



PROMISES, POWERS, AND PLANS

# The Authoritarian Playbook for 2025

How an authoritarian president will dismantle our democracy and what we can do to protect it

JANUARY 2024

A REPORT BY UNITED TO PROTECT DEMOCRACY

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# The Authoritarian Playbook for 2025

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January 2025

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**TRUMP**  
**— 2024 —**  
*The rules have changed.*

# Executive Summary

## Putting the authoritarian threat in context

Since June 16, 2015, the day that Donald Trump descended an escalator in Trump Tower and announced his run for the presidency, the American body politic has struggled to figure out how to treat him, his rhetoric, and the threat he poses to our system of government. A similar pattern plays out repeatedly: Trump makes a seemingly outlandish promise that upends conventional understandings of politics. Then, those who help Americans make sense of current events — the media, other politicians, pundits, and influencers — dismiss, distort, or deny the very promise Trump has made. And few then know quite what to make of it all or how to respond — a state of confusion that has enabled Trump to shatter democratic norms in previously inconceivable ways.

We now have more than eight years of experience with this phenomenon and a full presidential term as a track record proving that Trump's pledges should be taken both seriously *and* literally. He has, for the most part, sought to do the extreme things that were dismissed as mere rhetoric when first promised, from enacting a “Muslim ban” to refusing to accept the results of an election. And yet, here we are again, with Trump making even more extreme promises to “terminate” the Constitution, seek “retribution” against political opponents, and be a “dictator” (just on day one), only to see people unsure what to make of or how to respond to these threats.

This report aims to alter these dynamics by clearly showing how Trump would follow through on his most extreme anti-democratic pledges for a second term and then offering expert recommendations for how to mitigate that danger.

The bulk of the report looks specifically at three things: **Promises, Powers, and Plans.**

- It collects a set of **promises** Donald Trump has made, in his own words, for what he would do in a second term. It places them in their proper context, coming amidst a resurgence of similar authoritarians worldwide that Trump has openly admired and modeled himself after.

- It examines the **powers** of the presidency and how they could be used to implement those promises. It explains the legal mechanisms that will be applied to turn Trump's campaign promises into government policy and programs. And, it assesses the previously available guardrails that could constrain or prevent these abuses of power and the extent to which they will still hold.
- It explores the **plans** Trump and his allies have drafted to circumvent or override the checks in our system that otherwise have or could restrain his most extreme intentions. Based on expert input, it describes how these policies will play out in practice and negatively impact American life upon implementation.

In these ways, this report seeks to add to the growing body of reporting from outlets such as *The Atlantic*<sup>1</sup> and *The New York Times*<sup>2</sup> that have begun documenting what a second Trump term would look like. It also builds on prior work by Protect Democracy.

Protect Democracy previously issued *The Authoritarian Playbook*, which provided a framework for understanding how modern strongmen around the world have consolidated power and subverted modern democracies. This report builds on that earlier one and places Trump's promises, powers, and plans in that context.<sup>3</sup>

The ultimate assessment is a sobering one: As damaging as Trump's first term was to American systems of constitutional government, culminating in his efforts to overturn an election and violently halt the counting of electoral votes by Congress, what he has promised in his own words to do if returned to office would be even more destructive to our Republic.

Trump's campaign promises are extensive, as are the plans of groups working to support those promises in preparation for a second Trump term. This report, therefore, does not seek to cover them all. It also does not cover dangers posed by a second Trump term about which he has not made explicit promises or that fall outside of federal government operations, but that may pose even graver risks, such as the degree to which he uses the threat and reality of violence to achieve political ends. Those and other risks of a second Trump term also require attention, reporting, and analysis but are beyond the scope of this report. This report addresses the following topics on which he has made explicit promises and about which his allies have developed specific plans for federal government action:

- **Pardons to License Lawbreaking:** During Trump's first term, he discovered that he could leverage the pardon power to induce witnesses against him into silence. In a second term, he has indicated he would further abuse pardons to incite political violence, incentivize lawbreaking for his benefit, and render himself above the law.
- **Directing Investigations Against Critics and Rivals:** Retribution is the dominant theme of Trump's 2024 campaign, and his allies are making plans to eliminate the Department of Justice's traditional prosecutorial independence to give Trump

greater personal control to direct law enforcement against his perceived opponents and insulate himself from accountability.

- **Regulatory Retaliation:** In addition to steering prosecutorial discretion via the Department of Justice, Trump has vowed to consolidate and wield federal regulatory power to reward political loyalty and punish his critics, particularly those associated with the media. There are numerous reports of this regulatory retaliation happening during Trump’s first term, and plans for a second include ways of removing those obstacles that limited opportunities for more.
- **Federal Law Enforcement Overreach:** Trump’s declaration that immigration is “poisoning the blood of our country” is a grim foreshadowing of how he will invoke the Alien Enemies Act, a wartime provision dating back to 1798. Once Trump has that power, he has also expressed his will to expand the footprint of federal law enforcement to police cities and shut down lawful protests.
- **Domestic Deployment of the Military:** A central hallmark of American democracy is that the U.S. military not be used against American citizens. But Trump plans to abuse the Insurrection Act to order military force to quash dissent and target vulnerable communities.

The report also considers Trump’s repeated flirtation with staying in office beyond a second term. When viewed in the context of the Authoritarian Playbook and the actions of Trump-like figures around the globe, this threat becomes hard to ignore.

This report is not all doom and gloom, though. Although Trump’s first term battered our constitutional guardrails and the lives of many Americans, our democracy ultimately survived. As the report explains, that was no accident but the result of the courageous actions of a broad array of Americans and public leaders who stood up for our democracy. That work can provide both instruction and inspiration going forward.

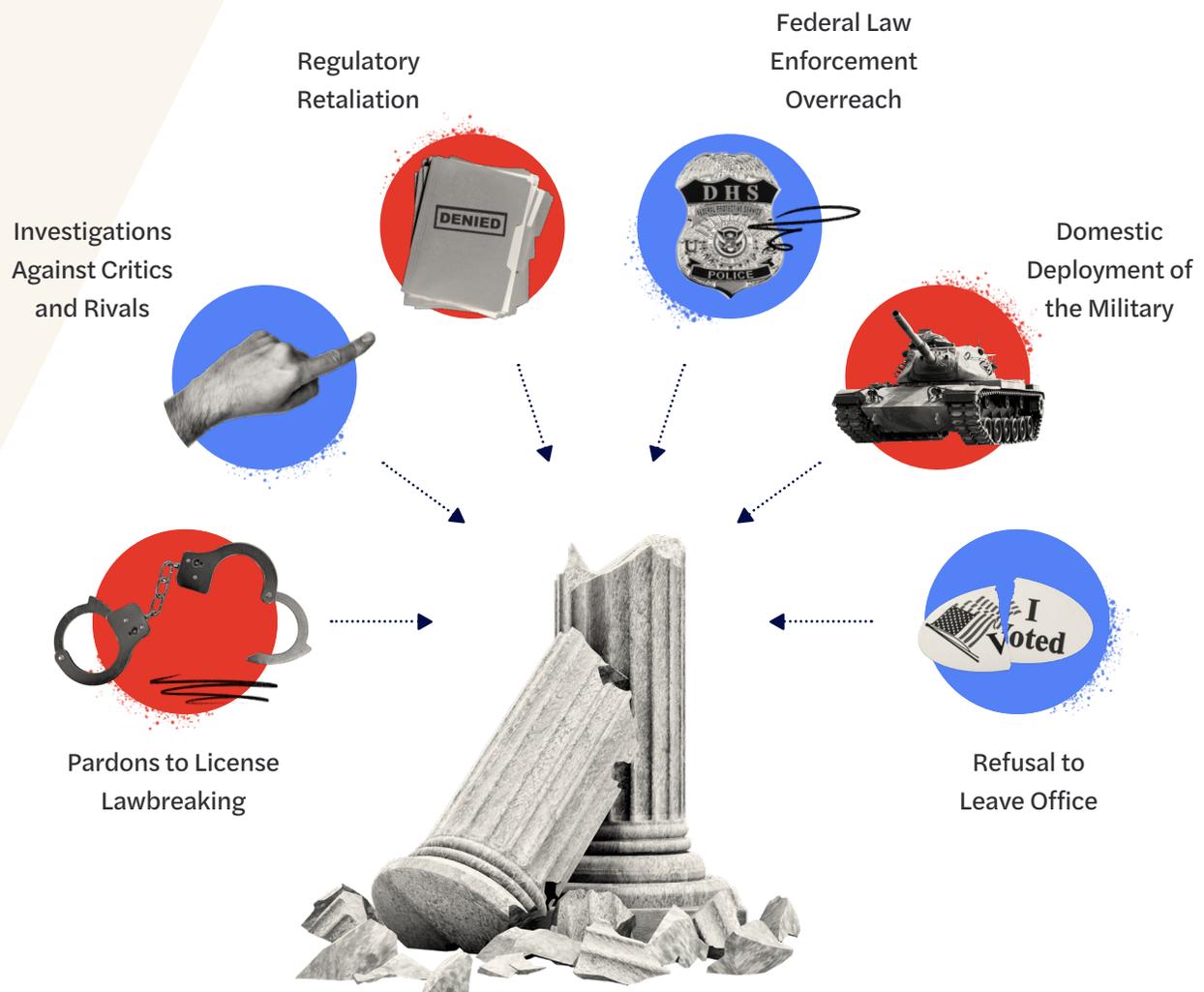
Drawing from those lessons, the report ends with ten recommendations to prepare to protect American democracy against unconstitutional and authoritarian actions. As of the release date of this report, we are one year away from the next presidential inauguration. The time to act on these recommendations is now. The recommendations include:

1. Create pro-democracy coalitions before the crisis arrives.
2. Take anti-democratic ideas and promises seriously.
3. Keep a broad pro-democracy movement united against the acute, big-picture autocratic danger.
4. Support Republicans that stand firm for democratic institutions.

- 5.** Rally around non-partisan, independent public servants.
- 6.** Uphold the rule of law and democratic institutions, and always repudiate violence.
- 7.** Protect the first targets, and arrange now to advocate for the most vulnerable.
- 8.** Evaluate security at the community, household, and personal level.
- 9.** Work to protect free and fair elections in 2026 and 2028.
- 10.** Continue building the democracy of tomorrow.

# What We Can Expect

Institutions crumble under authoritarian rule.  
Six major threats will dismantle our democracy.



# Introduction

It's not just rhetoric. Campaign promises are being translated into plans and programs to deploy executive power.

## Take Him at His Word

One year from now the next president of the United States will be inaugurated, and that person may very well be former president Donald Trump.

Recently, Trump was asked if he would “abuse power as retribution against anybody” if re-elected president in 2024.<sup>4</sup> The question came from a friendly source, Fox News host Sean Hannity. Hannity appeared to hope that Trump would reject the notion ahead of the Iowa caucus. Yet, that proved to be difficult for Trump.

Distancing himself from his earlier comments would mean denying the central promise of his campaign, which Trump launched by declaring to his voters: “I am your retribution.” Trump chose to mock Hannity’s question. “This guy, he says, ‘You’re not going to be a dictator are you?’” Trump replied, referring to Hannity. “I said, ‘No, no, no, no — other than Day 1.’ We’re closing the border. And we’re drilling, drilling, drilling. After that, I’m not a dictator.”

The audience laughed, humored by the way Trump played with the word “dictator,” as if he had never previously displayed any indication of acting like one. CNN’s Manu Raju asked Republicans on Capitol Hill for their reactions to the comment.<sup>5</sup> They, too, dismissed it as a joke, saying things such as:

***“It’s entertainment. And, you know, we’ve been around him long enough. It’s entertaining.”*** — Texas Rep. Michael McCaul

***“I think it was a joke.”*** — South Carolina Sen. Lindsey Graham

***“We all know Trump uses unique expressions when he explains things.”***  
— Kentucky Rep. James Comer

Senator J.D. Vance wrote: “Trump’s superpower is that he’s the most quick witted leader in a generation. Every grown man hyperventilating about this clip needs to find a sense of humor.”<sup>6</sup>

These reactions might be understandable if Trump had not already established a record of employing authoritarian tactics during his first term. Or, if there was no credible reporting by publications such as *The New York Times*, *The Atlantic*, and *The Washington Post* documenting the ambitions that Trump and his allies harbor of consolidating power to seek vengeance on their adversaries come 2025. But GOP lawmakers, like many others in elite political circles, have declined to take the threat seriously.

*The Wall Street Journal* editorial board wrote in December 2023: “We think American institutions are strong enough to contain whatever designs Mr. Trump has to abuse presidential power,” while suggesting that the real “danger” that could come from a second Trump administration is that he would “set up the left for huge gains in 2026 and 2028.”<sup>7</sup>

Others have adopted a fatalistic “both sides” approach to the looming crisis. As one writer at *National Review* asked: “[I]f our existing checks and balances under the Constitution aren’t strong enough to stop abuses of power by Trump ... why would you think that they’re strong enough to stop abuses of power by Joe Biden or anyone else?”<sup>8</sup>

Ex-CNN anchor Chris Cuomo, who covered Trump extensively in his former job, said that even though Trump made “life hard for my family,” he was open to voting for him in 2024 because “We survived a Trump administration. Would we survive another one? Yes. Yes...I don’t think there’s any greater risk to America with him than with Biden.”<sup>9</sup>

Democratic-turned-Independent former Senator Joe Lieberman, a prominent booster of efforts by No Labels to recruit a third-party 2024 presidential candidate, has a similar take. “This is such a strong country and our laws are so strong,” he told *Intelligencer*. “Trump lost 60 cases and he had to accept the final judgment of the courts. Well, he didn’t accept it, but Congress came back from recess and got it done.”<sup>10</sup>

One has to ask, why does the belief, whether genuine or performative, persist that if Trump regains power, somehow, his authoritarianism will be contained? How can his references to dictatorship be construed as humor at this point? Why do so many people still refuse to take Trump at his word?

This failure is particularly striking given not only Trump’s track record but how wrong similarly dismissive statements have proven to be in the past.

After repeated refusals by Trump to assure Americans that he would accept the results of the 2020 election led to concerns he might resist the transfer of power, *New York Times* columnist Ross Douthat famously wrote a column entitled “There Will be no Trump Coup,” in which he addressed directly the question of “whether [Trump] will leave power like a normal president or attempt some wild resistance.”<sup>11</sup> Douthat assured

us it was the former: “Our weak, ranting, infected-by-Covid chief executive is not plotting a coup,” Douthat insisted, three months before Trump dispatched a violent mob to storm the Capitol, leaving five dead, halting the congressional process of counting electoral votes, and threatening the peaceful transfer of power.

And Douthat was not alone. Roughly two months before the 2020 election, Protect Democracy’s Executive Director asked the chief of staff to a senior Republican senator to assess, on a scale of 1 to 10, how concerned he and the senator were about potential disruptions to the regular electoral process. “Zero,” he replied, saying they were “not worried at all.” A recently retired Republican senator offered a similar assessment.

Assessments of how seriously to take Trump’s seemingly outlandish statements during his 2016 campaign were similarly wrong. Trump issued a statement “calling for a total and complete shutdown of Muslims entering the United States” on December 7, 2015.<sup>12</sup> At the time, his Republican primary rival, former Florida Governor Jeb Bush posted on Twitter that, “Donald Trump is unhinged. His ‘policy’ proposals are not serious.”<sup>13</sup>

Tech entrepreneur and major political donor Peter Thiel defended and downplayed the promise. “I think a lot of voters who vote for Trump take Trump seriously but not literally, so when they hear things like the Muslim comment or the wall comment their question is not, ‘Are you going to build a wall like the Great Wall of China?’ or, you know, ‘How exactly are you going to enforce these tests?’” he said. “What they hear is we’re going to have a saner, more sensible immigration policy.”<sup>14</sup>

But of course, Trump was absolutely serious and signed Executive Order 13769 during the first week of his presidency.<sup>15</sup> Referred to by Trump himself as his promised “Muslim ban,” EO 13769 directed the Department of Homeland Security to, among other things, shut down entry to the United States by travelers from seven Muslim-majority countries.

## Overcoming a Failure of Imagination

Time and again, predictions that Trump was not serious have proved disastrously incorrect. And yet pundits and officials, mainly on the political right, continue to make them, having failed to internalize lessons from these past errors.

Why is this? David Frum has suggested in *The Atlantic* that it stems from an ordinary human failure: “For all its marvelous creativity, the human imagination often fails when turned to the future,” Frum wrote. “When Donald Trump is the subject, imagination falters further. Trump operates so far outside the normal bounds of human behavior — never mind normal political behavior — that it is difficult to accept what he may actually do, even when he declares his intentions openly.”<sup>16</sup>

This report attempts to help overcome that failure of imagination, from which we all suffer to some degree. In this report, Protect Democracy adds to the respectable body of reporting regarding the stakes of the 2024 election by explaining *how* a second Trump

administration will go about consolidating power at the federal policy level in service of an agenda of retribution.

This report examines Trump's campaign promises, which are no less ominous after campaign officials tried to temper them.<sup>17</sup> It focuses on a set of pledges most central to an authoritarian agenda. For each category, the report explains how these promises are being translated into concrete action plans that will become federal government policy, should he take office. Protect Democracy's legal and policy experts have carefully evaluated these plans and explain in the following pages how Trump and his allies are laying the groundwork to overcome factors that constrained him, to varying degrees, in his first presidency. We lay out the legal, policy, and bureaucratic mechanics of *how* these policies will be rolled out through the White House and various federal agencies.

In focusing on Trump's plans to implement his agenda of retribution through federal policy and programs, this report does not cover all aspects of the authoritarian threat come 2025. For example, it does not cover potential dangers to U.S. national security from Trump's foreign policy plans. Likewise, it does not address the complete set of extremist domestic policy plans. Nor does it address the dangers posed by Trump's give-and-take with white supremacist militia groups, the way his autocratic approach has been echoed by like-minded politicians at the state level, or the extent to which his rhetoric incites political violence. Additionally, in describing from a legal and policy perspective *how* Trump will use federal powers to disassemble our democracy, it does not portray all of the ways these abuses of power will harm the everyday lives of the American people. The report makes clear that the heart of Trump's agenda is not to address particular policy challenges or advance public policy goals; it is to aggrandize the executive branch's powers and use them for retribution.

## Following the Authoritarian Playbook

Our analysis builds on the foundation of Protect Democracy's Authoritarian Playbook, which offers expert advice for understanding authoritarian threats as distinct from politics-as-usual.<sup>18</sup> The Authoritarian Playbook outlines the seven tactics used by strongmen to gain and retain power and describes examples, foreign and domestic. As that report describes, modern aspiring autocrats around the globe have developed strategies and alliances to seize and wield power. Trump's core plans for a second term would employ each of these playbook tactics:

- Politicizing independent institutions
- Aggrandizing the power of the executive
- Spreading disinformation
- Quashing dissent
- Targeting marginalized communities
- Corrupting elections
- Stoking violence.

Since rising to power in 2016, Trump and his allies have not only followed the global authoritarian playbook — they’ve also aggressively sought to ingratiate themselves with an international authoritarian network. Parallels between Trump and strongmen abroad show how autocratic promises can become a reality.

Trump’s overt praise of autocrats, calling Russia’s Vladimir Putin, China’s Xi Jinping, and Turkey’s Recep Tayyip Erdoğan “tough” and “strong,” is a distinct departure from the American tradition.<sup>19</sup> Although he initially talked tough about North Korean leader Kim Jong Un, Trump later showered him with flattery: “We fell in love,” he said.<sup>20</sup>

Trump, the authoritarian movement that backs him, and Hungary’s Viktor Orbán are forming an especially strident international autocratic alliance.<sup>21</sup> And, Orbán provides a particularly worrying data point about a would-be autocrat returning to power.

Orbán governed Hungary from 1998–2002 through a center-right coalition, then left office and was out of power until 2010. Since returning to power, Orbán has ruled as an autocrat. He wrested control<sup>22</sup> over the independent media, put the country’s universities and cultural institutions under his authority,<sup>23</sup> used demonizing rhetoric to justify his immigration crackdowns,<sup>24</sup> and leveraged his electoral wins to rewrite his country’s constitution to keep himself in power. In a marked departure from Presidents Barack Obama and George W. Bush, who shunned Orbán, Trump welcomed him to the Oval Office in 2019 and lavished him with compliments. “I know he’s a tough man but he’s a respected man,” Trump said during their shared remarks to the press. “Probably, like me, a little bit controversial, but that’s OK. That’s OK.”<sup>25</sup>

## A Roadmap of What Follows

As the following pages describe, the dangers of Trump returning to power are severe. The report focuses on the following areas where Trump has made campaign promises for how he will govern if in power.

It begins with his pledge to issue pardons for the January 6th insurrectionists and others who ignore the law or commit violence on his behalf — a move that seeks to place him and his allies outside the constraints of the law.

In Section Two, it then turns to how he will pierce the independence of the Department of Justice to direct it to investigate and prosecute perceived critics or opponents.

His weaponization of the powers of government may begin with the criminal justice system, but it won’t end there. A third section examines how he will politicize regulatory agencies using their many administrative tools (licenses, permits, contracts, regulatory waivers) to force loyalty and quash dissent.

The report then turns to more direct uses of government force. Section Four addresses Trump’s plans for using Department of Homeland Security agents as a domestic police force.

Section Five considers his plans to deploy not just federal law enforcement but the U.S. military here in the United States.

Section Six considers Trump's repeated suggestions that — like other autocrats around the world — he might not leave office when a second term is up.

Each section begins with Trump's promises and situates them within The Authoritarian Playbook. It then explains in detail the legal and policy mechanisms that Trump will deploy to fulfill his promises. This includes assessing the strengths and vulnerabilities in the guardrails that could constrain the particular abuses of power. Each section then describes how these plans will likely play out in the world when implemented.

The final portions of this report turn from what Trump has planned to how a pro-democracy coalition can work together to enable our democracy to withstand and overcome the threat. To succeed, we must learn from what has worked before, so this includes an analysis of what strategies worked successfully to combat authoritarianism during Trump's first term, while recognizing that continued Trump-led assaults have left our democratic guardrails battered.

The report concludes with a set of ten recommendations that the pro-democracy coalition should pursue to mitigate the threat of an autocrat in the Oval Office. As grave as the danger is, ultimately, a broad and united majority of the American public, working with our Constitution and laws, can preserve our democracy.

# 1



## THE PROMISES: WHAT TRUMP HAS SAID



I have the absolute right to PARDON myself.”

JUNE 4, 2018 TWEET BY @REALDONALDTRUMP<sup>26</sup>



I will tell you, I will look very, very favorably about full pardons. If I decide to run and if I win, I will be looking very, very strongly about pardons. Full pardons...We'll be looking very, very seriously at full pardons because we can't let that happen. ... And I mean full pardons with an apology to many.”

DONALD TRUMP SPEAKING ABOUT JANUARY 6, 2021 RIOTERS  
IN A SEPTEMBER 2022 INTERVIEW<sup>27</sup>



[M]y answer is I am most likely — if I get in, I will most likely — I would say it will be a large portion of them. ... And it'll be very early on.”

TRUMP'S ANSWER WHEN ASKED IN A MAY 2023 TOWN HALL IF HE  
WILL PARDON RIOTERS CONVICTED OF FEDERAL OFFENSES RELATED  
TO THE JANUARY 6, 2021 ATTACK ON THE U.S. CAPITOL<sup>28</sup>

## PRESIDENTIAL CLEMENCY POWER

# Pardons to License Lawbreaking

Pioneering a new form of pardon abuse that threatens the rule of law

### The Playbook

The constitutional pardon power is intended as a tool of mercy and justice. Trump, however, has pledged to abuse it in new ways that would enable future violence and lawbreaking; place him and his allies beyond accountability; and undermine the safety and rights of the American people. Trump's pardon plans further the Authoritarian Playbook tactics of aggrandizing executive power, targeting marginalized communities, and stoking violence.

### The Powers and Plans

The Constitution confers on the president broad power “to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.”<sup>29</sup> If not subject to traditional constraints, detailed below, the pardon power can be abused to license the president's allies to perpetrate violence on his behalf; to break the law to advance his political fortunes; or to cover up the president's own crimes.

### The weakness of traditional guardrails against abuse

Historically, six constraints have prevented these types of pardon power abuse.

- First, political checks have constrained abuses of the pardon power by triggering congressional oversight in response, generating negative media attention and creating political backlash.<sup>30</sup> Most presidents avoid creating such circumstances for themselves.
- Second, over time, the executive branch has developed a set of procedural and administrative protocols to ensure the proper exercise of power. These include a prominent role for relevant law enforcement officials and prosecutors and the

Office of the Pardon Attorney<sup>31</sup> at the Department of Justice (DOJ). This office administers an application process<sup>32</sup> and issues formal guidelines for when pardons are appropriate.<sup>33</sup>

- Third, pardon power abuse can lead to a criminal offense. If a pardon is offered in connection with a bribe or as part of a scheme to obstruct justice, that may be criminal conduct.<sup>34</sup> Accordingly, governmental officials or others involved in such a scheme may be subject to criminal investigation and prosecution. 18 U.S. Code § 201<sup>35</sup> forbids bribery of public officials and witnesses; 18 U.S. Code § 1510<sup>36</sup> prohibits obstruction of criminal investigations; and 18 U.S. Code § 1512 broadly disallows tampering with witnesses, victims, or informants.<sup>37</sup>
- Fourth, concerning self-pardons, DOJ's Office of Legal Counsel (OLC) advised President Richard Nixon in 1974 not to pardon himself because "[u]nder the fundamental rule that no one may be a judge in his own case, it would seem that the question" — whether a president could pardon himself — "should be answered in the negative."<sup>38</sup> Nixon chose to adhere to that guidance rather than trigger a constitutional crisis.
- Fifth, presidents have traditionally adhered to the Constitution's obligation that they "faithfully execute" the duties of their office — that is, that they perform their responsibilities in service of the public interest — and so refrain from engaging in self-dealing pardons or those that license future lawbreaking.<sup>39</sup>
- Sixth, dating back to the early 19th century, federal courts have constrained the pardon power where its exercise may undermine other constitutional provisions and principles.<sup>40</sup> For instance, presidents may not pardon for civil contempt of court, nor pardon a crime before it has been committed. If the recipient declines to accept a pardon, it is not valid.<sup>41</sup> The procedures through which a pardon is granted cannot violate due process. Pardons cannot actually expunge a conviction.<sup>42</sup> In addition, pardons cannot interfere with the vested rights of a third party and cannot require that prisoners forfeit their constitutional rights.<sup>43</sup>

Trump's promise to pardon the January 6th rioters, and his proclamation that he has the power to pardon himself, are dangerous because an authoritarian-minded president can dispense with or ignore most of these constraints. Indeed, while in office before, Trump repeatedly did so.

To take them in turn, we should expect Trump to override existing legal and prudential constraints in the following ways:

- First, congressional oversight and traditional political checks have had little influence on Trump. He has resisted congressional oversight to an unprecedented degree.<sup>44</sup> From a political perspective, he built a coalition primarily on negative partisanship, effectively insulating himself from meaningful checks by the opposing party.<sup>45</sup>

- Second, the executive branch’s procedural and administrative constraints on exercising the pardon power are subject to presidential control. These are not required by any statute, and can be ignored or overridden. And indeed, Trump circumvented the Department of Justice, ignoring the Office of the Pardon Attorney and other procedural guidelines for properly exercising the pardon power. (A 2021 analysis found that only 25 of Trump’s 238 clemency grants, or 11%, were recommended by the pardon attorney.)<sup>46</sup>
- Third, Trump plans to enable White House control over specific DOJ investigations and prosecutions. The following section describes how that will be used for *offensive* purposes (retribution against perceived critics). But it can also be used for *defensive* purposes. Put another way, the White House might seek to direct the DOJ *not* to investigate criminal wrongdoing in connection with violating bribery or obstruction laws relating to pardons.
- Fourth, for similar reasons, the president could choose to ignore OLC conclusions that a self-pardon (or another pardon) is unlawful.
- Fifth, Trump has previously ignored his oath of office and the faithful execution requirement of the Constitution, and these will not constrain his actions in the future.<sup>47</sup>

That leaves the courts as the main backstop against abuse. Courts are not powerless — indeed, they have articulated a range of ways in which the Constitution constrains the pardon power — but their ability to prevent pardon abuse by themselves only goes so far.

### **The danger of dangled or promised pardons**

Beyond the paucity of binding constraints against a president formally issuing pardons, there are few guardrails against a president abusing the pardon power by dangling or promising a pardon to incentivize actions from subordinates or allies. While a lawfully issued pardon is, in our constitutional framework, an act of justice or mercy, the suggestion of a pardon can be an invitation to break the law without consequence.

A dangled pardon comes about solely through presidential rhetoric — whether shouted at a campaign rally, on social media, or whispered behind closed doors — without the president needing to observe any formal legal or procedural mechanism. This is, in fact, precisely what Trump is doing by proclaiming that he will pardon the January 6th rioters.

As president, Trump encouraged allies to obstruct Special Counsel Robert Mueller’s Russia investigation. A passage from the Mueller report explains how Trump sought to reward Michael Flynn and Paul Manafort if they didn’t “rat” him out:<sup>48</sup>

After Flynn withdrew from a joint defense agreement with the President and began cooperating with the government, the President’s personal counsel left a message for Flynn’s attorneys reminding them of the President’s warm feelings towards

Flynn, which he said “still remains,” and asking for a “heads up” if Flynn knew “information that implicates the President.” When Flynn’s counsel reiterated that Flynn could no longer share information pursuant to a joint defense agreement, the President’s personal counsel said he would make sure that the President knew that Flynn’s actions reflected “hostility” towards the President. During Manafort’s prosecution and when the jury in his criminal trial was deliberating, the President praised Manafort in public, said that Manafort was being treated unfairly, and declined to rule out a pardon. After Manafort was convicted, the President called Manafort “a brave man” for refusing to “break” and said that “flipping” “almost ought to be outlawed.”

While witnesses who cooperated with the special counsel, like former President Trump’s lawyer Michael Cohen, did not receive pardons, Trump’s allies who did not “break” — like Manafort and Flynn — did.<sup>49</sup>

As another example, according to reporting from CNN<sup>50</sup> and *The New York Times*,<sup>51</sup> Trump also told Customs and Border Protection Commissioner Kevin McAleenan, shortly before McAleenan was made acting DHS secretary, that McAleenan should close the southern border and that if any legal challenges arose, Trump would pardon McAleenan.

## How It Plays Out

As president, Trump created a new type of pardon for his personal allies and loyalists. These “henchmen pardons” serve a specific, autocratic purpose: not to temper justice with mercy, as the Framers intended of the pardon power, but to reward criminality; benefit the autocrat’s self-interest; and license future lawbreaking.<sup>52</sup>

Based on his promises, plans, powers, and precedent, we can anticipate a future President Trump to issue three types of henchmen pardons. Those that:

- License violence by his allies;
- Reward illegal political activity that accrued to his benefit; and
- Protect himself from accountability for lawbreaking.

### Licensing violence

The first category of pardons to license violence includes Trump’s plans to pardon the January 6th rioters, who have been convicted in federal court of serious violent federal crimes. Trump has not only promised to pardon most of them, but also to do so “very early on.”<sup>53</sup>

More than 1,237<sup>54</sup> defendants, including Trump,<sup>55</sup> have been charged in nearly all 50 states and the District of Columbia. If those pardons were granted, the Department of Justice’s investigation into the January 6th insurrection, the most extensive criminal probe in U.S. history, would effectively be nullified.<sup>56</sup>

*Trump supporters clashed with police officers on January 6, 2021, as they stormed the Capitol in hopes of overturning the 2020 presidential election results.*



Prominent members of domestic militia and extremist groups are part of the tally. Stewart Rhodes, founder of the right-wing militia Oath Keepers organization, was sentenced to 18 years in prison for seditious conspiracy and other charges related to the Capitol breach.<sup>57</sup> Separately, former Proud Boys leader Enrique Tarrío was sentenced to 22 years in prison for his role in the plot.<sup>58</sup> The FBI also continues to seek information on related crimes, notably the planting of pipe bombs outside both the Republican National Committee and Democratic National Committee on the evening of January 5, 2021.<sup>59</sup>

These wouldn't be the first violence-licensing pardons Trump has issued. Trump pardoned four Blackwater contractors convicted<sup>60</sup> of massacring 17 Iraqi civilians, including two children, and two Army officers accused of war crimes in Afghanistan.<sup>61</sup> Trump defended his leniency for war criminals with a social media post mocking the military justice system: "We train our boys to be killing machines, then prosecute them when they kill!"<sup>62</sup> As another example, after Maricopa County Sheriff Joe Arpaio was convicted of contempt of court for repeatedly violating a court order prohibiting illegal profiling and detention, Trump started using Arpaio's name in interviews and speeches to whip up his supporters. "Pardon Joe!" his supporters shouted.<sup>63</sup> Trump strongly hinted he would, then pardoned Arpaio claiming that he was convicted for just "doing his job."<sup>64</sup>

Issuing pardons to "a large portion" of January 6th rioters (as Trump has indicated he would) sends a clear message that engaging in political violence is allowed, so long as it is on Trump's behalf. It will encourage others to engage in violence when they know

Trump supports them — whether they are military contractors, government officials, or even militia members.

### **Rewarding illegal political activity**

A second category of henchmen pardons rewards, and provides incentives to, allies who break the law to advance the president's political fortunes. (January 6th pardons would also fit this category: The rioters were engaged in a violent effort to overthrow the election and keep Trump in power.)

Prior prominent recipients of this type of pardons include *2000 Mules* filmmaker Dinesh D'Souza and Trump's former White House strategist and longtime ally Steve Bannon. D'Souza pled guilty to using straw donors to make illegal campaign donations to a Republican Senate candidate.<sup>65</sup> Bannon was charged with defrauding donors who gave money to build a border wall.<sup>66</sup> Trump pardoned him before his trial even began.<sup>67</sup>

It's easy to see how more of this plays out: commit some sort of fraud to support Trump, or raise or donate a large amount to his political apparatus, and you won't face criminal sanctions for violating the law and harming others.

### **Self or self-protective pardons or pardon offers**

A third category of henchmen pardons is self or self-protective pardons, which allow the president to operate above the law. These may play out through issued pardons or the promise (or even suggestion) that a pardon will be forthcoming. Recall the pardons of Manafort and Flynn.

Should Trump win reelection and issue henchmen pardons in the same way he did during his first administration, that would represent a significant erosion of the rule of law itself. But it could quickly get worse.

In the event of additional federal investigations into a future President Trump, we should expect him to dangle pardons to key witnesses, so long as they don't testify or don't offer damaging testimony to him. More likely, Trump will intervene with the Department of Justice to direct the department to drop investigations involving him. If he is convicted of a federal offense before January 2025, Trump might seek to pardon himself.



Trump’s perversion of the pardon power as a tool for self-dealing posed an acute threat to the rule of law the first time around, rewarding the behavior of dozens of associates — including his former campaign manager and various advisors — who committed crimes. That threat will only escalate the second time around.

The latest promises of pardons for January 6th, for instance, would vindicate mass political violence as a method for securing power. In a second term, Trump will not hesitate to grossly abuse the pardon power to further the broader authoritarian project of placing his henchmen, and himself, above the law. The rights and even the personal safety of the rest of us will be subject to the whims of an autocrat and his followers.”

**Grant Tudor**

POLICY ADVOCATE, PROTECT DEMOCRACY

## Additional Reading

- **Preventing Pardon Abuse**, Protect Democracy (2020)<sup>68</sup>
- **Why dangling a pardon could be obstruction of justice, even if the president’s pardon power is absolute**, Alex Whiting, Just Security (2020)<sup>69</sup>
- **Can Congress do anything about Trump’s abuse of pardon power?**, Andrew Kent, Lawfare (2020)<sup>70</sup>

# 2



## THE PROMISES: WHAT TRUMP HAS SAID



I have an Article II, where I have the right to do whatever I want as president.”

TRUMP SPEECH TO TURNING POINT USA TEEN STUDENT ACTION SUMMIT, JULY 2019<sup>71</sup>



If I win and somebody wants to run against me, I call my attorney general. I say, listen, indict him. ‘Well, he hasn’t done anything wrong that we know of’ — I don’t know, indict him on income tax evasion, you’ll figure it out.”

TRUMP CAMPAIGN SPEECH IN RAPID CITY, SOUTH DAKOTA, SEPTEMBER 2023<sup>72</sup>



If I happen to be president and I see somebody who’s doing well and beating me very badly, I say go down and indict them. Mostly, that would be — you know, they would be out of business. They’d be out. They’d be out of the election.”

TRUMP INTERVIEW WITH UNIVISION, NOVEMBER 2023<sup>73</sup>

DEPARTMENT OF JUSTICE

# Directing Investigations Against Critics and Rivals

## Paring back prosecutorial independence

### The Playbook

“Equal Justice Under Law” is a bedrock of our democracy guaranteed by the Constitution and enshrined in marble on the Supreme Court.<sup>74</sup> Trump would replace that with an approach where he personally directs investigators and prosecutors to go after critics and perceived political opponents, and protects himself from criminal exposure. His plans for the Department of Justice are a classic example of the authoritarian tactic of politicizing independent institutions, enabling him to target vulnerable communities and quash dissent.

### The Powers and Plans

Both major U.S. political parties have historically accepted that DOJ authorities should be exercised impartially, and that political figures in the White House should not interfere in specific investigations or prosecutions. DOJ’s “first core priority” is to uphold the rule of law, and its Principles of Federal Prosecution protect the fair and impartial administration of justice.<sup>75</sup> These principles reflect fundamental constitutional guarantees of due process and equal protection. In the decades before Trump, administrations of both parties put in place a series of practices and guardrails to uphold these principles.<sup>76</sup>

Against that settled backdrop of independence from White House control, Trump’s pledge to have DOJ indict his political opponents may seem like just another outlandish statement. But that would require ignoring how Trump weakened traditional DOJ independence when he was president. And, going forward, veterans from his first administration have developed specific plans to weaken further or eliminate the major constraints that have traditionally prevented the White House from directing specific DOJ investigations or prosecutions.<sup>77</sup>

Plans to enable the White House to direct who DOJ does and doesn't investigate or prosecute have both offensive and defensive implications. This section focuses on the offensive implications, or how DOJ will be deployed against critics and opponents. Any decision to stop a prosecution for defensive purposes overlaps with potential abuse of the pardon power covered in Section One.

There are five major sets of guardrails that have typically prevented a president from weaponizing DOJ against his opponents. Those five constraints, and how Trump and his allies plan to overcome them, are as follows:

### **Policies limiting White House contacts with DOJ**

For decades, administrations of both parties issued formal memos that put policies in place to prevent the White House from using DOJ to target political opponents and to protect DOJ independence.<sup>78</sup> These are known as “contacts memos” and create a mechanism to channel communications between the White House and DOJ through a small number of senior officials to ensure these contacts are appropriate (i.e., about generally applicable policy matters) and not improper (i.e., pressuring DOJ to investigate political opponents).

Michael Mukasey, President George W. Bush's attorney general, issued a memo to this end,<sup>79</sup> as did President Obama's Attorney General Eric Holder.<sup>80</sup> Trump's White House counsel, Don McGahn, issued one of these memos in January 2017.<sup>81</sup> Biden White House counsel Dana Remus<sup>82</sup> and Attorney General Merrick Garland each did so in 2021.<sup>83</sup>

Trump-aligned advocates are calling on the next Republican administration to “reexamine” these long-standing policies. The Heritage Foundation is part of that effort. The think tank devoted considerable resources to create a hefty policy 2025 White House policy instruction manual, and it states:

Traditionally, both the White House Counsel and the Attorney General have issued a memo requiring all contact between the two institutions to occur only between the Office of White House Counsel and the Attorney General or Deputy Attorney General. The next Administration should reexamine this policy and determine whether it might be more efficient or more appropriate for communication to occur through additional channels.<sup>84</sup>

### **Presidential obligations under the Constitution**

The Constitution requires the president to “take care that the laws be faithfully executed,” and further takes an oath of office to “faithfully execute” the office of the president, and the Constitution and laws of the United States. Pursuant to those commands, post-Watergate presidents — Trump excepted — have traditionally respected the constitutional principles of due process and equality under the law, and left decisions about whom to investigate or prosecute to officials at the Department of Justice. They understood that they may shape DOJ's approach to and prioritization of

policy matters at a high level, but that directing DOJ to investigate or prosecute specific people would violate foundational principles of U.S. democracy.

Trump's statements demonstrate that he rejects any principled limit on presidential involvement with DOJ. Referring to the section of the Constitution that describes the executive branch's powers, Trump previously and incorrectly claimed many times that "I have an Article II, where I have the right to do whatever I want as president."<sup>85</sup>

### **Enforcement of limits on political interference by White House and DOJ attorneys**

The president has historically appointed White House attorneys and DOJ leadership who are diligent about protecting the rule of law and DOJ from White House interference, including enforcement of the contacts memos. If a president considered violating these principles, intentionally or unintentionally, these officials could be expected to caution against such action; to speak out in public against the interference; to refuse to follow improper orders; or ultimately to resign.

Even though White House and DOJ lawyers enabled Trump in many ways throughout his presidency, they ultimately pushed back on his worst impulses in the aftermath of the 2020 election. When Trump pressured Department of Justice officials to give credence to false allegations of voter fraud and launch sham investigations to advance that narrative, White House and DOJ lawyers resisted, telling Trump there was no evidence of widespread fraud.<sup>86</sup> The result was a bitter showdown and Attorney General Bill Barr's resignation in the final weeks of the Trump administration.<sup>87</sup> To replace Barr, Trump unsuccessfully attempted to install Jeffrey Clark, who was willing to carry out Trump's demands for DOJ election interference.<sup>88</sup> The threat of mass resignation from other DOJ lawyers stopped him. (As discussed below, Clark has since been charged at the state level for his actions to overturn the election results; the attorneys who refused to partake in the alleged conspiracy have not.)<sup>89</sup>

Since Trump left office, a legal movement has coalesced around him, offering a framework for his unconstrained view of his authority. These lawyers claim that DOJ should not have any "independence" from the president.<sup>90</sup>

Trump intends to appoint lawyers who affirm this belief to his next administration. According to credible reporting, Trump plans to populate key legal roles in his administration with lawyers "who are willing to use theories that more establishment lawyers would reject to advance his cause."<sup>91</sup> If given the chance, these lawyers will eliminate, undo, or challenge existing rules that limit the president's ability to interfere in DOJ investigations.

Some of that work is already underway. Clark, who also allegedly conspired with Trump to initiate sham investigations in December 2020, is making the case — with think tank support — to eliminate DOJ independence.<sup>92</sup> He released an essay titled "The U.S.

Justice Department is Not Independent” through the Center for Renewing America that explicitly calls for a White House-controlled Department of Justice.<sup>93</sup>

“Given the straightforward Take Care Clause, it is remarkable, first and foremost, that anyone at the Justice Department or even in academia, the media, or pressure groups can even try to speak with a straight face about the supposed independence of the Justice Department,” Clark wrote.<sup>94</sup> His paper spends considerable time criticizing the use of contacts memos to limit communications between the White House and DOJ, arguing that “If the President wants to consult with his DOJ subordinates, especially those with Senate confirmation, he should be able to do so and do so without rigmarole.” In Clark’s view, “The President cannot be removed from that equation and demoted to a mere policy setter.”<sup>95</sup>

While some might wish to dismiss Clark as an outlier, his perspective is supported by influential Republicans, such as Harvard Law School graduate, Navy JAG lawyer, and Florida Governor Ron DeSantis. DeSantis said in a 2023 interview:

Republican presidents have accepted the canard that the D.O.J. and F.B.I. are — quote — ‘independent.’ They are not independent agencies. They are part of the executive branch. They answer to the elected president of the United States.<sup>96</sup>

This view ignores not only history, but also the text and structure of the Constitution itself.<sup>97</sup> Congress created DOJ and enacted the laws that DOJ is authorized to enforce. The Constitution requires that the president “take care that the laws be *faithfully* executed,” and guarantees to all individuals due process and equal protection of the laws. These twin constraints on executive power — the duty to supervise the faithful execution of the laws, and the private rights against arbitrary or selective prosecution — forbid a president from wielding DOJ to prosecute particular targets.<sup>98</sup> No doubt the president is the head of the executive branch, and reasonable arguments can be offered around the proper scope of presidential policy-setting control over DOJ and other agencies. But even those who generally support a “unitary executive” approach to presidential power acknowledge the limits of that view; it is not *carte blanche* to directly prosecute opponents.<sup>99</sup>

### **Criminal investigation or prosecution**

Abuse of power can violate the law and lead to criminal accountability. After Watergate, numerous federal officials were indicted or jailed for their roles, including Attorney General John Mitchell and White House legal counsel John Dean.<sup>100</sup> At the time of this writing, Trump and Jeffrey Clark are facing federal and state charges, respectively, related to an alleged conspiracy to attempt “to use the power and authority of the Justice Department to conduct sham election crime investigations.”<sup>101</sup> DOJ attorneys who refused to go along with President Trump’s efforts to overturn the election are not facing charges.

This constraint is likely to be considerably weaker in a second Trump administration. DOJ officials will have fewer reasons to fear criminal accountability for conspiring with the White House to conduct sham investigations. The promise of pardons for federal crimes to benefit Trump (see Section One), and overall confidence in the protections the president offers, may embolden political appointees at DOJ to carry out his wishes (or violate the law for other reasons), without fear of accountability. And a belief that Trump will never relinquish power (see Section Six) may further temper the deterrence power of eventual legal accountability that was likely a factor in December 2020.

For these reasons, internal watchdog mechanisms at DOJ — like the Office of the Inspector General (OIG) — are also less likely to be effective. The OIG can be powerful, but only in a world where DOJ attorneys fear consequences from its recommendations.<sup>102</sup>

### **Pressure from Congress**

Congressional oversight, backed by the possibility of impeachment, can be a powerful constraint against White House abuse of law enforcement. Oversight by Congress uncovered the information that led to the Watergate prosecutions and President Nixon's resignation. In the first Trump administration, pressure from both Democrats and Republicans in Congress for some form of independent investigation into Russia's involvement in the election (after Trump fired FBI Director James Comey and Attorney General Jeff Sessions recused himself from the matter) ultimately culminated in the Mueller appointment.<sup>103</sup>

As described above, Trump pays little regard to congressional oversight. Moreover, the risk of successful impeachment that reportedly scared and constrained Trump will also be limited, as Republicans in Congress are more aligned behind Trump than they were in his first administration.<sup>104</sup> The refusal by most Republicans in Congress to support either the House's impeachment of Trump for the events of January 6th (nevermind conviction in the Senate), or the subsequent investigation by the Select Committee, sends a clear signal to Trump that he need not fear those forms of congressional accountability for future misconduct.

### **The remaining barriers: DOJ career officials and federal courts**

The constraints previously described will be significantly weakened if Trump is elected in 2024, placing extreme pressure on two remaining sets of actors: career officials at DOJ and federal courts. DOJ lawyers and courts each have powerful roles to play as guardrails against abuse of law enforcement powers. But, as described below, they will have only limited ability to prevent or mitigate harm to the intended targets.

## How it Plays Out

To make good on his promises for retribution, Trump has singled out a long list of people, by name, whom he will target for an unwarranted government investigation, including his top political rival, President Joe Biden.<sup>105</sup> Others include Trump's handpicked former staff, such as former Chief of Staff John Kelly, former Attorney General William Barr, and former Joint Chiefs of Staff Chairman General Mark Milley.<sup>106</sup>

These potential targets share two distinguishing commonalities: Each objected to at least one of Trump's unconstitutional actions and has publicly criticized him in some manner. For this, Trump falsely accused General Milley of treason, writing online that he committed "an act so egregious that, in times gone by, the punishment would have been DEATH!"<sup>107</sup>

Trump also plans to investigate institutions perceived to be working against his agenda, including schools<sup>108</sup> and universities;<sup>109</sup> technology<sup>110</sup> and media companies;<sup>111</sup> and Democratic lawyers.<sup>112</sup> This may be done through DOJ or other federal agencies (as described in Section Three). As described above, few restraints that traditionally protected against these sorts of politically directed investigations will hold.

At this point, career DOJ attorneys and law enforcement officials may refuse to carry out directives from the White House or DOJ leadership to do the president's bidding. Unfortunately, there is only so much they can do: report violations of policy to DOJ internal watchdogs (OIG and Office of Professional Responsibility); become whistleblowers to Congress or the media and public; or, ultimately, resign their positions.<sup>113</sup> In 2020, all four federal prosecutors resigned from the Roger Stone case after senior officials undercut the recommended sentence for Stone.<sup>114</sup> But these actions — which may have the salutary effect of bringing attention to abuses and denying the president the attorneys' talents — still won't be able to stop Trump's top lawyers from finding new prosecutors to do his bidding.

Those who find themselves in the crosshairs of a politically directed investigation or prosecution will have strong legal arguments grounded in the Constitution to challenge selective prosecutions. But by the time they can raise those arguments in court, the victims of the retribution agenda will likely already have been harmed.<sup>115</sup>

Politically motivated prosecutions don't need to result in a conviction to have their intended effect. Being threatened by the prospect of heavy fines or incarceration, and being forced to needlessly defend oneself in court, can be a form of harassment in itself. Legal proceedings are emotionally taxing, time-consuming, stressful for families, and expensive. For some targets of political prosecutions, being investigated may also cost them their employment, security clearance, and reputation. In the event these targets are indicted, the legal standard for challenging a prosecution as politically influenced is relatively high.<sup>116</sup> There is no guarantee even meritorious claims will succeed.



In view of the politically motivated retribution and self-dealing Trump used DOJ to accomplish while in office, we shouldn't doubt that he will follow through on his pledge to appoint DOJ and White House lawyers who will have no qualms about, and thus will not inhibit him from, carrying out his vision of personal absolute control over the government's law enforcement powers. We'll be in a world where FBI agents are directed to open investigations on not just people who run against Trump or criticize him; who have investigated him; or might hurt his businesses, but also on anyone who questions him, even if they are his supporters.

And at the same time, he'll shut down any inquiry into wrongdoing by him or his allies. This is a recipe for rampant authoritarianism directed from the Oval Office. And it will place extraordinary pressure on career civil servants and courts to go to unprecedented lengths to uphold the law.”

**Kristy Parker**

SPECIAL COUNSEL, DEFENDING THE RULE OF LAW, PROTECT DEMOCRACY

## Additional Reading

- **White House Communications with the Department of Justice and FBI**, Protect Democracy (2023)<sup>117</sup>
- **Investigating and Prosecuting Political Leaders in a Democracy**, Protect Democracy (2023)<sup>118</sup>
- **No 'Absolute Right' to Control DOJ: Constitutional Limits on White House Interference with Law Enforcement Matters**, Protect Democracy (2018)<sup>119</sup>
- **Independence and Accountability at the Department of Justice**, Jack Goldsmith, Lawfare (2018)<sup>120</sup>
- **The Take Care Clause, Justice Department Independence and White House Control**, Andrew McCause Wright, The Research Repository @WVU (2018)<sup>121</sup>

# 3



## THE PROMISES: WHAT TRUMP HAS SAID



I will immediately re-issue my 2020 Executive Order restoring the President's authority to remove rogue bureaucrats. And I will wield that power very aggressively.”

DONALD J. TRUMP FOR PRESIDENT 2024<sup>122</sup>



I say up front, openly, and proudly, that when I WIN the Presidency of the United States, they and others of the LameStream Media will be thoroughly scrutinized for their knowingly dishonest and corrupt coverage of people, things, and events. Why should NBC, or any other of the corrupt & dishonest media companies, be entitled to use the very valuable Airwaves of the USA, FREE? They are a true threat to Democracy and are, in fact, THE ENEMY OF THE PEOPLE! The Fake News Media should pay a big price for what they have done to our once great Country!”

TRUMP POST ON TRUTH SOCIAL, SEPTEMBER 2023<sup>123</sup>



When I return to the White House, I will do everything I can to challenge the Impoundment Control Act in court, and if necessary, get Congress to overturn it. We will overturn it.”

DONALD J. TRUMP FOR PRESIDENT 2024<sup>124</sup>

**FEDERAL AGENCIES**

# Regulatory Retaliation

Installing loyalists and wielding administrative powers to force political loyalty and quash dissent

## The Playbook

A hallmark of any democracy is the freedom to criticize the government without fear of censorship or reprisal. Trump has promised — and has developed plans — to use the regulatory and administrative powers of government to force political loyalty; sow disinformation; and quash speech by journalists and media outlets, businesses, and other private citizens. These plans follow the measures used by Viktor Orbán in Hungary and other 21st century autocrats to transform government power to serve the parochial interests of the ruler, not the broader public.

## The Powers and Plans

Trump often speaks frankly about using the vast powers of government to reward loyalists and punish critics and perceived opponents. A centerpiece of that approach will be the deployment of the Department of Justice's law enforcement powers against critics (see Section Two), paired with pardoning those who violate the law to carry out his wishes (Section One). But that's only part of it.

Federal agencies have a range of tools available to them, in addition to criminal investigation and prosecution, to execute federal law, implement federal programs, and so carry out the work of government. These administrative and regulatory authorities ensure that our healthcare and environmental laws are enforced; support our education system; distribute public resources; provide relief in disasters; purchase the tools required for national security; and protect our financial system. Trump has plans to transform these authorities into tools to coerce loyalty and curb dissent, making government aid, contracts, licenses, merger approvals, tax benefits, permits, civil penalties, relief aid, grants, and regulatory waivers contingent on showing him personal fidelity.

There is precedent for this overseas in countries governed by leaders whom Trump endorses, like Hungary, where Viktor Orbán’s government unleashed the regulatory powers of the state to punish media he deemed insufficiently loyal and to prop up outlets he favored.<sup>125</sup> Kim Lane Scheppele described Orbán’s actions in *The Journal of Democracy*:

In 2010, he cut all state advertising funds to critical news outlets and threatened to sever contracts with private advertisers that continued to support targeted media. The following year, he established a Fidesz-controlled media council with the power to levy bankrupting fines against news outlets that did not favor the Fidesz worldview. Hit on all sides by financial attacks, independent and opposition media began to fail just as news media across the globe were struggling financially to adapt to the online world. It was therefore not obvious outside Hungary that the country’s media companies were failing for different reasons. Once they were sufficiently weakened, however, these starved outlets could be bought for cheap. Orbán’s close friends snapped up many of them at the Fidesz fire sale — at which point state advertising resumed to sustain them. Rather than jailing journalists, engaging in blatant censorship, or simply shuttering hostile media, Orbán let economic pressure do the work.<sup>126</sup>

In that vein, Trump made several attempts, with varying degrees of success, to crack down on the media during his first term.

- He ordered a government review<sup>127</sup> of postal rates and urged his postmaster general to double shipping rates<sup>128</sup> on Amazon, as a part of his campaign to pressure *Washington Post* and Amazon owner Jeff Bezos to provide him with more favorable news coverage.<sup>129</sup>
- As a 2016 candidate, Trump threatened<sup>130</sup> to block the merger of AT&T and Time Warner because CNN was “wildly anti-Trump” and, after he became president, the Department of Justice challenged the deal.<sup>131</sup> *The New Yorker* reported that Trump ordered top aides to “get this lawsuit filed...I’ve mentioned it fifty times. And nothing’s happened. I want to make sure it’s filed. I want that deal blocked!”<sup>132</sup> Trump also sought to punish CNN in other ways, banning<sup>133</sup> a reporter from a press conference for shouting “inappropriate” questions and suspending another reporter’s White House press pass after a contentious news conference.<sup>134</sup>

In the United States, at least for much of the post-Watergate era, six categories of constraints have stopped the executive branch from transforming into an Orbán-like mafia state.<sup>135</sup> Those are: (1) Senate confirmation requirements for senior agency officials and protection for non-partisan civil servants; (2) statutory structures that ensure the independence of certain agencies; (3) congressional control over the power of the purse; (4) norms, including as reflected in policy memos; (5) fear of investigation, congressional oversight, and political backlash; and (6) civil litigation to enforce formal

legal barriers. Trump and his allies were constrained in limited ways in his first term and have developed plans to weaken the first four of these constraints in a subsequent term; he is unlikely to be constrained by the other two. We address these constraints in turn.

### **Bypassing Senate confirmation and replacing career civil servants with loyalists**

For well over a century, the modern civil service system has ensured that the everyday powers of government are implemented by officials selected impartially and based on merit — not by those engaged in a system of political patronage.

Under long-standing rules, the president can make around 4,000 political appointments, only approximately 1,200 of which require Senate confirmation.<sup>136</sup> To promptly fill those positions in 2025, Trump and allies are engaged<sup>137</sup> in an intensive screening process<sup>138</sup> that, as Axios described, “drills down more on political philosophy than on experience, education or other credentials.”<sup>139</sup>

For positions requiring Senate confirmation, Trump frequently sought to evade that check during his first term. Under the Federal Vacancies Reform Act (FVRA), certain people can temporarily fill<sup>140</sup> open roles when there is no Senate-confirmed official in place, an allowance Trump eagerly utilized.<sup>141</sup>

While presidential administrations of both parties<sup>142</sup> have taken advantage of the FVRA’s ambiguities, Trump was unique in the way he leveraged high-profile firings<sup>143</sup> and forced resignations to exercise maximum control over executive branch officials in some of the most powerful government agencies.<sup>144</sup> We saw this across multiple agencies in his administration, from the Department of Justice<sup>145</sup> and Department of Homeland Security,<sup>146</sup> to the Pentagon<sup>147</sup> and agency inspectors general.<sup>148</sup> Trump expressed enthusiasm for installing temporary, unaccountable agency leaders, telling the press in 2019, “I like acting [officials]. It gives me more flexibility.”<sup>149</sup>

In one case, a federal court found Trump’s FVRA abuse unlawful, but that did not stop him.<sup>150</sup> In February 2020, *The Washington Post* found that “Trump has kept acting officials in charge of top agencies and departments so much that they’ve accounted for 1 out of every 9 days in those positions. Across 22 Cabinet-level jobs, acting officials have served a total of 2,736 days — more than seven years of combined time.”<sup>151</sup>

To fulfill his campaign pledge to “totally obliterate the deep state” in his next term, Trump will go further.<sup>152</sup> He has promised<sup>153</sup> to reissue his October 2020 executive order, *Creating a Schedule F in the Excepted Service*, to terminate scores of career employees, which was issued by Trump too late in his presidency to be implemented.<sup>154</sup> President Biden took office before the order could go into effect and he rescinded it in January 2021.<sup>155</sup> As noted above, Trump has promised to prioritize “immediately” re-issuing the order upon his inauguration. Experts estimate that could impact “anywhere from tens of thousands to hundreds of thousands in a workforce of 2.1 million.”<sup>156</sup>

The current civil service system was created by a series of statutes dating back to the Pendleton Act of 1883, enacted to eliminate the “spoils system” in which federal jobs were given and retained based on personal and political loyalty.<sup>157</sup> When Trump says, as he did at a South Carolina rally in 2022, that “We will pass critical reforms making every executive branch employee fireable — fireable — by the president of the United States,” he is pledging to replace the impartial system begun over a century ago with one based on personal fealty.<sup>158</sup>

### **Undermining independent federal agencies**

In our constitutional system, Congress creates administrative agencies to carry out its laws, and it has designed certain agencies to operate with some degree of independence from presidential control. These independent agencies have considerable power over private actors and critical functions for our democracy. The Federal Communications Commission (FCC), for example, issues broadcast licenses;<sup>159</sup> the Federal Elections Commission (FEC) administers campaign finance laws;<sup>160</sup> and the Federal Trade Commission (FTC) enforces competition and consumer protection laws.<sup>161</sup>

Under the structures that Congress enacted, these are different from traditional cabinet agencies in several respects.<sup>162</sup> In particular: they are led by a commission or board that is appointed over time, not all at once by the same president; the board is frequently required to be bipartisan; and certain officers at these agencies are protected from removal by the president. (Note: DOJ’s independence in specific law enforcement matters is a result of constitutional constraints, other statutory limitations, and agency guidance — not this type of institutional structuring.<sup>163</sup>)

A second Trump administration will seek to pierce the independence of federal agencies to expand presidential control over their activities. For example, Trump released a policy video saying he would place the FTC and FCC “under Presidential authority.”<sup>164</sup>

Trump’s open threats to wield these agencies in retributive ways, however, underscore why Congress created them to be independent. Indeed, the FCC was designed, at least in part, to protect dissenting voices. Commercial and noncommercial broadcast stations must obtain a license from the FCC, which must be renewed periodically.<sup>165</sup> Broadcasters must, by law, “serve the public interest, convenience, and necessity.”<sup>166</sup> With an independent agency, the people applying this standard and deciding whether to grant or revoke licenses<sup>167</sup> are professional civil servants, overseen by a bipartisan board.<sup>168</sup>

Trump intends to replace that independent process with one where he has direct authority and can more readily manipulate the applicable standards. That critical step would allow him to direct the FCC’s regulatory powers, as he has promised, against media companies like MSNBC and its parent company, NBCUniversal, along with others that he has labeled as the “enemy of the people” that “should pay a big price” for coverage critical of him.<sup>169</sup>

*Trump participated in a bilateral meeting with Ukraine President Volodymyr Zelensky on Sept. 25, 2019. Trump was later impeached by the House of Representatives for holding up funding for Ukraine.*



### **Seizing the congressional power of the purse**

The prior analysis highlights some of the ways Congress ensures the effective administration of its laws: through Senate confirmation of key officials; through requiring a professional merit-based civil service; and through statutory structures to ensure the independence of key regulatory agencies.

Another tool Congress uses is its constitutional power of the purse. Article I gives Congress the power to raise money (Art. 1, Sec. 7) and to decide how to spend it (Art. 1, Sec. 9).<sup>170</sup> Accordingly, agencies cannot spend money that Congress has not appropriated,<sup>171</sup> and the executive branch cannot refuse to execute Congress's will by "impounding" (or refusing to spend) funds that Congress appropriates, unless the president gets approval from Congress to do otherwise.<sup>172</sup> The congressional power of the purse helps prevent a president from spending federal money on friends or withholding it from perceived adversaries.

Trump and allies are developing — and have previously exercised — tools to undermine the congressional power of the purse.<sup>173</sup> The charge in the first Trump impeachment was that he withheld money Congress had decided to spend — \$391 million in security assistance to Ukraine — as leverage to coerce Ukraine to probe his potential opponent in the 2020 presidential campaign.<sup>174</sup> The independent Government Accountability Office released a report finding that Trump's actions violated the Impoundment Control Act.<sup>175</sup>

Now, Trump and his allies are pursuing new plans to withhold money that Congress has decided should be spent in specific ways. Trump has promised that “bringing back Impoundment will give us a crucial tool with which to obliterate the Deep State, Drain the Swamp, and starve the Warmongers.”<sup>176</sup>

### **Remaining norms and guardrails**

In addition to legal and administrative constraints, a set of norms and political factors have prevented abuse of the government’s regulatory powers to reward friends and punish critics. While the two major parties have differing views on the proper size and scope of federal regulatory power, they’ve traditionally agreed it should be deployed in an evenhanded way. As then-GOP presidential nominee Mitt Romney put it in 2012, “the government shouldn’t be picking winners and losers.”<sup>177</sup>

Consistent with that norm, White House policies on contacts with the Department of Justice (described in more detail in Section Two) have also included prohibitions on White House officials contacting officials at other agencies to weigh in on matters like specific waivers, contracts, or grant applications.

Congressional oversight, fears of political backlash, and impeachment have reinforced these norms. Take, for example, the extensive congressional investigation into a loan guarantee provided by the Department of Energy to Solyndra, a California-based solar company, during the Obama Administration.<sup>178</sup> Investigations never identified improper interference in the regulatory decision to give Solyndra a loan, yet the oversight and public reaction<sup>179</sup> imposed a huge political cost on the president and was fodder for multi-million dollar political advertising campaigns.<sup>180</sup> Impeachment is the ultimate measure of congressional accountability for wrongdoing, but Trump has already shown himself impervious to conviction for spending abuses. In the Ukraine impeachment, the Senate acquitted Trump with just a single Republican voting to convict;<sup>181</sup> that Republican, Utah Sen. Mitt Romney, is not seeking re-election in 2024.<sup>182</sup>

Taken together, then, Trump and his allies have plans in place to override most of the guardrails that protect against abuse of federal regulatory powers. That will leave in place just one major type of constraint — recourse to the courts by people harmed, using a set of constitutional protections like the First Amendment and statutes that govern administrative procedures or federal contracting.

While civil litigation can be a powerful tool, it is not a panacea. Litigation is time-consuming, expensive, and risky—and even if successful, by the time a case is resolved, it may be too late to vindicate the interests of the people harmed. In the meantime, an example will be set that criticism is punished and loyalty rewarded.

## How it Plays Out

As described above, Trump and his allies have developed detailed plans to fill the federal workforce with people prepared to use executive power to act on Trump's threats of retribution. His quest to expel career civil service employees and replace them with loyalists is similar to the way Victor Orbán purged Hungary's civil service in a "bloodless liquidation" that allowed him to turn the government into a mafia state.<sup>183</sup>

Trump advisor Kash Patel — who served on Trump's National Security Council and as chief of staff to the Acting Secretary of Defense, and who could have a high-ranking role in a second Trump Administration — said on Steve Bannon's podcast:

The one thing we learned in the Trump administration, the first go-around, is we got to put in all America patriots, top to bottom, and we got them for law enforcement. We got them for intel collection, we got them for offensive operations, we got them for D.O.D., C.I.A., everywhere...Yes, we're going to come after the people in the media who lied about American citizens, who helped Joe Biden rig presidential elections — we're going to come after you. Whether it's criminally or civilly, we'll figure that out.<sup>184</sup>

Former government officials who speak out against Trump may also be subjected to retaliatory measures. Recall that Trump revoked former CIA Director John Brennan's security clearance.<sup>185</sup>

Trump could retaliate against broader swaths of the American people by withholding government aid on a mass scale. Former Trump DHS official Miles Taylor recounts that Trump attempted to pull Federal Emergency Management Agency funding that California needed to fight wildfires because the state would not help him win the election. "He told us to stop giving money to people whose houses had burned down because he was so rageful that people in the state of California didn't support him," Taylor said.<sup>186</sup>

Going forward, Trump and his allies could also take punitive action against other institutions they believe are working against their political agenda. They've already turned their sights on the education system and are proposing ways to use federal funding to control classroom speech. The first plank of Trump's "Plan to Save American Education" promises he will "Cut federal funding for any school or program pushing Critical Race Theory, gender ideology, or other inappropriate racial, sexual, or political content on our children." In a video accompanying the written plan, Trump called for "a new credentialing body that will be the Gold Standard, anywhere in the world, to certify teachers who embrace patriotic values, support our way of life, and understand that their job is not to indoctrinate children, but very simply to educate them."<sup>187</sup>

If Trump is elected and enacts these plans, the entities harmed by Trump’s regulatory retaliation will have legal rights and claims available to seek redress. PEN America filed a lawsuit challenging Trump’s retaliatory actions against the press in 2018 (Protect Democracy served as counsel).<sup>188</sup> The claims were grounded in the First Amendment and rules around due process and administrative law. But, as described above, litigation is hard, expensive, and uncertain. It also may take years to resolve, at which point substantial harm may have already been done.<sup>189</sup>



Trump will reorient the federal government away from serving and empowering the American people, however imperfectly, and toward serving and empowering himself. Like Trump himself, it will be corrupt, capricious, and cruel. And where Trump goes, society will have to follow.

Many of Trump’s plans are unlawful, but unlawfulness has rarely stopped him in the past. It would not be surprising to see the president try to send an order down to air traffic controllers to ground a plane because he’s mad at a congresswoman who’s on board or prevent emergency relief funds from going to a majority-Democrat city hit by a hurricane.

Government officials will curry favor by mimicking these Trumpian tactics, creating an army of petty tyrants trying to channel the president’s vicious and violent whims. We can expect many in the private sector to follow suit, seeking opportunities to prove their loyalty by trolling the most vulnerable. The cost of pushing back or voicing disagreement will be far too high for the vast majority of us to tolerate.”

**Erica Newland**

COUNSEL, PROTECT DEMOCRACY

## Additional Reading

- **Punishing Corporate Expression: Distinguishing the Abuse of Government Power from Politics as Usual**, Protect Democracy (2023)<sup>190</sup>
- **The Federal Vacancies Reform Act**, Protect Democracy (2022)<sup>191</sup>
- **How a Proposed Regulation Protects the Civil Service from Politicized Attacks: A look at the Biden Administration's Response to Schedule F**, Protect Democracy (2023)<sup>192</sup>
- **There's a Term for Desantis's War on Disney — It's Called Autocratic Capture**, Protect Democracy (2023)<sup>193</sup>

# 4



## THE PROMISES: WHAT TRUMP HAS SAID

“

They let — I think the real number is 15, 16 million people into our country. When they do that, we got a lot of work to do. They're poisoning the blood of our country.”

TRUMP'S COMMENT ABOUT IMMIGRANTS AT A RALLY IN DURHAM, NEW HAMPSHIRE, DECEMBER 16, 2023<sup>194</sup>

“

I will bring back the travel ban and expand it even further to keep radical Islamic terrorists out of our country ... The worst enemy is the enemy from within ... Those who join our country must love our country and we're going to keep foreign Christian hating communists, Marxists, socialists. We're going to keep 'em the hell out of America. We don't want 'em. ...”

TRUMP SPEECH IN DUBUQUE, IOWA, SEPTEMBER 20, 2023<sup>195</sup>

“

I'll also invoke immediately the Alien Enemies Act.”

TRUMP SPEECH IN DUBUQUE, IOWA, SEPTEMBER 20, 2023<sup>196</sup>

“

I will use every power at my disposal ... I will use everything I can, every single power at my disposal including sending as many federal law enforcement assets as required to restore safety and peace... Very simply, if you rob a store, you can fully expect to be shot as you are leaving that store. Shot! ... The word that they shoot you will get out within minutes and our nation, in one day, will be an entirely different place.”

TRUMP SPEAKING AT THE CALIFORNIA REPUBLICAN PARTY CONVENTION, SEPTEMBER 29, 2023<sup>197</sup>

## HOMELAND SECURITY

# Federal Law Enforcement Overreach

## Expanding the footprint of federal law enforcement

### The Playbook

Trump plans to follow the Authoritarian Playbook tactics of aggrandizing executive power and using it to target vulnerable communities. He intends to expand the footprint of federal law enforcement by consolidating resources under his control at the Department of Homeland Security (DHS). He will do this primarily in the context of immigration enforcement, where he has plans to invoke part of the Alien and Sedition Acts to facilitate large-scale arrests, which will involve constructing mass detention camps. He will also leverage executive powers to dispatch federal law enforcement officers to our cities to use against protesters or for other purposes.

### The Powers and Plans

In our federalist system, police powers — the regulation of “[p]ublic safety, public health, morality, peace and quiet, law and order” — generally belong to state and local governments.<sup>198</sup> The federal government has the power to enforce federal law, but generally not to police the streets. By reserving general police power to the states — both sovereign and closest to the communities they police — the Constitution seeks to protect against centralized abuse of power.

Trump plans to change that by broadening the scope and escalating the intensity of federal law enforcement nationwide. His principal tool for doing so will be the Department of Homeland Security.

Ample federal resources are available there. DHS is a sprawling federal agency created in the wake of the 9/11 terrorist attacks. It is made up of components that include not only immigration enforcement agencies — in particular Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), which includes the

Border Patrol — but also the Transportation Security Administration (TSA); Federal Protective Service; Coast Guard; Federal Emergency Management Agency (FEMA); and Secret Service.<sup>199</sup>

DHS is already the largest federal law enforcement agency, containing over 66,000 law enforcement officers as of 2020 — nearly 50% more than DOJ and approximately half of the total number of federal law enforcement officers spread across dozens of agencies.<sup>200</sup> Its broad mission<sup>201</sup> and expansive enforcement power have proven particularly vulnerable to abuse.<sup>202</sup> Institutional constraints on abuses of power are relatively weak because DHS, as a newer agency, lacks some of the longstanding rule-of-law norms that DOJ has built up.

Most DHS law enforcement officers are in its immigration enforcement agencies — ICE and CBP. Trump plans to add to these forces, promising in a December 2023 speech to “shift massive portions of federal law enforcement to immigration enforcement, including parts of the DEA, ATF, FBI” and claiming that this will “stop the invasion.”<sup>203</sup>

While Trump’s plans for deployment of DHS don’t end with immigration enforcement, they do begin there.

### **Alien Enemies Act and Expedited Removal**

Immigration has long been a topic of heated policy debate, especially around controlling the southern border and determining how many immigrants are admitted to the United States — and from where. Policy disagreements and shifting political incentives have, for decades, prevented meaningful reform of the immigration system. Trump plans to capitalize on that system and leverage the vast resources available to him through DHS to carry out an agenda that includes mass detention camps and other tactics that have earned historical condemnation.

That begins with his promise to resurrect the Alien Enemies Act of 1798 — the only remaining piece of the Alien and Sedition Acts still on the books.<sup>204</sup>

In its current form, the Alien Enemies Act authorizes the president to order the apprehension, detention, and removal of noncitizens over the age of 14 “as alien enemies” during a “declared war” or “any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government.” The Act “authorize[s] the President to arrest, indefinitely detain, and remove alien enemies en masse, without hearing.”<sup>205</sup> The statute authorizes the apprehension and detention not only of immigrants who are not present in the country legally, but also “enemies” who have not obtained citizenship — which includes those with specific protected status and lawful permanent residents (“green card” holders).

The Act was not intended to regulate peacetime immigration enforcement. It was written for use,<sup>206</sup> and was used in the context of formally declared wars — such as the World Wars — or in the event of an attack or imminent attack from a foreign government.<sup>207</sup>

Assuming Congress does not formally declare war, Trump will likely rely on language in the statute referring to an “invasion or predatory incursion” perpetrated or attempted “against the territory of the United States” by a “foreign nation or government.” Trump repeatedly claims<sup>208</sup> there is an “invasion” of migrants and promises to declare war on Mexican drug cartels (further discussed in the next section).<sup>209</sup>

Recent reporting by *Rolling Stone* describes “a written memo circulated in the upper ranks of Trumpland, outlining how Trump in a second term could ‘get this done.’” According to that reporting, Trump officials would “argue in court that cartels, gangs, and drug dealers in Latin America have, essentially, co-opted and corrupted their governments to such a degree that the criminals represent effective state actors” and “are therefore engaged in an invasion on behalf of foreign narco-states.”<sup>210</sup>

Trump’s pledge to invoke the Alien Enemies Act in response to drug dealers, gangs, or cartels would be inconsistent with the Act’s history and text. It would be met with an immediate challenge in the courts. While courts *should* find that the statutory requirements for invoking the Act are not satisfied, it is not certain that they would review the president’s determination that the Act is triggered, nor that they would do so quickly.

Trump’s plan to invoke the Alien Enemies Act would work alongside his plan for relying on expedited removal authorities, which authorize immigration enforcement officers to arrest, detain, and deport certain immigrants without judicial process. The relevant provision in federal law authorizes removal from the United States without a hearing or other review for certain individuals who lack documentation that they have been continuously present in the country for at least two years.<sup>211</sup> The statute generally requires detention of individuals, with limited exceptions. And it bars judicial review of expedited removal orders, again with limited exceptions.

DHS regulations have in the past implemented this statute as a border control measure for recent land border crossers, applying it to individuals who (a) were apprehended within 100 miles of the border, and (b) within 14 days of entering the country.<sup>212</sup> The Trump administration eliminated these limitations,<sup>213</sup> and reporting in *The New York Times* indicates he would do so again.<sup>214</sup> (As Heritage’s *Mandate for Leadership* notes, the 100-mile limit is discretionary and “not a statutory requirement.”<sup>215</sup>) If implemented, that would mean that anywhere in the United States, ICE officers could arrest and decide to remove (and detain pending removal) undocumented immigrants or those mistakenly suspected of being undocumented. With limited due process available, U.S. citizens would face higher likelihood of getting mistakenly seized and even removed, as has happened<sup>216</sup> in the past.<sup>217</sup>

Together, these authorities will be used to apprehend and detain so many people that Trump and his advisers already anticipate creating new detention camps. As *The New York Times* explains, the scale of arrests that would result from Trump’s policies would require him “to build huge camps to detain people while their cases are processed and they await deportation flights.” As in the past, Trump would likely seek to end the *Flores*

settlement, which limits the amount of time children may be detained.<sup>218</sup> According to the *Times's* reporting, Trump advisor Stephen Miller plans to construct these new camps “under the authority and control” of DHS.<sup>219</sup>

### **Additional DHS Law Enforcement Authorities**

Trump intends to increase the footprint of federal law enforcement at DHS in various ways. He has been clear that he fully intends to expand the reach of his police force, saying, “I will use every power at my disposal ... I will use everything I can, every single power at my disposal, including sending as many federal law enforcement assets as required to restore safety and peace.”<sup>220</sup>

DHS can deputize agents as U.S. Marshals under 40 U.S.C. § 1315, which gives DHS the responsibility to protect federal buildings, grounds, and property. That is the authority Trump used in 2020 as a pretext to deploy militarized federal law enforcement agents to crack down on protesters in Portland, Oregon.<sup>221</sup> In addition to distorting those DHS authorities, the Trump Administration deployed CBP’s Border Patrol Tactical Unit (BORTAC) to the city, where they engaged in aggressive surveillance and arrest activities against protesters.<sup>222</sup>

Current federal law also grants immigration officials expansive enforcement power within 100 miles of any U.S. border.<sup>223</sup> Within this zone — which is home to two-thirds of the United States population and many of its largest cities — CBP can set up immigration checkpoints to stop and question drivers without particularized suspicion of illegal activity, and can conduct roving patrols to stop vehicles based only on reasonable suspicion of an immigration violation. It also has considerable surveillance power within this zone.<sup>224</sup>

Although DHS has sweeping authorities for immigration and border enforcement (or federal property protection in the case of 40 U.S.C. § 1315) using them for other purposes — whether to quash protests or as a pretext to surveil, question, or arrest targeted groups — is a concerning overreach.

As encouragement for federal authorities to act even more aggressively, Trump has declared his intent to “indemnify through the federal government all police officers and law enforcement officials throughout the United States from being destroyed by the radical left from taking strong actions against crime.”<sup>225</sup> If he could implement this, law enforcement agents who break the law or violate Americans’ civil rights effectively could not be held accountable.

Trump will also likely threaten to cut federal funding for cities that refuse to cooperate with or welcome an influx of federal law enforcement. During his first term, Trump ordered funding cuts to so-called anarchist jurisdictions — his label for cities with active racial justice protests in 2020 that he deemed to be “permitting anarchy, violence and destruction.”<sup>226</sup>

## How it Plays Out

To condition the public to accept police action against his likely targets, Trump has already begun dehumanizing them, describing them as “vermin” — just as dictators have done in the past. In a 2023 Veterans Day speech, Trump said, “We pledge to you that we will root out the communists, Marxists, fascists and the radical left thugs that live like vermin within the confines of our country that lie and steal and cheat on elections.”<sup>227</sup>

He accused undocumented immigrants, in particular, of “poisoning the blood of our country,” saying, “These people are very aggressive: They drink, they have drugs, a lot of things happening.”<sup>228</sup> He also claimed in a campaign interview that migrants “come from prisons. We know they come from mental institutions and insane asylums. We know they’re terrorists.”<sup>229</sup>

Trump likewise invokes the term “invasion” to describe the flow of migrants into the United States and, by extension, justify his sweeping plans and promises.<sup>230</sup> At one campaign rally, for example, Trump described immigration at the border by saying, “This is an invasion. This is like a military invasion ... They’re taking over our cities” and claiming that hundreds of thousands of people are “charging across our border.”<sup>231</sup>

Like his rhetoric, Trump’s immigration plans harken back to some of the darkest eras in American history. His desire to revive the Alien Enemies Act recalls President Roosevelt’s invocation of the statute following the attack on Pearl Harbor, setting in motion a series of orders that led to Japanese internment during World War II.<sup>232</sup> When discussing his immigration plans, Trump talks about “following the Eisenhower model.”<sup>233</sup> This was a reference to what was known as Operation Wetback, during which the Border Patrol carried out one of the largest mass deportations of immigrants in United States history using military-like tactics.<sup>234</sup>

Trump’s longtime immigration advisor Stephen Miller, who described Trump’s future plans in great detail to *The New York Times*, promised that “Trump will unleash the vast arsenal of federal powers to implement the most spectacular migration crackdown.”<sup>235</sup> Much like the Eisenhower examples Trump and his allies are using as models, these efforts will not only be widespread and resource-intensive but also chaotic and cruel.

The invocation of the Alien Enemies Act, combined with an aggressive approach to expedited removal, will provide a basis to apprehend certain immigrants, detain them, and remove them without process. Beyond that, Miller hopes the scope of the enforcement “blitz” will swamp immigration lawyers, which will inevitably result in some citizens and other lawful residents being swept up and detained unintentionally.<sup>236</sup>

Although there will be legal challenges to any invocation of the Alien Enemies Act, the damage will likely be done while litigation proceeds (including removals that the courts may not reverse). Even if the courts hold that the Act was not properly invoked, they may not enjoin its application during the litigation, effectively allowing Trump to succeed.

The volume of migrants Trump plans to apprehend will require building new detention camps. Miller described them as “vast holding facilities that would function as staging centers” that could in themselves convince immigrants to self-deport. *The New York Times* reporting, which summarized Miller’s thinking, said, “If pursuing a long-shot effort to win permission to remain in the country would mean staying locked up in the interim, some may give up and voluntarily accept removal without going through the full process.”<sup>237</sup> Given the history of poor conditions and overcrowding in Border Patrol facilities, this is likely to lead to serious health issues and even additional deaths.<sup>238</sup>

While Miller has acknowledged current legal limits on detaining children, he also says Trump will try to eliminate those legal limits. Additionally, Trump has refused to rule out reinstating policies requiring the intentional separation of children from their families at the southern border.<sup>239</sup>

### **Beyond immigration**

Once Trump has successfully harnessed and expanded federal law enforcement capabilities, those resources will be available to him to do much more than advance his immigration priorities. His desire to license this use of force<sup>240</sup> through indemnification, pardons (as discussed in Section One) or non-prosecution, strongly indicates he would direct and deploy resources against other human targets in an aggressive fashion.<sup>241</sup>

As listed in Trump’s promises above, Trump has been clear how violently he would like police to act: “Very simply, if you rob a store, you can fully expect to be shot as you are leaving that store. Shot! ...The word that they shoot you will get out within minutes and our nation, in one day, will be an entirely different place.”

Another concern is that states and localities inclined to accept federal law enforcement forces may have difficulty regaining authority over their jurisdictions. In 2020, Portland initially consented to the federal deputization of local police officers to augment policing of protests, but then faced the Trump administration’s refusal to end deputization<sup>242</sup> when the city rescinded consent.<sup>243</sup>

Whether federal forces are deployed unilaterally or with local consent, holding them accountable for wrongdoing will be an uphill battle. As more than a dozen mayors pointed out in 2020, state and local governments have no oversight power over federal law enforcement and cannot require their compliance with local policies on the use of force.<sup>244</sup> In addition, there have been few federal consequences around using force during the first Trump administration. That is in part because of the evasive tactics federal law enforcement used,<sup>245</sup> and in part because of judicial doctrines that have shielded officers from liability, including for serious shooting injuries.<sup>246</sup> The Trump Administration also limited accountability for local law enforcement, significantly curtailing the use of consent decrees to ensure constitutional limits on the use of force.<sup>247</sup>

In these ways, federal law enforcement would be largely unaccountable for use of excessive force in our communities. As we describe in Section Five, Trump is promising to cross a new line: the domestic deployment of the military against Americans.



Trump is following the 20th century dictator’s playbook of dehumanizing vulnerable groups in order to isolate them and justify cruelty by the state. He’s backing up his rhetoric by threatening to invoke extreme and novel legal tools to effectuate an agenda of inhumanity on a scale we haven’t seen for generations. We should expect him to follow through on his pledges. That will mean mass detention camps reminiscent of World War II. It will mean paramilitary-style federal law enforcement deployment to our cities in the event of demonstrations or political activity Trump dislikes. This will go far beyond rhetoric, and it won’t be about law and order so much as establishing an expansive federal police force loyal – and accountable – only to him.”

**Genevieve Nadeau**

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PROTECT DEMOCRACY

## Additional Reading

- **A Primer on Expedited Removal**, American Immigration Council (2023)<sup>248</sup>
- **Portland and the Paramilitarization of the Border Patrol**, Paul Matzko, Cato Institute (2020)<sup>249</sup>
- **The Department of Homeland Security: Priorities for Reform**, Carrie Cordero and Katie Galgano, Center for a New American Security (2021)<sup>250</sup>
- **The Border Zone Next Door, and Its Out-of-Control Police Force: Recommendations for the Biden Administration to Rein in Customs and Border Protection**, Katherine Hawkins, Project on Government Oversight (2023)<sup>251</sup>

# 5



## THE PROMISES: WHAT TRUMP HAS SAID



Can't you just shoot them? Just shoot them in the legs or something?"

TRUMP'S QUERY TO AIDES ABOUT BLACK LIVES MATTER PROTESTERS, AS TOLD BY HIS FORMER DEFENSE SECRETARY MARK ESPER<sup>252</sup>



[T]he federal government can and should send the National Guard to restore order and secure the peace without having to wait for the approval of some governor that thinks it's politically incorrect to call them in."

TRUMP REMARKS TO AMERICA FIRST POLICY INSTITUTE, JULY 2022<sup>253</sup>



We'll put them down very quickly if they do that. We have the right to do that. We have the power to do that if we want. Look, it's called 'insurrection.' We just send in, and we do it very easy. I mean, it's very easy."

TRUMP'S REPLY TO FOX NEWS HOST JEANINE PIRRO WHEN SHE ASKED IN SEPTEMBER 2020 HOW HE WOULD REACT IF HE WON THE 2020 ELECTION AND DEMOCRATS RIOTED<sup>254</sup>



I will order the Department of Defense to make appropriate use of special forces, cyber warfare, and other overt and covert actions to inflict maximum damage on cartel leadership, infrastructure, and operations."

DONALD J. TRUMP FOR PRESIDENT 2024<sup>255</sup>

DEPARTMENT OF DEFENSE

# Domestic Deployment of the Military

## Invoking the Insurrection Act to use the military in American streets and cities

### The Playbook

A foundational safeguard against autocratic rule is that, with tightly limited exceptions, the U.S. military is not used here at home on the streets of American cities. Trump has promised and planned to change that, deploying military force to quash dissent, target vulnerable communities, and possibly corrupt elections.

### The Powers and Plans

The Constitution makes the president the Commander-in-Chief of our armed forces. A set of constitutional and statutory constraints are intended to prevent the chief executive from abusing this awesome power — overseas or, especially, here at home.

The Constitution grants Congress the authority to declare war; to fund the military; to make rules concerning captures; to regulate the Army and Navy; and to provide for calling forth the militia to uphold the laws and “suppress Insurrections and repel Invasions.”<sup>256</sup>

Congress has used its legislative authority to constrain exercises of military force. The War Powers Resolution (1973) limits the president’s ability to wage war unilaterally.<sup>257</sup> And the Posse Comitatus Act (1878) prohibits members of the military from participating in domestic civilian law enforcement unless authorized by the Constitution or Congress.<sup>258</sup> These laws reflect long standing American wariness, dating back to the Declaration of Independence, around domestic use of the military.

### Deployment of the military on U.S. soil

There are, however, narrow exceptions and loopholes to these laws — and those exceptions are what a future President Trump plans to abuse to implement his promises.

Two in particular are of concern: the Insurrection Act and the president's authority over the National Guard.

First, the Insurrection Act authorizes the president to use the military at home to engage in civilian law enforcement in certain situations.<sup>259</sup> The language of the Act — which first dates back to 1792<sup>260</sup> — permits the president to use the federal military domestically to suppress “any insurrection, domestic violence, unlawful combination, or conspiracy.”<sup>261</sup> These terms are not defined in the statute. Moreover, an 1827 Supreme Court decision held that the president alone decides when to invoke the Act because he is “presumed to act in obedience to his duty.”<sup>262</sup> (There are limits in some circumstances.)<sup>263</sup>

Notwithstanding the broad language of the Insurrection Act, it is rarely used and has generally not been abused by past presidents. As the Brennan Center's Liza Goitein explained in early 2019: “While controversy surrounded all these examples [of its usage], none suggests obvious overreach.”<sup>264</sup>

In 2020, however, Trump explored invoking the Insurrection Act in connection with the George Floyd protests. As former Attorney General Barr described:<sup>265</sup> “the President expressed strong inclination to make visible the use of the military in suppressing [the protests]...using the military was one of the President's fixations that had to be batted down on a regular basis...For a time, almost on a weekly basis, he would give me ultimatums — he said he was ready to invoke the Insurrection Act and deploy the military in twenty-four hours unless I came forward with an alternative plan.” According to reporting, White House aides drafted an Insurrection Act proclamation in June 2020.<sup>266</sup>

One reason Trump didn't invoke the Insurrection Act is that he instead took advantage of a second loophole to the prohibition on domestic use of the military — this one related to the National Guard. The Posse Comitatus Act does not always apply to members of the National Guard. It does when the National Guard operates under federal control, but not when state governors control Guard units. The Trump Administration found two ways around this. First, the District of Columbia National Guard (in contrast to the National Guards of other territories) is always under the control of the president.<sup>267</sup> But the D.C. National Guard is small.

And so in 2020, Trump Administration officials distorted a separate provision allowing for “hybrid status” under Title 32, which is generally used for training exercises, to bring in out-of-state National Guard troops into D.C. from 11 states.<sup>268</sup> As two Members of Congress explained:

Congress has limited the activities the National Guard can perform in hybrid status, but it does allow it to perform training exercises in this formulation. Barr twisted this provision to enable the rogue deployment in Washington from 11 states. According to Barr's interpretation of the law, it seems that the president can shoehorn any duty into the category of “training.” And if a governor objects to a federal mission in his or her state, well, that's no obstacle under Barr's theory: The president can

simply find willing governors in other states and send their National Guard units across state borders.<sup>269</sup>

That summer, with D.C. National Guardsmen and 3,800 National Guard troops from 11 states augmenting D.C. and federal law enforcement units,<sup>270</sup> the Trump administration deployed a series of forces who wore “drab military-style uniforms with no insignia, identifying emblems or name badges.”<sup>271</sup> To clear Lafayette Square, security officers used a combination of flash bangs, smoke canisters, shields, horses,<sup>272</sup> tear gas,<sup>273</sup> and rubber pellets<sup>274</sup> against the protesters. Low-flying Army National Guard helicopters, producing winds equivalent to a tropical storm, buzzed the crowd.<sup>275</sup>

Although there have been efforts to address the loopholes Trump abused in June 2020, Congress has not passed reforms, and these grim scenes could be created again.<sup>276</sup>

### **Lack of meaningful constraints**

Self-constraint has generally prohibited previous presidents from abusing these potentially expansive legal authorities to deploy the U.S. military on U.S. soil. That may be attributable to their own sense of national interest and political assessments of when they will have the support of the public and national civic leaders.

A few other factors also may prevent abuse.

Defense Department lawyers and officials, who act under constitutional oaths, can influence decision-making. In particular, the U.S. Northern Command (NORTHCOM), staffed by career military professionals, is involved in deployment actions in the continental United States.<sup>277</sup>

Congress could also be a check. Formal legislative constraints can be difficult to enact, but pursuing them would be well within Congress’s authority.<sup>278</sup> In addition, Congress can also provide a check through the power of the purse, political pressure, and oversight.

Lastly, while courts have in the past declined to intervene when the president uses force abroad or invokes the Insurrection Act, under a 1932 case, they may rule on whether the military’s actions when deployed at home are illegal.<sup>279</sup> Despite limited precedent on this issue, there are constitutional arguments for why courts should curtail abuses of this power in certain instances.<sup>280</sup>

As in other contexts, most of these constraints will likely be weak in the face of Trump’s plans. He has proclaimed his interest in using the military to quash domestic protests and target cartel activity at the border. He has plans to surround himself with loyalists who are aligned with his aspirations and unlikely to provide the check that General Milley and others did in 2020.<sup>281</sup> Guardrails that were once thought firm have already been weakened by the prior Trump administration. And Republican members of Congress are increasingly reluctant to challenge Trump, placing tremendous pressure on civil servants, military leaders, and federal courts to resist or check unlawful actions.

Officers remove  
Black Lives  
Matter protesters  
from Lafayette  
Park on June 1,  
2020, in  
Washington D.C.



## How it Plays Out

In light of the campaign trail promises and the legal landscape, we can expect a future President Trump to deploy the U.S. military within the United States in several ways: within cities to put down protests, as he instructed governors during the summer of 2020; at the southwestern border, to apprehend migrants; and potentially in dozens of other American towns and cities in support of his plans to “wage war” on Mexican drug cartels.

When it comes to targeting protesters, Trump’s record is clear. Speaking to governors during the summer of 2020 Black Lives Matter protests, he said: “You’ve got to arrest people, you have to track people, you have to put them in jail for 10 years and you’ll never see this stuff again.”<sup>282</sup> He also tweeted: “Crossing State lines to incite violence is a FEDERAL CRIME! Liberal Governors and Mayors must get MUCH tougher or the Federal Government will step in and do what has to be done, and that includes using the unlimited power of our Military and many arrests. Thank you!”<sup>283</sup>

William Galston of the Brookings Institution, writing in *The Wall Street Journal*, describes how deploying the military against protesters could unfold after the 2024 election:

Consider this scenario: After a divisive campaign, a presidential candidate opposed by half the country is inaugurated, and a massive protest breaks out in Washington. While observers and authorities report that the demonstrators are

mostly peaceful, the new president disagrees, federalizes the National Guards of Maryland, Virginia and the District of Columbia, and deploys them with orders to suppress the protests.<sup>284</sup>

Indeed, Trump and his advisors have contemplated using the Insurrection Act to quash those protesting his election or inauguration, as he suggested in his remarks on Fox News highlighted above.<sup>285</sup> Consider, too, whether he would seek to do so against a campaign rally for the opposition party in 2026 or 2028 (see Section Six).

Galston then offers an alternative scenario in the context of future protests against police violence:

After police in a large city kill an unarmed black man, protests break out and spread to other cities. Although the protests are peaceful at first, the president argues that similar events in the past have turned violent in a manner that exceeded local and state capacity to suppress them. He then orders the deployment of military forces to break them up before threats to life and property arise.<sup>286</sup>

Trump is already on record with this willingness to deploy troops over the will of the state and local authorities. In a Rose Garden speech shortly before Lafayette Square was cleared, Trump said:

Today, I have strongly recommended to every governor to deploy the National Guard in sufficient numbers that we dominate the streets... If the city or state refuses to take the actions that are necessary to defend the life and property of their residence, then I will deploy the United States military and quickly solve the problem for them.<sup>287</sup>

Trump allies also have plans to invoke the Insurrection Act at the border. In detailing plans for sweeping immigration raids and sprawling detention camps, former aide Stephen Miller promised that “Trump will do whatever it takes,” including invoking the Insurrection Act to deploy the military to apprehend migrants at the border in 2025 and beyond.<sup>288</sup> This would represent a significant departure from previous border deployments that have occurred under presidents of both parties, none of which involved invoking the Insurrection Act to allow members of the Armed Forces to engage in law enforcement operations.

Invoking the Insurrection Act at the border could move the Overton Window on the appropriate use of the military in immigration enforcement and drug interdiction operations, easing the path to a dramatic escalation of military operations within the U.S. This concern is made all the more salient given Trump's plans to use military force against Mexican drug cartels.

Recall Trump's promise to “order the Department of Defense to make appropriate use of special forces, cyber warfare, and other overt and covert actions to inflict maximum

damage on cartel leadership, infrastructure, and operations.”<sup>289</sup> In 2023, *Rolling Stone* reported on plans for how he will operationalize that pledge, noting, “Trump has been asking policy advisers for a range of military options aimed at taking on Mexican drug cartels, including strikes that are not sanctioned by Mexico’s government, according to two sources familiar with the situation.”<sup>290</sup>

Given that Mexican drug cartels have deeply embedded operations in dozens of locations throughout the United States, Trump’s promise to use the Department of Defense — rather than law enforcement — to defeat them raises the specter that military troop deployment will not be geographically limited to areas outside the United States.<sup>291</sup>

One source indicated Trump has requested “battle plans”<sup>292</sup> for this, and Trump-aligned think tanks are developing strategies to accommodate him. The America First Policy Institute, where former Trump Acting DHS Secretary Chad Wolf serves, issued a report on this subject.<sup>293</sup> As has Former Trump DHS Deputy Secretary Ken Cuccinelli, who issued a 2022 white paper for the Center for Renewing America entitled “It’s Time to Wage War on Transnational Drug Cartels” calling for, among other things, “specific military operations to destroy the cartels,” and for the president to “activate and deploy available units from the military, including the Coast Guard.”<sup>294</sup>

As one expert notes, military operations to defeat the cartels could beget more “carnage” — and it would not be confined to one side of the border.<sup>295</sup> That’s because “[t]he cartels would not have far to travel to launch retaliatory terrorist attacks on U.S. soil.”<sup>296</sup>

What’s at stake with these promised deployments is not only a violation of longstanding norms around the appropriate role of the military but also access to due process, the increased likelihood of the use of excessive force, and the potential for collateral damage inflicted on the American people as a result of the escalating conflict. Some experts have noted, “Military personnel are primarily trained and equipped to fight and destroy an enemy — an enemy that generally does not have constitutional rights... Military deployment, in short, risks an escalation in violence — a phenomenon that has been tragically demonstrated on multiple occasions in U.S. history.”<sup>297</sup>



Keeping the military out of domestic law enforcement is a foundational American principle enshrined in law to protect individual liberties and preserve democratic order. We saw Trump and his allies ignore both the principle and the law in his first administration, exploiting loopholes to flood downtown D.C. with National Guard troops in order to brutally disperse nonviolent demonstrators at Lafayette Square.

In a second Trump administration, he has committed to much worse, promising to deploy troops to put down protests on Inauguration Day, send troops into Democratic cities to enforce order, and militarize southern border enforcement. Politicizing institutions like the military is a hallmark authoritarian tactic intended to silence dissenters, target vulnerable communities, and coerce fealty to the autocratic leader. We should be prepared for Trump, newly empowered and surrounded by enablers, to act with impunity, placing unprecedented stress on our military and democratic institutions.”

**Aisha Woodward**

HEAD OF CONSTRAINING EXECUTIVE POWER TEAM  
AND POLICY STRATEGIST, PROTECT DEMOCRACY

## Additional Reading

- **The Alarming Scope of the President’s Emergency Powers**, Elizabeth Goitein, *The Atlantic* (2020)<sup>298</sup>
- **The Insurrection Act Explained**, Joseph Nunn, Brennan Center for Justice (2021)<sup>299</sup>
- **Why Were Out-of-State National Guard Units in Washington, D.C.? The Justice Department’s Troubling Explanation**, Steve Vladeck, *Lawfare* (2020)<sup>300</sup>
- **Domestic Military Deployment Reforms**, Protect Democracy (2022)<sup>301</sup>
- **Authorities Governing the Deployment of Troops during the Election and Post-Election Season**, National Task Force on Election Crises (2020)<sup>302</sup>

# 6

## ON ELECTIONS: WHAT TRUMP HAS SAID



He's now president for life. President for life. No, he's great. ... And look, he was able to do that. I think it's great. Maybe we'll have to give that a shot some day."

TRUMP TO DONORS IN REFERENCE TO XI JINPING DURING CLOSED-DOOR REMARKS AT A 2018 FUNDRAISER<sup>303</sup>



We are going to win four more years. ... And then after that, we'll go for another four years because they spied on my campaign. We should get a redo of four years."

TRUMP TO SUPPORTERS AT AN AUGUST 2020 CAMPAIGN RALLY<sup>304</sup>



And then after that, we'll negotiate, right? Because we're probably — based on the way we were treated — we are probably entitled to another four after that."

TRUMP AT A SEPTEMBER 2020 NEVADA CAMPAIGN EVENT<sup>305</sup>



Do you throw the Presidential Election Results of 2020 OUT and declare the RIGHTFUL WINNER, or do you have a NEW ELECTION? A Massive Fraud of this type and magnitude allows for the termination of all rules, regulations, and articles, even those found in the Constitution."

TRUMP POST ON TRUTH SOCIAL, DECEMBER 2022<sup>306</sup>

## TRANSFER OF POWER

# The Autocrat Won't Leave

## Risks to future elections

As noted in the Introduction, this report does not cover every dangerous pledge or plan Trump has developed. Rather, the focus is on a core set of concrete promises and plans straight from the autocratic playbook whereby Trump would harness the powers of the federal government to consolidate power into an authoritarian regime.

Still, one more threat must be addressed: the risk that an autocrat won't leave office, whether through a refusal to respect election results or constitutionally prescribed term limits. Given Trump's previous refusal to respect the will of the voters in the 2020 election, his repeated flirtations with staying in office beyond two terms should not be taken lightly.

### The Playbook

Once autocrats gain power, they are extremely difficult to dislodge, as they ignore or eliminate legal limits on the duration of their terms of office. Whether through formal constitutional change or informal tactics to evade legal rules (for example, by installing an ally as a puppet leader), autocrats in Russia, China, and Venezuela have maintained their grip on power long after they should have relinquished it. In an era of competitive authoritarianism, elections can become a tool to reinforce an authoritarian grip on power, not to challenge it.<sup>307</sup> In countries such as Venezuela, Nicaragua, and Russia, law enforcement is used to intimidate, jail, or sideline the electoral opposition. Autocrats in Turkey and Hungary exercise control over the media to influence elections. These tactics echo those Trump has pledged to use here, described above in Sections Two and Three. So, too, autocrats pursue increasingly distorted election rules that make it nearly impossible for the opposition to win, even when they are allowed to compete. And if that's not enough, by taking a heavy hand over the election administration, autocrats can rig the vote in their favor.

## How it Plays Out

In contrast to the topics addressed above, we are not aware of concrete legal or policy plans to enable Trump to remain in office beyond four years. And — again in contrast to the promises and plans described above — he's sometimes disclaimed an intent to seek a third term.<sup>308</sup>

But we shouldn't write off the threat not to leave as outlandish or impossible. That mistake has been made before: Trump's early pledges to "Build the Wall" and enact a Muslim Ban were initially dismissed, but as president he invested heavily in both of those efforts, and largely succeeded on the latter. So, we should not ignore his talk of a third term.

If Trump successfully regains the presidency, he will have an overwhelming incentive to cling to power. He is likely to abuse his powers to quash existing federal criminal investigations and prosecutions in which he is a defendant. State prosecutions, including the ongoing Georgia election subversion case, are likely to be delayed as long as he's president, and he will also have sought to stay an array of civil litigation against him. But those protections evaporate if he leaves office — and in a second term, he is likely to violate numerous laws that could subject him to further liability. His best recourse for avoiding substantial financial liability, if not prison time, will be to stay in office. That's at least in part why he launched a violent insurrection in a bid to cling to power following his 2020 election defeat — and we shouldn't expect 2028 to play out differently.

Numerous other authoritarian leaders have blown past the original legal limits on their tenures to hold onto power for decades. Vladimir Putin has effectively ruled Russia for 24 years, 16 years longer than his original term limit. Xi Jinping changed the Chinese constitution to eliminate presidential term limits, enabling him to rule indefinitely.<sup>309</sup> Hugo Chávez of Venezuela was limited to two six-year terms before amending the Constitution to allow indefinite reelection;<sup>310</sup> Venezuela has now been controlled by him or his handpicked successor, Nicolas Maduro, for almost 25 years. Trump follows their playbook in every other area; he could do so here as well.

Yes, the 22nd Amendment ("No person shall be elected to the office of the President more than twice...")<sup>311</sup> would be an obstacle to plans for a third term — but Trump won't see it as an insurmountable one. We should expect him to marshal an array of fanciful legal arguments to hold onto power. For example, he's already floated the notion that he was deprived of his first term by the Mueller probe and other investigations of his campaign. This is not a compelling argument, but the history of American constitutional law is replete with examples of legal arguments that once seemed implausible somehow taking hold.

Trump approvingly posted an edited Time magazine video with the slogan Trump '4EVA' to his social media feed.<sup>312</sup>



Other loopholes or workarounds might result from constitutionally-untethered lawyering — whether phony invocations of an emergency to indefinitely delay an election; linguistic gimmicks to avoid the clear meaning of constitutional language; or audacious arguments to stiff-arm the courts from weighing in. And in this scenario, Trump would have the benefit of four more years to appoint to the judiciary extreme ideological allies who might be more willing to accept these arguments, or just shift the Overton Window of existing judicial opinion — particularly if he can demonstrate the political support to win an election.

As Brookings Institution Senior Fellow and *Washington Post* Editor-at-Large Robert Kagan put it:

Trump might not want or need a third term, but were he to decide he wanted one, as he has sometimes indicated, would the 22nd Amendment block him any more effectively from being president for life than the Supreme Court, if he refused to be blocked? Why should anyone think that amendment would be more sacrosanct than any other part of the Constitution for a man like Trump, or perhaps more importantly, for his devoted supporters?<sup>313</sup>



# What Worked Last Time

## How courageous Americans helped safeguard U.S. democracy

The best way to defeat authoritarianism is at the ballot box. Nothing is more important than pro-democracy voters joining together to protect a free and fair election in 2024 and defeat authoritarian-minded candidates.<sup>314</sup>

While that would not cure all that ails our democracy, it would give us four more years to reduce the power of the autocratic faction, create off-ramps for strongman supporters, form new political coalitions, and harden legal guardrails against abuses of power.

But, the electoral defeat of authoritarian candidates may not always be achievable. As Trump's 2016 victory proves, and indeed, the election of autocrats in democratic systems around the globe make clear, authoritarians can win elections outright — especially in a two-party winner-take-all electoral system.<sup>315</sup>

In the event an autocrat is elected, we will need plans for protecting the core institutions of our democracy and our constitutional order against extralegal or authoritarian subversion. To prepare for such a scenario, we should anticipate future challenges and assess what strategies helped mitigate the threat in the intervening years between Trump's first inauguration and exit from office.

After Trump's election in 2016, pro-democracy coalitions formed and stepped in as a counterweight to the authoritarians in the White House. Across the country, people organized, lobbied, demonstrated, and provided concrete support to the most marginalized. Attorneys organized and gathered at the airports, where Trump's Muslim ban was causing chaos.<sup>316</sup> Americans generously donated funds to support organizations to protect vulnerable members of our society.<sup>317</sup>

Starting in 2016 and stretching into the new administration, institutionalists across the political spectrum<sup>318</sup> gave us the vocabulary<sup>319</sup> for naming the threat, accurately describing the Trump administration's authoritarian mindset, non-democratic

*Despite concerns that the pandemic would suppress voter turnout in the 2020 presidential election, Americans voted in record numbers.*



commitments, and utter cruelty. Thousands of former DOJ officials wrote forcefully to warn the public about the degradation of the Department of Justice.<sup>320</sup> A host of Republicans bucked their party, spoke out, and filed suits to preserve our form of government.<sup>321</sup>

Political organizing that began at the end of 2016 translated into wins at the ballot box in 2020 and 2022, supplanting election deniers with new pro-democracy officials.

Non-partisan government officials took risks to honor their oaths. As Trump appointees<sup>322</sup> at DOJ worked to cover up<sup>323</sup> impeachable offenses, the National Security Council's top expert on Ukraine, Alexander Vindman, testified about President Trump's efforts to pressure Ukraine to smear his domestic political rivals, at significant personal cost.<sup>324</sup>

Then, as the 2020 elections approached and Trump began a campaign to undermine confidence in the results, Americans worked to maintain confidence in our elections. The National Task Force on Election Crises, a cross-ideological, multi-disciplinary body of more than 50 trusted experts on election law, election administration, national security, cybersecurity, social media, emergency response, continuity of government, transfers of power, voting rights, and public health, engaged with key state and federal election officials and elected leaders, and civil society stakeholders to help prevent and mitigate election crises.<sup>325</sup>

Recognizing that the basic building blocks of our democracy were under threat, the heads of the Chamber of Commerce, AFL-CIO, the National Association of Evangelicals, and the National African American Clergy Network, a unique coalition, joined together on election day to support our democratic process and the peaceful transition of power.<sup>326</sup>

At a time when gathering in person posed a life-threatening risk, local and state officials worked around the clock to expand mail-in-voting. And, despite the danger, Americans still came out to vote in person and to drive others to the polls, producing record turnout numbers.<sup>327</sup> Poll workers dealt not only with tough pandemic-related challenges but also violent threats, sometimes from the president himself.<sup>328</sup>

Amid growing violence in the post-election period, the courts rightly dismissed frivolous cases, rejecting dozens of cases filed by the president's campaign and his allies.<sup>329</sup> The Supreme Court swiftly declined to hear any appeals.

After Trump left office, the House of Representatives impeached Trump for his actions. When most Republicans in the Senate refused to convict, the efforts to hold Trump accountable continued. The House Select Committee to Investigate the January 6th Attack on the United States Capitol was formed. Republicans Liz Cheney and Adam Kinzinger broke with their party to serve on it, bringing the necessary bipartisan credibility that brought forward testimony from top Trump aides who illuminated the president's role in the coup attempt. Election workers Ruby Freeman and Shaye Moss weathered ugly and racist personal attacks to testify to the harassment they suffered from being mercilessly smeared by Trump, his lawyer Rudy Giuliani, and others.

Over the course of more than four years, it was this hopeful, courageous, and pragmatic American spirit that held our democracy together in the face of a would-be authoritarian president who tried desperately to stay in power, overruling the will of the American people.

Today, we must recognize that we may be called to rise to the occasion again and that next time, the task will be harder.

Before Trump, many norms long sustained our democracy: the certification of election results and the counting of electoral certificates as a ministerial exercise; the willingness of the losing candidate to concede; the outgoing administration accepting the results and facilitating the transition; the understanding that the incumbent would not pressure DOJ to undermine faith in the outcome. Pursuant to these norms and constitutional principles, we could trust that the President would not pocket money from foreign governments, impound funds as part of a scheme to dig up dirt on his political opponents,<sup>330</sup> fire five inspectors general in six weeks,<sup>331</sup> or block funding for the U.S. Postal Service to make it harder to vote.<sup>332</sup>

We can no longer take those norms for granted. We must defend our democratic institutions so that in our time of need, the democratic institutions will be able to defend us. The final section of this report contains recommendations the pro-democracy coalition should adopt to withstand and overcome the challenges when faced with a president bent on authoritarian consolidation.

# What We Can Do

## Ten strategies to protect our democracy



# Recommendations

## Ten strategies for the pro-democracy coalition to mitigate the threat

Many autocratic tactics described in this report will be best mitigated with targeted litigation, legislation, or other advocacy responses. But, from an overarching perspective, we recommend that civil society actors and the American public take the following approaches to prepare for and guard against the looming threat of an autocrat returning to the Oval Office.

None of these recommendations are a panacea. But, together, they provide a comprehensive set of actions that, informed by our recent successes containing the authoritarian threat in America and lessons drawn from abroad, will be foundational for the pro-democracy movement to build upon in the event of an authoritarian in the White House in 2025.

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# 1

## Create pro-democracy coalitions before the crisis arrives.

Now is the time to build stronger and deeper pro-democracy coalitions that are educated about what's at stake and prepared to act together. Blunting a full-on autocratic government takeover will require courts, Congress, agency officials, states, and municipalities to act as checks against abuse of power. But, institutions often struggle to do this on their own. We'll need to bolster them, and the best way to do that is through broad coalitions – whether of civic groups, advocacy organizations, business interests, faith groups, or otherwise. Building coalitions is time-consuming and requires legwork to establish respect and develop alignment.

## 2 Take anti-democratic ideas and promises seriously.

The voting public must know what is at stake in the next election and beyond. Public communicators, whether they hold jobs in the news media, campaigns, non-profit advocacy, corporate public affairs, or some other outward-facing positions, should focus on explaining how autocratic rule will impact their audiences and communities. That means focusing less on the horseshoe elements of political stories and refraining from “both sides” coverage that fails to explain the unique authoritarian threat. As New York University journalism professor Jay Rosen has encapsulated the need, we must all focus on “not the odds, but the stakes.”<sup>333</sup>

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## 3 Keep a broad pro-democracy movement united against the acute, big-picture autocratic danger.

The pro-democracy coalition must remain united as it continues to grow. That requires temporarily setting aside disagreements within the pro-democracy movement to the greatest extent possible. In a democracy the size of the United States, there are numerous permutations of firmly held beliefs on political issues. Authoritarians will exacerbate these divisions, pitting vulnerable groups against each other.

The pro-democracy coalition must stay focused on what unites us – protecting the ability to resolve policy disagreements through a democratic process. As Poland showed recently, and Belgium and Finland showed in the early 20th century, the way to overcome autocratic movements is for people committed to democracy from the left, center, and right to put their traditional differences aside to come together to defend democracy.

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# 4

## Support Republicans that stand firm for democratic institutions.

The authoritarian movement in America has been made possible with support from the Republican Party. At the same time, Republican officials and affiliated interest groups can have an outsized impact in checking the authoritarian faction. As scholars Daniel Ziblatt and Steven Levitsky have explained, it's essential for pro-democratic actors in the authoritarian-dominated party not just to offer tacit criticism of autocratic actions but to “expel antidemocratic extremists from their ranks, refuse to endorse their candidacies, eschew all collaboration with them and, when necessary, join forces with ideological rivals to isolate and defeat them.”<sup>334</sup> The pro-democracy coalition must be willing partners to support and nurture those relationships with pro-democracy Republicans that can produce meaningful change.

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# 5

## Rally around non-partisan, independent public servants.

Our democracy depends on millions of dedicated public servants doing their jobs to deliver services, uphold the law, and keep the public informed. Through their commitment to the rule of law, these civil servants, election officials, judges, and court employees are a first line of defense against an autocratic government. As this report explains, that is why among the autocratic faction's first moves in power will be to dismantle the civil service and independent law enforcement and replace them with regime loyalists.

Independent public servants are the bulwark standing between the authoritarian and the American people; we may frequently disagree with them or be frustrated by what they do (or don't do), but we must safeguard their vital roles. We must also help them when they speak out against authoritarianism, providing material resources and other forms of support in lawful ways when they risk their livelihoods or safety to do the right thing.

## **6 Uphold the rule of law and democratic institutions, and always repudiate violence.**

The laws and institutions of our democracy are imperfect and we should seek necessary reforms. (See recommendation 10.) Yet, however problematic our laws or distorted our institutions, pro-democracy actors should observe the rule of law. Most importantly, pro-democracy actors must always condemn political violence. This also means respecting lawful court orders, avoiding aggressive presidential executive actions that stretch constraints on abuse of power, and refusing to tolerate corruption.

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## **7 Protect the first targets and arrange to advocate for the most vulnerable.**

A central tenet of the autocratic playbook is to target vulnerable people and populations to deflect from an autocrat's failures and consolidate support. Community groups, civic and industry associations, and state and local governments should articulate agreements to support each other in times of need. We might think of this as the NATO Article V approach — “an attack against one ... is an attack against all.” As with NATO, such alliances and agreements can create a deterrent effect that will make it harder for an autocrat to single out members.

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## **8 Evaluate security at the community, household, and personal level**

Members of the pro-democracy coalition should be ready to address potential threats to their personal security, families, and workplaces. Practical safety preparedness includes protecting private personal information, evaluating online security vulnerabilities, and training for the unexpected. We should also identify people in our households, neighborhoods, and communities who may require additional support and develop plans in advance to help them should the need arise.

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## 9 Work to protect free and fair elections in 2026 and 2028.

An autocrat in the White House will cause immense damage to our democratic institutions and hurt an enormous number of people, but the 2026 midterms will not be far away. We can expect the autocratic faction to continue to seek to suppress the right to vote, undermine confidence in election systems, and explore ways to nullify votes for opposing candidates.

We need to make substantial investments in all available strategies to protect free and fair elections in 2026 and 2028 so that “we the people” have a chance to hold the authoritarian faction accountable and vote it out of office. Those cycles may also be an opportunity for the pro-democracy coalition to come together to support solid pro-democracy candidates committed to upholding our Constitution and the rule of law.

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## 10 Continue building the democracy of tomorrow.

In many ways, our democracy hangs in the balance over the next 12 months. American civil society must focus aggressively during that time on the defensive work of protecting a free and fair election in 2024, limiting the likelihood the autocratic faction prevails, and preparing for an autocrat in the White House in 2025.

Alongside these defensive efforts to protect our democracy, however, we must also work to build the resilient and inclusive democracy of tomorrow. That includes strengthening our checks and balances and rule of law institutions, reforming our electoral systems and political parties to make our democracy more representative and authoritarian resistant, enabling the democratic participation of those who have been historically excluded, bridging divides, and enhancing civic engagement.

# Notes

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