illinois had begun investigating an alleged tax scheme involving the company's Swiss subsidiary.³ This investigation led to raids by federal agents on three different Caterpillar offices in March 2017.⁴ Days after the raids, Caterpillar announced it retained Mr. Barr "to take a fresh look at Caterpillar's disputes with the government, get all the facts, and then help us bring these matters to proper resolution based on the merits."⁵ Since January 2018, the IRS has sought to recover \$2.3 billion in unpaid taxes and penalties from Caterpillar in connection with the alleged tax practices.⁶ Alarming, just six days after Mr. Barr was nominated to serve as Attorney General, an inspector general agent at the U.S. Federal Deposit Insurance Corporation was reportedly instructed by the DOJ tax division and the Office of the Deputy Attorney General "that no further action was to be taken on the [Caterpillar] matter until further notice."⁷ The investigation has reportedly been "stalled" since this order was

² 26 U.S.C. § 7217; U.S. Department of Justice, *Government Ethics Outline*, July 5, 2017, [<https://www.justice.gov/jmd/government-ethics-outline>].

³ Caterpillar Inc.; *Annual Report* (Form 10-K), at 22, (Feb. 15, 2015), ("On January 8, 2015, the Company received a grand jury subpoena from the U.S. District Court for the Central District of Illinois. The subpoena requests documents and information from the Company relating to, among other things, financial information concerning U.S. and non-U.S. subsidiaries (including undistributed profits of non-U.S. subsidiaries and the movement of cash among U.S. and non-U.S. subsidiaries)."), [https://www.sec.gov/Archives/edgar/data/18230/0000018230150000/cat_10-kx12312014.htm].

⁴ *Federal Agents Search Caterpillar Locations*, Wall Street Journal, Mar. 3, 2017, [<https://www.wsj.com/articled/federal-agents-search-caterpillar-locations-1488475293>].

⁵ *New Caterpillar CEO Asks Former U.S. Attorney General to Assess and Help Address Ongoing Government Investigation*, Caterpillar/CisionPRNewswire, Mar. 16, 2017, [<https://www.prnewswire.co.uk/news-releases/new-caterpillar-ceo-asks-former-us-attorney-general-to-assess-and-help-address-ongoing-government-investigation-616370284.html>].

⁶ Caterpillar, Inc., *Annual Report* (Form 10-K), at 102, (Feb. 15, 2018), ("On January 31, 2018, we received a Revenue Agent's report from the IRS indicating [...] proposed increases to tax and penalties for these years of approximately \$2.3 billion."), [https://sec.gov/Archives/edgar/data/18230/000001823018000042/cat_10-kx12312017].

⁷ *Exclusive: U.S. Investigators were told to take 'no further action' on Caterpillar, ex-client of Barr*, REUTERS, Nov. 18, 2020, 9 ("I was instructed on December 13, 2018," wrote the agent, Jason LeBeau, "that the Tax Division and the Office of the Deputy Attorney General jointly came to the decision that no further action was to be taken on the matter until further notice."), [<https://www.reuters.com/article/us-usa-barr-caterpillar-exclusive/exclusive-u-s-investigators-were-told-take-no-further-action-on-caterpillar-ex-client-of-barr-idUSKBN27Y2PO>].

issued and many questions remain unanswered about the decision and what ethics guidance was provided to Mr. Barr regarding the matter.⁸

Additionally, we seek to understand how the agencies addressed the potential for political interference with regard to a multi-billion dollar tax enforcement action involving Renaissance Technologies LLC (Renaissance), a prominent hedge fund whose owners are among the nation's biggest political donors. According to public reports, since 2017 the IRS has reportedly sought to collect approximately \$7 billion in back taxes from Renaissance for its use of basket options contracts, a type of transaction the IRS has long considered an abusive tax avoidance technique.⁹ Renaissance has contested the tax bill and is reportedly exploring the possibility of a settlement to reduce its tax liability.¹⁰ These efforts by the IRS follow the findings of a bipartisan report from the Senate Permanent Subcommittee on Investigations describing how Renaissance used these transactions over ten years to avoid taxes on \$34 billion in profits.¹¹

Among the individuals with a direct financial interest in the matter is former Renaissance co-chief executive officer Robert Mercer. In 2016, Mr. Mercer gave \$22.5 million in disclosed donations to Republican candidates and to political-action committees, including \$15.5 million to a pro-Trump Super PAC called Make America Number 1.¹² The Make America Number 1 Super PAC also employed Stephen Bannon and Kellyanne Conway, who both went on to take senior positions in President Trump's White House.¹³

The integrity of the tax system depends on all civil and criminal proceedings remaining impartial, no matter the influence of the parties involved. Accordingly, in order to better understand how the DOJ and IRS have enforced policies and procedures intended to prevent political interference and the appearance of conflicts of interest, please provide the following information:

1. All records since January 20, 2017 relating to communications or meetings between and among employees of the White House, and with any DOJ or IRS employee, related to ongoing investigations, enforcement actions and regulatory decisions related to tax matters involving specific parties, including Caterpillar and Renaissance. These records should include, but not be limited to:

⁸ *Id.*

⁹ *Billionaire Robert Mercer did Trump a huge favor. Will he get a payback?*, MCCLATCHY, Nov. 6, 2017, [<https://www.mcclatchydc.com/news/politics-government/article147454324.html>]

¹⁰ *Renaissance Explores Settlement as IRS Seeks Billions in Taxes*, BLOOMBERG, Apr. 10, 2019, [<https://www.bloomberg.com/news/articles/2019-04-10/renaissance-explores-settlement-as-irs-seeks-billions-in-taxes>]

¹¹ *ABUSE OF STRUCTURED FINANCIAL PRODUCTS: Misusing Basket Options to Avoid Taxes and Leverage Limits*, Included in: U.S. Senate. Permanent Subcommittee on Investigations, Homeland Security and Governmental Affairs Committee, Testimony *ABUSE OF STRUCTURED FINANCIAL PRODUCTS: MISUSING BASKET OPTIONS TO AVOID TAXES AND LEVERAGE LIMITS* (S. Hrg. 113-422), [[https://www.hsgac.senate.gov/imo/media/doc/REPORT- Abuse%20of%20Structured%20Financial%20Products%20\(Basket%20Options\)%20\(7-22-14,%20updated%209-30-14\).pdf](https://www.hsgac.senate.gov/imo/media/doc/REPORT-Abuse%20of%20Structured%20Financial%20Products%20(Basket%20Options)%20(7-22-14,%20updated%209-30-14).pdf)].

¹² *The Reclusive Hedge-Fund Tycoon Behind the Trump Presidency*, NEW YORKER, Mar. 17, 2017, [<https://www.newyorker.com/magazine/2017/03/27/the-reclusive-hedge-fund-tycoon-behind-the-trump-presidency>]; *The Mercers and Stephen Bannon: How a populist power base was funded and built*, WASHINGTON POST, Mar. 17, 2017, [<https://www.washingtonpost.com/graphics/politics/mercerc-bannon/>]

¹³ *Id.*

- a. Copies of all relevant communications discussing such matters;
- b. Purpose and attendees of meetings;
- c. Notes or transcriptions from the meetings; and
- d. Communications about the meetings

I ask that you provide the requested information as soon as possible but no later than May 18, 2021. If you have any questions you may contact Chairman Wyden's Senate Finance oversight staff at 202-224-7800. Thank you for your prompt attention to this matter.

Sincerely,



Ron Wyden
Chairman
Committee on Finance



Sheldon Whitehouse
Chairman
Subcommittee on Federal Courts, Oversight,
Agency Action, and Federal Rights