

United States Senate
WASHINGTON, DC 20510

December 6, 2023

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

The Honorable Antony Blinken
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Attorney General Garland and Secretary Blinken,

I wish to address to your attention a recent opinion piece published in the pages of a widely-circulated American newspaper. Based on my review of public charging documents that the Department of Justice has filed in courts of law, I suspect that one or both of you might characterize this article as an invitation to “insurrection,” a manifestation of criminal “conspiracy,” or an attempt to bring about civil war.¹

After declaring that the odds of an American dictatorship in the next few years are “pretty good” and that “[t]hose who hope to be saved [from dictatorship] by a U.S. military devoted to the protection of the Constitution are living in a fantasyland,” writer Robert Kagan—an editor at large at *The Washington Post*—proceeded to the conclusion that a second Trump presidency would justify secession, treason, and (likely) political violence:

Resistance [to President Trump and the United States government] could come from the governors of predominantly Democratic states such as California and New York through a form of nullification. States with Democratic governors and statehouses could refuse to recognize the authority of a tyrannical federal government. *That is always an option in our federal system.*²

Excuse me? I must have missed that day in civics class. Our system of federalism prescribes a robust role for state governments and often allows for local resolution of local matters. But

¹ Robert Kagan, *Opinion: A Trump dictatorship is increasingly inevitable. We should stop pretending*, Wash. Post, Nov. 30, 2023, <https://www.washingtonpost.com/opinions/2023/11/30/trump-dictator-2024-election-robert-kagan/>.

² *Id.* (emphasis added).

“[t]he Constitution, in all its provisions, looks to an *indestructible* Union.”³ “[F]ederal authority is supreme,”⁴ and “arguments by James Madison and Thomas Jefferson for state nullification . . . have long since [been] rejected.”⁵ Never mind that our country endured the horror of civil war hoping to put to bed the idea that states can ignore lawful federal authority when it inconveniences them. According to Robert Kagan, the prospect of a second Donald Trump presidency is terrible enough to justify open rebellion against the United States, along with the political violence that would inevitably follow.

As you know, prosecutors in the Department of Justice have embraced several stunningly broad interpretations of federal law in their bid to ensnare President Trump in criminal wrongdoing. For example, prosecutors have relied on a broad reading of 18 U.S.C. § 241 to argue that President Trump has conspired to “threaten” or “intimidate” one or more persons in their free exercise of the “right to vote, and to have one’s vote counted.”⁶ By that standard, I would like to know whether a supporter of President Trump might be “intimidate[d]” into foregoing the right to vote after learning that Robert Kagan has encouraged large blue states to rebel against the United States if Trump is elected. If so, I wonder further whether the editors of *The Washington Post*, having put Kagan’s call to arms in print, might have conspired to suppress the vote.

Additionally, it is my understanding Robert Kagan’s wife, Victoria Nuland, is a senior administration official charged with reviewing our nation’s most sensitive national security information and intelligence programs. I am curious to know whether, in the view of the State Department, Victoria Nuland’s close relationship with her husband might compromise her judgment about the best interests of the United States.

To assuage my curiosity, please answer the following questions by **January 6, 2024**:

- Will the Department of Justice open an investigation into Robert Kagan for potential violations of 18 U.S.C. § 241, 18 U.S.C. § 2383, or any other federal criminal statute? If not, what factors counsel against such an investigation? Why were those factors inapplicable in President Trump’s case?
- Does the Department of Justice agree with Robert Kagan that, should they perceive federal authority to be tyrannical, the states of California and New York would be free to flout the federal government?
- How does the Department of Justice distinguish between heated political rhetoric and evidence of a conspiracy to violate rights or rebel against the United States? In the view of the Department of Justice, could a demand for “nullification” or secession “intimidate” a voter into changing his behavior at the ballot box?
- Will the State Department review Victoria Nuland’s security clearance in light of her husband’s call for rebellion against the United States? If not, why not?

³ *Texas v. White*, 74 U.S. 700, 7 Wall. 700, 725 (1868) (emphasis added).

⁴ *United States v. Morrison*, 529 U.S. 598, 640 n.12 (2000).

⁵ *United States v. Navarro-Vargas*, 408 F.3d 1184, 1203 n.24 (9th Cir. 2005).

⁶ Indictment, Dkt. 1, *United States v. Trump*, No. 1:23-CR-00257 (D.D.C. Aug. 8, 2023).

Sincerely,

A handwritten signature in black ink, appearing to read 'JDV', with a horizontal line extending to the right from the end of the signature.

JD VANCE
United States Senator