STATEMENT OF

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ATTORNEY GENERAL

BEFORE THE
U.S. SENATE COMMITTEE ON THE JUDICIARY

FOR A HEARING ON

THE DEPARTMENT OF JUSTICE'S INVESTIGATION OF RUSSIAN INTERFERENCE WITH THE 2016 PRESIDENTIAL ELECTION

PRESENTED

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Statement of Attorney General William P. Barr
Before the Committee on the Judiciary
United States Senate
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Good morning, Chairman Graham, Ranking Member Feinstein, and Members of the Committee. Thank you for the opportunity to appear today to discuss the conclusion of the investigation into Russian efforts to interfere in the 2016 election by Special Counsel Robert S. Mueller, III, and the confidential report he submitted to me, which I recently released to the public after applying necessary redactions.

When I appeared before this Committee just a few months ago for my confirmation hearing, Senators asked for two commitments concerning the Special Counsel's investigation: first, that I would allow the Special Counsel to finish his investigation without interference; and second, that I would release his report to Congress and to the American public. I believe that the record speaks for itself. The Special Counsel completed his investigation as he saw fit. As I informed Congress on March 22, 2019, at no point did I, or anyone at the Department of Justice, overrule the Special Counsel on any proposed action. In addition, immediately upon receiving his confidential report to me, we began working with the Special Counsel to prepare it for public release and, on April 18, 2019, I released a public version subject only to limited redactions that were necessary to comply with the law and to protect important governmental interests.

Preparation for Public Release

As I explained in my letter of April 18, 2019, the redactions in the public report fall into four categories: (1) grand-jury information, the disclosure of which is prohibited by Federal Rule of Criminal Procedure 6(e); (2) investigative techniques, which reflect material identified by the intelligence and law enforcement communities as potentially compromising sensitive sources, methods, or techniques, as well as information that could harm ongoing intelligence or law enforcement activities; (3) information that, if released, could harm ongoing law enforcement matters, including charged cases where court rules and orders bar public disclosure by the parties of case information; and (4) information that would unduly infringe upon the personal privacy and reputational interests of peripheral third parties, which includes deliberation about decisions not to recommend prosecution of such parties. I have also made available to a bipartisan group of leaders in Congress, including Chairman Graham and Ranking Member Feinstein, a minimally redacted version that includes everything other than the grand-jury material, which by law cannot be disclosed.

We made every effort to ensure that the redactions were as limited as possible. According to one analysis, just eight percent of the public report was redacted. And my understanding is that less than two percent has been withheld in the minimally redacted version made available to Congressional leaders. While the Deputy Attorney General and I selected the categories of redactions, the redactions themselves were made by Department of Justice attorneys working closely with attorneys from the Special Counsel's Office. These lawyers consulted with the prosecutors handling ongoing matters and with members of the intelligence community who reviewed selected portions of the report to advise on redactions. The Deputy Attorney General and I did not overrule any of the redaction decisions, nor did we request that any additional material be redacted.

We also permitted the Office of the White House Counsel and the President's personal counsel to review the redacted report prior to its release, but neither played any role in the redaction process. Review by the Office of White House Counsel allowed them to advise the President on executive privilege, consistent with long-standing Executive Branch practice. As I have explained, the President made the determination not to withhold any information based on executive privilege. Review by the President's personal counsel was a matter of fairness in light of my decision to make public what would otherwise have been a confidential report, and it was consistent with the practice followed for years under the now-expired Ethics in Government Act.

Bottom-Line Conclusions

After the Special Counsel submitted the confidential report on March 22, I determined that it was in the public interest for the Department to announce the investigation's bottom-line conclusions—that is, the determination whether a provable crime has been committed or not. I did so in my March 24 letter. I did not believe that it was in the public interest to release additional portions of the report in piecemeal fashion, leading to public debate over incomplete information. My main focus was the prompt release of a public version of the report so that Congress and the American people could read it for themselves and draw their own conclusions.

The Department's principal responsibility in conducting this investigation was to determine whether the conduct reviewed constituted a crime that the Department could prove beyond a reasonable doubt. As Attorney General, I serve as the chief law-enforcement officer of the United States, and it is my responsibility to ensure that the Department carries out its law-enforcement functions appropriately. The Special Counsel's investigation was no exception. The Special Counsel was, after all, a federal prosecutor in the Department of Justice charged with making prosecution or declination decisions.

The role of the federal prosecutor and the purpose of a criminal investigation are well-defined. Federal prosecutors work with grand juries to collect evidence to determine whether a crime has been committed. Once a prosecutor has exhausted his investigation into the facts of a case, he or she faces a binary choice: either to commence or to decline prosecution. To commence prosecution, the prosecutor must apply the principles of federal prosecution and conclude both that the conduct at issue constitutes a federal offense and that the admissible evidence would probably be sufficient to obtain and sustain a guilty verdict by an unbiased trier of fact. These principles govern the conduct of all prosecutions by the Department and are codified in the Justice Manual.

The appointment of a Special Counsel and the investigation of the conduct of the President of the United States do not change these rules. To the contrary, they make it all the more important for the Department to follow them. The appointment of a Special Counsel calls for particular care since it poses the risk of what Attorney General Robert Jackson called "the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted." By definition, a Special Counsel is charged with investigating particular potential crimes, not all potential crimes wherever they may be found. Including a democratically elected politician as a subject in a criminal investigation likewise calls for special care. As Attorney General Jackson admonished his United States Attorneys, politically sensitive cases demand that federal prosecutors be "dispassionate and courageous" in order to "protect the spirit as well as the letter of our civil liberties."

The core civil liberty that underpins our American criminal justice system is the presumption of innocence. Every person enjoys this presumption long before the commencement

of any investigation or official proceeding. A federal prosecutor's task is to decide whether the admissible evidence is sufficient to overcome that presumption and establish guilt beyond a reasonable doubt. If so, he seeks an indictment; if not, he does not. The Special Counsel's report demonstrates that there are many subsidiary considerations informing that prosecutorial judgment—including whether particular legal theories would extend to the facts of the case and whether the evidence is sufficient to prove one or another element of a crime. But at the end of the day, the federal prosecutor must decide yes or no. That is what I sought to address in my March 24 letter.

Russian Interference

The Special Counsel inherited an ongoing investigation into Russian interference in the 2016 presidential campaign, and whether any individuals affiliated with President Trump's campaign colluded in those efforts. In Volume I of the report, the Special Counsel found that several provable crimes were committed by Russian nationals related to two distinct schemes. First, the report details efforts by the Internet Research Agency (IRA), a Russian company with close ties to the Russian government, to sow social discord among American voters through disinformation and social media operations. Second, the report details efforts by Russian military officials associated with the GRU to hack into computers and steal documents and emails from individuals affiliated with the Democratic Party and the presidential campaign of Hillary Clinton for the purpose of eventually publicizing those emails. Following a thorough investigation, the Special Counsel brought charges against several Russian nationals and entities in connection with each scheme.

The Special Counsel also looked at whether any member or affiliate of the presidential campaign of Donald J. Trump participated in these crimes. With respect to the disinformation scheme, the Special Counsel found no evidence that any Americans—including anyone associated with the Trump campaign—conspired or coordinated with the Russian government or the IRA. Likewise, with respect to hacking, the Special Counsel found no evidence that anyone associated with the Trump campaign, nor any other American, conspired or coordinated with the Russian government in its hacking operations. Moreover, the Special Counsel did not find that any Americans committed a crime in connection with the dissemination of the hacked materials in part because a defendant could not be charged for dissemination without proof of his involvement in the underlying hacking conspiracy.

Finally, the Special Counsel investigated a number of "links" or "contacts" between Trump Campaign officials and individuals connected with the Russian government during the 2016 presidential campaign. The Special Counsel did not find any conspiracy with the Russian government to violate U.S. law involving Russia-linked persons and any persons associated with the Trump campaign.

Thus, as to the original question of conspiracy or coordination between the Trump campaign and the Russian government to interfere in the 2016 presidential election, the Special Counsel did not find that any crimes were committed by the campaign or its affiliates.

Obstruction of Justice

In Volume II of the report, the Special Counsel considered whether certain actions of the President could amount to obstruction of justice. The Special Counsel decided not to reach a conclusion, however, about whether the President committed an obstruction offense. Instead, the

report recounts ten episodes and discusses potential legal theories for connecting the President's actions to the elements of an obstruction offense. After carefully reviewing the facts and legal theories outlined in the report, and in consultation with the Office of Legal Counsel and other Department lawyers, the Deputy Attorney General and I concluded that, under the principles of federal prosecution, the evidence developed by the Special Counsel would not be sufficient to charge the President with an obstruction-of-justice offense.

The Deputy Attorney General and I knew that we had to make this assessment because, as I previously explained, the prosecutorial judgment whether a crime has been established is an integral part of the Department's criminal process. The Special Counsel regulations provide for the report to remain confidential. Given the extraordinary public interest in this investigation, however, I determined that it was necessary to make as much of it public as I could and committed the Department to being as transparent as possible. But it would not have been appropriate for me simply to release Volume II of the report without making a prosecutorial judgment.

The Deputy Attorney General and I therefore conducted a careful review of the report, looking at the facts found and the legal theories set forth by the Special Counsel. Although we disagreed with some of the Special Counsel's legal theories and felt that some of the episodes examined did not amount to obstruction as a matter of law, we accepted the Special Counsel's legal framework for purposes of our analysis and evaluated the evidence as presented by the Special Counsel in reaching our conclusion. We concluded that the evidence developed during the Special Counsel's investigation is not sufficient to establish that the President committed an obstruction-of-justice offense.

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The responsibility of the Department of Justice, when it comes to law enforcement, is to determine whether crimes have been committed and to prosecute those crimes under the principles of federal prosecution. With the completion of the Special Counsel's investigation and the resulting prosecutorial decisions, the Department's work on this matter is at its end aside from completing the cases that have been referred to other offices. From here on, the exercise of responding and reacting to the report is a matter for the American people and the political process. As I am sure you agree, it is vitally important for the Department of Justice to stand apart from the political process and not to become an adjunct of it.