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Trump and allies plot revenge, Justice Department control in a second term

Advisers have also discussed deploying the military to quell potential unrest on Inauguration Day. Critics have called the ideas under consideration dangerous and unconstitutional.

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Donald Trump and his allies have begun mapping out specific plans for using the federal government to punish critics and opponents should he win a second term, with the former president naming individuals he wants to investigate or prosecute and his associates drafting plans to potentially invoke the Insurrection Act on his first day in office to allow him to deploy the military against civil demonstrations.

In private, Trump has told advisers and friends in recent months that he wants the Justice Department to investigate onetime officials and allies who have become critical of his time in office, including his former chief of staff, John F. Kelly, and former attorney general William P. Barr, as well as his ex-attorney Ty Cobb and former Joint Chiefs of Staff chairman Gen. Mark A. Milley, according to people who have talked to him, who, like others, spoke on the condition of anonymity to describe private conversations. Trump has also talked of prosecuting officials at the FBI and Justice Department, a person familiar with the matter said.

In public, Trump has vowed to appoint a special prosecutor to “go after” President Biden and his family. The former president has frequently made corruption accusations against them that are not supported by available evidence.

To facilitate Trump's ability to direct Justice Department actions, his associates have been drafting plans to dispense with 50 years of policy and practice intended to shield criminal prosecutions from political considerations. Critics have called such ideas dangerous and unconstitutional.

"It would resemble a banana republic if people came into office and started going after their opponents willy-nilly," said Saikrishna Prakash, a constitutional law professor at the University of Virginia who studies executive power. "It's hardly something we should aspire to."

Much of the planning for a second term has been unofficially outsourced to a partnership of right-wing think tanks in Washington. Dubbed "Project 2025," the group is developing a plan, to include draft executive orders, that would deploy the military domestically under the Insurrection Act, according to a person involved in those conversations and internal communications reviewed by The Washington Post. The law, last updated in 1871, authorizes the president to deploy the military for domestic law enforcement.

The proposal was identified in internal discussions as an immediate priority, the communications showed. In the final year of his presidency, some of Trump's supporters urged him to invoke the Insurrection Act to put down unrest after the murder of George Floyd in the summer of 2020, but he never did it. Trump has publicly expressed regret about not deploying more federal force and said he would not hesitate to do so in the future.

Trump campaign spokesman Steven Cheung did not answer questions about specific actions under discussion. "President Trump is focused on crushing his opponents in the primary election and then going on to beat Crooked Joe Biden," Cheung said. "President Trump has always stood for law and order, and protecting the Constitution."

The discussions underway reflect Trump's determination to harness the power of the presidency to exact revenge on those who have challenged or criticized him if he returns to the White House. The former president has frequently threatened to take punitive steps against his perceived enemies, arguing that doing so would be justified by the current prosecutions against him. Trump has claimed without evidence that the criminal charges he is facing — a total of 91 across four state and federal indictments — were made up to damage him politically.

"This is third-world-country stuff, 'arrest your opponent,'" Trump said at a campaign stop in New Hampshire in October. "And that means I can do that, too."

Special counsel Jack Smith, Attorney General Merrick Garland and Biden have all said that Smith's prosecution decisions were made independently of the White House, in accordance with department rules on special counsels.

Trump, the clear polling leader in the GOP race, has made “retribution” a central theme of his campaign, seeking to intertwine his own legal defense with a call for payback against perceived slights and offenses to right-wing Americans. He repeatedly tells his supporters that he is being persecuted on their behalf and holds out a 2024 victory as a shared redemption at their enemies’ expense.

‘He is going to go after people that have turned on him’

It is unclear what alleged crimes or evidence Trump would claim to justify investigating his named targets.

Kelly said he would expect Trump to investigate him because since his term as chief of staff ended, he has publicly criticized Trump, including by alleging that he called dead service members “suckers.” Kelly added, “There is no question in my mind he is going to go after people that have turned on him.”

Barr, another Trump appointee turned critic, has contradicted the former president’s false claims about the 2020 election and called him “a very petty individual who will always put his interests ahead of the country’s.” Asked about Trump’s interest in prosecuting him, Barr deadpanned, “I’m quivering in my boots.”

“Trump himself is more likely to rot in jail than anyone on his alleged list,” said Cobb, who accused Trump of “stifling truth, making threats and bullying weaklings into doing his bidding.”

Milley did not comment.

Other modern presidents since the Watergate scandal — when Richard M. Nixon tried to suppress the FBI’s investigation into his campaign’s spying and sabotage against Democrats — have sought to separate politics from law enforcement. Presidents of both parties have imposed a White House policy restricting communications with prosecutors. An effort under the George W. Bush administration to remove U.S. attorneys for political reasons led to high-level resignations and a criminal investigation.

Rod J. Rosenstein, the Trump-appointed deputy attorney general who oversaw the investigation by special counsel Robert S. Mueller III into Russian interference in the 2016 election, said a politically ordered prosecution would violate the 14th Amendment’s guarantee of equal protection under law and could cause judges to dismiss the charges. That constitutional defense has rarely been raised in U.S. history, Rosenstein said.

“Making prosecutorial decisions in a nonpartisan manner is essential to democracy,” Rosenstein said. “The White House should not be meddling in individual cases for political reasons.”

But Trump allies such as Russ Vought, his former budget director who now leads the Center for Renewing America, are actively repudiating the modern tradition of a measure of independence for the Department of Justice, arguing that such independence is not based in law or the Constitution. Vought is in regular contact with Trump and would be expected to hold a major position in a second term.

“You don’t need a statutory change at all, you need a mind-set change,” Vought said in an interview. “You need an attorney general and a White House Counsel’s Office that don’t view themselves as trying to protect the department from the president.”

A fixation on prosecuting enemies

As president, Kelly said, Trump would often suggest prosecuting his political enemies, or at least having the FBI investigate them. Kelly said he would not pass along the requests to the Justice Department but would alert the White House Counsel’s Office. Usually, they would ignore the orders, he said, and wait for Trump to move on. In a second term, Trump’s aides could respond to such requests differently, he said.

“The lesson the former president learned from his first term is don’t put guys like me ... in those jobs,” Kelly said. “The lesson he learned was to find sycophants.”

Although aides have worked on plans for some other agencies, Trump has taken a particular interest in the Justice Department. In conversations about a potential second term, Trump has made picking an attorney general his number one priority, according a Trump adviser.

“Given his recent trials and tribulations, one would think he’s going to pick up the plan for the Department of Justice before doing some light reading of a 500-page white paper on reforming the EPA,” said Matt Mowers, a former Trump White House adviser.

Jeffrey Clark, a fellow at Vought’s think tank, is leading the work on the Insurrection Act under Project 2025. The Post has reported that Clark is one of six unnamed co-conspirators whose actions are described in Trump’s indictment in the federal election interference case.

Clark was also charged in Fulton County, Georgia, with violating the state anti-racketeering law and attempting to create a false statement, as part of the district attorney's case accusing Trump and co-conspirators of interfering in the 2020 election. Clark has pleaded not guilty. As a Justice Department official after the 2020 election, Clark pressured superiors to investigate nonexistent election crimes and to encourage state officials to submit phony certificates to the electoral college, according to the indictment.

In one conversation described in the federal indictment, a deputy White House counsel warned Clark that Trump's refusing to leave office would lead to "riots in every major city." Clark responded, according to the indictment, "That's why there's an Insurrection Act."

Clark had dinner with Trump during a visit to his Bedminster, N.J, golf club this summer. He also went to Mar-a-Lago on Wednesday for a screening of a new Dinesh D'Souza movie that uses falsehoods, misleading interviews and dramatizations to allege federal persecution of Jan. 6 rioters and Christians. Also attending were fringe allies such as Stephen K. Bannon, Roger Stone, Laura Loomer and Michael Flynn.

"I think that the supposedly independent DOJ is an illusion," Clark said in an interview. Through a spokeswoman he did not respond to follow-up questions about his work on the Insurrection Act.

Clark's involvement with Project 2025 has alarmed some other conservative lawyers who view him as an unqualified choice to take a senior leadership role at the department, according to a conservative lawyer who spoke on the condition of anonymity to describe private talks. Project 2025 compromises 75 groups in a collaboration organized by the Heritage Foundation.

Project 2025 director Paul Dans stood by Clark in a statement. "We are grateful for Jeff Clark's willingness to share his insights from having worked at high levels in government during trying times," he said.

After online publication of this story, Rob Bluey, a Heritage spokesman, said: "There are no plans within Project 2025 related to the Insurrection Act or targeting political enemies."

How a second Trump term would differ from the first

There is a heated debate in conservative legal circles about how to interact with Trump as the likely nominee. Many in Trump's circle have disparaged what they view as institutionalist Republican lawyers, particularly those associated with the Federalist Society. Some Trump advisers consider these individuals too soft and accommodating to make the kind of changes within agencies that they want to see happen in a second Trump administration.

Trump has told advisers that he is looking for lawyers who are loyal to him to serve in a second term — complaining about his White House Counsel’s Office unwillingness to go along with some of his ideas in his first term or help him in his bid to overturn his 2020 election defeat.

In repeated comments to advisers and lawyers around him, Trump has said his biggest regrets were naming Jeff Sessions and Barr as his attorneys general and listening to others — he often cites the “Federalist Society” — who wanted him to name lawyers with impressive pedigrees and Ivy League credentials to senior Justice Department positions. He has mentioned to several lawyers who have defended him on TV or attacked Biden that they would be a good candidate for attorney general, according to people familiar with his comments.

The overall vision that Trump, his campaign and outside allies are now discussing for a second term would differ from his first in terms of how quickly and forcefully officials would move to execute his orders. Alumni involved in the current planning generally fault a slow start, bureaucratic resistance and litigation for hindering the president’s agenda in his first term, and they are determined to avoid those hurdles, if given a second chance, by concentrating more power in the West Wing and selecting appointees who will carry out Trump’s demands.

Those groups are in discussions with Trump’s campaign advisers and occasionally the candidate himself, sometimes circulating policy papers or draft executive orders, according to people familiar with the situation.

“No one is opposed to them putting together ideas, but it’s not us,” a campaign adviser said. “These groups say they’ll have the whole transition planned. Some of those people I’m sure are good and Trump will appoint, but it’s not what is on his mind right now. I’m sure he’d be fine with some of their orders.”

Trump’s core group of West Wing advisers for a second term is widely expected to include Stephen Miller, the architect of Trump’s hard-line immigration policies including family separation, who has gone on to challenge Biden administration policies in court through a conservative organization called America First Legal. Miller did not respond to requests for comment.

Alumni have also saved lists of previous appointees who would not be welcome in a second Trump administration, as well as career officers they viewed as uncooperative and would seek to fire based on an executive order to weaken civil service protections.

For other appointments, Trump would be able to draw on lineups of personnel prepared by Project 2025. Dans, a former Office of Personnel Management chief of staff, likened the database to a “conservative LinkedIn,” allowing applicants to present their resumes on public profiles, while also providing a shared workspace for Heritage and partner organizations to vet the candidates and make recommendations.

“We don’t want careerists, we don’t want people here who are opportunists,” he said. “We want conservative warriors.”

Marianne LeVine and Karen DeYoung contributed to this report.