

A3P III THE ARTICLE III PROJECT

June 24, 2024

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

Re: Criminal Referral Against Kristen Clarke,
Assistant Attorney General for Civil Rights

Dear Mr. Attorney General:

More than seven weeks ago, you received serious and credible evidence that Kristen Clarke—President Biden’s and your Assistant Attorney General for Civil Rights—perjured herself at her Senate confirmation hearing back in 2021 when she lied to the Senate about her arrest for a violent domestic dispute. Unsurprisingly, given your track record of leading a politicized and weaponized Biden Justice Department that goes after political enemies and protects political friends, more than seven weeks has passed and you have done nothing publicly to address this serious matter. The Biden White House and Justice Department pretend “nobody is above the law”—while ensuring Kristen Clarke is clearly above it. Thus, I write to refer this matter for criminal prosecution.

Prior to assuming her current senior political appointment in the Biden Justice Department, Kristen Clarke, like every other nominee who requires confirmation by the United States Senate, answered a series of questions under oath in written and oral form. Kristen Clarke knowingly and willfully provided a false answer to one of these questions, which constitutes the basis for this criminal referral on two grounds: (1) a violation of Title 18, United States Code, § 1001(a)(2) (knowingly and willfully making materially false statements); and (2) a violation of Title 18, United States Code, § 1621(1) (perjury).

A news report from *The Daily Signal*¹ explains clearly how Kristen Clarke lied to Congress and perjured herself during her Senate confirmation hearing. In 2006, Kristen Clarke and her husband Reginald Avery lived in Upper Marlboro, Maryland. On the night of July 4, Kristen Clarke and Avery engaged in a vicious argument after Kristen Clarke had discovered that Avery had been unfaithful. According to Avery, Kristen Clarke attacked him with a knife and caused injuries so severe that Avery required emergency-room care. Avery claims that the injuries were so serious that his finger was cut to the bone. Prince George’s County authorities arrested Kristen Clarke on the night of the incident. *The Daily Signal* reviewed police logs and

¹ Mary Margaret Olohan, *Exclusive: DOJ’s Kristen Clarke Testified She Was Never Arrested. Court Records and Text Messages Indicate She Was*, *The Daily Signal*, April 30, 2024, available at <https://www.dailysignal.com/2024/04/30/exclusive-doj-kristen-clarke-testified-she-was-never-arrested-court-records-and-text-messages-indicate-she-was/> (last visited June 24, 2024).

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court records to confirm that the arrest had occurred. In January 2008, the Maryland District Court for Prince George’s County expunged the record of the arrest.

On April 21, 2021, after her testimony before the Senate Judiciary Committee, Kristen Clarke answered under oath and penalty of perjury a series of written questions from senators. Senator Tom Cotton asked the question pertinent to this referral: “Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?”²

Kristen Clarke’s response was unambiguous: “No.”

After *The Daily Signal* published its report, Kristen Clarke released a statement to CNN. In it, Kristen Clarke claimed to have been a victim of years-long domestic abuse by Avery that had traumatized her. Kristen Clarke acknowledged the arrest but asserted, “I didn’t believe during my confirmation process and I don’t believe now that I was obligated to share a fully expunged matter from my past.” Kristen Clarke also stated, “When given the option to speak about such traumatic incidents in my life, I have chosen not to.”

“[W]hoever, in any matter within the jurisdiction of the . . . legislative branch of the Government of the United States, knowingly and willfully . . . makes any materially false, fictitious, or fraudulent statement or representation, . . . shall be fined under this title, imprisoned not more than 5 years o[r] both.” 18 U.S.C. § 1001(a)(2).

Senator Cotton did not merely ask Kristen Clarke whether she ever had been arrested for a violent crime; he also asked if she had been accused of one. By any objective measure, the facts as alleged by Avery constitute a violent crime. Kristen Clarke, Avery claims, attacked him and injured him to the point that he required emergency-medical treatment for his finger, which had been cut to the bone. Even if the Prince George’s County authorities had not arrested Kristen Clarke, she still would have been required to answer affirmatively to Senator Cotton’s question. Kristen Clarke knew full well what Avery had alleged. She is a highly accomplished attorney; indeed, she is one of the most powerful figures in the Biden Justice Department. It is implausible that she does not understand that Avery’s allegations constitute an accusation of a violent crime.

Kristen Clarke’s defense in her statement to CNN—that the matter was expunged and therefore not subject to disclosure—is absurd. It is true that Maryland Code of Criminal Procedure § 10-109 prohibits employers—both private and in state government—from inquiring about expunged matters. As Kristen Clarke well should know, the State of Maryland has no authority to prohibit employers in other states from making such inquiries. The State of Maryland only has jurisdiction to prohibit employers from doing so within its borders.

² Senator Cotton: Nomination of Kristen M. Clarke to be an Assistant Attorney General of the United States Questions for the Record, April 21, 2021, *available at* <https://www.judiciary.senate.gov/imo/media/doc/Kristen%20Clarke%20Responses%20for%20the%20Record.pdf> (last visited June 24, 2024).

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Kristen Clarke’s case is even more clear-cut because it concerns the advice-and-consent process outlined in Article II, Section 2, Clause 2 of the United States Constitution (the Appointments Clause). Presidents submit nominees for Senate evaluation. It is imperative that the Senate is provided with accurate information in order for it to provide informed constitutional advice and consent on each nominee. Such information includes past instances of alleged misconduct by nominees. The nominee must make senators aware of such issues in order to judge fully the character and fitness of each nominee to serve in the most powerful positions of government. The laws of the State of Maryland cannot supersede the Appointments Clause. Pursuant to Article VI, Clause 2 of the United States Constitution, it—and not the laws of the State of Maryland—is the supreme law of the land.

The Senate confirmed Kristen Clarke’s nomination by a vote of 51-48 (with 1 senator not voting).³ But for Kristen Clarke’s perjury, the Senate almost certainly would not have confirmed her nomination. In other words, Kristen Clarke lied her way into one of the most senior political appointments in the Biden Justice Department—and she is getting away with it under your leadership.

There is ample evidence to support this referral for false statements and perjury. Avery has accused Kristen Clarke of a violent crime. He also has alleged that local Maryland police arrested her. Police and court records corroborate the occurrence of the arrest. Most crucially, Kristen Clarke acknowledged it in her statement to reporter Hannah Rabinowitz of CNN. Kristen Clarke answered Senator Cotton’s question under oath in a manner contrary to her admission three years later.

Kristen Clarke’s conduct is egregious. Senator Cotton asked her a straightforward question, and she willfully and knowingly gave a false answer. Kristen Clarke claims that she had an “option” not to disclose this incident. This assertion shows an utter disregard for the role of the United States Senate in evaluating the worthiness of a nominee for confirmation. Neither Kristen Clarke nor the State of Maryland is entitled to decide what information the Senate deserves to know. That prerogative lies with the Senate. Senator Cotton asked a routine question, and Kristen Clarke failed to answer it honestly.

When discussing President Trump, you have stated: “No person is above the law in this country.”⁴

³ United States Senate, Roll Call Vote #203, 117th Congress - 1st Session, May 25, 2021, *available at* https://www.senate.gov/legislative/LIS/roll_call_votes/vote1171/vote_117_1_00203.htm (last visited June 24, 2024).

⁴ AG Garland on Charging a Former President: No One Is Above the Law, C-SPAN, Jan. 20, 2022, *available at* <https://www.c-span.org/video/?c5024451/ag-garland-charging-president-law> (last visited June 24, 2024).



More than seven weeks after clear evidence of Kristen Clarke's false statements and perjury became public, it is very clear you consider her above the law. This is unacceptable, and I demand you open a criminal probe.

Thank you for your attention to this important matter.

Sincerely,

Mike Davis, President and Founder
Article III Project (A3P)