# Congress of the United States

# House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM 2157 RAYBURN HOUSE OFFICE BUILDING WASHINGTON, DC 20515–6143 MAJORITY (202) 225–5074 MAJORITY (202) 225–5051 https://oversight.house.gov

February 25, 2025

Mr. Edward R. Martin Jr. Interim United States Attorney for the District of Columbia 601 D Street NW Washington, DC 20004

Dear Mr. Martin:

I write concerning several recent public communications you have made in your official capacity asserting that certain critics of the Trump Administration or policies that it favors including two Democratic Members of Congress—have violated the law and/or are subject to "inquiry" or other investigative activity by your office.<sup>1</sup> These include your shocking post on X yesterday stating that "[a]s President Trumps' [*sic*] lawyers, we are proud to fight to protect his leadership as our President and we are vigilant in standing against entities like the AP that refuse to put America first."<sup>2</sup> As you have announced, these communications are connected to your office's recently-launched "Operation Whirlwind," which you have reportedly described as intended to "hold accountable those who threaten [federal] workers."<sup>3</sup>

The safety of federal employees and officials is self-evidently paramount and emphatically must remain an ironclad priority for the Department of Justice. Your recent public statements, however—which are directed exclusively at opponents of and express support for the Trump Administration, explicitly criticize the Biden Administration, publicize pending investigative activity by your office, and make assertions of fact for which there exists no evidence—raise serious concerns that your new initiative is a pretext for misusing your office for political ends, threatening and intimidating critics of the Administration, and chilling constitutionally protected speech. Your post on X yesterday appears to confirm that these are in fact your aims.

<sup>&</sup>lt;sup>1</sup> Ryan J. Reilly "paints a vivid and urgent portrait of... disarray" (@ryanjreilly.com), Bluesky (Feb. 19, 2025) (online at https://bsky.app/profile/ryanjreilly.com/post/3lik4sbvu4c2n)); *Read Interim U.S. Attorney Ed Martin's Letters to Democratic Lawmakers*, Washington Post (Feb. 19, 2025) (online at www.washingtonpost.com/dc-md-va/2025/02/19/ed-martin-dc-letters-schumer-garcia/).

<sup>&</sup>lt;sup>2</sup> U.S. Attorney Ed Martin (@USAEdMartin), X (Feb. 24, 2025) (online at https://x.com/USAEdMartin/status/1894117113834488072).

<sup>&</sup>lt;sup>3</sup> Ryan J. Reilly "paints a vivid and urgent portrait of... disarray" (@ryanjreilly.com), Bluesky (Feb. 19, 2025) (online at https://bsky.app/profile/ryanjreilly.com/post/3lik4sbvu4c2n).

Indeed, as the *Washington Post* reported, legal experts have observed that your communications "would be more credible but for [your] own actions in the three weeks since taking office and [President] Trump's long pattern of sowing falsehood-laden attacks and encouraging violence against political critics."<sup>4</sup> The latter include more than 100 threats by Donald Trump to prosecute or punish perceived enemies, including against former President Biden, legislators, judges, and members of the Biden family—precisely none of which are mentioned in your communications.<sup>5</sup> While professing concern for the safety of all federal workers and officials, you have personally moved to dismiss criminal cases in which rioters at the U.S. Capitol on January 6, 2021, were convicted of or pled guilty to attacking Capitol Police Officers and presided over the firing of the career prosecutors who pursued those cases.<sup>6</sup> And notably, your communications make no mention of the continuing threat to Capitol Police Officers and other federal workers by the January 6 rioters whom Donald Trump pardoned, exemplified last week by the arrest of former Proud Boys leader Enrique Tarrio outside the Capitol on a charge of assaulting a female protester.<sup>7</sup>

Your communications are also conspicuously silent on Elon Musk's pattern of targeting career federal civil servants by name on X and reportedly "sparking his online army of followers to launch blistering critiques of ordinary federal employees," and his now deleted post stating that "no one is even trying to assassinate" former President Biden or former Vice President Harris.<sup>8</sup> Nor do your statements reflect any concern whatsoever about the publication of the names of 10 employees at the Department of Homeland Security by a Heritage Foundation-funded group, which called them "America's most subversive immigration bureaucrats," or that group's publication earlier this month of the names of more than 50 other federal employees on what it labelled a "DEI Watchlist."<sup>9</sup>

It thus appears that your stated commitment to protect federal employees and officials extends only to President Trump and his allies. As discussed below, your politically selective

<sup>6</sup> What to Know about Ed Martin, the Right-Wing Activist Trump Tapped to be DC's Top Prosecutor, CNN (Feb. 19, 2025) (online at www.cnn.com/2025/02/19/politics/ed-martin-justice-department-washington-dc/index.html).

<sup>7</sup> Ex-Proud Boys Leader Enrique Tarrio Arrested on Assault Charge Outside U.S. Capitol, NBC News (Feb. 21, 2025) (online at www.nbcnews.com/politics/politics-news/ex-proud-boys-leader-enrique-tarrio-arrested-assault-charge-us-capitol-rcna193246).

<sup>8</sup> Musk Unleashes Online Army on Federal Workers. "A Tough Way to Find Out She's Losing Her Job," Wall Street Journal (Nov. 22, 2024) (online at www.wsj.com/tech/musk-unleashes-online-army-on-federal-workersa-tough-way-to-find-out-shes-losing-her-job-f57a2e94); Elon Musk Deletes X Post About 'No One' Attempting to Assassinate Biden or Harris, NBC News (Sept. 16, 2024) (online at www.nbcnews.com/tech/elon-musk-deletes-xpost-about-assassination-biden-harris-rcna171260).

<sup>9</sup> How Elon Musk and the Right Are Trying to Recast Reporting as 'Doxxing,' New York Times (Feb. 12, 2025) (online at www.nytimes.com/2025/02/12/business/media/elon-musk-doxxing-marko-elez.html).

<sup>&</sup>lt;sup>4</sup> D.C. U.S. Attorney Probing Democrats Over Alleged Threats, Documents Show, Washington Post (Feb. 20, 2025) (online at www.washingtonpost.com/dc-md-va/2025/02/19/trump-justice-operation-whirlwind-democrats/).

<sup>&</sup>lt;sup>5</sup> Trump Makes More Than 100 Threats to Prosecute or Punish Perceived Enemies, NPR (Oct. 22, 2024) (online at www.npr.org/2024/10/22/nx-s1-5155032/trump-makes-more-than-100-threats-to-prosecute-or-punish-perceived-enemies).

approach to law enforcement violates DOJ policies, breaches your ethical obligations, and constitutes a misuse of your office—and most alarmingly, as a leading expert on legal ethics has observed, is "undermining the prosecutorial independence of the Justice Department."<sup>10</sup> Your post on X yesterday, moreover, appears to reflect your deeply disturbing and grossly erroneous view that the office of United States Attorney exists to further the personal interests of Donald Trump, rather than those of the American people, and may be used to target elements of the media that scrutinize or are critical of his Administration—a view that is fundamentally antithetical to, and represents a direct threat to, the rule of law in this country.

# February 3, 2025, Letter to Elon Musk

On February 3, 2025, you posted on your X account a letter, also dated February 3, on your office's letterhead to Elon Musk, with the salutation "Dear Elon," and stating: "It was good to work with the DOGE team this weekend. ... At this time, I ask that you utilize me and my staff to assist in protecting the DOGE work and the DOGE workers. ... Let me assure you of this: we will pursue any and all legal action against anyone who impedes your work or threatens your people. We will not act like the previous administration who looked the other way as the Antifa and BLM rioters as well as thugs with guns trashed our capital [*sic*] city."<sup>11</sup>

As the *New York Times* noted, your letter to Mr. Musk "was unusual, not least because criminal investigations are generally not announced in a public forum, let alone before any facts or evidence have been collected."<sup>12</sup> It thus appears to have violated DOJ's own policies, which provide unambiguously that "DOJ generally will not confirm the existence of or otherwise comment about ongoing investigations."<sup>13</sup>

Moreover, a leading criminal justice scholar and former U.S. Attorney commented that your communications suggest that you are "all-in in President Trump's camp" and are "going to exercise [your] power in a way that is favorable politically[.]"<sup>14</sup> Such overt political favoritism by a senior law enforcement official is blatantly improper on several grounds. It is flatly inconsistent with DOJ's *Principles of Federal Prosecution*, which are premised on "the fair, evenhanded administration of the federal criminal laws."<sup>15</sup> It also violates the Standards of Ethical Conduct for Employees of the Executive Branch, which require all employees to "act

<sup>10</sup> In Podcasts, D.C. U.S. Attorney Discussed Investigating Trump Foes, Washington Post (Feb. 21, 2025) (online at www.washingtonpost.com/dc-md-va/2025/02/21/us-attorney-ed-martin-trump-prosecutor-podcast/).

<sup>11</sup> Ed Martin (@EagleEdMartin), X (Feb. 3, 2025) (online at https://x.com/EagleEdMartin/status/1886456136032817488).

<sup>12</sup> In Fiery Words, the Federal Prosecutor in Washington Promises an Inquiry Into Allegations Raised by Musk, New York Times (Feb. 7, 2025) (online at www.nytimes.com/2025/02/07/us/politics/federal-prosecutor-ed-martin-elon-musk.html).

<sup>13</sup> U.S. Department of Justice, *Justice Manual* § 1-7.400 (2024) (online at https://www.justice.gov/jm/jm-1-7000-media-relations#1-7.540).

<sup>14</sup> U.S. Attorney Hints at Prosecutions Over 'Targeting' of DOGE Employees, Washington Post (Feb. 3, 2025) (online at www.washingtonpost.com/dc-md-va/2025/02/03/martin-supports-for-musk-doge/).

<sup>15</sup> U.S. Department of Justice, *Principles of Federal Prosecution* § 9-27.001 (online at www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.001).

impartially and not give preferential treatment to any private organization or individual" and to "endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards."<sup>16</sup> And your explicit support for DOGE's mission likewise runs afoul of the American Bar Association's *Criminal Justice Standards for the Prosecution Function*, which provide that a prosecutor "should not use ... improper considerations, such as partisan or political or personal considerations, in exercising prosecutorial discretion" and that it is improper for a prosecutor to make "public statement[s] that the prosecutor knows or reasonably should know will have a substantial likelihood of materially prejudicing a criminal proceeding or heightening public condemnation of the accused."<sup>17</sup>

## February 3, 2025, Post on X

Also on February 3, 2025, you posted a statement on X asserting that your office's "initial review of the evidence presented to us indicates that certain individuals and/or groups have committed acts that appear to violate the law in targeting DOGE employees."<sup>18</sup> You further stated: "We are in contact with the FBI and other law-enforcement partners to proceed rapidly. We also have our prosecutors preparing."<sup>19</sup> As the *Washington Post* observed, your statement was "atypical in alleging violations of law before any charges were filed."<sup>20</sup> Furthermore, by publicly announcing the existence of, and commenting upon, your investigation on social media, your statement, yet again, appears to have violated DOJ's express policy prohibiting such communications.

#### Letters to Members of Congress

You also sent letters dated January 21, 2025, February 6, 2025, and February 11, 2025, to the current U.S. Senate Minority Leader concerning statements he reportedly made at a rally in opposition to the U.S. Supreme Court's reproductive rights case law.<sup>21</sup> In the first of those letters, you requested "clarification" concerning those comments, which you asserted were made "clearly and in a way that many found threatening."<sup>22</sup> In your February 3 letter, you asserted that the Minority Leader's comments "were not just strong language born of a Brooklyn upbringing" and that "any reasonable person would hear your words as threatening."<sup>23</sup> And even

<sup>18</sup> Ed Martin (@EagleEdMartin), X (Feb. 3, 2025) (online at https://x.com/EagleEdMartin/status/1886538976145891408).

<sup>19</sup> Id.

<sup>20</sup> U.S. Attorney Hints at Prosecutions Over 'Targeting' of DOGE Employees, Washington Post (Feb. 3, 2025) (online at www.washingtonpost.com/dc-md-va/2025/02/03/martin-supports-for-musk-doge/).

<sup>21</sup> Read Interim U.S. Attorney Ed Martin's Letters to Democratic Lawmakers, Washington Post (Feb. 19, 2025) (online at www.washingtonpost.com/dc-md-va/2025/02/19/ed-martin-dc-letters-schumer-garcia/).

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>&</sup>lt;sup>16</sup> 5 C.F.R. § 2635.101(b) (online at www.law.cornell.edu/cfr/text/5/2635.101).

<sup>&</sup>lt;sup>17</sup> American Bar Association, *Criminal Justice Standards for the Prosecution Function* (4th ed.), Standards 3-1.6(a) and 3-1.10(c) (online at www.americanbar.org/groups/criminal\_justice/resources/standards/prosecution-function/).

after the Minority Leader's staff confirmed in a written response to you that the Senator's words were neither intended as nor constituted a physical threat to any person, you sent a further letter to him in which you wrote: "Your cooperation is more important than ever to complete this inquiry <u>before any action is taken</u>. I remind you: **no one is above the law**."<sup>24</sup>

Even setting aside your superfluous and unprofessional *ad hominem* commentary on the Minority Leader's personal background, these letters were extraordinary, in that, as one legal expert noted, "[p]rosecutors typically leave it to agents to investigate cases so they do not themselves become witnesses."<sup>25</sup> The highly unusual nature of these communications led the same expert to conclude that they "are designed more to chill free speech than to seek clarification, as they purport to do," while another noted that their "ingratiating and self-promotional tone makes [them] read more like a job application than the customary way that nonpolitical federal prosecutors speak."<sup>26</sup>

# February 19, 2025, Office-Wide Email

On February 19, 2025, you reportedly issued an office-wide email announcing an investigation into what you described as a potential attack on Secretary of Defense Pete Hegseth and the formation of "Operation Whirlwind."<sup>27</sup> That email, which was subsequently posted on social media, further stated: "Our office has been flooded with threats against those who helped free the January 6th prisoners . . . We must protect our cops, our prosecutors, our DOGE workers, the President, and all other government employees from threats against our nation."<sup>28</sup> You also cited the Senate Minority Leader's words, which you described as "threats" and noted: "It is particularly disturbing that other politicians have followed his words with threats of their own."<sup>29</sup> Once again, by focusing solely on potential threats against members and supporters of the Trump Administration and expressing solidarity with the criminal defendants convicted for their roles in the January 6, 2021, attack on the United States Capitol, your email violated both DOJ policy and your ethical obligations as a prosecutor.

Your statements also highlight your blatant conflict of interest as Interim U.S. Attorney. You moved to dismiss your office's prosecution of one of the January 6 defendants convicted of assaulting police with a dangerous weapon and obstructing Congress, despite having represented that same individual at trial while you were still in private practice—and, astonishingly, while

<sup>26</sup> Id.

<sup>28</sup> Id.

<sup>&</sup>lt;sup>24</sup> Id.

<sup>&</sup>lt;sup>25</sup> D.C. U.S. Attorney Probing Democrats Over Alleged Threats, Documents Show, Washington Post (Feb. 20, 2025) (online at www.washingtonpost.com/dc-md-va/2025/02/19/trump-justice-operation-whirlwind-democrats/).

<sup>&</sup>lt;sup>27</sup> Ryan J. Reilly "paints a vivid and urgent portrait of... disarray" (@ryanjreilly.com), Bluesky (Feb. 19, 2025) (online at https://bsky.app/profile/ryanjreilly.com/post/3lik4sbvu4c2n).

you were simultaneously listed as counsel of record for *both* that individual and DOJ.<sup>30</sup> Exacerbating this conflict, at the time you moved to dismiss those charges, you had also been an organizer, participant, and witness to the "Stop the Steal" rally on January 6 and made posts on X confirming your attendance at that rally-turned-insurrection and expressing support for the Oath Keepers.<sup>31</sup> Moreover, prior to holding your current office, you hosted a podcast promoting the use of DOJ to exact "retribution" against Donald Trump's political enemies through law enforcement.<sup>32</sup> Notably, you are currently facing a complaint before the District of Columbia Bar based upon this conflict, which appears to violate both federal ethics rules and the state Rules of Professional Conduct applicable to you.<sup>33</sup>

## **Mischaracterization of Protected Political Speech as Criminal Activity**

Underlying each of your communications discussed above is the false assumption that mere opposition to, or criticism of, the Trump Administration and policies that it supports may constitute a federal crime. That suggestion is baseless and contrary to the law. While genuine "threats" are not protected speech under the First Amendment, words and actions opposing or criticizing DOGE or other administration actions—such as "imped[ing]" DOGE's work and "confrontations, or other actions in any way that impact [DOGE employees' work]"—are entirely lawful and qualify as speech protected by the First Amendment to the U.S. Constitution. The U.S. Supreme Court has repeatedly affirmed the fundamental principle that, while the government can prosecute unlawful threats, "[w]hat [it] cannot do … is use the power of the State to punish or suppress disfavored expression."<sup>34</sup>

The Court has likewise recognized that even indirect threats by government officials such as the type of "thinly veiled threats to institute criminal proceedings" contained in your communications—may also chill protected speech and violate the First Amendment.<sup>35</sup> Moreover, your singling out of speakers with specific viewpoints, raise the threat of unconstitutional viewpoint discrimination.<sup>36</sup> Because your communications are aimed solely at speakers opposed to DOGE or other Trump Administration policies and appear to target

<sup>31</sup> See id.

<sup>&</sup>lt;sup>30</sup> See Letter from Reps. Dan Goldman, Hillary Scholten, Stacey Plaskett, Mikie Sherrill, Glenn Ivey, Maggie Goodlander & Shomari Figures to Inspector General Michael Horowitz (Feb. 12, 2025) (online at https://goldman.house.gov/sites/evo-subsites/goldman.house.gov/files/evo-mediadocument/2.12.25\_Letter%20from%20from%20Rep.%20Goldman%2C%20et%20al.%2C%20to%20DOJ%20IG%2 0Horowitz.pdf).

<sup>&</sup>lt;sup>32</sup> In Podcasts, D.C. U.S. Attorney Discussed Investigating Trump Foes, Washington Post (Feb. 21, 2025) (online at www.washingtonpost.com/dc-md-va/2025/02/21/us-attorney-ed-martin-trump-prosecutor-podcast/).

<sup>&</sup>lt;sup>33</sup> See id.; The 65 Project, Bar Complaint Against Edward Martin (Feb. 6, 2025) (online at https://the65project.com/bar-complaint-against-edward-martin/).

<sup>&</sup>lt;sup>34</sup> See Nat'l Rifle Ass'n of Am. v. Vullo, 602 U.S. 175, 188 (2024).

<sup>&</sup>lt;sup>35</sup> *Id.* at 189-90; *see also* Letter from ACLU of the District of Columbia to Edward R. Martin, Jr. (Feb. 4, 2025) (online at www.acludc.org/sites/default/files/20250204\_acludc\_ltr\_to\_martin65.pdf).

<sup>&</sup>lt;sup>36</sup> See Iancu v. Brunelli, 588 U.S. 388, 393 (2019) ("A core postulate of free speech law" is that "[t]he government may not discriminate against speech based on the ideas or opinions it conveys.").

unquestionably protected speech, I am deeply concerned that your "Operation Whirlwind" and associated activities that you are undertaking may violate the First Amendment and chill legitimate political expression. They also raise the concern that you are using your office to carry out Elon Musk's evident goal to silence media and other commentators who criticize him or DOGE.<sup>37</sup>

# **Requests for Information**

In order to investigate whether your office is effectively and evenhandedly protecting federal employees and officials and complies with the U.S. Constitution, DOJ policies, and other applicable laws, regulations, and rules, we request that you provide written responses to the following no later than March 11, 2025:

- Please identify, respectively, the number of initial leads, preliminary inquiries, and full investigations that your office has undertaken concerning violence or threats of violence against: (a) current or former Democratic officials; (b) individuals known to your office as opponents of DOGE or other Trump Administration policies; (c) current or former attorneys and other staff in your office who were involved in the prosecution of defendants charged with criminal offenses in connection with the events at the U.S. Capitol on January 6, 2021; and (d) current or former U.S. Capitol Police officers and other personnel who were involved in the events at the U.S. Capitol on January 6, 2021.
- 2. Please identify the steps you have taken or intend to take as Interim U.S. Attorney, or if confirmed by the Senate, as U.S. Attorney, to protect the safety of current or former attorneys and other staff in your office who were involved in the prosecution of defendants charged with crimes in connection with the events at the U.S. Capitol on January 6, 2021.
- 3. Please identify the steps you have taken or intend to take as Interim U.S. Attorney, or if confirmed by the Senate, as U.S. Attorney, to protect the safety of current or former U.S. Capitol Police officers and other U.S. Capitol Police personnel who were involved in the events at the U.S. Capitol on January 6, 2021.
- 4. Please identify the steps you have taken or intend to take as Interim U.S. Attorney, or if confirmed by the Senate, as U.S. Attorney, to protect current or former federal employees targeted individually by social media posts or other media by Elon Musk or any other individuals or groups.
- 5. Please confirm your belief that the Department of Justice represents the United States of America and its citizens, and not the personal and individual political or business interests of the President.

<sup>&</sup>lt;sup>37</sup> See How Elon Musk and the Right Are Trying to Recast Reporting as 'Doxxing,' New York Times (Feb. 12, 2025) (online at www.nytimes.com/2025/02/12/business/media/elon-musk-doxxing-marko-elez.html).

- 6. Please confirm your belief that the Department of Justice may not, consistent with the law and Constitution of the United States, take investigative, enforcement, or other action against any individual or entity based upon that individual's or entity's criticism of, dissent from, or other non-violent opposition to, the policies or members of a given presidential administration.
- 7. Please state whether you believe criticism of, or opposition to, DOGE, Elon Musk, or any other policy or action of, or individual associated with, the Trump Administration, constitutes protected speech under the First Amendment of the U.S. Constitution, as defined by the U.S. Supreme Court.
- 8. Please confirm that your office does not intend to investigate or prosecute any individual or entity based upon criticism of, or opposition to, DOGE, Elon Musk, or any other policy or action of, or individual associated with, the Trump Administration, for making protected speech under the First Amendment of the U.S. Constitution, as defined by the U.S. Supreme Court.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

If you have any questions regarding this request, please contact Democratic Committee staff at (202) 225-5051.

Sincerely,

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Gerald E. Connolly Ranking Member

Cc: The Honorable James Comer, Chairman