

From: Donoghue, Richard (ODAG)
<ricdonoghue@jmd.usdoj.gov>
To: Pak, BJay (USAGAN) <bpak@usa.doj.gov>
Cc:
Bcc:
Subject: FW: [EXTERNAL EMAIL] - Georgia Video Consult
Date: Mon Dec 07 2020 12:48:45 EST
Attachments:

JFYI. Please do not forward.

From: Donoghue, Richard (ODAG)
Sent: Monday, December 7, 2020 12:09 PM
To: Bowdich, David L. (DO) (FBI) [REDACTED]
Subject: RE: [EXTERNAL EMAIL] - Georgia Video Consult

Dave,

Thanks for forwarding. It is antiquated indeed.

Unfortunately, this is a continuation of a policy disagreement between the Election Crimes Branch (ECB) of PIN and the AG. While I understand ECB's concerns and the reasons for their historic practice, the AG simply does not agree with what he termed their "passive and delayed enforcement approach" (11/9/20 AG Memorandum) and has clearly directed that Department components should undertake preliminary inquiries and investigations of election-related allegations in certain circumstances even if election-related litigation is still ongoing. While this may be different from ECB's traditional approach (which was essentially to allow election fraud to take its course and hope to deter such misconduct in future elections through intervening prosecutions), the AG gets to make that call. PIN recognizes that much when they say below that he "has ultimate decision-making authority on this issue." As I relayed last night, the AG told me last night that the FBI should conduct some interviews relating the State Farm Arena allegations so that we are not relying entirely on the work/assessments of non-federal law enforcement authorities. It may well be that the GA SOS is correct in concluding that nothing nefarious happened there, but the fact is that millions of Americans have come to believe (rightly or wrongly) that something untoward took place and it is incumbent on the Department to timely conduct a limited investigation to assure the American people that we have looked at these claims. If we come to the same conclusion as the GA SOS, then that should give the public increased confidence in the election results in GA. If we come to a different conclusion, then we'll deal with that. Either way, the AG made it clear that he wants to be sure that we are actually doing our job and not just standing on the sidelines.

While PIN says below that they do not "concur" in proceeding with interviews, their concurrence is not required by the Justice Manual, nor has it ever been required. That is language they use to imply that they have approval/disapproval authority when, in fact, they do not. The only requirement in the Justice Manual is for consultation with PIN and that clearly has been done here. Moreover, given that the AG has specifically directed that the FBI conduct some interviews here (he leaves the number and depth of the interviews entirely up to the FBI), the decision has been made. We all have a chain of command for a reason.

Sorry that you and your team have been dragged into this again. Unfortunately, this is the reality of working here these days.

Thanks and good luck with it.

Rich

From: Bowdich, David L. (DO) (FBI) [REDACTED]
Sent: Monday, December 7, 2020 8:18 AM
To: Donoghue, Richard (ODAG) <ricdonoghue@jmd.usdoj.gov<mailto:ricdonoghue@jmd.usdoj.gov>>
Subject: FW: [EXTERNAL EMAIL] - Georgia Video Consult

This is putting us in a bad spot. We need to get this PIN issue settled as to how to proceed. I feel like we are operating under an antiquated thought process here. Everyone understood that before the election we should not do these types of inquiries, but we are in a place right now in this election cycle in which these types of allegations are important to vet out, particularly when many in the country are still questioning the results. I am no lawyer, but my interpretation of the AG's 2020 Memorandum is different from theirs. Let me know your thoughts on how to proceed. Our folks in Atlanta are prepared to begin when they receive direction from me. I am forwarding this to our General Counsel for his analysis as well.

DB

From: [REDACTED] (FBI) [REDACTED]
Sent: Monday, December 7, 2020 8:01 AM
To: Bowdich, David L. (DO) (FBI) [REDACTED]
Subject: FW: [EXTERNAL EMAIL] - Georgia Video Consult

From: [REDACTED] (FBI) [REDACTED]
Sent: Monday, December 7, 2020 7:51 AM
To: [REDACTED] (FBI) [REDACTED]
Subject: FW: [EXTERNAL EMAIL] - Georgia Video Consult

FYSA.

[REDACTED]

From: [REDACTED] (FBI)
Sent: Monday, December 07, 2020 5:19 AM
To: [REDACTED] (FBI)
Cc: [REDACTED]
Subject: Fwd: [EXTERNAL EMAIL] - Georgia Video Consult

Sir, guidance below from PIN in regard to the situation in GA. I have not yet provided to AT.

[REDACTED]

[REDACTED]

[REDACTED]

----- Forwarded message -----

From: "Amundson, Corey (CRM)" [REDACTED]

Date: Dec 7, 2020 12:34 AM

Subject: [EXTERNAL EMAIL] - Georgia Video Consult

To: [REDACTED] (FBI) [REDACTED]

PIN understands that the FBI proposes to interview certain individuals appearing in a video depicting vote tabulation at State Farm Arena in Georgia as soon as this morning (Monday). PIN also appreciates that the Attorney General may have approved and directed the proposed steps and has ultimate decision-making authority on this issue. PIN nevertheless recognizes our continuing obligation to examine and provide input on the proposed investigative activity under the Justice Manual. Though we anticipate receiving a formal request, we recognize the need for timely input in advance of the interviews. PIN therefore provides this input now based on the information we currently have and with the understanding that additional information might change our input. As explained below, PIN does not concur in any overt investigative activity, including the proposed interviews.

Based on a review of the information provided by the FBI, including a summary of the Secretary of State (SOS) investigation, PIN concludes that the allegations here do not fall within the scope of the Attorney General's Memorandum Regarding Post-Voting Election Irregularity Inquiries (Nov. 9, 2020), which created an exception to the DOJ Election Non-Interference Policy for substantial, clear, apparently credible, and non-speculative allegations of voting and vote tabulation irregularities "that, if true, could potentially impact the outcome of a federal election in an individual State." Accordingly, any overt investigative activity (and only if sufficiently predicated) must wait until the elections in Georgia (including the forthcoming Jan. 5, 2021, special elections) are concluded, their results certified, and all recounts and election contests concluded, pursuant to the DOJ Election Non-Interference Policy (Federal Prosecution of Election Offenses, 8th ed. pp. 84-85).

The same conclusion is compelled by the Attorney General's Memorandum Regarding Election Year Sensitivities (May 15, 2020), which directs that Department employees "must be particularly sensitive to safeguarding the Department's reputation of fairness, neutrality, and nonpartisanship." SOS investigators have already conducted recorded interviews of the individuals at issue and such interviews reportedly revealed nothing to suggest nefarious activity with regard to the integrity of the election. The FBI "re-interviewing" those individuals at this point and under the current circumstances risks great damage to the Department's reputation, including the possible appearance of being motivated by partisan concerns.

Please consult again if and when your office seeks to open a full field and grand jury investigation or wants to pursue overt investigative steps after the elections in your area are concluded, certified, and uncontested. Lastly, it is our practice to note in all concurrences and certain consultations, even as to covert or future activity, that you should be aware and mindful that the Attorney General's Memorandum Regarding Election Year Sensitivities (May 15, 2020), directs, in part, that "[i]f you face an issue, or the appearance of an issue, regarding the timing of statements . . . near the time of a primary or general election, contact the Public Integrity Section of the Criminal Division for further guidance." Please consult as to any proposed press release or statement in this matter.

Corey R. Amundson
Chief | Public Integrity Section