

United States Senate

September 13, 2019

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Inspector General Horowitz:

I write to convey my concerns about the Justice Department's investigation into four automakers that expressed support for maintaining a national program with the state of California to make cleaner, less-polluting vehicles, and agreed with California to a framework for emission reductions consistent with this commitment.

When Congress wrote the Clean Air Act, it granted California the ability to apply for a special waiver to continue setting standards exceeding the applicable federal standard to address the unique air pollution problems faced by the state. While no other state is eligible for such a waiver, states can voluntarily adopt any standards California sets, occasionally leading to two regulatory standards across the nation. To achieve a consistent nationwide set of vehicle emissions and fuel economy standards, the Obama administration worked with California to establish the National Program in 2009, which complies with National Highway Traffic Safety Administration, Environmental Protection Agency (EPA), and California Air Resources Board (CARB) legal authorities to regulate vehicle emissions and fuel economy. The current standards, impacting model years 2017 through 2025, were finalized in 2012 and the EPA conducted a mid-term evaluation that in January 2017 affirmed the appropriateness of the standards. On March 15, 2017, the Trump administration announced that it would reconsider the Final Determination in an effort to roll back the existing emissions standards. The administration's final rule is expected imminently.

As the Trump administration prepared to roll back emission standards, CARB, on behalf of the state of California, announced a groundbreaking framework with four automakers—Ford, Honda, Volkswagen Group of America, and BMW of North America.¹ The framework, which impacts model years 2022 through 2026, expresses the manufacturers' commitment to a set of terms for light-duty greenhouse gas emissions standards while increasing automakers' flexibility in achieving the standard. The automakers agreed to comply with these compromise standards—which slightly loosened existing emissions standards set in 2012 but are far more stringent than standards proposed by the Trump administration. In exchange, California agreed to treat the

¹ Press Release, California Air Resources Board, California and Major Automakers Reach Groundbreaking Framework Agreement on Clean Emission Standards (July 25, 2019), available at <https://ww2.arb.ca.gov/news/california-and-major-automakers-reach-groundbreaking-framework-agreement-clean-emission>.

automakers' compliance with the framework as satisfying CARB's regulatory program.² Discussions continue to formalize these understandings.

Notably, the four automakers negotiated with the state of California and proposed the framework after the White House declined an industry request to come up with a proposal to maintain a single national standard that recognized California's authority. In June 2019, 17 of the world's largest automakers warned President Trump that his plan to relax national standards could destabilize the automotive industry and hamper investment.³ Notwithstanding this industry plea, the EPA refused to re-enter negotiations with California and sought to move ahead with its original plan.⁴

Now, in an expression of hostility towards California's regulatory authority, the Trump administration has launched a multi-pronged assault on California's framework with the four automakers. On September 6, it was reported that the Justice Department had launched an investigation into whether the four automakers had violated federal antitrust law by agreeing to follow the emissions program set forth in the framework with California.⁵ Academics and practicing lawyers have described the Justice Department's investigation as "unusual" and "unprecedented," as there is nothing on the face of the framework that suggests any legitimate competitive concern.⁶ On the same day, the EPA and the U.S. Department of Transportation (DOT) also sent a letter to CARB, claiming that the state's framework was inconsistent with federal law.⁷ The EPA and DOT assert that the framework undermines federal authority to set fuel economy and vehicle emissions standards—a position that is contrary to longstanding precedent under the Clean Air Act, and the terms of the framework.⁸

This chain of events raises serious questions about whether federal law enforcement is being used to coerce the four automakers to abandon their efforts to make cleaner, less-polluting vehicles. It also raises questions about whether the machinery of the Justice Department is being used for partisan political purposes, or at the behest of special interest groups that oppose even modest efforts to reduce greenhouse gas emissions.

² *Id.*

³ Coral Davenport, *Automakers Tell Trump His Pollution Rules Could Mean 'Untenable' Instability and Lower Profits*, N.Y. Times, June 6, 2019, <https://www.nytimes.com/2019/06/06/climate/trump-auto-emissions-rollback-letter.html>.

⁴ Chester Dawson and Jennifer Dlouhy, *White House Nixes Automakers' Plea for California Pact on Emissions*, Automotive News, June 6, 2019, <https://www.autonews.com/regulation-safety/white-house-nixes-automakers-plea-california-pact-emissions>.

⁵ Hiroko Tabuchi and Coral Davenport, *Justice Dept. Investigates California Emissions Pact That Embarrassed Trump*, N.Y. Times, Sept. 6, 2019, <https://www.nytimes.com/2019/09/06/climate/automakers-california-emissions-antitrust.html>.

⁶ Michael Wayland, *DOJ Launches Antitrust Probe Over California Emissions Deal with Automakers*, Sept. 6, 2019, https://www.cnbc.com/2019/09/06/doj-launches-antitrust-probe-over-auto-emissions-deal-with-california-wsj-reports.html?_source=sharebar|twitter&par=sharebar; Keith Laing and Breana Noble, *Feds Launch 'Unprecedented' Antitrust Probe into Calif. MPG Deal with Ford*, The Detroit News, Sept 6, 2019, <https://www.detroitnews.com/story/business/autos/2019/09/06/feds-antitrust-probe-california-mpg-deal-ford-vw-honda-bmw/2231506001/>;

⁷ News Release, U.S. Environmental Protection Agency, EPA and DOT Put California on Notice (Sept. 6, 2019), available at <https://www.epa.gov/newsreleases/epa-and-dot-put-california-notice>.

⁸ *Id.*

Given these concerns, I strongly urge the Office of Inspector General to investigate the purported grounds for the Justice Department's investigation of the four automakers. I also request that the Office of Inspector General evaluate whether the Justice Department has received any requests or suggestions, whether express or implied, to investigate the emissions framework between California and the automakers.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kamala', with a stylized flourish extending to the right.

KAMALA D. HARRIS
United States Senator