

United States Senate

WASHINGTON, DC 20510

September 21, 2020

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Barr:

We write to express serious concern about the apparent rolling back of anti-bias training sessions for Justice Department personnel, instigated by a troubling Trump Administration-wide effort casting such programs as “un-American.” The Administration’s new policy opposing racial sensitivity and anti-racism training for federal government employees has already led to the indefinite postponement of an unconscious bias training program in at least one division of the Justice Department. This development is all the more alarming as it comes while the nation is confronting a historic moment with racial justice and Americans are taking to the streets to protest systemic racism and demand policing reforms.

On September 4, 2020, Office of Management and Budget Director Russell Vought issued a memorandum to the heads of the federal government’s executive departments and agencies that began by calling racial sensitivity and anti-racism training sessions “divisive, anti-American propaganda.”¹ Director Vought stated that President Trump had “directed me to ensure that Federal agencies cease and desist from using taxpayer dollars to fund” these programs.² Pending “more detailed guidance on implementing the President’s directive,” Director Vought instructed agencies to start identifying all federal training programs on issues like “critical race theory” or “white privilege.”³ The memorandum also directed agencies to try to “cancel any such contracts and/or to divert Federal dollars away from these un-American propaganda training sessions.”⁴ The memorandum concluded, “The divisive, false, and demeaning propaganda of the critical race theory movement is contrary to all we stand for as Americans and should have no place in the Federal government.”⁵

President Trump promptly issued a tweet supporting this effort, stating, “This is a sickness that cannot be allowed to continue. Please report any sightings so we can quickly extinguish!”⁶ Director Vought has echoed that sentiment, tweeting, “@realDonaldTrump asked people to report any sightings of #CriticalRaceTheory ‘training.’ We have been working with agencies to identify

¹ Memorandum from Russell Vought, Dir., Office of Mgmt. & Budget, Exec. Office of the President, to Heads of Exec. Dep’ts & Agencies 1 (Sept. 4, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/09/M-20-34.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 2.

⁶ Donald J. Trump (@realDonaldTrump), TWITTER (Sept. 5, 2020, 7:52 AM), <https://twitter.com/realDonaldTrump/status/1302212909808971776>

un-American trainings. We have set up an email to report these sightings. These must be stopped!”⁷ And in a speech last Thursday—for Constitution Day, the day commemorating the document’s signing in 1787—President Trump opted to denounce critical race theory as a “Marxist doctrine” and called teaching it to children “a form of child abuse in the truest sense of the word.”⁸

Late last week, a news report emerged that at least one Justice Department office has effectively canceled its unconscious bias training program because of the Administration’s directive. According to this report, employees in the Justice Department’s Antitrust Division were told that a previously scheduled training program on unconscious bias set for last week had been indefinitely postponed until further guidance was provided.⁹ “It does not appear that the Division has much, if any, discretion related to postponing the training at this moment,” a senior official in the Division reportedly wrote in an e-mail to employees, expressing disappointment about this development. “We were excited about this training. We had received a lot of positive responses about the training, and we were looking forward to it.”¹⁰ A description of this unconscious bias training program stated that it was “strongly recommended for all Division employees, particularly for managers and those involved in hiring,” and the description did not include the terms “white privilege” or “critical race theory.”¹¹

In 2016, the Justice Department established a new implicit bias training program for all of its law enforcement officers, prosecutors, and other personnel. This training program was “based on the latest social science research and best practices in law enforcement” and would help Department employees “learn how to recognize and address their own implicit bias, which are the unconscious or subtle associations that individuals make between groups of people and stereotypes about those groups,” including based on factors such as “race, ethnicity, gender, sexual orientation, religion and socio-economic status.”¹² As then-Deputy Attorney General Sally Q. Yates explained in announcing the program:

[I]mplicit bias also presents unique challenges to effective law enforcement, because it can alter where investigators and prosecutors look for evidence and how they analyze it without their awareness or ability to compensate. The good news is that research suggests the vast majority of people can counter these effects if they are aware of which biases they possess—and are trained to recognize when they creep into their reasoning or situational awareness. . . . And perhaps most

⁷ Russ Vought (@RussVought45), TWITTER (Sept. 16, 2020, 8:14 PM), <https://twitter.com/RussVought45/status/1306386119412641795>.

⁸ Morgan Chalfant & Brett Samuels, *Trump Announces Commission To Further ‘Patriotic Education,’* HILL (Sept. 17, 2020), <https://thehill.com/homenews/administration/516941-trump-announces-commission-to-further-patriotic-education>.

⁹ Andrew Keshner, *Trump’s Crackdown on ‘Critical Race Theory’ Training Leads to Cancellation of Justice Department ‘Unconscious Bias’ Program,* MARKETWATCH (Sept. 17, 2020), <https://www.marketwatch.com/story/trumps-crack-down-on-critical-race-theory-training-leads-to-cancellation-of-justice-department-unconscious-bias-program-2020-09-17>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Press Release, U.S. Dep’t of Justice, Department of Justice Announces New Department-Wide Implicit Bias Training for Personnel (June 27, 2016), <https://www.justice.gov/opa/pr/departments-justice-announces-new-department-wide-implicit-bias-training-personnel>.

importantly, these trainings reaffirm our commitment to a criminal justice system that is fair, impartial, and procedurally just.¹³

More broadly, as experts have said, “racial and diversity awareness trainings are essential steps in helping rectify the pervasive racial inequities in American society, including those perpetuated by the federal government.”¹⁴ And as one leading scholar on the issue has explained in response to the Administration’s “mischaracterization” and “caricature” of this scholarship, “The focus of Critical Race Theory is on the way that race is baked into the current political, economic, and social system so that racial subordination is reproduced through normal operations, often without regard to intent.”¹⁵

The evident rolling back of anti-bias training programs at the Department is all the more concerning in light of your own comments last week at Hillsdale College disparaging the protesters around the country who have been marching for racial justice. Referencing the Black Lives Matter movement, you stated, “They’re not interested in Black lives. They’re interested in props, a small number of Blacks who are killed by police during conflicts with police—usually less than a dozen a year—who they can use as props to achieve a much broader political agenda.”¹⁶ Beyond the obvious inappropriateness, incorrectness, and insensitivity of these remarks, it should be noted that an investigation by the *Washington Post* has found that in fact “250 Black Americans were killed by police last year,” and that “Black people are also killed by police at a higher rate than White people.”¹⁷

The Justice Department is charged with enforcing our nation’s laws dispassionately and protecting Americans’ civil rights. At this critical time when the country is grappling with racial justice and policing practices, providing robust anti-bias training programs to Justice Department personnel is as important as ever.

In light of these concerns, we respectfully request that you respond to the following questions:

1. What types of personnel training sessions on implicit bias, unconscious bias, or any other form of discrimination have been, or will be, canceled or postponed at the Justice Department because of the Administration’s recent directive?
2. What is the Justice Department’s rationale for canceling or postponing any such training sessions?

¹³ Memorandum from Deputy Att’y Gen. Sally Q. Yates to All Dep’t Law Enf’t Agents & Prosecutors (June 27, 2016), <https://www.justice.gov/opa/file/871116/download>.

¹⁴ Josh Dawsey & Jeff Stein, *White House Directs Federal Agencies To Cancel Race-Related Training Sessions It Calls ‘Un-American Propaganda,’* WASH. POST (Sept. 5, 2020), <https://www.washingtonpost.com/politics/2020/09/04/white-house-racial-sensitivity-training>.

¹⁵ Cheryl Harris, *What Is Critical Race Theory and Why Is Trump Afraid of It?*, NATION (Sept. 17, 2020), <https://www.thenation.com/article/politics/trump-critical-race-theory>.

¹⁶ Devlin Barrett & Matt Zapotosky, *Barr Accuses Justice Department of Headhunting and Meddling with Politics*, WASH. POST (Sept. 16, 2020), https://www.washingtonpost.com/national-security/william-barr-hillsdale-college/2020/09/16/0986dac4-f887-11ea-a275-1a2c2d36e1f1_story.html.

¹⁷ *Id.*

3. What was the specific basis for the indefinite postponement of the Antitrust Division's unconscious bias training session that had been set for last week?
4. Do you believe that training sessions on implicit bias, unconscious bias, or any other form of discrimination are "divisive, un-American propaganda," in the terminology used by Director Vought's memorandum?¹⁸
5. When it was announced in 2016, the Justice Department's implicit bias training program was set to reach more than 23,000 agents employed by the Federal Bureau of Investigation, the Drug Enforcement Administration, the U.S. Marshals Service, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives; some 5,800 attorneys at U.S. Attorney's Offices nationwide; and other personnel such as prosecutors in the Department's litigation components and agents at the Office of the Inspector General.¹⁹ Which agencies, components, or other offices within the Justice Department have canceled or postponed trainings on implicit bias, unconscious bias, or any other form of discrimination because of the Administration's recent directive?

We appreciate your prompt attention to this matter and respectfully request a response no later than October 5, 2020.

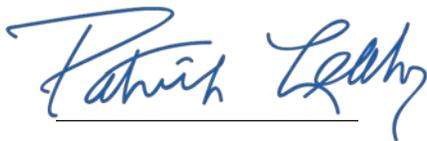
Sincerely,



CORY A. BOOKER
United States Senator



DIANNE FEINSTEIN
Ranking Member



PATRICK LEAHY
United States Senator



RICHARD J. DURBIN
United States Senator



AMY KLOBUCHAR
United States Senator



CHRISTOPHER A. COONS
United States Senator

¹⁸ Vought, *supra* note 1, at 1.

¹⁹ Press Release, *supra* note 12.



RICHARD BLUMENTHAL

United States Senator



MAZIE K. HIRONO

United States Senator