

Federal Law Enforcement Reform:  
Depoliticization into a Constitutional Framework to Restore Public Confidence

Christopher J. Boosey

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Gai Ferdon, Ph.D.  
Thesis Chair

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Joel Cox, Ed.D.  
Committee Member

---


James H. Nutter, D.A.  
Honors Director

---

Date

Christopher J. Boosey

cjboosey @liberty.edu

 <https://orcid.org/0000-0003-0779-3288>

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### **Abstract**

This thesis proposes that there is a lack of public confidence in federal law enforcement agencies and that this is because these agencies have become political weapons, investigating individuals rather than crimes, in violation of the U.S. Constitution. Following multiple scandals, from the historical targeting of the Civil Rights movement to present attempts to designate parents critical of school administrators as domestic terrorists, wholesale reform of these agencies is urgent. Therefore, this thesis will address the issue of politicization, political corruption, and the lack of adherence to constitutional principles through the problem, significance, and solution method. This thesis will first examine the history of these federal law enforcement agencies and provide evidence, using both primary and secondary sources that have been peer-reviewed or extensively sourced, of the issues mentioned earlier within them. Then, this paper will address the significance of the problem within these agencies. The solution to federal overreach will be examined, with justification as to the preferred outcome for a particular agency, and explain the danger of complacency. Hopefully, by evidencing this significance, the reforms contained within this paper can be applied to facilitate a United States where equal justice for all is not just words, and our enduring constitutional freedoms can aid us in developing a more perfect Union.

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## **Federal Law Enforcement Reform:**

### **Depoliticization into a Constitutional Framework to Restore Public Confidence**

*When once a republic is corrupted, there is no possibility of remedying any of the growing evils, but by removing the corruption and restoring its lost principles: every other correction is either useless or a new evil.*

— Charles Louis de Secondat, Baron de Montesquieu, *The Spirit of Laws*

It is often assumed that federal law enforcement agencies are a relatively new concept as the largest and most well-known agency, the Federal Bureau of Investigation (FBI) — was founded in the early twentieth century. However, Federal law enforcement agencies predate even the signing of the Declaration of Independence. While the history of federal law enforcement agencies is littered with examples of politicization and political corruption — which is ironic as federal agencies were seen as a panacea to such activity in state and local agencies — this behavior has become ever more apparent in this age of information, and incompatible with a constitutional republic. Such politicization and political corruption are hallmarks of an authoritarian state.

This thesis will address the issue of politicization, political corruption, and the lack of adherence to constitutional principles through the problem, significance, and solution method. This thesis paper will first examine the history of these federal law enforcement agencies and provide evidence of the issues mentioned earlier within them. This thesis will then address the significance of the problem within certain federal law enforcement agencies. As there are multiple agencies, the level of issues within those agencies necessitates a diverse response. Tackling the problem this way will enable the categorization of federal law enforcement agencies based on the level of politicization and political corruption to allow for a tiered solution



response. These solutions will be examined, with justification as to the preferred outcome for a particular agency, and explain the danger of complacency. Solutions will include potential punitive action against individuals and corrective legislative measures. Wholesale reform of these agencies, emphasizing the U.S. Constitution as their supreme authority, over and above any political figure or institution in their chain of command, will restore their lost principles.

### **History of Federal Law Enforcement in the United States**

Some critics of federal law enforcement agencies in the U.S. argue that we do not need these agencies as they did not exist until the twentieth century. While it is true that the forerunner to the FBI, the Bureau of Investigation, was not founded until July 26, 1908,<sup>1</sup> the FBI was not the first federal law enforcement agency in the U.S. Three agencies, the United States Postal Inspection Service (USPIS), the United States Customs Service (USCS), and the U.S. Marshals Service (USMS) are all older than the FBI and all claim to be the oldest. The USCS was formed on July 31, 1789, to regulate duties and tariffs on goods entering the U.S.<sup>2</sup> The USMS was founded by way of the Judiciary Act of 1789 as the Office of the United States Marshal during the Washington presidency.<sup>3</sup> However, with the appointment of William Goddard as a surveyor general by then colonial Postmaster General Benjamin Franklin, in 1775, the forerunner of USPIS was founded, predating even the Declaration of Independence.<sup>4</sup> The Second Continental Congress would later appoint Franklin as the Postmaster General of the United States Post Office

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<sup>1</sup> Federal Bureau of Investigation, "Timeline," <https://www.fbi.gov/history/timeline>.

<sup>2</sup> An Act to Regulate the Collection of the Duties Imposed by Law on the Tonnage of Ships or Vessels, and on Goods, Wares and Merchandises Imported into the United States, Public Law 1-5 (July 31, 1789).

<sup>3</sup> United States Marshals Service, "History - Oldest Federal Law Enforcement Agency," accessed 2022, <https://www.usmarshals.gov/history/oldest.htm>.

<sup>4</sup> United States Postal Inspection Service, *History of the U.S. Postal Inspection Service*, Video (YouTube, 2020), <https://youtu.be/nfCUuIsnFBQ>.

Department.<sup>5</sup> Another agency with a relatively long history is the United States Secret Service, which was formed in 1865 within the Treasury Department to address rampant counterfeiting of U.S. currency, as one-third of the currency then in circulation was counterfeit following the U.S. Civil War.<sup>6</sup> The Secret Service only received their more well-known tasking of protecting the President of the United States (POTUS) following the assassination of President McKinley in 1901.<sup>7</sup>

The most recent restructuring of federal law enforcement came in the wake of 9/11, with the forming of the United States Department of Homeland Security (DHS), which combined twenty-two different federal departments and agencies, in whole or in part, to create a unified, more effective, integrated Department.<sup>8</sup> The events of 9/11 taught that interagency co-operation and communication were lacking. The following federal law enforcement agencies would become part of DHS: US Customs Service, Immigration and Naturalization Service, Federal Protective Service (FPS), Transportation Security Administration (TSA), part of the Animal and Plant Health Inspection Service, FBI (two offices moved under DHS control, U.S. Coast Guard Investigative Service (CGIS), and USSS).<sup>9</sup> With this reorganization, agency missions and tasking were divided to create new agencies to increase efficiency in collaboration and coordination. The

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<sup>5</sup> United States Postal Inspection Service, *History of the U.S. Postal Inspection Service*, Video (YouTube, 2020), <https://youtu.be/nfCUuIsnFBQ>.

<sup>6</sup> United States Secret Service, “150+ years of history,” <https://www.secretservice.gov/about/history/150-years>.

<sup>7</sup> Ibid.

<sup>8</sup> United States Department of Homeland Security, “Creation of the Department of Homeland Security,” <https://www.dhs.gov/creation-department-homeland-security>.

<sup>9</sup> United States Department of Homeland Security, “Who joined DHS,” <https://www.dhs.gov/who-joined-dhs>.

new agencies created included: U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE).<sup>10</sup>

### **History of the Problems within Federal Law Enforcement in the United States**

The history of problems, including corruption and violations of constitutional rights, within Federal Law Enforcement in the United States is extensive, and no agency is free from the stain of it. However, not all federal agencies are equally stained. The abuses committed by federal agencies cannot be addressed without addressing one Congress mandated in 1850. The Compromise of 1850 was a series of bills passed predominantly to deal with the issue of slavery. The five statutes that complete the Compromise<sup>11</sup> include:

- An act resolving territorial disputes between Texas and others and the creation of the Territory of New Mexico
- An act adding California as a State
- An act creating the Territory of Utah
- An act prohibiting slavery within the District of Columbia
- An act amending the Fugitive Slave Act of 1793 to make it stricter.

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<sup>10</sup> DHS, "Who joined DHS."

<sup>11</sup> An Act proposing to the State of Texas the Establishment of her Northern and Western Boundaries, the Relinquishment by the said State of all Territory claimed by her exterior to said boundaries, and of all her Claims upon the United States, and to establish a territorial Government for New Mexico, *US Statutes at Large* 9, sec. 49,446-52 (1850); An Act for the admission of the State of California into the Union, *US Statutes at Large* 9, ch. 50,452 (1850); An Act to establish a Territorial Government for Utah, *US Statutes at Large* 9, ch. 51,453 (1850); An Act to suppress the Slave Trade in the District of Columbia, *US Statutes at Large* 9, ch. 63,467 (1850); An Act to amend, and supplementary to, the Act entitled "An Act respecting Fugitives from Justice, and Persons escaping from the Service of their Masters," approved February twelfth, one thousand seven hundred and ninety-three, Public Law 31-60, 31<sup>st</sup> Cong. *US Statutes at Large* 9, ch. 63,467 (1850, repealed June 28, 1864).

With the establishment of the Fugitive Slave Act of 1850, U.S. Marshals were required by this Act<sup>12</sup> and the U.S. Constitution<sup>13</sup> to return enslaved people fleeing to the North, which had abolished slavery, to their masters in the South. However, despite any personal issues with the law, U.S. Marshals upheld it rather than violate it and the Constitution.<sup>14</sup>

### **Watergate**

In 1972, the campaign to re-elect President Nixon illegally wiretapped the Democratic National Congress at the Watergate Hotel. This later would become known as the Watergate scandal. The whole affair was orchestrated by a former FBI agent, G. Gordon Liddy, and then CIA agents, with collaboration from other former and then serving FBI agents. This included acting FBI Director L. Patrick Gray, who improperly passed FBI FD-302 interview reports connected to Watergate to then-White House Counsel John Dean.<sup>15</sup> Additionally, Gray would later go on to destroy evidence related to the investigation.<sup>16</sup> The Watergate tapes also made clear that there was an attempt by the head of the FBI to silence the investigation at the direction

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<sup>12</sup> Fugitive Slave Act of 1850, sec. 5,467.

<sup>13</sup> “No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.” US Constitution, art. 4, sec. 2, cl. 3.

<sup>14</sup> U.S. Marshals Service, “The Constitutional Imperative,” <https://www.usmarshals.gov/who-we-are/about-us/history/historical-reading-room/constitutional-imperative>.

<sup>15</sup> Ronald Kessler, *The Secrets of the FBI* (New York: Forum Books, 2011), 53, eBook Collection (EBSCOhost).

<sup>16</sup> Ibid.

of President Nixon.<sup>17</sup> Over 40 government officials were indicted on charges including conspiracy, obstruction of justice, and perjury.<sup>18</sup>

### **Civil Rights Era**

In the late 1950s, segregationists in the Southern United States began using a litany of race-related laws to prosecute civil rights activists.<sup>19</sup> Examples include Alabama attempting to prosecute Martin Luther King, Jr. on “tax evasion and perjury related to his taxes”<sup>20</sup> and Virginia targeting the NAACP under the façade of enforcing legal ethics requirements.<sup>21</sup>

Additionally, the Church Commission uncovered that Federal Law Enforcement agencies, most notably the FBI, attempted to disrupt the civil rights movement and violate civil liberties under the color of the law, contrary to Chapter 13 of Title 18 of the U.S. Code.<sup>22</sup> This was accomplished through their Counterintelligence Program or COINTELPRO. COINTELPRO referred to the counterintelligence program between 1956-1971 and represented a series of covert and illegal projects actively conducted by the FBI aimed at surveilling, infiltrating, discrediting, and disrupting domestic American political organizations.<sup>23</sup> This program predominantly

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<sup>17</sup> President Richard Nixon, conversation with Harry R. Haldeman, Conversation No. 741-2, White House Oval Office, June 23, 1972.

<sup>18</sup> Kessler, *Secrets of the FBI*, 54.

<sup>19</sup> Christopher W. Schmidt, "*New York Times v. Sullivan* and the Legal Attack on the Civil Rights Movement," *Alabama Law Review* 66, no. 2 (2014) 293, 295.

<sup>20</sup> Schmidt, "*Sullivan* and the Civil Rights Movement," 302.

<sup>21</sup> *NAACP v. Button*, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963).

<sup>22</sup> Offenses under Title 18, Chapter 13 of the U.S. Code include § 241 - Conspiracy against rights, and § 242 - Deprivation of rights under color of law. Punishments under these sections vary, according to the harm that befalls the victim of unconstitutional, governmental overreach.

<sup>23</sup> Select Committee on Intelligence, Book III - Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans, 94th Cong., 2d sess., 1976, S. Rep. 94-755, 1-78.

targeted “subversive” groups, including the NAACP, the KKK, and sovereign citizen organizations.

### Gun Control Issues

The “individual rights” theory of the right to keep and bear arms (RTKBA) predates the American founding as a right belonging to Englishmen enumerated within the English Constitution, specifically within the *Bill of Rights* (1688).<sup>24</sup> In fact, English constitutional law, and laws by royal decree, like the *Assize of Arms* (1181 & 1253),<sup>25</sup> made it a duty to be armed.<sup>26</sup> The rulings in *Heller*,<sup>27</sup> *McDonald v. City of Chicago*,<sup>28</sup> and the latest case of *New York State Rifle & Pistol Association (NYSRPA) v. Bruen*<sup>29</sup> have made it clear that the Supreme Court of the United States of America (SCOTUS) holds that the RTKBA is an individual right and that any restriction must “affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.”<sup>30</sup>

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<sup>24</sup> “That the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law.” Bill of Rights, 1688, 1 W. & M. sess. 2, ch.2. See also “Since only slightly over one percent of the population was then Catholic, this amounted to a general right to own arms applicable to virtually all Englishmen.” David T. Hardy, “Historical Bases of the Right to Keep and Bear Arms,” in Subcommittee on the Constitution of the Select Committee on the Judiciary, *The Right to Keep and Bear Arms*, 97th Cong., 2nd sess, 1982, 45-67.

<sup>25</sup> William Weir, *A Well Regulated Militia* (Hamden, CT: Archon Books, 1997), 5, <https://archive.org/details/wellregulatedmil0000weir/mode/2up>. See also William Blackstone, *Commentaries on the Laws of England in Four Books*, vol. 1 *Books I & II*, ed. George Sharswood (Philadelphia: J. B. Lippincott, 1753), chap. 13, sec. 551. Online Library of Liberty, <https://oll.libertyfund.org/title/sharswood-commentaries-on-the-laws-of-england-in-four-books-vol-1>. See also John J. Bagley & Peter B. Rowley, *A Documentary History of England*, vol. 1, *1066-1540* (Harmondsworth, UK: Penguin Books), 155-56.

<sup>26</sup> Bagley & Rowley, *Documentary History of England 1066-1540*, 155-56.

<sup>27</sup> *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

<sup>28</sup> *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010).

<sup>29</sup> *New York State Rifle & Pistol Assn, Inc. v. Bruen*, 142 S. Ct. 2111, 597 U.S. \_\_\_, 213 L. Ed. 2d 387 (2022).

<sup>30</sup> *Bruen*, 2127.

SCOTUS has made clear that the regulation that will be considered part of the historical tradition will primarily cover the period between the ratification of Amendments II<sup>31</sup> and XIV<sup>32</sup> of the U.S Constitution, with lesser consideration given to any regulations prior to the ratification of Amendment II of the U.S. Constitution. Regulation after the ratification of Amendment XIV will not be considered part of the historical tradition, especially since the introduction of those regulations was characterized by racist intent. Colion Noir, an African American attorney and gun rights activist, has evidenced that the gun control movement “evolved from Slave Codes that banned slaves from owning weapons before the Civil War to Black Codes that targeted freed slaves for disarmament to today’s gun control measures that leave...inner-city residents [as a whole] vulnerable to criminal[s].”<sup>33</sup> Under this doctrine, most, if not all, regulation by the government on the RTKBA violates Amendment II of the U.S. Constitution.

However, the agency responsible for enforcing firearms legislation, the Bureau for Alcohol, Tobacco, Firearms, and Explosives (BATFE), is one of the most prolific violators of civil liberties and requires drastic reform. One of this Agency’s biggest failures was the Waco Siege. In 1992, a group of Branch Davidians, a fringe Seventh-Day Adventist group, was maligned as a cult-to make the federal agents look like heroes.<sup>34</sup> This vilification aided the federal law enforcement agencies in hiding the prior attempts by Davidian leader David Koresh to comply with the law. During a visit by ATF agent Davy Aguilera to Henry McMahon, who

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<sup>31</sup> US Constitution, amend 2.

<sup>32</sup> US Constitution, amend 14, sec. 2.

<sup>33</sup> Colion, Noir “How & why gun control is racist,” August 10, 2020, video, 1:20. <https://youtu.be/0fZYxsaY91Q>.

<sup>34</sup> James Bovard, "Gun Crackdowns have Already Led to too Many Federal Abuses," *The Hill*, March 7, 2018.

supplied firearms to the Davidians, McMahon suggested that the Davidians were illegally converting semi-automatic firearms to fully automatic.<sup>35</sup> Upon hearing of the allegation, Koresh invited Aguilera to visit the Davidian's residence and conduct an inspection, which he refused to do.<sup>36</sup> In fact, the later congressional report into the investigation by ATF stated that Aguilera's affidavit application "contained an incredible number of false statements."<sup>37</sup>

The congressional report goes even further, finding the ATF's handling of the investigation "was grossly incompetent...[and]... lacked the minimum professionalism expected of a federal law enforcement agency."<sup>38</sup> Prior to the ATF's assault, they alerted the media that they expected to seize an enormous cache of weapons so they could boost publicity,<sup>39</sup> and they chose a dynamic-entry approach for the same reason.<sup>40</sup> After the raid failed, leaving six Davidians and four ATF Agents dead, the ATF lied, saying their agents had been ambushed.<sup>41</sup> The ATF would later halt a shooting review so as not to create evidence for the defense after ATF Agent admitted to superiors that the ATF started shooting first.<sup>42</sup> This false 'ambush'

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<sup>35</sup> Select Committee on Government Reform and Oversight, Investigation into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians, 104<sup>th</sup> Cong., 2d sess., 1996, HR Rep. 104-749, pt.2, 10.

<sup>36</sup> Select Committee, WACO Investigation, 10.

<sup>37</sup> Select Committee, WACO Investigation, 3.

<sup>38</sup> Select Committee, WACO Investigation, 13.

<sup>39</sup> Richard Gid Powers, *Broken: The Troubled Past and Uncertain Future of the FBI* (New York: Free Press, 2004), 376.

<sup>40</sup> Select Committee, WACO Investigation, 15.

<sup>41</sup> Bovard, "Gun Crackdowns Led to Many Federal Abuses," *The Hill*, March 7, 2018.

<sup>42</sup> Hearing before the Select Committee of the Judiciary, Investigation into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians, evening session, 104<sup>th</sup> Cong., 2d sess., July 20, 1995, 62. <https://web.archive.org/web/20190928055508/https://digital.library.txstate.edu/bitstream/handle/10877/1874/423.pdf>.



narrative would lead the FBI to act more punitively with the Davidians over the subsequent 51-day siege.<sup>43</sup>

Another ATF blunder would be the Fast and Furious Scandal. During the Obama administration, then-Attorney General Eric Holder authorized the release of firearms by the ATF to allow them to be trafficked into Mexico, thereby allowing the tracking of these firearms through cartel hands. However, the ATF lost track of the firearms, resulting in their misuse, and leading to thousands of deaths.<sup>44</sup>

However, what is even more alarming is the attitude of ATF officers concerning the possession of firearms in general. In the case of *Staples v. United States*, a man was convicted of possessing an AR-15 rifle that was unlawfully capable of firing as a fully automatic. The ATF Agents discovered they could utilize Staple's AR-15 as an automatic firearm without significant modification.<sup>45</sup> However, the owner was unaware of this capability and had never used it.<sup>46</sup> Attorneys for the Justice Department even stated that "one would hardly be surprised to learn that owning a gun is not an innocent act."<sup>47</sup> Justice Thomas, in his opinion, overturned Staples's conviction and rebuked the U.S. Government for forgoing the need to prove "guilty intent ... [so as] to ease the prosecution's path to conviction."<sup>48</sup>

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<sup>43</sup> Tim Lynch, *No Confidence: An Unofficial Account of the Waco Incident* (Washington DC: CATO Institute, 2001), Policy Analysis No. 395.

<sup>44</sup> Ken Ellingwood, Richard A. Serrano & Tracy Wilkinson, "Mexico Still Waiting for Answers on Fast and Furious Gun Program," *Los Angeles Times*, September 19, 2011.

<sup>45</sup> *Staples v. United States*, 511 U.S. 600 (1994).

<sup>46</sup> *Staples*, 603.

<sup>47</sup> *Staples*, 609 citing *United States v. Freed*, 401 U.S. 601, 609 (1971) where "a gun" is substituted with "hand grenades."

<sup>48</sup> *Staples*, 615.

Another alarming fact is that there is no separation of powers regarding the ATF. They set the standards for what is and is not permitted under the law by their interpretation of the National Firearms Act and the Gun Control Act and then enforce those standards. This clearly violates the separation of legislative and executive actions of government. *Guedes v. BATFE* (2019) allowed for a federal ban on bump stocks, which falsely asserted that bump stocks effectively enable semi-automatics to be operated similarly to automatic firearms to go into force.<sup>49</sup> Interestingly, the *Guedes* decision cited “Chevron deference,” which allows agencies to create rules and regulations that they enforce administratively.<sup>50</sup> The ATF has, since this ruling, decided that pistol-stabilizing braces on AR pistols allow for them to be shot from the shoulder and are, therefore, short-barreled rifles (SBR), subject to ATF regulation, where they had previously advised that these braces did not magically turn a pistol into an SBR. However, SCOTUS ruled in *West Virginia v. E.P.A* (2022) that agencies may only do this if Congress has delegated them regulatory authority.<sup>51</sup> Following the ruling in *West Virginia v. EPA* (2022), cases argued in both the Fifth and Sixth Circuit Courts of Appeal ruled that the ATF rules relating to bump stocks were not entitled to Chevron deference<sup>52</sup> meaning that the precedent of *Guedes* is likely to be overturned.

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<sup>49</sup> *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1 (D.C. Cir. 2019).

<sup>50</sup> *Guedes*, 4.

<sup>51</sup> *W. Virginia v. Env't Prot. Agency*, 213 L. Ed. 2d 896, 142 S. Ct. 2587 (2022)

<sup>52</sup> *Cargill v. Garland*, 57 F.4th 447 (5th Cir. 2023) and *Gun Owners of Am., Inc. v. Garland*, 992 F.3d 446 (6th Cir. 2021).

## Stealth Authoritarianism of the Obama Presidency

### *The Nature of Stealth Authoritarianism*

Ozan Varol coined stealth authoritarianism to describe emerging “more subtle, mechanisms of authoritarian control that rely on the same legal rules that exist in regimes with favorable democratic credentials.”<sup>53</sup> Stealth authoritarianism is an approach “to protect and entrench power when direct repression is not a viable option,”<sup>54</sup> such as in the United States’ constitutional republic. The aim is to create a de facto one-party state, also known as a dominant-party state, with the illusion of representation.<sup>55</sup> Varol lists six mechanisms that are primarily used to institute stealth authoritarianism:

- The use of judicial review to consolidate power.
- The use of libel lawsuits against dissidents to create a culture of self-censorship.
- The adoption of [favorable] electoral laws.
- The use of non-political crimes, such as laws criminalizing tax evasion or embezzlement, to prosecute political dissidents.
- The use of internationally backed surveillance laws and institutions to extort or discredit political dissidents.
- The enactment of democratic reforms and the use of rule-of-law rhetoric to shape perceptions and deflect attention from anti-democratic practices<sup>56</sup>

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<sup>53</sup> Ozan O. Varol, "Stealth Authoritarianism," *Iowa Law Review* 100, no. 4 (2015): 1678.

<sup>54</sup> *Ibid.*

<sup>55</sup> A one-party state is a regime where no political opposition exists and a dominant-party state refers to a regime where a single, dominant party governs subject to political opposition. Axel Hadenius and Jan Teorell, "Pathways from Authoritarianism," *Journal of Democracy* 18, no. 1 (2007) 147-148.

<sup>56</sup> Varol, "Stealth Authoritarianism," 1686-7.

### *The Obama Presidency*

In his 1765 Dissertation on the Canon and Feudal Law, John Adams states, "liberty cannot be preserved without a general knowledge among the people, who have a right...and a desire to know ... the characters and conduct of their rulers."<sup>57</sup> To that end, the media, and other such entities, are supposed to act as a watchdog, which used to be the case. However, with more recent practices of stealth authoritarianism, there has been no watchdog, mainly due to the incestuous relationship between the Obama Administration and the media.<sup>58</sup>

**IRS Conducting Targeted Audits.** In the run-up to the 2012 midterms, the Internal Revenue Service selectively targeted conservative organizations, including the Tea Party Movement, for increased scrutiny under the guise of enforcing the tax laws.<sup>59</sup> This was to preoccupy them with tax audits rather than to compete in an election effectively. Even following an investigation and an admonition by the Treasury Inspector General for Tax Administration (TIGTA), similar practices were continued throughout the Obama Presidency, with unequal treatment in the processing of applications for tax-exempt status under 26 U.S.C.S. 501(c)(3) and (4) by applicants whose names might suggest "certain political orientations."<sup>60</sup>

**Hillary Clinton's Laptop.** During her tenure as the 67<sup>th</sup> United States Secretary of State, Hillary Clinton used a private and insecure e-mail server to conduct government business

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<sup>57</sup> John Adams, "A Dissertation on the Canon and Feudal Law (1765)," in *The Revolutionary Writings of John Adams*, ed. C. Bradley Thompson, Illustrated ed. (Liberty Fund, 2001), 20-35.

<sup>58</sup> Paul Farhi, "Media, Administration Deal with Conflicts," *The Washington Post*, Jun 12, 2013.

<sup>59</sup> Treasury Inspector General for Tax Administration, [TIGTA], *Inappropriate Criteria were used to Identify Tax-Exempt Applications for Review* (Washington, D.C. [2013]).

<sup>60</sup> For certain read conservative or Republican. *True the Vote, Inc. v. IRS*, 831 F.3d 551 (2016), in LexisNexis Academic <https://advance-lexis-com.eu1.proxy.openathens.net/api/permalink/b9392659-8990-48c8-8672-72b55471e1e3/?context=1516831> (accessed November 11, 2022).

(including using classified material) in direct contravention of national security legislation.<sup>61</sup>

This included e-mails with then-President Obama on multiple occasions, including on July 1, 2012, when Secretary Clinton was in Russia.<sup>62</sup>

Then-FBI Director James Comey's response to this was, without the approval of Attorney General Loretta Lynch, to give a press conference admonishing Clinton for her actions but stating that no legal action would be taken, and the investigation closed as intent to mishandle classified material was needed to prove a crime.<sup>63</sup> However, intent is not a prerequisite for the prosecution of these crimes. On October 28, 2016, Director Comey informed Congress that the investigation was reopened due to connections with Anthony Weiner's laptop, which was also under federal investigation.<sup>64</sup> Hacked e-mails, which may or may not have been forged, were released stating that the investigation into Clinton would be squashed, which seems likely as AG Lynch was seen having a private tarmac meeting with President Bill Clinton on June 27.<sup>65</sup> Mere days before the general election, Comey closed the Clinton investigation on November 6.<sup>66</sup>

The issue of the laptop became a talking point during the 2016 election. The presidential campaign of Donald J. Trump, who was challenging Hillary Clinton for the presidency, was calling for due process to be followed, with an investigation and charges for mishandling of

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<sup>61</sup> Pollock, *Ethical Dilemmas and Decisions in Criminal Justice*, 236.

<sup>62</sup> Dan Bongino and Denise C. McAllister, *Spygate: The Attempted Sabotage of Donald J. Trump*, ed. Matt Palumbo (Nashville, TN: Post Hill Press, 2018), 197.

<sup>63</sup> Pollock, *Ethical Dilemmas and Decisions in Criminal Justice*, 235.

<sup>64</sup> *Ibid.*

<sup>65</sup> Bongino, *Spygate: The Attempted Sabotage of Donald J. Trump*, 200-1.

<sup>66</sup> Pollock, *Ethical Dilemmas and Decisions in Criminal Justice*, 236; See also Bongino, *Spygate*, 203.

classified material. This material had ended up in the hands of enemies of the U.S.<sup>67</sup> and the Clinton campaign engineered for the intelligence apparatus of the United States to be turned against Donald Trump, creating the Spycgate conspiracy of Russian collusion.

While the political aims of the Obama administration to seek to continue control of the executive branch by its party, the Democratic party, are clear, what is not clear is the motivations of our intelligence and law enforcement agencies to go along with such actions they knew to be unwarranted, or, in the case of Hillary Clinton's criminal acts,<sup>68</sup> to turn a blind eye to them. To understand this, one must realize that people with their own political proclivities run these agencies. While we may stipulate that they must be apolitical in conducting their duties, political beliefs are as important to people as their religious beliefs. Requiring someone to act in a way that is not in accordance with their religious beliefs is protected against under the free exercise clause of Amendment I of the U.S. Constitution.<sup>69</sup> However, even this protection does not allow an individual to act criminally, as we have seen with the politically motivated actions of senior members of these agencies.

### **Spygate**

Conducting intelligence operations on political opponents is the hallmark of an authoritarian regime. Stealth authoritarianism is an approach where governments use the legitimate mechanisms of government, such as criminal investigations and legislative and

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<sup>67</sup> Senate Committee on the Judiciary, Chairman Graham Releases Information from DNI Ratcliffe on FBI's Handling of Crossfire Hurricane, 117th Cong., 2<sup>nd</sup> sess., September 29, 2020.

<sup>68</sup> Federal Bureau of Investigation, Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal E-Mail System, July 5, 2016.

<sup>69</sup> "The Free Exercise Clause protects citizens' right to practice their religion as they please, so long as the practice does not run afoul of a "public morals" or a "compelling" governmental interest." "First Amendment and Religion," United States Courts, accessed November 27, 2022. See also US Constitution, amend. 1.

judicial hearings, to give their actions the patina of legitimacy, while the reality is that their actions amount to criminal abuse of power for political ends. This all together makes such activity challenging to prosecute as the court of public opinion is divided with supporters of the corrupt regime viewing their actions as the legitimate work of government. In contrast, the challengers' supporters rightly view it as systemic corruption. This happened with the *Crossfire* investigations into Donald Trump's 2016 presidential campaign: *Dragon*, *Typhoon*, *Razor*, *Fury*, *Hurricane*,<sup>70</sup> and others. The Federal Bureau of Investigation (FBI) knew there was no "justifiable reason"<sup>71</sup> to begin these investigations and knew this was nothing more than an opposition conspiracy fabricated by the Clinton campaign.<sup>72</sup> This investigation was conducted at the highest levels of the FBI, with direction from the White House.

Comey confirmed the existence of an investigation into the Trump campaign in March 2017. However, the FBI had tried to get a FISA warrant in mid-June of 2016 but were denied for lack of a case, and they officially opened the case in late July 2016. Comey also denied claims that President Obama ordered the wiretapping of Donald Trump.<sup>73</sup> However, given the political basis for the investigation into President Trump, the fact that Obama for America was paying Perkins Coie for legal services while Perkins Coie was funding Fusion GPS's operations against

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<sup>70</sup> *Crossfire Dragon* was the FBI investigation into Carter Page. *Crossfire Typhoon* was the FBI investigation into George Papadopoulos. *Crossfire Razor* was the FBI investigation into Lt. Gen. Michael T. Flynn USA (Retd.). *Crossfire Fury* was the FBI investigation into Paul Manafort. *Crossfire Hurricane* was the FBI investigation into President Donald J. Trump.

<sup>71</sup> Kevin R. Brock, "New FBI Document Confirms the Trump Campaign was Investigated without Justification," *The Hill*, May 27, 2020.

<sup>72</sup> Senator Grassley of Iowa speaking regarding the Russia Investigation, *Cong. Rec.*, 117<sup>th</sup> Cong, 2<sup>nd</sup> sess., 2020, Vol. 168, no. 90: S2647-8.

<sup>73</sup> Pollock, *Ethical Dilemmas and Decisions in Criminal Justice*, 236.

the Trump campaign,<sup>74</sup> and the deception related to the existence of the investigations, the credence of Barack Obama, Hillary Clinton (or both) directing the investigation is high.

Additionally, the FBI clearly both had no case and has severe problems.<sup>75</sup> This is proven by the fact that very senior FBI attorneys like Kevin Clinesmith were convicted of doctoring evidence to refute, rather than confirm, the fact that Cater Page was working on behalf of the United States, just so there was justification to spy on Page.

### ***Criminal Actions of Federal Agencies Related to the Crossfire Investigations***

**Durham Special Investigation.** On May 13, 2019, then-Attorney General William Barr appointed United States Attorney John Durham to conduct a preliminary review of matters related to the 2016 presidential election campaigns.<sup>76</sup> Subsequent to that review, a criminal investigation became necessary, which continues while this paper is being written. With the looming general election of 2020, it became necessary for AG Barr to appoint Durham with order 4878-2020 as Special Counsel for the Department of Justice to investigate

whether any federal official, employee, or any other person or entity violated the law in connection with the intelligence, counter-intelligence, or law-enforcement activities directed at the 2016 presidential campaigns, individuals associated with those campaigns, and individuals associated with the administration of President Donald J. Trump, including but not limited to Crossfire Hurricane and the investigation of Special Counsel Robert S. Mueller, III.<sup>77</sup>

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<sup>74</sup> “April 12 – Marc Elias, a lawyer for Perkins Coie representing the Clinton campaign and DNC, retains Fusion GPS...April 19 – The DNC pays a six-figure expense to Perkins Coie. April 25 – Obama for America begins paying Perkins Coie.” Bongino, *Spygate*, 199.

<sup>75</sup> Josh Gerstein, “Ex-FBI lawyer spared prison for altering Trump-Russia probe email,” *Politico*, January 29, 2021.

<sup>76</sup> Attorney General, Order, “Appointment of special counsel to investigate matters related to intelligence activities and investigations arising out of the 2016 presidential campaigns, Order 4878-2020,” Special Counsel’s Office (October 19, 2020): 1.

<sup>77</sup> AG, “Order 4878-2020,” 1-2.



Special counsels are appointed to ensure independence in the investigation, especially when there is the potential of a conflict of interest, perceived or legitimate, within the ordinary prosecuting authority.<sup>78</sup> As current members of agencies and the government were under the microscope, it necessitated the appointment of a special counsel. Additionally, the special counsel decides when an investigation will terminate, with or without formal charges being pursued, pursuant to Title 28, and the investigation is customarily concluded with the issuance of a final report.<sup>79</sup> While a special counsel may be disciplined or removed by the AG, and only the AG, for cause, namely misconduct, dereliction of duty, incapacity, or conflict of interest,<sup>80</sup> it is not politically expedient to do so. If Congress were even to suspect that such a dismissal was not warranted, it would likely trigger impeachment proceedings against the AG. As members of the Biden Administration were also members of the Obama Administration, which was suspected of wrongdoing by this investigation, a special counsel protects against the termination of a politically damaging investigation by the current administration. To date, only three individuals have been charged by the Durham investigation, and only one of those has been convicted.

**Michael Sussmann.** Sussmann was charged with one count of making a false statement to the FBI contrary to Title 18 of the U.S. Code<sup>81</sup> during his meeting with then-FBI General Counsel James Baker on September 19, 2016. In this meeting, he produced information alleging a covert communications channel between the Trump Organization and Russia's Alfa Bank. The charges relate to Sussman's statements that he was providing the information on his own behalf,

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<sup>78</sup> U.S. National Archives and Records Administration, Office of the Federal Register, "Office of Special Counsel," *Federal Register* 64, no. 131 (9 July 1999): 37038.

<sup>79</sup> U.S. NARA, "Office of Special Counsel," 37043.

<sup>80</sup> U.S. NARA, "Office of Special Counsel," 37043.

<sup>81</sup> False Statements Accountability Act, *U.S. Code*, tit. 18, sec. 1001(a) (1996).

not on behalf of a client or company, when he was, in fact, working for both Hillary Clinton's presidential campaign and technology executive Rodney Joffe.<sup>82</sup> However, a jury, which can objectively be viewed as tainted, unanimously found him not guilty.<sup>83</sup>

**Igor Danchenko.** Danchenko was charged with five counts of making a false statement to the FBI contrary to Title 18 of the U.S. Code.<sup>84</sup> It was alleged that he<sup>85</sup>:

1. Lied to the FBI on June 15, 2017, regarding communications with Charles Dolan Jr., a senior Democrat Party operative and executive at the public relations firm kglobal, related to the Fusion GPS/Steele Dossier.<sup>86</sup>
2. Lied to the FBI on March 16, 2017, stating he had received a phone call and agreed to meet with Sergei Millian, confirming the existence of a well-developed "conspiracy of co-operation" between the Trump Campaign and Russian officials.<sup>87</sup>
3. Repeated the lie of March 16, 2017, that he made to the FBI on March 18, 2017.<sup>88</sup>
4. Lied to the FBI on November 16, 2017, stating he had spoken with Sergei Millian on the telephone.<sup>89</sup>

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<sup>82</sup> Brooke Singman, Jake Gibson, and David Spunt, "Michael Sussmann found not guilty of charge brought by Special Prosecutor John Durham," *FOX News*, last modified May 31, accessed November 27, 2022.

<sup>83</sup> Singman, Gibson and Spunt, "Michael Sussmann found not guilty," 31 May 2022.

<sup>84</sup> False Statements Accountability Act, *U.S. Code*, tit. 18, sec. 1001(a) (1996).

<sup>85</sup> Grand Jury Indictment in *US v Danchenko*, E. Va, 1:21-cr-00245-AJT (Nov 3, 2021): 3-4, 7-10, 37, see also Samuel Chamberlain, "Longtime Clinton crony takes center stage in latest Durham indictment," *New York Post*, last modified November 5, 2021, accessed November 27, 2022.

<sup>86</sup> Grand Jury Indictment in *US v Danchenko*, E. Va, 1:21-cr-00245-AJT (Nov 3, 2021): 4-7, 37, see also Kelly Hooper, "Danchenko trial opens, expected to be last of prosecutor's probe into origins of Trump-Russia investigation," *Politico*, October 11, 2022.

<sup>87</sup> Grand Jury Indictment in *US v Danchenko*, E. Va, 1:21-cr-00245-AJT (Nov 3, 2021): 4-7, 38, see also Kelly Hooper, "Danchenko trial opens, expected to be last of prosecutor's probe into origins of Trump-Russia investigation," *Politico*, October 11, 2022.

<sup>88</sup> *Ibid.*

<sup>89</sup> Grand Jury Indictment in *US v Danchenko*, E. Va, 1:21-cr-00245-AJT (Nov 3, 2021): 4-7, 39, see also Kelly Hooper, "Danchenko trial opens, expected to be last of prosecutor's probe into origins of Trump-Russia investigation," *Politico*, October 11, 2022.

5. Continued to lie to the FBI on October 24, 2017 about having spoken with Sergei Millian multiple times on the telephone.<sup>90</sup>

A jury acquitted Danchenko of all charges.<sup>91</sup>

**Kevin Clinesmith.** Clinesmith is the only person to have been convicted for his part in the *Crossfire* investigations, and he pleaded guilty to the charges. Clinesmith was working as an FBI attorney on the *Crossfire* investigation. As part of the checks and balances required, Clinesmith contacted the Central Intelligence Agency to confirm that Carter Page was not a CIA source for Russia.<sup>92</sup> The CIA e-mailed back, confirming that Carter Page was indeed a source and made contacts with Russian entities on behalf of the agency.<sup>93</sup> Clinesmith doctored that e-mail to read that he was not a CIA source to legitimize a request for surveillance to the FISA court. In his defense, he claimed he was merely taking “an inappropriate shortcut” to save himself some additional checks and balances.<sup>94</sup> Clinesmith was charged with one count of making a false document contrary to Title 18 of the U.S. Code.<sup>95</sup>

Clinesmith was awarded 12 months of probation and 400 hours of community service.<sup>96</sup> Following a review by the D.C. Bar, Kevin Clinesmith was awarded a 1-year suspension from

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<sup>90</sup> Grand Jury Indictment in *US v Danchenko*, E. Va, 1:21-cr-00245-AJT (Nov 3, 2021. 4-7, 37

<sup>91</sup> Josh Gerstein, “Durham loses again in court, but trial airs FBI flaws,” *Politico*, October 18, 2022.

<sup>92</sup> Josh Gerstein, “Ex-FBI lawyer spared prison for altering Trump-Russia probe email,” *Politico*, January 29, 2021.

<sup>93</sup> *Ibid.*

<sup>94</sup> Gerstein, “Ex-FBI lawyer spared prison.”

<sup>95</sup> False Statements Accountability Act, *U.S. Code*, tit. 18, sec. 1001(c) (1996).

<sup>96</sup> Gerstein, “Ex-FBI lawyer spared prison.”

practicing law, despite a serious felony conviction relating to ethical behavior.<sup>97</sup> To even the casual observer, Clinesmith seems to have been given the proverbial slap-on-the-wrist rather than receiving a proportionate punishment for his crimes.

**Additional Crimes and their Perpetrators.** While the Durham investigation has not wrapped up, we know that, despite the evidence, they have been unable to obtain convictions and, when they have, failed to get satisfactory sentences. The problem seems to rest on the fact that the political proclivities in the vicinity of the courts where they try the cases (in the District of Columbia) overwhelmingly lean Democrat, oppose the wronged parties, and are the neighbors, colleagues, and acquaintances of the accused. For example, the District of Columbia (D+91) in 2020 voted 93 percent for Joe Biden for the presidency<sup>98</sup> compared to the solid-blue state of California (D+32), which voted 63.5 percent for the Democrat president.<sup>99</sup>

However, who would be liable for prosecution if we were to see further charges? As the Clinton campaign knowingly passed false information to the FBI relating to Russian collusion, with the full consent and knowledge of Hillary Clinton, she and her campaign members should be charged with conspiring to commit the felony of providing false information to the FBI.<sup>100</sup> This would amount to two sentences of up to five years, totaling a maximum of ten years.

What of the government officials who knew from the start that this was nonsense the Clinton campaign and other opposition groups concocted? As this constituted electoral

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<sup>97</sup> District of Columbia Court of Appeals, Board on Professional Responsibility, Hearing Committee Number 4, “In re. Kevin E. Clinesmith,” Board Docket No. 21-ND-004 (August 11, 2021): 20

<sup>98</sup> “Washington, D.C. Election Results 2020,” *Politico*. Last modified January 6, 2021.

<sup>99</sup> “California Election Results 2020,” *Politico*. Last modified January 6, 2021.

<sup>100</sup> *U.S. Code*, tit. 18, sec. 371 (1948). See also False Statements Accountability Act, *U.S. Code*, tit. 18, sec. 1001(a) (1996).

interference in the campaign and a violation of constitutionally protected liberties such as privacy, the leadership of these agencies and those running the *Crossfire* investigations have made themselves liable for prosecution for three different offenses under Title 18, Chapter 13 of the U.S. Code. These include:

1. 18 U.S. Code § 241 - Conspiracy against rights, which carries a punishment of up to ten years per count,
2. 18 U.S. Code § 242 - Deprivation of rights under color of law, which carries a punishment of up to one year per count, and
3. 18 U.S. Code § 245 - Federally protected activities, which carries a punishment of up to one year per count.

### **Thought Policing and Abolition of Rights under Biden**

#### ***January 6 Prisoners***

On January 6, 2021, at the Save America Rally, then-President Trump said to those assembled: "I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard."<sup>101</sup> Protestors then marched on the Capitol to protest perceived irregularities and fraud in the 2020 General Election. There was an attempt, for political reasons,<sup>102</sup> to try to make out that this was an insurrection however, it failed to meet the definition.<sup>103</sup> Many people were arrested for their actions on January 6; however, their constitutional liberties have not been upheld due to their protest of the Biden Administration.

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<sup>101</sup> Sam Cabral, "Capitol riots: Did Trump's words at rally incite violence?" *BBC News*, February 14, 2021, <https://www.bbc.com/news/world-us-canada-55640437>.

<sup>102</sup> Had it been an insurrection, US Constitution, amend. 14 sec. 3 cl. 1, could have been used to prevent those who engaged in or supported it, including President Trump, to prevent them seeking any form of government office again. This was the failed intent of the partisan January 6 committee.

<sup>103</sup> "An organized and usually violent act of revolt or rebellion against an established government or governing authority of a nation-state or other political entity by a group of its citizens or subjects; also, any act of engaging in such a revolt." Encyclopaedia Britannica, s.v. "Insurrection," accessed February 5, 2023. <https://www.britannica.com/topic/insurrection-politics>.

No matter one's opinion on January 6 prisoners, it is a standing principle of Amendment VIII of the U.S. Constitution that "[p]risoners retain the essence of human dignity inherent in all persons."<sup>104</sup> Specifically, prison officials have an obligation to "provide humane conditions of confinement."<sup>105</sup> Additionally, "punishment is excessive and unconstitutional if it (1) makes no measurable contribution to goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering or two is grossly out of proportion to the severity of the crime."<sup>106</sup>

Representative Marjorie Taylor-Greene, who represents Georgia's 14<sup>th</sup> District, compiled a report into the practices within the federal correctional facilities where the January 6 protestors are being held, based on the eyewitness testimony of herself, her colleagues, and their staff and further investigations Unlawful and concerning practices within these facilities included:

1. DENIAL of access to the chapel and communion without COVID-19 vaccination, with no ability to consider a religious exemption.
2. DENIAL of access to other communal facilities, such as the hairdresser, without COVID-19 vaccination. Forced to use dangerous chemicals to reduce hair length.
3. DENIAL of ability to speak to an attorney, and when granted, denied the ability for conversations to be in confidence. Denial of access to the law library.
4. Solitary confinement for up to 23 hours a day. In some cases, this is extended. Compounding this issue is that this is the case whether they were awaiting charges, charged, or convicted.
5. Unjustified beatings by correctional officers.
6. DENIAL of access to medical treatment.

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<sup>104</sup> "Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment." *Brown v. Plata*, 563 U.S. 493, 510 (2011).

<sup>105</sup> "The Constitution 'does not mandate comfortable prisons,' but neither does it permit inhumane ones..." (citing *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981)) *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

<sup>106</sup> *Coker v. Georgia*, 433 U.S. 584, 592 (1977).

7. DENIAL of access to food at times.
8. DENIAL of access to showers and toilets.
9. Facilities are maintained in an unsanitary fashion.<sup>107</sup>

Additional sources show that protestors have also been held without knowing the charges they are facing, were denied bail, or had excessive bail placed upon them.<sup>108</sup>

### ***Conspiracy to Censor with Big Tech***

There has been an erosion of free speech in the United States.<sup>109</sup> While there is no meter to measure this, when journalism and the arts, usually the biggest enactors of ‘cancel culture,’ start voicing their objections to ‘cancel culture,’<sup>110</sup> we are in ‘five-alarm-fire’ territory regarding free speech. The issues relating to free speech are “often dismissed because many are the actions or policies of private actors like Big Tech companies, rather than...state action.” However, following Elon Musk’s takeover of Twitter, evidence has become known showing that, rather than these actions and policies being developed internally within the Big Tech companies, the US Government, including federal law enforcement agencies, most notably the FBI, have been directing these actions and policies. Due to the State Action requirement, to take action against constitutional violations by a private actor, one must demonstrate that the federal government

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<sup>107</sup> Office of Congresswoman Marjorie Taylor Greene (GA-14), “Unusually Cruel: An Eyewitness Report from Inside the DC Jail,” December 7, 2021, 16-19

<sup>108</sup> Robert L. Livingston, “Jan. 6th Detainees Must Receive Due Process,” *The Washington Times* November 10, 2021. <https://www.washingtontimes.com/news/2021/nov/10/jan-6th-detainees-must-receive-due-process/>.

<sup>109</sup> Jonathan Turley, “Harm and Hegemony: The Decline of Free Speech in the United States,” *Harvard Journal of Law & Public Policy* 45, no. 2 (Spring 2022): 573.

<sup>110</sup> Turley, “Harm and Hegemony,” 575.

was responsible rather than the private actor.<sup>111</sup> Elon Musk granted Matt Taibbi, Bari Weiss, and Michael Schellenberger access to Twitter's internal systems.<sup>112</sup> This was so that they could release the material for public consumption.

Twitter Files, part 6, released by Taibbi on December 16, 2022, was so explosive that it sent the FBI into damage control, with an FBI spokesperson denying that it "controlled Twitter"<sup>113</sup> and going on offense by stating:

The men and women of the FBI work every day to protect the American public. It is unfortunate that conspiracy theorists and others are feeding the American public misinformation with the sole purpose of attempting to discredit the agency.<sup>114</sup>

So, what was in those released files? They detailed that the contact between Twitter and the FBI was "constant and pervasive as if it were a subsidiary."<sup>115</sup> Over the course of eleven months in 2022, "there were over 150 e-mails between the FBI and former Twitter Trust and Safety chief Yoel Roth."<sup>116</sup> There were a "surprisingly high number [of] requests by the FBI for Twitter to

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<sup>111</sup> "Although the conduct of private parties lies beyond the Constitution's scope in most instances, governmental authority may dominate an activity to such an extent that its participants must be deemed to act with the authority of the government and, as a result, be subject to constitutional constraints. This is the jurisprudence of state action, which explores the "essential dichotomy" between the private sphere and the public sphere." *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620, 111 S. Ct. 2077, 2082, 114 L. Ed. 2d 660 (1991).

<sup>112</sup>Lindsay Dodgson, "Musk's Media Renegades: The Anti-establishment Writers Including Matt Taibbi and Bari Weiss Chosen for the 'Twitter Files,'" *Insider* December 12, 2022. <https://www.insider.com/journalists-helping-elon-musk-twitter-files-2022-12>.

<sup>113</sup> Jonathan Turley, "When the FBI Attacks its Critics as 'Conspiracy Theorists,' It's Time to Reform the Bureau," *The Hill* December 24, 2022. <https://thehill.com/opinion/judiciary/3787443-when-the-fbi-attacks-its-critics-as-conspiracy-theorists-its-time-to-reform-the-bureau/>.

<sup>114</sup> Turley, "When the FBI Attacks," *The Hill*.

<sup>115</sup> Matt Taibbi (@mtaibbi), "3. Twitter's contact with the FBI was constant and pervasive, as if it were a subsidiary," Twitter, December 16, 2022, 4:00 pm, <https://twitter.com/mtaibbi/status/1603857539178848280>.

<sup>116</sup> Matt Taibbi (@mtaibbi), "4. Between January 2020 and November 2022, there were over 150 emails between the FBI and former Twitter Trust and Safety chief Yoel Roth," Twitter, December 16, 2022, 4:00 pm, <https://twitter.com/mtaibbi/status/1603857541414412304>.



take action on election misinformation, even involving joke tweets from low-follower accounts.”<sup>117</sup>

This was exemplified by internal communications from the FBI’s National Election Command Post to the SF field office, containing a long list of accounts that may warrant additional action,<sup>118</sup> which was promptly forwarded to Twitter,<sup>119</sup> and then actioned by Twitter.<sup>120</sup> This meets the legal standard of “direction to act by a government agency,” making Twitter like a subsidiary or, better yet, as a government agent. These files clear the road for civil action against Twitter and other social media companies for conspiracy against rights contrary to Section 241 of Title 18. To see a small chain of e-mails related to this exchange, see Appendix A.

### ***School Board Protests***

When President Obama nominated him for the late-Associate Justice Antonin Scalia’s seat on SCOTUS, Merrick Garland was considered a highly principled man and beyond political actions. His nomination expired as the Senate refused to consider it, in line with their implied

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<sup>117</sup> Matt Taibbi (@mtaibbi), “6. But a surprisingly high number are requests by the FBI for Twitter to take action on election misinformation, even involving joke tweets from low-follower accounts,” Twitter, December 16, 2022, 4:00 pm, <https://twitter.com/mtaibbi/status/1603857546099449869>.

<sup>118</sup> Matt Taibbi (@mtaibbi), “18. In an internal email from November 5, 2022, the FBI’s National Election Command Post, which compiles and sends on complaints, sent the SF field office a long list of accounts that “may warrant additional action”,” Twitter, December 16, 2022, 4:00 pm, <https://twitter.com/mtaibbi/status/1603857603867598859>. See also Figure 1.

<sup>119</sup> Matt Taibbi (@mtaibbi), “19. Agent Chan passed the list on to his “Twitter folks”,” Twitter, December 16, 2022, 4:00 pm, <https://twitter.com/mtaibbi/status/1603857609118859264>. See also Figure 2.

<sup>120</sup> Matt Taibbi (@mtaibbi), “20. Twitter then replied with its list of actions taken. Note mercy shown to actor Billy Baldwin,” Twitter, December 16, 2022, 4:00 pm, <https://twitter.com/mtaibbi/status/1603857615456534529>. See also Figure 3.

powers to advise and consent.<sup>121</sup> However, following his appointment as the 86<sup>th</sup> Attorney General of the United States, Garland has shown himself to be a highly political actor, oblivious to even the most blatant ethical concerns.

On October 4, 2021, AG Garland weaponized the FBI and U.S. Attorneys' offices to address "criminal conduct directed towards school personnel"<sup>122</sup> and establish a task force to address the issue. What was this criminal conduct? Parents stood up to school board personnel, who were demanding action over what their children were being taught and safety concerns over the environment in which their children were being taught. The key issues were teaching the 1619 project, Critical Race Theory<sup>123</sup> pornographic and age-inappropriate sex and gender-related materials, masks in the classroom, and transgender bathroom policies. Most parents only exercised their first amendment rights and committed no criminal acts. The only known case where a parent was arrested was following a scuffle caused by baiting by trans-activists who were calling his daughter, whom a gender-fluid student had raped, a liar.<sup>124</sup> This amounted to the AG *de facto* designating parents as domestic terrorists. It was later discovered that AG Garland's

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<sup>121</sup> In line with the doctrine of checks and balances, the power to advise and consent to presidential nominations includes the right to not consent and refuse to consider someone outright. US Constitution art. II sec. 2.

<sup>122</sup> U.S. Department of Justice, "Justice Department Addresses Violent Threats Against School Officials and Teachers," 21-960, October 4, 2021, <https://www.justice.gov/opa/pr/justice-department-addresses-violent-threats-against-school-officials-and-teachers>.

<sup>123</sup> Critical Race Theory is a Marxist theory that claims race is a social construct designed to have a class of the oppressors and the oppressed. As society is structured that way, a person is pre-ordained with lesser opportunities and therefore, the entire system needs to be destroyed. Christopher Boosey et al., "Understanding Critical Race Theory in Christian Ethics," (group presentation in CJUS 350 at Liberty University, Lynchburg, VA, December 6, 2022). See also Christopher F. Rufo, "Liberals were losing the argument over critical race theory in schools — time to call in the FBI," *New York Post* October 6, 2021. <https://nypost.com/2021/10/06/liberals-are-losing-crt-in-schools-time-to-call-in-the-fbi/>.

<sup>124</sup> "Loudoun County Schools had a father arrested to cover up his daughter's rape by a skirt-wearing male student in a girls' bathroom," *Standing for Freedom Center* October 13, 2021. <https://www.standingforfreedom.com/2021/10/loudoun-county-schools-had-a-father-arrested-to-cover-up-his-daughters-rape-by-a-skirt-wearing-male-student-in-a-girls-bathroom/>.

son-in-law's job was distributing the same textbooks to the schools the parents were objecting to.<sup>125</sup> AG Garland claimed that this caused no conflict of interest or ethical concerns and refused to have his actions independently reviewed by an ethics panel.<sup>126</sup>

### **Significance of the Problems within Federal Law Enforcement in the United States**

From the evidence exemplified in this paper, while not scratching the surface of the problem, it can be concluded that there is a significant problem with how federal law enforcement agencies are acting and being led, and in contrast with the intentions and desires of the founding generation. In fact, the Constitution only authorizes federal enforcement of three types of laws; counterfeiting of currency, offenses against the Law of Nations (such as piracy), and treason.<sup>127</sup> When we consider the Founders, two who were often at loggerheads on just about everything, Thomas Jefferson and Alexander Hamilton, agreed that law enforcement was best managed at the state level or lower.<sup>128</sup> There are three primary areas where there is a level of justification for federal law enforcement that does not wholly violate the idea of separation of powers between the federal government and the states. These are:

1. Extraterritorial and International law enforcement: This consists of the policing of federal tribal areas, federal property, and D.C., crime relating to our external borders, and cooperation with international law enforcement efforts.
2. Internal Federal law enforcement: This consists of law enforcement upon federal employees, including the military, within the procedures set forth within their

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<sup>125</sup> Callie Patterson, "AG Garland's son-in-law's education company supports critical race theory," *New York Post* Oct 13, 2021. <https://nypost.com/2021/10/13/critical-race-theory-firm-linked-to-ag-garlands-kin-serves-schoolscompany-co-founded-by-ag-garlands-son-in-law-serves-over-20k-schools/>.

<sup>126</sup> The Hill, "Did You Seek an Ethics Opinion? Cruz Fights with Garland Over Son-In-Law's Business," YouTube video, October 27, 2021. <https://youtu.be/edk8d0mJt8o> <https://youtu.be/edk8d0mJt8o>.

<sup>127</sup> David B. Kopel, "17. The Expanding Federal Police Power," in *Cato Handbook for Congress: Policy Recommendations for the 105th Congress*, ed. David Boaz & Edward H. Crane (Washington DC: Cato Institute, 1997), 197-98.

<sup>128</sup> Kopel, "Expanding Federal Police Power," 198.

departments. This includes the facilitation of corrections for those found guilty of federal crimes.

3. Cross-State law enforcement: This consists of law enforcement where crimes and criminal organizations traverse state boundaries. However, States could work together independent of any federal intervention. In this regard, this type of law enforcement should be at the states' consent to provide assistance when requested.

As former Attorney General Edwin Meese put it:

Federal law-enforcement authorities are not as attuned to the priorities and customs of local communities as state and local law enforcement. In the Ruby Ridge tragedy, for example, would the local Idaho authorities have tried to apprehend Weaver in such an aggressive fashion? ... More fundamentally, would Idaho officials have cared about two sawed-off shotguns? In the Waco situation, would the local sheriff's department have stormed the compound, or instead have waited to arrest David Koresh when he ventured into town for supplies, as he did frequently?<sup>129</sup>

### **Founding Principles for Law Enforcement**

As it was a matter that both the federalist and the anti-federalists agreed on, the bedrock principle for law enforcement in the US is that it is best managed at a state or local level.<sup>130</sup>

Police power is reserved for the states<sup>131</sup> as there is no general police power, enumerated or implied, given to the federal government.<sup>132</sup> Article 1, Sections 8-10 enumerate what the federal government is responsible for, may not do (and therefore is for the States), and what the States must not do. By the Constitution, the federal government is given explicit police powers in the

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<sup>129</sup> Kopel, "Expanding Federal Police Power," 198.

<sup>130</sup> Kopel, "Expanding Federal Police Power," 198.

<sup>131</sup> Lottery Case (*Champion v. Ames*), 188 U.S. 321 (1903).

<sup>132</sup> "To uphold the Government's contention... would require this Court to pile inference upon inference in a manner that would bid fair to convert congressional Commerce Clause authority to a general police power of the sort held only by the States. *United States v. Lopez*, 514 U.S. 549, 549-50, 115 S. Ct. 1624, 1625, 131 L. Ed. 2d 626 (1995).

spheres of commerce,<sup>133</sup> finance,<sup>134</sup> immigration,<sup>135</sup> customs,<sup>136</sup> mail,<sup>137</sup> extraterritorial affairs,<sup>138</sup> the federal government and lands, tribal affairs,<sup>139</sup> and the military and the militia.<sup>140</sup> However, through the necessary and proper clause,<sup>141</sup> the federal government may conduct additional law enforcement actions, but only where necessity and propriety dictate those actions in connection with the federal government's enumerated powers.<sup>142</sup> To that end, the first principle of federal law enforcement reform requires that all agencies must be for the enforcement of an enumerated power, or the existence of that agency must be both necessary and proper to support those enumerated powers.

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<sup>133</sup> “To regulate Commerce” US Constitution, art. 1, sec. 8, cl. 3.

<sup>134</sup> “To establish ... uniform Laws on the subject of Bankruptcies throughout the United States; To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures; To provide for the Punishment of counterfeiting the Securities and current Coin of the United States” US Constitution, art. 1, sec. 8, cls. 4-6.

<sup>135</sup> “To establish an [*sic*] uniform Rule of Naturalization” US Constitution, art. 1, sec. 8, cl. 4.

<sup>136</sup> “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises” US Constitution, art. 1, sec. 8, cl. 1.

<sup>137</sup> “To establish Post Offices and post Roads” US Constitution, art. 1, sec. 8, cl. 7.

<sup>138</sup> “To regulate Commerce with foreign Nations; To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations” US Constitution, art. 1, sec. 8, cls. 3 and 10.

<sup>139</sup> “To regulate Commerce...with the Indian Tribes; To make Rules for the Government; To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings” US Constitution, art. 1, sec. 8, cls. 3, 14, and 17.

<sup>140</sup> “To make Rules for the...Regulation of the land and naval Forces; To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States” US Constitution, art. 1, sec. 8, cls. 14 and 16.

<sup>141</sup> “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” US Constitution, art. 1, sec. 8, cl. 18.

<sup>142</sup> David F. Forte and Matthew Spalding, eds., *The Heritage Guide to the Constitution*, 2nd ed. Washington DC: Regnery Publishing, 2014, 190.

Secondly, and just as important, is the procedural aspect of law enforcement. The Bill of Rights contains explicit rights related to constitutional criminal procedure. These cover everything from the right to *habeas corpus*<sup>143</sup> and the prohibition of *ex post facto* laws<sup>144</sup> to the rights to due process<sup>145</sup> and the prohibition of cruel and unusual punishment.<sup>146</sup> We also have the liberties including the rights to speak freely, protest, petition our government. No U.S. citizen should be targeted for exercising their inalienable rights.

The doctrine of separation of powers requires “that the legislature makes, the executive executes, and the judiciary construes the law.”<sup>147</sup> While checks and balances do provide some overlap in jurisdiction, this is to prevent any branch from exerting too much power, not to vest powers in one branch to act unilaterally.<sup>148</sup> It does not permit a federal law enforcement agency, as part of the executive, to create rules and regulations, a preserve of the legislative branch, and then enforce those rules. The reinterpretation of the legality of certain firearm components by the ATF poses such an issue, as it is wielding both legislative and executive authority, with *ex post facto* concerns relating to the way they act against citizens who were compliant yesterday yet considered a felon today, all for owning a particular item. Therefore, the second principle of federal law enforcement reform relates to procedure. Rights are something that must be respected and not treated, doctrinally, as a hindrance to law enforcement. Federal law enforcement

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<sup>143</sup> US Code tit. 28, ch. 153.

<sup>144</sup> “No ... *ex post facto* Law shall be passed [by the Federal government].” US Constitution, art. 1, sec. 9 cl. 3. “No state shall...pass any...*ex post facto* law.” US Constitution, art. 1, sec. 10, cl. 1.

<sup>145</sup> Protected by US Constitution, amend. V in the federal sphere and US Constitution, amend. XIV in the state sphere.

<sup>146</sup> US Constitution, amend. VIII.

<sup>147</sup> Chief Justice John Marshall’s opinion in *Wayman v. Southard*, 23 U.S. 1, 46, 6 L. Ed. 253 (1825).

<sup>148</sup> Forte and Spalding, *The Heritage Guide to the Constitution*, 231-36.

agencies cannot have any legislative powers given to them, and all targeting should be on the crimes committed, not upon a person in pursuit of a conviction.

### **Tiering of Agencies**

To see a graded list of Federal Law Enforcement Agencies, according to the standards laid out below, please see Appendix B.

#### ***Tier 1 – Total Culture of Constitutional Abuses, Illegitimate Agencies, and Duplication of Effort***

This tier of agencies has an extensive history of acting in either an overtly political manner, in favor of one particular party, a culture of riding roughshod over the constitutional liberties of U.S. citizens and others protected by the Constitution, or both. Additionally, any agency that does not meet the first principle of this federal law enforcement reform i.e., tied to the enforcement of an enumerated federal power, or any agency where they provide generalized tasking for a particular department, will fall into this tier.

#### ***Tier 2 – Moderate Level of Constitutional Abuses***

This tier of agencies has some history of acting in either an overtly political manner, in favor of one particular party, there have been a few cases where they have been found to violate constitutional liberties of U.S. citizens and others protected by the Constitution, or both.

#### ***Tier 3 – Attempts to Adhere to Constitutional Principles/No Known Level of Constitutional Abuses.***

The final tier consists of agencies with little to no history of politicized behavior, nor are there examples of constitutional violations readily available. Most of these agencies are minor federal law enforcement agencies with very specific tasking.

## **Solving Federal Overreach**

### **Abolition, Distribution of Tasking, and Reestablishment of New Agency**

Under this recommendation, an agency would be abolished, have its tasking temporarily or permanently transitioned to a different agency with a remit for that tasking, and, if required, create a new agency to ensure there is no unnecessary loss in capability for the federal law enforcement apparatus. Obviously, this is an extreme measure and should only be considered for those agencies that do not have a legitimate constitutional function, are institutionally politicized and corrupted, and are guilty of the most egregious violations of civil liberties. Unfortunately, as this paper has shown, agencies like this exist, and these have been labeled as Tier 1 in Appendix B.

### ***Issues***

There are two fundamental issues regarding this category of solutions: what to do with the personnel in these agencies and how to ensure that tasking is transitioned effectively. Many of the people who work for these agencies would look to transfer to a similar agency and into a similar role. However, as organizational subcultures tend to provide the basis for the abolition of their agency and are likely to transfer with them, care must be taken to ensure that only the good agents remain in government employment. To that end, the aim would be to require all agents looking to transfer to another agency to be assessed by the Inspector General's office to ensure that they are fitting for transfer and retention of their Federal Law Enforcement Training Accreditation.

**Roadblocks and Reform.** The current bureaucratic system, however, makes it almost impossible to dismiss personnel and would make this aim impossible without reform of the way federal employees are managed. The dismissal rate for non-military employees of the federal



government in FY 2017 was 0.5%.<sup>149</sup> The government is relatively successful in appeals against adverse actions, including suspensions, dismissals, and demotions. For example, in FY 2016, 84% of agency decisions were upheld.<sup>150</sup> However, the avenues for appeal and processes required for dismissal are vast.<sup>151</sup> This likely deters dismissal actions by management through administrative burden, in all but the most extreme cases of employee misconduct.<sup>152</sup> Dr. Donald Devine, former Director of the Office of Personnel Management under President Ronald Reagan, has proposed several reforms to federal employment regulations, which he says are overdue.<sup>153</sup> Many of the regulations were put in place under the FDR Administration with the intent to root out partisanship and corruption, yet they have been counterproductive to that aim.<sup>154</sup> Dr. Devine's recommendations include:

1. A reimbursable fee system, so that it costs to mount an appeal against adverse actions, and the loser will ultimately foot the bill.
2. Minor adverse actions can only be reviewed "in-house." External review reserved for serious adverse actions, such as dismissal.
3. There must only be one avenue of appeal, instead of more than four.

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<sup>149</sup> U.S. Office of Personnel Management, FedScope, "Separations Trend Cubes," <https://www.fedscope.opm.gov/separations.asp> (accessed October 4, 2018).

<sup>150</sup> U.S. Merit Systems Protection Board, Annual Report for FY 2016, January 18, 2017, <https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1374269&version=1379643&application=ACROBAT> (accessed September 21, 2018).

<sup>151</sup> Donald J. Devine, *Reforming the Federal Bureaucracy: Challenge and Opportunity (Backgrounder 3357)*, December 10, 2018, (Washington D.C.: The Heritage Foundation), 4-5, [https://www.heritage.org/sites/default/files/2018-12/BG3357\\_0.pdf](https://www.heritage.org/sites/default/files/2018-12/BG3357_0.pdf).

<sup>152</sup> Devine, *Reforming the Federal Bureaucracy*, 5.

<sup>153</sup> Devine, *Reforming the Federal Bureaucracy*, 2.

<sup>154</sup> Kay Cole James, *Biography of an Ideal: A History of the Federal Civil Service* (Washington: U.S. Office of Personnel Management, 2003), Internet Archive, passim, <https://web.archive.org/web/20161221173643/https://archive.opm.gov/biographyofanideal/PDF/BiographyOfAnIdeal.pdf>.

4. Public-service unions must be removed due to their incompatibility with federal government.

Following federal employment regulation reform, the federal law enforcement reforms discussed in this paper could be enacted but it would not be an overnight action. A year would be a reasonable transition for budgetary reasons, so agencies can adjust their budgets to facilitate a smooth transition. Though an imperfect solution, once finances are put in place and the agencies to have acquainted themselves with their new tasking, this measure prevents the rot from remaining.

### *Support*

There have been numerous calls for abolishing certain agencies due to their unconstitutional tasking or the litany of scandals that have plagued them. The Government acting tough by taking this step would have the general public's support.

### *Applicability*

Due to the level of change, cost, and legislation needed, this cannot practicably apply to most agencies. However, Tier 1 Agencies must go through this process, and there are only two agencies: the Federal Bureau of Investigation, due to institutionalized politicized corruption and excessive civil rights violations, and the Bureau for Alcohol, Tobacco, Firearms, and Explosives, due to excessive civil rights violations and *per se* lack of constitutionality for its firearms tasking. To ease this reform, the National Firearms Act, Gun Control Act, and similar firearms legislation should be repealed for lack of constitutionality, allowing all remaining ATF tasking to transfer to the Department of Homeland Security.

Additionally, many departments have their own Inspector General (IG) departments and protective service divisions for their department leadership. The recommendation of this paper is to investigate bringing these minor IG departments into a new agency: the General Inspections

Agency. Larger departments with diverse taskings, such as Defense and Homeland Security, will be allowed to keep their separate offices of Inspector General. All separate protective service divisions maintained by departments should also be amalgamated into the Federal Protective Service under the Department of Homeland Security.

### **New Management and Practice Reform**

Under this recommendation, the agency would have new leadership installed. This new leadership would then assist in focusing federal law enforcement agencies into being conducted in accordance with the constitutional principles of the United States. This would mean that agents, being trained in the Constitution, would have greater latitude to make a good faith refusal to conduct investigations into individuals if there is a clear issue of constitutionality. In such cases, the agency's legal department would then be required to provide guidance as to whether a manager had instructed an agent to violate the Constitution and is therefore liable to disciplinary action, or whether the agent was incorrect. However, freedom of conscience for agents choosing to not conduct actions that they believe to be constitutionally suspect must be upheld by the agency. Additionally, there would need to be a cultural shift directed within the law enforcement agencies. Civil liberties must not be treated as a hindrance to law enforcement tasking. Instead, the mantra should be that working within these parameters is the way to ensure that criminals pay for their actions. The ideology needs to be nurtured within the agencies from the leadership down, so trying to institute reforms without changing the leadership might be less than successful. The changes under this recommendation would start to see fruition within the short term (1-5 years). The agencies that will undergo this reform are Tier 2 in Appendix B.

***Issues***

The principle issue with this approach is finding the exemplary leadership to implement the changes as, frequently, predecessors groom the future leadership of these agencies, the future leadership transfers from other agencies with the same issues, or both. Therefore, we have seen the decline in behavior by these agencies. If the right leadership can be found, motivating change within the organization is much simpler.

***Support***

There is public support for a reform agenda within federal law enforcement. Additionally, people tend to think, often rightly, that if an agency is acting incorrectly under current leadership, it is unlikely to truly reform without a change of leadership. While it may not wholly be leadership's responsibility, it needs to be held accountable for failings.

***Applicability***

This applies to Tier 2 Agencies. It provides a workable plan that can be implemented over time.

**Practice Reform**

Under this recommendation, the agency changes how federal law enforcement is conducted within the constitutional principles of the United States. However, this recommendation is very much like the previous one without a leadership change. The rationale is that there is no evidence that the leadership needs changing. If it becomes apparent that it does, then transitioning to the previous recommendation is facilitated by changing leadership. The changes under this recommendation would start to see fruition within the medium term (5-10 years). Part of this reform would include instigating the necessary reforms through the Federal Law Enforcement Training Centers (FLETC) to ensure that new agents will have these new

practices installed in them from the start. The agencies that will undergo this reform are Tier 3 in the Appendix B. Most agencies in Tier 3 normally have rolling leadership changes every 2-3 years or so.

### *Issues*

The primary issue is that this also involves changing how we train our federal law enforcement agents from the start at FLETC. This means that the instructors need to be retrained with the new mindset. This may mean that we will have to halt training at FLETC for all but the instructors to ensure that we have a universality of doctrine regarding constitutional law enforcement. This could lead to shortfalls in staffing which is already an issue in many agencies.

### *Support*

As stated previously, reform has public support, and changing how agents are trained is highly likely to share in that support.

### *Applicability*

This is the minimal change approach, meaning it will have the broadest applicability. This is designed predominantly for those agencies that need minimal change but will still benefit from these reforms.

### **Do Nothing**

The do-nothing approach is wholly unacceptable, as the issues raised by this paper have only worsened through inaction.

### *Issues*

Failing to act on the politicized corruption and disregard to constitutional liberties has taken us to a place that does not resemble the American ideal and has more in common with

Communist China. That devolution of trust in the government and loss of civil liberties will only worsen over time, as history has already shown.

### *Support*

No matter what side of the political fence an individual sits, there is agreement that the current federal law enforcement system is broken and needs action to fix it. While some may not agree with the changes proposed by this paper, they disagree more with the do-nothing approach.

### *Applicability*

This approach could be applied to many agencies without a history of politicized corruption or civil rights abuses. However, the Tier 3 agencies could just as easily be responsible for the next Ruby Ridge or Waco. As such, while there is momentum behind a reform agenda, it would be best not to let it go to waste.

### **Conclusion**

This thesis addressed the issue of politicization, political corruption, and the lack of adherence to constitutional principles through the problem, significance, and solution method. Through the extensive examination of the history of these federal law enforcement agencies, using a vast array of sources, the significance of the problem within certain federal law enforcement agencies became readily apparent. The depth of the problem was worse than it was considered to be when this research was begun. As such, especially in the case of the FBI and the ATF, robust measures have been proven to be necessary to restore lost constitutional principles. The tiered solution provides a workable solution, allowing for the most serious problems to be suitably eradicated while not “throwing the baby out with the bathwater.” Federal law enforcement reform is greatly desired by the public and many within the agencies but not necessarily by the leadership. When the truth of Montesquieu’s words in this paper’s epigraph

are considered, it empowers those in authority to take necessary steps. These reforms will improve public confidence, which will also improve safety for agents and the public alike. Hopefully, the reforms contained within this paper can be applied to facilitate a United States where equal justice for all is not just words, and our enduring constitutional freedoms can aid us in developing a more perfect Union.

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## Appendix A

**From:** @fbi.gov>  
**Sent:** Sunday, November 6, 2022, 12:56 PM  
**Cc:** @fbi.gov>; @fbi.gov>; @fbi.gov>  
**Subject:** Request for Coordination with Twitter

ASAC Chan,

The National Election Command Post (NECP) is requesting assistance from SF regarding coordination with Twitter. Specifically, NECP has been made aware of Tweets by certain accounts that may warrant additional action due to the accounts being utilized to spread misinformation about the upcoming election. Specifically, NECP is requesting the following:

1. Coordination between SF and Twitter to determine whether the accounts identified below have violated Twitter's terms of service and may be subject any actions deemed appropriate by Twitter.
2. The issuance of preservation letters regarding the accounts identified below in order to preserve subscriber information and content information pending the issuance of legal process.
3. Any location information associated with the accounts that Twitter will voluntarily provide to aid the FBI in assigning any follow-up deemed necessary to the appropriate FBI field office.

### **Twitter Accounts**

1. @DartfulCodger
2. @DrAndrewJackson
3. @DanDuryeas
4. @2020\_mtb
5. @JeanneGary13
6. @RSBNetwork
7. @Davidkloy
8. @Ronsmit49336969
9. @AScottHoneycut
10. @thearmogidaship
11. @Davidkloy
12. @lexitollah
13. @Tiboron11
14. @wisefrog57
15. @hfsboatr5
16. @chriswest567
17. @Trump2017847791
18. @kag2020\_2024
19. @Tiberius444
20. @BillyBaldwin
21. @chrisfig33ad
22. @michaelp4283
23. @BrettBarker22
24. @EPaul9
25. @warrenintronno

Please let us know if you need additional information to process this request by replying all to this email.

Thanks,

--Michael

### **Figure 1.**

*An internal e-mail from the FBI's National Election Command Post to the San Francisco Field Office, dated November 6, 2022, 12:56 pm.*

On Sun, Nov 6, 2022 at 9:10 PM Elvis Chan [REDACTED]@fbi.gov> wrote:

Twitter folks,

Please see below list of Twitter accounts which we believe are violating your terms of service by disseminating false information about the time, place, or manner of the upcoming elections.

Let us know if you decide to take any actions against these accounts based on our tipper to you. Also let us know if we need to issue a preservation letter as we intend to serve legal process for these accounts. Thanks for your consideration.

Regards, Elvis

Elvis M. Chan  
Asst. Special Agent in Charge  
FBI San Francisco, Cyber Branch  
Work: [REDACTED]  
Cell: [REDACTED]  
Email: [REDACTED]@fbi.gov  
Pronouns: he, him, his

## Figure 2.

*An e-mail from the San Francisco Field Office implicitly requesting action on the accounts shown in Figure 1, dated November 6, 2022, 9:10 pm.*

**From:** Patrick Conlon [REDACTED]  
**Sent:** Tuesday, November 8, 2022 09:41 AM  
**To:** Chan, Elvis M. (SF) (FBI) [REDACTED]@fbi.gov>  
**Cc:** Yoel Roth [REDACTED]  
 [REDACTED]  
 (CID) (FBI) [REDACTED]@fbi.gov>; (CID) (FBI) [REDACTED]  
 [REDACTED]@fbi.gov>; (CID) (FBI) [REDACTED]@fbi.gov>; [REDACTED]  
 (CID) (FBI) [REDACTED]@fbi.gov>; (CID) (FBI) [REDACTED]  
 [REDACTED]@fbi.gov>; (SF) (FBI) [REDACTED]@fbi.gov>; [REDACTED]  
 (SF) (FBI) [REDACTED]@fbi.gov>; (SF) (FBI) [REDACTED]@fbi.gov>  
**Subject:** [EXTERNAL EMAIL] - [SOCIAL NETWORK] Re: Request for Coordination with Twitter

Hi Elvis,  
 Thank you for your patience as our team assessed the accounts that you flagged.  
 We've completed our review and taken the following actions on some of the accounts:  
 Permanently suspended for policy violations (ban evasion, platform manipulation, excessive misinformation strikes) -

- @JeanneGary13
- @wisefrog57
- @EPaul9
- @2020\_mtb
- @chriswest567
- @Trump2017847791
- @BrettBarker22

Temporarily suspended for spam behaviors –

- @Davidkloy

Had Tweets bounced for civic misinformation policy violations -

- @Ronsmit49336969
- @thearmogidaship
- @lexitollah
- @Tiboron11
- @kag2020\_2024
- @kag2020\_2024
- @chrisfig33ad
- @michaelp4283
- @warrenintronno

In regards to your question about a preservation letter, it is a good way to ensure that the data hasn't been purged from our systems before legal process if filed and processed. Externally the contact for submitting those is the same.

Thank you,

-Patrick

**Figure 3.**

*An e-mail from Twitter to the FBI confirming the action taken against the flagged accounts shown in Figure 1, dated November 8, 2022, 9:41 am.*

**Appendix B**

## Tiered List of Law Enforcement Agencies

<b>Agency</b>	<b>Department</b>	<b>Tier</b>
Protective Operations Division	Agriculture	1
Office of Inspector General	Agriculture	1
U.S. Forest Service Law Enforcement & Investigations	Agriculture	3
Office of Inspector General	Commerce	1
US Commerce Department Police	Commerce	3
Office of Export Enforcement	Commerce	3
National Institute of Standards and Technology Police	Commerce	3
National Marine Fisheries Service Office of Law Enforcement	Commerce	3
Office of Inspector General	Defense	3
Defense Criminal Investigative	Defense	3
Pentagon Force Protection Agency	Defense	3
United States Pentagon Police	Defense	3
Department of Defense Police	Defense	3
Defense Logistics Agency Police	Defense	3
National Security Agency Police	Defense	3
Defense Intelligence Agency Police	Defense	3
National Geospatial-Intelligence Agency Police	Defense	3
United States Army Criminal Investigation Division	Defense	3
United States Army Counterintelligence	Defense	3
United States Army Military Police Corps	Defense	3
Department of the Army Civilian Police and Guards	Defense	3
United States Army Corrections Command	Defense	3
Naval Criminal Investigative Service	Defense	3
United States Marine Corps Criminal Investigation Division	Defense	3
United States Navy Master-at-Arms	Defense	3
Department of the Navy Police	Defense	3
United States Marine Corps Military Police	Defense	3
United States Marine Corps Civilian Police	Defense	3
Department of the Air Force Office of Special Investigations	Defense	3
United States Air Force Security Forces	Defense	3
Department of the Air Force Police and Civilian Guards	Defense	3
Office of Inspector General	Education	1
Protective Service Division	Education	1
Office for Civil Rights	Education	3

Office of Inspector General	Energy	1
Office of Health, Safety and Security	Energy	3
National Nuclear Security Administration	Energy	3
Office of Secure Transportation	Energy	3
Federal Protective Forces	Energy	1
Office of Inspector General	Health and Human Services	1
United States Food and Drug Administration	Health and Human Services	3
Office of Criminal Investigations	Health and Human Services	3
National Institutes of Health Police	Health and Human Services	3
Office of Inspector General	Homeland Security	3
Federal Protective Service	Homeland Security	3
Federal Law Enforcement Training Centers	Homeland Security	3
Office of the Chief Security Officer	Homeland Security	3
Coast Guard Investigative Service	Homeland Security	3
United States Coast Guard Police	Homeland Security	3
United States Customs and Border Protection	Homeland Security	3
United States Border Patrol	Homeland Security	3
Federal Emergency Management Agency	Homeland Security	3
Mount Weather Emergency Operations Center Police	Homeland Security	3
United States Immigration and Customs Enforcement	Homeland Security	3
Homeland Security Investigations	Homeland Security	3
Enforcement Removal Operations	Homeland Security	3
United States Secret Service	Homeland Security	3
Transportation Security Administration	Homeland Security	3
Federal Air Marshal Service	Homeland Security	3
Federal Flight Deck Officer	Homeland Security	3
Office of Inspection	Homeland Security	2
United States Citizenship and Immigration Services Fraud Detection and National Security Directorate	Homeland Security	2
Office of Inspector General	Housing and Urban Development	1
Protective Service Division	Housing and Urban Development	1
Office of Inspector General	Interior	1
Bureau of Land Management Office of Law Enforcement	Interior	3
Bureau of Indian Affairs Police	Interior	2
United States Bureau of Reclamation	Interior	3
National Parks Service U.S. Park Ranger	Interior	3
National Parks Service United States Park Police	Interior	3
Office of Surface Mining Reclamation and Enforcement	Interior	3

United States Fish and Wildlife Service Office of Law Enforcement	Interior	3
Division of Refuge Law Enforcement	Interior	3
Office of the Inspector General	Justice	3
Bureau of Alcohol, Tobacco, Firearms and Explosives	Justice	1
Drug Enforcement Administration	Justice	2
Federal Bureau of Investigation	Justice	1
FBI Police	Justice	1
FBI Academy	Justice	1
Federal Bureau of Prisons	Justice	2
United States Marshals Service	Justice	3
Office of Inspector General	Labor	1
Office of Inspector General	State	1
Diplomatic Security Service	State	3
Office of Inspector General	Transportation	1
United States Merchant Marine Academy Department of Public Safety	Transportation	3
National Highway Traffic Safety Administration	Transportation	3
Office of Inspector General	Treasury	1
Bureau of Engraving and Printing Police	Treasury	3
Financial Crimes Enforcement Network	Treasury	3
Internal Revenue Service Criminal Investigation	Treasury	3
United States Mint Police	Treasury	3
Treasury Inspector General for Tax Administration	Treasury	3
Special Inspector General for Pandemic Recovery ( <i>Temporary Agency</i> )	Treasury	3
Special Inspector General for the Troubled Asset Relief Program ( <i>Temporary Agency</i> )	Treasury	3
Office of Inspector General	Veterans Affairs	1
Veterans Affairs Police	Veterans Affairs	3
Sergeant at Arms of the United States House of Representatives	Legislative Branch	3
Sergeant at Arms of the United States Senate	Legislative Branch	3
United States Capitol Police	Legislative Branch	3
United States Capitol Police Office of Inspector General	Legislative Branch	1
Library of Congress Office of Inspector General	Legislative Branch	1
Government Publishing Office Office of Inspector General	Legislative Branch	1
Government Publishing Office Police	Legislative Branch	3
Marshal of the United States Supreme Court	Judicial Branch	3
United States Supreme Court Police	Judicial Branch	3
Office of Probation and Pretrial Services	Judicial Branch	3

Security Protective Service	Central Intelligence Agency	3
Office of Inspector General	United States Environmental Protection Agency	1
Office of Enforcement and Compliance Assurance	United States Environmental Protection Agency	3
Criminal Investigation Division	United States Environmental Protection Agency	3
Office of Protection Services	National Gallery of Art	1
Office of Inspector General	National Aeronautics and Space Administration	1
Office of Protective Services	National Aeronautics and Space Administration	1
Office of Inspector General	United States Office of Personnel Management	1
Office of Inspector General	United States Postal Service	1
United States Postal Inspection Service	United States Postal Service	2
U.S. Postal Police	United States Postal Service	2
Office of Inspector General	Smithsonian Institution	1
Office of Protection Services	Smithsonian Institution	1
National Zoological Park Police	Smithsonian Institution	3
Office of Inspector General	Amtrak	1
Amtrak Police Department	Amtrak	3
Federal Reserve Police	Federal Reserve System	3
Federal Reserve Board of Governors	Federal Reserve System	3
Federal Reserve Board Police	Federal Reserve System	3
Office of Inspector General	Tennessee Valley Authority	1
Tennessee Valley Authority Police	Tennessee Valley Authority	3
Office of Inspector General	Nuclear Regulatory Commission	1
Office of Inspector General	National Science Foundation	1
Office of Inspector General	National Archives and Records Administration	1
Office of Inspector General	Peace Corps	1
Office of Inspector General	Railroad Retirement Board	1
Office of Inspector General	Small Business Administration	1
Office of Inspector General	Federal Deposit Insurance Corporation	1
Office of Inspector General	General Services Administration	1
Office of Inspector General	Social Security Administration	1
Office of Inspector General	United States Agency for International Development	1